

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

VINCE AND MARY PANESKO,)
	) No. 98-2-0004
Petitioners,)
	) ORDER GRANTING
v.	) COUNTY'S MOTION
	) TO DISMISS, ENTERING
	) A FINDING OF
	) NONCOMPLIANCE AND
LEWIS COUNTY,	) DENYING PETITIONERS'
Respondent.	) AMENDED MOTION FOR
	) DECLARATION OF
	) INVALIDITY

I. INTRODUCTION

On March 2, 1998, we received a petition for review from Vince and Mary Panesko challenging Lewis County's alleged failure to timely adopt an interim urban growth area (IUGA) ordinance, a comprehensive plan (CP), and implementing development regulations (DRs). Petitioners also requested Lewis County Mobile Home Park Ordinance #1051 and the Lewis County Code (LCC) Chapter 15.30, Mobile Home Parks, be declared invalid because they allowed urban growth in the rural area. On March 23, 1998, Petitioners moved for a determination of noncompliance and a declaration of invalidity. A motions hearing was scheduled for May 7, 1998. On May 4, 1998, Lewis County adopted IUGA Ordinance #1159 which also purported to preclude urban growth in rural areas. On May 5, 1998, Lewis County requested permission to file a motion and moved to dismiss Petitioners' motion for invalidity.

On May 7, 1998, we heard argument at the motions hearing regarding all aspects of the case. As the ordinance had been adopted only days before the motions hearing, we accepted supplemental briefing, which was completed June 1, 1998. On May 18, 1998, John T. Mudge moved to file an amicus curiae brief regarding the Chehalis IUGA and at the same time presented the amicus brief.

II. SYNOPSIS OF THE ORDER

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In this order we grant John T. Mudge's Motion to File Amicus Curiae Brief. We enter a finding of noncompliance because Lewis County has failed to timely adopt a CP and DRs. At this stage of the case and of the record, we do not have a firm and definite conviction that Lewis County made an error in its public participation process during the adoption of Ordinance #1159, and thus deny petitioners' motion. We grant the County's motion to dismiss the requested invalidity, without prejudice.

We find that questions regarding Ordinance #1159's compliance with the Act should be addressed in any petitions filed within 60 days of the publication of its adoption on May 13, 1998. To review issues in Ordinance #1159 in this case, which is scheduled for a hearing on July 8, 1998, on an incomplete record, concurrently with a hearing process (#98-2-0009, Smith, et al. v. Lewis County) on issues culminating in a hearing on the merits on October 20, 1998, would, in our opinion, preclude a fair and orderly proceeding.

We deny Petitioners' motion to invalidate the mobile home ordinances and the LCC mobile home section because of mootness and without prejudice.

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III. DISCUSSION AND CONCLUSION

Failure to Act

The petition for review was filed alleging that the County had failed to adopt IUGA ordinances, a CP, and DRs and called for the mobile home park ordinances to be declared invalid for allowing urban growth in rural areas. The County acknowledged that it had not adopted a CP nor DRs to implement it. The County is not in compliance regarding timely adoption of a CP and implementing DRs.

Rural Lands & IUGAs

Petitioners initially contended that no IUGA was in place and that preexisting, non-GMA mobile home ordinances allowed urban growth in rural areas which substantially interfered with the

goals of the Act. They argued that the pre-GMA mobile home ordinance allowed urban growth in rural areas, and so the mobile home ordinance and code should be declared invalid until IUGAs and rural area DRs were adopted. The County stated that it was about to adopt an IUGA ordinance.

In their Reply Regarding Amended Motion for Declaration of Invalidity, April 30, 1998, Petitioners stated that “the County’s asserted brief timeline to adopt IUGAs and rural area development regulations, if fulfilled, means that it will only be in invalidity a short time.” Shortly after that April 30, 1998, Reply, the County adopted its IUGA ordinance which also purported to protect rural areas from urban growth. At that point Petitioners then argued that the new ordinance should be found noncompliant because it was inadequate and not adopted in good faith.

Petitioners contended that the ordinance was noncompliant because of an improper public participation process. They further called upon us to review a number of substantive issues.

They asserted that we have discretion to conduct a substantive review of an ordinance passed in response to a failure to act, citing *Seaview Coast Conservation Coalition v. Pacific County*, #95-2-0076, Order dated May 28, 1997; *Friends of Skagit County, et al., v. Skagit County*, #95-2-0-065, Order dated July 14, 1997; and *Achen, et al., v. Clark County*, #95-2-0067, Order dated February 5, 1998. We note that each of these cases had completed a full hearing process, including a hearing on the merits, and a final decision and order had been entered. Each case was in the compliance process. Their records were extensive and complete. Such is not the case here. The hearing on the merits is scheduled for July 8, 1998, and has not yet been briefed. The County’s record is not complete because Ordinance #1159 and its adoption records were not part of the case at the time the index was filed.

The County asserted that the petitioners’ argument made the case for a review of an IUGA and supporting regulations by a petition properly filed with the full record before the Board and with the opportunity for all affected parties to participate. The County contended that the years of public process involving the Planned Growth Committee, individual cities, and other opportunities for public review and comment make their public participation process compliant. It maintained that the extent of the adoption process precluded a finding of lack of good faith. It argued that noncompliance under the clearly erroneous standard could not be shown “without a

full review of the record in detail,” under the requirements of RCW 36.70A.320 and that such a review was not possible with the limited record in this case.

While it is true that the length of time that the ordinance was before the planning commission and Board of County Commissioners was short, this record showed a 2½ year period in which IUGAs were discussed extensively in meetings noticed and open to the public. We do not reach the issue of compliance at this time. We hold that there is sufficient facial, good-faith evidence in this limited record combined with the presumption of validity under RCW 36.70A.320 to deny Petitioners’ motion for IUGA compliance and invalidity.

Petitioners cited a number of concerns with the rural lands aspect of Ordinance #1159. These included commercial/industrial development in the rural area, cluster caps, and urban growth in rural areas. Amicus Mudge noted issues new to this case in his brief regarding Ordinance #1159, including affordable housing, wastewater, stormwater, and clustering. At this writing one petition challenging Ordinance #1159 has already been filed. More than 30 days are still left in the 60-day period during which challenges may be made. Were we to proceed with a substantive review of the *challenges enumerated by Petitioners*, the process would parallel the new petition of Smith, et al. v. Lewis County, #98-2-0009. This would be an untenable situation that could only be resolved by posting this case beyond the 180-day limit, which we cannot do, or, alternatively, deciding #98-2-0009 without a hearing.

In Petitioners’ amended motion, April 17, 1998, they quoted the hearing examiner for Lewis County, regarding mobile home urban-density development in rural areas, as saying that:

“It is unfortunate for all parties that the governing ordinance is inadequate and outdated. It is probably correct that once the County enacts growth management regulations, mobile home parks of this type will be excluded or at least severely restricted from areas falling outside of urban growth areas. Said limitations do not currently exist however.”

Less than one month later Ordinance #1159 was passed. It remains to be seen whether the enactment of this growth management regulation does what the hearing examiner thought it might. The original petition challenged the mobile home ordinance as an example of an outdated

regulation allowing urban growth in rural areas and further called for the County to be found in noncompliance for failure to adopt IUGAs. Ordinance #1159, flawed or not, responded to this challenge. We hold that the extent to which the response was adequate can only be determined through properly filed new petitions with the full record before us and opportunity for all affected parties to participate.

ORDER

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We find Lewis County in noncompliance for failure to timely adopt a CP and implementing DRs. Pursuant to RCW 36.70A.300(3)(b), adoption of the CP is to take place by March 30, 1999, and DRs by September 1, 1999, as outlined in the Lewis County CP schedule (Exhibit C, April 1, 1998, Response to Petitioners' Motion). We require the County to file periodic reports on progress as follows: October 1, 1998, January 15, 1999, and July 1, 1999.

We grant the motion of the County to dismiss the motion of Vince and Mary Panesko for an order of invalidity. We decline to rule on any issues regarding Ordinance #1159 until completion of a new petition process. We deny Petitioners' motion to invalidate Ordinance #1051 and LCC Chapter 15.30 because of mootness.

The hearing on the merits scheduled for July 8, 1998, is cancelled.

Findings of fact are included by reference appended as Appendix I, pursuant to RCW 36.70A.270 (6).

So ORDERED this 12th day of June, 1998.

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.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member

APPENDIX I

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FINDINGS OF FACT

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1. Lewis County acknowledges that it has not adopted a comprehensive plan (CP) and development regulations (DRs).
 2. Lewis County is required to adopt a CP and DRs by July 1, 1997

CONCLUSION OF LAW

Lewis County is not in compliance with the GMA because it has failed to timely adopt a CP and DR