

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

VINCE AND MARY PANESKO,)	
)	No. 98-2-0004
Petitioners,)	
)	COMPLIANCE
v.)	ORDER
)	
LEWIS COUNTY,)	
)	
Respondent.)	
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PROCEDURAL HISTORY

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On November 16, 1999, we entered an order finding Lewis County in continued noncompliance for failure to adopt permanent implementing development regulations (DRs). We required that such regulations be adopted by April 15, 2000. This due date was later extended to May 15, 2000. On May 16, 2000, the County adopted permanent DRs (Ordinance #1170B). In an associated case, #99-2-0027c, Butler, et al., v. Lewis County, (*Butler*) we entered a final decision and order (FDO) on June 30, 2000, finding the comprehensive plan (CP) and associated interim DRs (Ordinances #1159A and B) noncompliant, and in some aspects, invalid.

On August 10, 2000, a compliance hearing was held telephonically. Jennifer Dold represented Petitioners Vince and Mary Panesko. Alexander Mackie represented Respondent Lewis County. John T. Mudge, Amicus Curiae, was present. Present for the Board were Les Eldridge, William H. Nielsen and Nan Henriksen.

DISCUSSION

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Petitioners argued that the County had continued its failure to act, even though permanent regulations were adopted May 16, 2000, because the CP (which the DRs were adopted to

implement) was later found to be noncompliant and, in some aspects, invalid. They maintained that the inadequacy of the County’s previous interim DRs to meet the requirement of permanent DRs was mirrored by the final DRs now in effect implementing a noncompliant and invalid CP. They asked that we hold this case open in order to “maintain jurisdiction” over the interim DRs.

Petitioners also remarked upon the County staff response to Mr. Panesko’s brother when he asked for CP maps and was told by Mr. Fitzpatrick of the County staff that the maps he wished to see were not available because they were maps for a CP which was invalid and therefore not valid themselves. Petitioners argued that this County response underscored their position that the DRs failed to meet the requirement for permanency.

The County responded that the permanent DRs were adopted May 16, 2000. The County added that since the final set of DRs was adopted, the complete ordinance and full set of maps have been available from the Community Development staff. The County pointed out that Mr. Fitzpatrick’s comments were not the official position of the County regarding the CP and added that Mr. Fitzpatrick had been so informed and now realized that the maps were valid and available as part of the adopted CP and DRs.

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CONCLUSION

We find that the County has met our requirement that it adopt permanent DRs, and is in compliance with the Act in that regard. We make no findings regarding the question of the DRs’ substantive compliance with the Act. That question has been raised in many aspects in several subsequent Lewis County petitions for review now before us.

Petitioners are correct that the CP which the DRs implement was found invalid and noncompliant in *Butler*. We note that the DRs were adopted prior to our June 30, 2000, findings of noncompliance and invalidity with regard to the CP. Therefore, the County adopted permanent DRs which were presumptively valid to implement a CP which at that time was also

presumptively valid. RCW 36.70A.320. This action complies with our FDO in this case. The DRs were adopted prior to our finding of CP noncompliance in *Butler*. We do not find persuasive Petitioners' argument that keeping this case open would "keep the County on track." Petitioners acknowledged that the pending series of PFRs will provide an avenue to raise challenges to any aspects of the County's permanent DRs.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 21st day of August, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member