

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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3
4 KATHLEEN HEIKKILA, RICHARD A. BATTIN, and VINCE
5 PANESKO,

Case No. 04-2-0020c

6
7 Petitioners,

8 v.

**FINAL DECISION AND
ORDER**

9
10 CITY OF WINLOCK,

11 Respondent,

12 and

13
14 CARDINAL FG COMPANY,

15
16 Intervenor.

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19 **SYNOPSIS**

20 Petitioners in this case challenge legislative enactments of the City of Winlock (City)
21 designed to facilitate the provision of City water services to areas outside the City's urban
22 growth area (UGA). The legislative enactments at issue are the comprehensive plan
23 amendments enacted in Ordinance 867 and the amendments to the City's water system
24 plan (WSP) enacted in Ordinance 868.
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27 In this case, the Board decides that the amendments to the City's WSP are not within the
28 subject-matter jurisdiction of the Board. They do not amend the comprehensive plan, either
29 directly or by reference. While some local governments use water system plans to meet
30 requirements of the Growth Management Act (GMA), there is no express requirement in the
31 GMA for a water system plan.
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1 The Board also decides that RCW 36.70A.110(4) does not preclude the City from providing
2 municipal water service to another UGA. The City intends to provide water service to the
3 newly approved major industrial development (MID) urban growth area (UGA) site approved
4 by Lewis County for a new Cardinal float glass facility. To the extent that the City
5 comprehensive plan amendments allow an extension of water service to this MID UGA, they
6 are compliant with the GMA.
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9 However, the Board will not decide whether the comprehensive plan amendments are in
10 compliance with the GMA in allowing the extension of municipal water service to the rural
11 areas. The language of the plan amendments does not actually provide for an extension of
12 water to the rural areas; it merely provides that, “[W]ater line extensions beyond the City’s
13 UGA shall be authorized only when consistent with the GMA.” This kind of language does
14 not establish a policy with respect to service in the rural areas because it offers no
15 parameters for that service. To determine whether the City’s plan amendments establish
16 compliant service to the rural areas, the Board would have to speculate about the potential
17 contours of the City’s proposed service to the rural areas. Such speculation is not within the
18 proper scope of the Board’s review, and we decline to pass on a set of hypothetical policy
19 choices the City has yet to make.
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22 **PROCEDURAL HISTORY**

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24 This case is a consolidation of three petitions for review. On October 14, 2004, Petitioner
25 Vince Panesko filed a Petition for Review challenging City of Winlock Ordinance Nos. 867
26 and 868 (with exhibits). Ordinance No. 867 and 868 were adopted August 23, 2004, and
27 published on August 25, 2004. The Panesko petition was assigned WWGMHB Case No.
28 04-2-0019. On October 20, 2004, Petitioner Kathleen Heikkila filed a Petition for Review
29 also challenging the same City of Winlock ordinances. The Heikkila petition was assigned
30 WWGMHB Case No. 04-2-0020. Both petitions were consolidated in WWGMHB Case No.
31 04-2-0020c on October 21, 2004.
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1 On October 22, 2004, Petitioner Richard A. Battin filed a Petition for Review challenging the
2 same ordinances of the City of Winlock as are challenged in consolidated WWGMHB Case
3 No. 04-2-0020c. This petition was assigned WWGMHB Case No. 04-2-0021. On
4 November 1, 2004, the Battin petition was consolidated with the other two petitions into
5 WWGMHB Case No. 04-2-0020c.
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8 Cardinal FG Company (Cardinal) filed a motion to intervene on November 3, 2004. No
9 party objected and Cardinal was granted intervenor status on November 18, 2004.
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11 The City and Cardinal filed motions to dismiss the issues in the consolidated case. Cardinal
12 FG Company's Motion to Dismiss, November 18, 2004; City of Winlock's Motion to Dismiss,
13 November 22, 2004. Only Petitioner Panesko filed a response to these motions. Response
14 to Cardinal FG Company's Motion to Dismiss, December 1, 2004. On December 14, 2004,
15 the Board dismissed Issues No. 1, 2, and 8.¹ The Board reserved ruling on the remaining
16 issues.
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19 A number of motions to supplement the record were brought in this case and the Board
20 added Index Nos. 185 – 7, 190 – 1, 201 and 203 to the record by Order on Motions to
21 Supplement the Record, January 10, 2005. The Board took official notice of Attachment 8
22 to the Washington State Department of Health Interim Planning Guidance as Index No. 85
23 in response to the City of Winlock's Resubmitted Motion to Take Official Notice, January 27,
24 2005. The City's motion to supplement the record was denied, with leave to renew it at the
25 hearing on the merits. Order Denying Motion for Reconsideration of Motion to Supplement,
26 February 17, 2005. The City declined to renew its motion to supplement the record at the
27 hearing. Petitioner Heikkila sought to introduce additional evidence (for the first time) at the
28 hearing.
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32 ¹Issues No. 1, 2 and 8 were dismissed by Order on Motions on December 14, 2004. However, that order did not become final until the entry of this Final Decision and Order and is also expanded herein.

1 hearing on the merits. That motion was denied with the caveat that the Petitioner could
2 seek to introduce the new evidence in the course of her arguments if it became necessary
3 to do so. However, the Petitioner did not renew her motion to supplement the record in the
4 course of her argument, so no new evidence was added in the course of the hearing.
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6 **ISSUES PRESENTED**

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8 The issues set out in the Prehearing Order are as follows:

9 1. In the context of the entire record are the statements in the seven challenged
10 documents which enable the extension of water services beyond the Winlock UGA non-
11 compliant with RCW 36.70A.110(4)?

12 2. If those sections of the challenged documents which enable future water line
13 extensions outside of the UGA are determined to be non-compliant, will continued
14 authorization of and installation of water lines outside of the Winlock UGA during the
15 remand period significantly interfere with goals 1 and 2 of the Growth Management Act,
16 RCW 36.70A.020(1) and (2)?

17 3. Are the provisions in the WSP and Comp Plan amendments and their supporting
18 Findings of Fact which enable the extension of water service beyond the Winlock UGA
19 inconsistent with the Lewis County Comp Plan Land Use Element which states,
20 "The County plan prohibits the extension of the urban services defined below,
21 outside of the urban growth area, except where already in existence, or where
22 necessary and available to resolve existing or imminent health hazards,"
23 and therefore is non-compliant with RCW 36.70A.100 which requires consistency between
24 city plans and county plans.

25 4. Are the provisions in the WSP and Comp Plan amendments, and their supporting
26 Findings of Fact which enable the extension of water service beyond the Winlock UGA
27 inconsistent with the Lewis County Code LCC 17.150.030 which prohibits extension of
28 water service outside of an UGA, and therefore are non-compliant with RCW 36.70A.100
29 which requires city comp plans to be consistent with county comp plans.

30 5. In view of (1) the Winlock letter of intent to provide water service to Cardinal, (2)
31 Cardinal's reference to Winlock water as a water source in permitting documents, and (3)
32 the availability of water in the Lewis County staff report for recommending Cardinal
33 approval, is the failure of the Winlock comp plan and WSP amendments to address the
34 planning to extend water service to the Cardinal site non-compliant with RCW
35 36.70A.070(3) and (4) which requires all proposed capital facilities and utilities for the next 6
36 yrs to be described?

1 6. Is Winlock guilty of double book-keeping where the plans in the comp plan and WSP
2 are different from actual plans between Winlock and different potential customers who are
3 currently working with Winlock to obtain services outside of the UGA? Are the Winlock
4 comp plan and WSP amendments non-compliant with RCW 36.70A.040 and RCW
5 36.70A.070 for failure to acknowledge planning which has occurred for nearly a year?

6 7. Are the sections of the 7 challenged documents which enable extension of water
7 services beyond the UGA non-compliant with RCW 36.70A.070 for failing to be consistent
8 with the second paragraph of the Public Facilities Services section of the Winlock comp plan
9 which states: "All development requiring urban services will be located in the urban growth
10 area..."

11 8. Is the Annexation Policy on page I-5 of the Winlock Water System Plan Update non-
12 compliant with RCW 36.70A.110(4)?

13 9. When the City Planning Commission and the City Council reviewed the plan change
14 request, held public hearings, and made a final decision on the plan change request on a
15 time schedule that did not follow the time schedule and process for making changes to the
16 Comprehensive Plan, which are outlined in the Winlock Comprehensive Growth
17 Management Plan, did the City of Winlock fail to comply with RCW 36.70A.120, which
18 requires each city that plans under RCW 36.70A.040 to perform its activities in conformity
19 with its comprehensive plan?

20 **BURDEN OF PROOF**

21 In the resolution of the issues presented in this case, the Petitioners bear the burden of
22 proof. Comprehensive plan amendments and development regulations, and amendments
23 to them are presumed valid upon adoption. RCW 36.70A.320(1). To meet their burden, the
24 Petitioners must show that the challenged amendments are clearly erroneous:

25 The board shall find compliance unless it determines that the action by the state
26 agency, county, or city is clearly erroneous in view of the entire record before the
27 board and in light of the goals and requirements of this chapter.
28 RCW 36.70A.320(3).

29 In order to find the City's action clearly erroneous, the board must be "left with the firm and
30 definite conviction that a mistake has been made." *Department of Ecology v. PUD1*, 121
31 Wn.2d 179, 201, 849 P.2d 646 (1993). We review the challenges here under the clearly
32 erroneous standard.

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DISCUSSION AND ANALYSIS

A. Jurisdictional Challenge

Issue No. 8. Is the Annexation Policy on page I-5 of the Winlock Water System Plan Update non-compliant with RCW 36.70A.110(4)?

The Petitioners in this case challenge two ordinances adopted by the City of Winlock: Ordinance 867 which adopts six amendments to the City’s comprehensive plan; and Ordinance 868 which amends the City’s water system plan (WSP). The City argues that the Board does not have jurisdiction over the WSP because there is no GMA planning requirement for a water system plan. Petitioners agree that Ordinance 868 does not amend the comprehensive plan but argue that it addresses issues that are required subjects of a comprehensive plan and, to that extent, are subject to the Board’s jurisdiction.

The growth boards’ subject-matter jurisdiction is established in RCW 36.70A.280:

- A growth management hearings board shall hear and determine only those petitions alleging either:
 - (a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or
 - (b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

RCW 36.70A.290(2) provides:

All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city.

1 Except where otherwise specified in the Act,² this means that the boards' jurisdiction to
2 review legislative enactments is limited to comprehensive plans, development regulations,
3 and amendments to either. *Wenatchee Sportsmen's Ass'n v. Chelan County*, 141 Wn.2d
4 169, 178, 4 P.3d 123, 2000 Wash. LEXIS 472 (2000). Petitioners cite to no specific
5 provision in the GMA requiring the creation of a water system plan.
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8 Here, all parties agree that the WSP is not a part of the comprehensive plan, although
9 Petitioners argue that parts of it should be in the comprehensive plan. Some local
10 governments use the information contained in a WSP (theirs or the WSP of other entities) to
11 meet GMA capital facilities' planning requirements. However, there is no specific GMA
12 requirement for a WSP and the WSP is not part of the City's comprehensive plan, so the
13 amendments to the WSP are not subject to the Board's jurisdiction. Issue No. 8, which is
14 solely addressed to compliance of the WSP with the GMA is, therefore, dismissed. To the
15 extent that the other issues allege that the amendments to the WSP are noncompliant with
16 the GMA, those issues are also dismissed on the same grounds.
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19 *B. Challenges to Compliance with RCW 36.70A.110(4):*
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21 *Issue No. 1:* In the context of the entire record are the statements in the seven
22 challenged documents which enable the extension of water services beyond the
23 Winlock UGA non-compliant with RCW 36.70A.110(4)?

24 *Issue No. 2:* If those sections of the challenged documents which enable future
25 water line extensions outside of the UGA are determined to be non-compliant, will
26 continued authorization of and installation of water lines outside of the Winlock UGA
27 during the remand period significantly interfere with goals 1 and 2 of the Growth
28 Management Act, RCW 36.70A.020(1) and (2)?
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31 ² Although the *Wenatchee Sportsmen* case does not elaborate on this, it is clear that the boards have
32 jurisdiction to hear other challenges where expressly provided in the Act. The most obvious example of this is
a challenge to the 20-year growth management populations projections, as specified in RCW
36.70A.280(1)(b).

1 The comprehensive plan amendments that are alleged to violate RCW 36.70A.110(4) are:

2 Amendment No. 1 – An amendment to the Land Use Element:

3 “Allow water line extensions beyond the City’s urban growth area only when
4 consistent with the GMA.”

5 Amendment No. 3 – An amendment to the Public Facilities and Services Element:

6 “Water line extensions beyond the City’s UGA shall be authorized only when
7 consistent with the GMA.”

8 RCW 36.70A.110(4) provides:

9
10 In general, cities are the units of local government most appropriate to provide urban
11 governmental services. In general, it is not appropriate that urban governmental
12 services be extended to or expanded in rural areas except in those limited
13 circumstances shown to be necessary to protect basic public health and safety and
14 the environment and when such services are financially supportable at rural densities
and do not permit urban development.

15 The Board addressed the question of whether RCW 36.70A.110(4) prohibits the extension
16 of city water services from one UGA to another UGA in our Order on Motions in this case.

17 We found:

18 Urban growth areas by definition are allowed to have urban levels of growth and
19 should have the urban services to support that growth. See RCW 36.70A.030(17),
20 (18), and (19). Nor can the statute be read to mean that water service lines cannot
21 pass through rural lands. The reason for the prohibition in RCW 36.70A.110(4)
22 against providing urban services to rural areas is that urban services in the rural
23 areas would create pressure to urbanize the rural areas and create sprawl. *Thurston*
24 *County v. Cooper Point Association*, 148 Wn. 2d 1, 57 P.3d 1156 (2002). If the
25 Winlock water lines just traverse the rural areas and do not serve them, it will not
violate RCW 36.70A.110(4).

26 Order on Motions, December 14, 2004, at 5-6.

27 Since the comprehensive plan amendments provide that water service will be extended
28 beyond the City’s UGA, “only when consistent with the GMA,” the amendments would only
29 fail to comply with the GMA if there were no set of circumstances under which a water
30 service extension outside of the City’s UGA would be compliant. We find that the extension
31 of City water service from the City’s UGA to another UGA – in this case, the Cardinal major
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1 industrial development (MID) UGA - would not violate the GMA.³ Urban levels of service in
2 urban growth areas are necessary and appropriate.

3
4 However, Petitioners argue that we should further decide that the comprehensive plan
5 amendments also allow extension of City water services into the rural areas and that this is
6 noncompliant with the GMA. Petitioner (Paneko) Opening Brief at 4-5; Petitioner (Battin)
7 Reply Brief at 2-3. The City responds with arguments concerning the ways in which the
8 extension of municipal water service to rural uses in a rural area is not prohibited by the
9 GMA. Response Brief of the City of Winlock at 6-7.

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12 These arguments about what the City might choose to do point to a problem with both the
13 challenges and the comprehensive plan amendments themselves. The question of whether
14 the extension of City water service to rural areas outside the City's UGA is compliant with
15 the GMA is not presented by the comprehensive plan amendments challenged here. The
16 comprehensive plan amendments merely provide that any extensions will comply with the
17 GMA. This language does not establish a policy with respect to City water service to rural
18 areas. While we were able to discern from the City Council findings to Ordinance 867 that
19 the City intended to serve the new Cardinal MID UGA with municipal water, we are not able
20 to tell what the parameters of rural service by the City might be. The comprehensive plan
21 amendments do not themselves set out the parameters except to say that extensions shall
22 be authorized only when compliant with the GMA. Since even the strictest reading of the
23 statute allows extension of water service to the rural areas where necessary for health and
24 safety reasons (RCW 36.70A.110(4)), service to the rural areas is not *per se* noncompliant
25 with the GMA. To determine whether the City's plan amendments establish a policy for
26 compliant service to the rural areas, the Board would have to speculate about the potential
27 contours of the City's proposed service to the rural areas. Such speculation is not within the
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³ In this case, the City Council findings make it clear that the water service extension would be for the new major industrial development UGA approved by the County for the Cardinal float glass project.

1 proper scope of the Board's review which is to determine whether the policy choices made
2 by a local government are compliant with the GMA. We decline to pass on a set of
3 hypothetical circumstances for water service extension into the rural areas.
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5
6 On the other hand, the fact that the comprehensive plan amendments do not set out the
7 policy of the City with respect to water extensions outside the UGA is of concern to the
8 Board. A policy should advise the public as well as any potential applicants of the choices
9 the City has made. At argument, the City stated that it would decide whether to grant a
10 water service extension as applications for service are presented. However, a land use
11 policy should not be developed on an ad hoc basis, application by application. The policy
12 should be clear and available to any interested party prior to an application being presented.
13 Otherwise, there can be no real opportunity for public participation in the development of the
14 policy, nor will there be certainty to the public and property owners in the way the policy will
15 be applied.
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18 Cardinal argues that the Central Board has approved the use of comprehensive plan
19 provisions that require compliance with the Growth Management Act as "binding
20 comprehensive plan policy." Cardinal FG Company's Response Brief at 5. However, the
21 policy at issue in the cited case, *Hensley v. Snohomish County (Hensley VI)*, CPSGMHB
22 03-3-0009c (Final Decision and Order, September 22, 2003) differs in an important respect
23 from the City's comprehensive plan provisions challenged here. In *Hensley VI*, there was a
24 commitment in the County comprehensive plan to, among other things, ensure that any
25 UGA boundary expansions comply with the GMA. UGA boundary changes necessarily
26 require comprehensive plan amendments to accomplish them because they involve
27 changes in the comprehensive plan. Therefore, a UGA boundary expansion, if and when it
28 occurs, will itself be a policy decision at the *plan* level, and will be adopted with public
29 participation as required by the GMA. Water service extensions do not require
30 comprehensive plan amendments and so the determination of what kinds of service
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1 extensions to allow will be an ad hoc, application by application, *project* level determination.
2 This could lead to exactly the kind of uncoordinated and potentially inconsistent land use
3 decision-making that the GMA was designed to avoid. See RCW 36.70A.010. This Board
4 does not wish to give the impression that this kind of comprehensive plan language may be
5 used to avoid the requirements of the GMA.
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8 A careful review of the issues set out in the consolidated petitions for review, however, leads
9 us to conclude that this issue was not presented to the Board by Petitioners. The issues in
10 the prehearing order do not raise the lack of specificity in the challenged comprehensive
11 plan amendments. While Petitioner Panesko does argue in his opening brief that “circular
12 avoidance of the City’s responsibility under the GMA” violates RCW 36.70A.040 and RCW
13 36.70A.070, none of the issues set out in the prehearing order allege that failure. Petitioner
14 (Panesko) Opening Brief at 2; Amended Prehearing Order, November 12, 2004. Since the
15 Board may not issue advisory opinions on issues not presented to the Board in the
16 statement of issues, as modified by any prehearing order, we may not enter any findings on
17 this issue. RCW 36.70A.290(1).
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20 *Conclusion:* The challenged comprehensive plan amendments are compliant with RCW
21 36.70A.110(4).
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24 *C. Consistency Challenges:*

25 *Issue No. 3:* Are the provisions in the WSP and Comp Plan amendments, and their
26 supporting Findings of Fact which enable the extension of water service beyond the
27 Winlock UGA inconsistent with the Lewis County Comp Plan Land Use Element
which states,

28 “The County plan prohibits the extension of the urban services defined below,
29 outside of the urban growth area, except where already in existence, or where
30 necessary and available to resolve existing or imminent health hazards,”
31 and therefore is non-compliant with RCW 36.70A.100 which requires consistency
32 between city plans and county plans.

1 *Issue No. 4:* Are the provisions in the WSP and Comp Plan amendments, and their
2 supporting Findings of Fact which enable the extension of water service beyond the
3 Winlock UGA inconsistent with the Lewis County Code LCC 17.150.030 which
4 prohibits extension of water service outside of an UGA, and therefore are non-
5 compliant with RCW 36.70A.100 which requires city comp plans to be consistent with
6 county comp plans.

7 *Issue No. 7:* Are the sections of the 7 challenged documents which enable extension
8 of water services beyond the UGA non-compliant with RCW 36.70A.070 for failing to
9 be consistent with the second paragraph of the Public Facilities Services section of
10 the Winlock comp plan which states: "All development requiring urban services will
11 be located in the urban growth area..."

12 The Petitioners argue three types of inconsistency: (1) inconsistency of the comprehensive
13 plan amendments with the County comprehensive plan; (2) inconsistency of the City
14 comprehensive plan amendments with the County development regulations; and (3)
15 inconsistency of the City comprehensive plan amendments with the City's comprehensive
16 plan. Petitioner (Paneko) Opening Brief at 8-9; Petitioner (Heikkila) Brief at 2-4; and
17 Petitioner (Battin) Brief at 4 (joining the arguments of Petitioner Paneko). However, in all
18 cases, the inconsistency challenges apply to possible future City policy -- not to the actual
19 policy in the challenged comprehensive plan amendments.
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22 The requirement that county and city comprehensive plans be consistent with one another
23 comes from RCW 36.70A.100, which provides:

24 The comprehensive plan of each county or city that is adopted pursuant to RCW
25 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans
26 adopted pursuant to RCW 36.70A.040 of other counties or cities with which the
27 county or city has, in part, common borders or related regional issues.

28 This Board has held that consistency means that no feature of the plan or regulation is
29 incompatible with any other feature of the plan or regulation. *CMV v. Mount Vernon*,
30 WWGMHB 98-2-0006 (Final Decision and Order, July 23, 1998). In addition, it means no
31 feature of one plan may preclude achievement of any other feature of that plan or any other
32

1 plan. *Carlson v. San Juan County*, WWGMHB 00-2-0016 (September 15, 2000, Final
2 Decision and Order).

3
4 First, Petitioners argue that the Lewis County comprehensive plan prohibits the extension of
5 urban services outside of the urban growth area, except where already in existence, or
6
7 where necessary and available to resolve existing or imminent health hazards:

8 The County plan prohibits the extension of the urban services defined below, outside
9 of the urban growth area, except where already in existence, or where necessary and
10 available to resolve existing or imminent health hazards.
11 Lewis County Comprehensive Plan at 4-28 and 4-29.

12 The City and Cardinal respond that a full reading of the language of the Lewis County
13 comprehensive plan shows no inconsistency because it further provides that rural area
14 development will be accomplished by rural governmental services:

15 The rural area development contemplated in this plan is to be accomplished by rural
16 governmental services as defined below, which permits the County to take advantage
17 of a significant base of existing facilities and services already available in the rural
18 areas.
19 Lewis County Comprehensive Plan at 4-28. Cardinal FG Company's Response Brief at 3;
20 Response Brief of the City of Winlock at 4 (joining the arguments of Cardinal).

21
22 Petitioners challenge the consistency of the City's plan amendments with the quoted section
23 of the Rural Element of the Lewis County Comprehensive Plan but, as written, there is no
24 inconsistency. This section of the County comprehensive plan applies to the rural areas,
25 not to urban growth areas. Therefore, it does not prohibit the extension of the water service
26 extension to the Cardinal MID site which is, by definition, an urban growth area rather than a
27 rural area. It could only apply to water service in the rural areas but that is something we
28 have already noted is speculative at this point.
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31 Second, Petitioners allege that the City's comprehensive plan amendments are inconsistent
32 with Lewis County development regulations, in particular LCC 17.150.030. Petitioners

1 argue that LCC 17.150.030 also prohibits the extension of urban services to rural areas
2 generally. They then point to LCC 17.150.030(3)(e) and (3)(k) as creating a clear
3 prohibition against extending *city* water services into the rural area. Petitioner (Paneko)
4 Opening Brief at 9; Petitioner (Heikkila) Brief at 4.
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7 Cardinal and the City respond that RCW 36.70A.100 requires consistency between city and
8 county comprehensive plans, not between city comprehensive plans and county
9 development regulations. Cardinal FG Company's Response Brief at 6-8. There is no
10 requirement, they argue, that the City's comprehensive plan be consistent with the County's
11 development regulations. *Ibid.* Even if there were such a requirement, Cardinal argues that
12 the City comprehensive plan amendments are not inconsistent with the County
13 development regulation, LCC 17.150.030.
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16 The Board agrees that RCW 36.70A.100 requires consistency between city and county
17 comprehensive plans, rather than between city comprehensive plans and county
18 development regulations. However, since the function of development regulations is to
19 implement the comprehensive plan, development regulations are not unrelated to the
20 comprehensive plan provisions they implement. See RCW 36.70A.040. They may be
21 significant in elucidating the meaning of a comprehensive plan provision.
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23
24 Chapter 17.150 of the Lewis County Code applies special conditions to rural area
25 development. LCC 17.150.030 is entitled "Urban growth prohibited" and has a number of
26 provisions. The purpose of this code section is "to identify and define the criteria for
27 distinguishing between rural development in rural areas and urban growth which is
28 prohibited." LCC 17.150.030(1).
29

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31 As we have already said, the City's comprehensive plan amendments do not describe how
32 water service might be extended into the rural areas. Since the County regulations do not

1 prohibit municipal water service in the rural areas under all conditions (e.g. service to limited
2 areas of more intensive rural development “LAMIRDs” is exempted from the prohibition), the
3 extension of City water service to the rural areas could be consistent with the County code.⁴
4 Without speculating about the nature of the water service extension to the rural areas, this
5 Board could not find a violation of RCW 36.70A.100.
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8 Third, Petitioners argue that the comprehensive plan amendments are inconsistent with the
9 Winlock comprehensive plan, second paragraph of the Public Facilities Services section,
10 which states: “All development requiring urban services will be located in the urban growth
11 area...” Petitioner (Heikkila) Brief at 8, Ex. 6. The City admits that this was an overlooked
12 element of the comprehensive plan when the challenged amendments were adopted and
13 offers to remove it, if necessary. Response Brief of the City of Winlock at 13.
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16 At argument, the City pointed out that its comprehensive plan applies to its own jurisdictional
17 limits, which is the Winlock urban growth area. Since the City is located wholly within its
18 urban growth area, this section of its plan appears to be addressed to the concern that the
19 urban growth area be provided with urban levels of service rather than to a limitation on
20 providing urban services elsewhere. We do not, therefore, believe that it creates an
21 inconsistency requiring removal.
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24 *Conclusion:* The comprehensive plan amendments adopted in Ordinance 867 comply with
25 RCW 36.70A.100.
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31 ⁴ We emphasize that we are not deciding here that municipal water service extensions to LAMIRDs are
32 compliant with the GMA in the abstract. We only note that the two plans are not inconsistent with one another
in that there is a possible type of rural service water extension that is allowed by the County comprehensive
plan.

1 *D. Failure to Include Planning for the Cardinal MID in the City Comprehensive Plan*

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3 *Issue No. 5:* In view of (1) the Winlock letter of intent to provide water service to
4 Cardinal, (2) Cardinal's reference to Winlock water as a water source in permitting
5 documents, and (3) the availability of water in the Lewis County staff report for
6 recommending Cardinal approval, is the failure of the Winlock comp plan and WSP
7 amendments to address the planning to extend water service to the Cardinal site
8 non-compliant with RCW 36.70A.070(3) and (4) which requires all proposed capital
9 facilities and utilities for the next 6 yrs to be described.

10 *Issue No. 6:* Is Winlock guilty of double book-keeping where the plans in the comp
11 plan and WSP are different from actual plans between Winlock and different potential
12 customers who are currently working with Winlock to obtain services outside of the
13 UGA. Are the Winlock comp plan and WSP amendments non-compliant with RCW
14 36.70A.040 and RCW 36.70A.070 for failure to acknowledge planning which has
15 occurred for nearly a year.

16 Petitioners argue that the City has been negotiating with Cardinal for over a year to provide
17 water service to the new MID and therefore the City has an obligation to include service to
18 the Cardinal MID in the capital facilities element of its plan. Petitioner (Paneko) Opening
19 Brief at 10-13; Petitioner (Heikkila) Brief at 5-8; Petitioner (Battin) Brief at 1-4. The City
20 responds that it is considering five options for water service to Cardinal. Response Brief of
21 the City of Winlock at 10. "Once Cardinal selects one of the five options it is considering, an
22 amendment will be prepared." *Ibid* at 11. Cardinal adds that the City could not finalize
23 plans for providing water service until it knew which of the options would be used by
24 Cardinal. Cardinal FG Company's Response Brief at 9. Petitioner Paneko responds that
25 "[A]ny time a city engages in planning for over a year on expansion projects not mentioned
26 in the comp plan, that constitutes double book-keeping." Petitioner (Paneko) Reply Brief
27 at 3.

28
29 The necessary components of the capital facilities element of the comprehensive plan are
30 described in RCW 36.70A.070(3), which mandates:

31 A capital facilities plan element consisting of: (a) An inventory of existing capital
32 facilities owned by public entities, showing the locations and capacities of the capital

1 facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed
2 locations and capacities of expanded or new capital facilities; (d) at least a six-year
3 plan that will finance such capital facilities within projected funding capacities and
4 clearly identifies sources of public money for such purposes; and (e) a requirement to

5 reassess the land use element if probable funding falls short of meeting existing
6 needs and to ensure that the land use element, capital facilities plan element, and
7 financing plan within the capital facilities plan element are coordinated and
8 consistent.

9 Petitioners argue that the planning that the City did concerning the options for extension of
10 water service to the new Cardinal MID triggered a requirement to include those options in its
11 forecast of future needs and proposed locations and capacities for expanded or new capital
12 facilities. Petitioner (Panesko) Opening Brief at 10-14; Petitioner (Heikkila) Brief at 5-8;
13 Petitioner (Battin) Brief at 1-4. Petitioners point to evidence in the record showing that the
14 City was pursuing an amendment to its WSP in January 2004 and urge that the planned
15 extension of water service to the Cardinal MID must be in the City's comprehensive plan.
16

17 *Ibid.*

18
19 The City responds that when an option is chosen by Cardinal, the City will need to amend its
20 WSP and also determine whether this change requires a change in its comprehensive plan.
21 Response Brief of the City of Winlock at 11. Until that is done, however, Petitioners'
22 "contention is premature." *Ibid.*
23

24
25 We agree with the City. There is nothing in the GMA indicating at what stage in the analysis
26 of options for a change or addition to the City's capital facilities element it must be
27 incorporated into the comprehensive plan itself. Under the circumstances here, the analysis
28 of the options did not rise to the level of proposing a particular change to the City's capital
29 facilities plan. When the option is chosen, the City may have to revise its comprehensive
30 plan to account for what is actually proposed for future expansion. Until the policy choice is
31 made concerning the option to pursue, however, it would be a needless exercise to
32

1 incorporate possible options into the comprehensive plan only to have to go through another
2 comprehensive plan amendment process to delete some of them when the final proposal is
3 chosen.

4
5 *Conclusion:* The failure to include the options for extension of water service to the Cardinal
6 MID in the capital facilities and/or utilities element of the City's comprehensive plan does not
7 violate RCW 36.70A.040 or 36.70A.070.
8

9
10 *E. Procedure for Adoption of the City's Comprehensive Plan Amendments*

11
12 *Issue No.9.* When the City Planning Commission and the City Council reviewed the plan
13 change request, held public hearings, and made a final decision on the plan change
14 request on a time schedule that did not follow the time schedule and process for making
15 changes to the Comprehensive Plan, which are outlined in the Winlock Comprehensive
16 Growth Management Plan, did the City of Winlock fail to comply with RCW 36.70A.120,
17 which requires each city that plans under RCW 36.70A.040 to perform its activities in
18 conformity with its comprehensive plan.

19 Petitioners also allege that the City failed to comply with the GMA by failing to adopt the
20 challenged comprehensive plan amendments on the schedule established in the Winlock
21 Comprehensive Growth Management Plan. Petitioner (Heikkila) Brief at 9 – 12. They refer
22 to page iv of the City's comprehensive plan, which provides that “[c]hanges to the
23 Comprehensive Growth Management Plan and/or Urban Growth Areas and Future Land
24 Use Map will be reviewed once a year.” Ex. 9-190 to Petitioner (Heikkila) Brief, Ex. 7 to
25 Response Brief of City of Winlock.

26
27 The City responds that this part of the comprehensive plan is intended to apply to private
28 applicants for plan changes, not to the City itself. Response Brief of City of Winlock at 13.
29 The City points to language in the plan providing that the requests can come from any
30 citizen or landowner, and setting out application procedures for private applicants. *Ibid.*
31 The City further points out that these amendments were adopted to resolve an earlier
32

1 appeal by the same Petitioners (WWGMHB Case No. 04-2-0006c) in which the City agreed
2 to provide specific notice to the individual Petitioners. *Ibid.* There is no dispute that the City
3 did comply with its earlier agreement.
4

5 RCW 36.70A.130(2)(b) provides:
6

7 Except as otherwise provided in (a) of this subsection, all proposals shall be
8 considered by the governing body concurrently so the cumulative effect of the various
9 proposals can be ascertained, However, after appropriate public participation a
10 county or city may adopt amendments or revisions to its comprehensive plan that
11 conform with this chapter whenever an emergency exists or to resolve an appeal of a
12 comprehensive plan filed with a growth management hearings board or with the
13 court.

14 The challenged comprehensive plan amendments were adopted as part of the City's
15 resolution of the earlier case before this Board. *Battin v. Winlock*, WWGMHB Case No.
16 04-2-0006c (Order Dismissing Petition for Review, May 27, 2004). Under the GMA,
17 amendments to resolve an appeal to a growth hearings board may be adopted, with
18 appropriate public participation, at any time. The City's comprehensive plan should not be
19 read so restrictively to prohibit that which the GMA expressly allows.
20

21 *Conclusion:* The adoption of the challenged comprehensive plan amendments complies
22 with RCW 36.70A.120.
23

24 FINDINGS OF FACT

- 25
- 26 1. Winlock is a city in Lewis County, a county that is required to plan under RCW
27 36.70A.040. Lewis County is a county located west of the crest of the Cascade
28 Mountains and therefore the City of Winlock is within the jurisdictional boundaries of
29 this Board pursuant to RCW 36.70A.250(1)(c).
30
 - 31 2. On October 14, 2004, Petitioner Vince Panesko filed a Petition for Review
32 challenging City of Winlock Ordinance Nos. 867 and 868 (with exhibits). It was
assigned WWGMHB Case No. 04-2-0019.

- 1 3. Ordinance No. 867 and 868 were adopted August 23, 2004, and published on
2 August 25, 2004.
- 3 4. On October 20, 2004, Petitioner Kathleen Heikkila filed a Petition for Review also
4 challenging the same City of Winlock ordinances. It was assigned WWGMHB Case
5 No. 04-2-0020.
- 6 5. The Panesko and Heikkila petitions were consolidated in WWGMHB Case No. 04-2-
7 0020c on October 21, 2004.
- 8 6. On October 22, 2004, Petitioner Richard A. Battin filed a Petition for Review
9 challenging the same ordinances of the City of Winlock as are challenged in
10 consolidated WWGMHB Case No. 04-2-0020c. This petition was assigned
11 WWGMHB Case No. 04-2-0021.
- 12 7. On November 1, 2004, the Battin petition was consolidated with the other two
13 petitions into this case, WWGMHB Case No. 04-2-0020c.
- 14 8. Petitioner Heikkila and Petitioner Battin have standing to raise the issues in their
15 petitions based on oral and written comments they submitted to the City in the
16 comprehensive plan amendment process.
- 17 9. Petitioner Panesko has standing to raise the issues in his petition based on the
18 written comments he submitted to the City in the comprehensive plan amendment
19 process.
- 20 10. Ordinance 868 amends the City's water system plan (WSP).
- 21 11. There is no specific requirement in the Growth Management Act (Ch. 36.70A RCW)
22 for a water system plan (WSP).
- 23 12. The WSP is not part of the City's comprehensive plan.
- 24 13. Ordinance 867 amends the City's comprehensive plan. The challenged
25 comprehensive plan amendments provide that water service will be extended beyond
26 the City's UGA "only when consistent with the GMA."
- 27 14. Intervenor Cardinal FG Company has submitted an application for a major industrial
28 development pursuant to RCW 36.70A.365 to Lewis County.
29
30
31
32

- 1 15. The City has entered into a letter of intent with Cardinal to study serving the proposed
2 Cardinal facility with city water (Finding 10) and has found that the City has excess
3 water capacity, the revenue from sale of which would benefit existing users of the
4 City's water system. (Finding 13). 2004 City Council Findings, Comprehensive Plan
5 Amendments.
6
- 7 16. The City Council also found that "The City's current Comprehensive Plan policy on
8 water service outside urban areas is more restrictive than permitted by the GMA."
9 (Finding 13) 2004 City Council Findings, Comprehensive Plan Amendments.
- 10 17. The purpose of the comprehensive plan amendments (Ordinance 867) was to allow
11 extension of the City's water service to Cardinal FG Company's proposed major
12 industrial development.
13
- 14 18. If approved, the proposed Cardinal site for a major industrial development would not
15 be a "rural area"; it would be a designated "urban growth area." RCW 36.70A.365.
- 16 19. If the Winlock water lines just traverse the rural areas to get to the new urban growth
17 area and do not provide water service in the rural area, they will not extend or expand
18 the City's water service in a rural area.
- 19 20. The extension of City water service from the City's urban growth area (UGA) to
20 another UGA – in this case, the Cardinal major industrial development (MID) UGA –
21 would provide urban levels of water service to an urban growth area. Urban levels of
22 service in urban growth areas are necessary and appropriate.
- 23
- 24 21. Since even the strictest reading of RCW 36.70A.110(4) allows extension of water
25 service to the rural areas where necessary for health and safety reasons, service to
26 the rural areas is not *per se* noncompliant with the GMA.
- 27
- 28 22. To determine whether the City's plan amendments establish a policy for compliant
29 service to the rural areas, the Board would have to speculate about the potential
30 contours of the City's proposed service to the rural areas. Such speculation is not
31 within the proper scope of the Board's review which is to determine whether the
32 policy choices made by a local government are compliant with the GMA.

- 1 23. Under the GMA, a land use policy should not be developed on an ad hoc basis,
2 application by application. The policy should be clear and available to any interested
3 party prior to an application being presented. Otherwise, there can be no real
4 opportunity for public participation in the development of the policy, nor will there be
5 certainty to property owners in the way the policy will be applied.
6
- 7 24. The issues in the prehearing order do not raise the lack of specificity in the
8 challenged comprehensive plan amendments.
- 9 25. The section of the Rural Element of the Lewis County Comprehensive Plan alleged to
10 be inconsistent with the challenged City comprehensive plan amendments applies to
11 the rural areas, not to urban growth areas.
- 12 26. The nature of possible water service extension to the rural areas under the
13 challenged comprehensive plan amendments lacks specificity so the amendments
14 are not inconsistent with the County comprehensive plan or LCC 17.150.030 on their
15 face.
16
- 17 27. The second paragraph of the Public Facilities Services section of the City
18 comprehensive plan states: "All development requiring urban services will be located
19 in the urban growth area..."
- 20 28. This section of the City plan is addressed to the concern that the urban growth area
21 be provided with urban levels of service rather than to a limitation on providing urban
22 services elsewhere.
23
- 24 29. There is no inconsistency between the challenged comprehensive plan amendments
25 and the City's comprehensive plan.
- 26 30. The City has been pursuing an amendment to its water system plan (WSP) since
27 January 2004 to allow an extension of its water service to the Cardinal major
28 industrial development (MID) site.
29
- 30 31. Cardinal has been considering five options for water service to its MID. The City's
31 analysis of the options does not rise to the level of proposed new facilities under the
32 facts of this case until one option is requested by Cardinal.

- 1 32. Until the policy choice is made concerning the option to pursue, it would be a
2 needless exercise to incorporate possible options into the comprehensive plan only
3 to have to go through another comprehensive plan amendment process to delete
4 some of them when the final proposal is chosen.
5
6 33. RCW 36.70A.130(2) provides that plan amendments to resolve appeals to the
7 growth boards may be adopted at any time so long as there is appropriate public
8 participation.
9
10 34. The City's comprehensive plan schedules an annual adoption process for
11 comprehensive plan amendments proposed by "citizens" and property owners and
12 does not prohibit more frequent amendments to resolve appeals to the growth
13 boards.
14
15 35. The City adopted the challenged comprehensive plan amendments to resolve the
16 issues in an earlier case involving the same Petitioners, *Battin v. Winlock*, WWGMHB
17 Case No. 04-2-0006c.

18 CONCLUSIONS OF LAW

- 19 A. The Board has jurisdiction over the parties and Ordinance 867.
20
21 B. The Petitioners have standing to raise the issues in this case.
22
23 C. The Petitions for Review were timely filed.
24
25 D. The Board lacks subject-matter jurisdiction over the City's water system plan
26 amendments, Ordinance 868.
27
28 E. The adoption of the amendments to the City comprehensive plan, Ordinance 867,
29 complies with RCW 36.70A.110(4).
30
31 F. The comprehensive plan amendments adopted in Ordinance 867 comply with RCW
32 36.70A.100.
33
34 G. The failure to include the options for extension of water service to the Cardinal MID in
the capital facilities and/or utilities element of the City's comprehensive plan does not
violate RCW 36.70A.040 or 36.70A.070.

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H. The adoption of the challenged comprehensive plan amendments complies with RCW 36.70A.120.

ORDER

In accordance with the above findings and conclusions, the Board finds that Ordinance 867 COMPLIES with the Growth Management Act. The petitions for review are hereby DISMISSED.

This is a final order for purposes of reconsideration pursuant to WAC 242-02-832 and appeal pursuant to RCW 36.70A.300(5).

Entered this 15th day of April 2005.

Margery Hite

Holly Gadbow

Gayle Rothrock