

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

VINCE PANESKO et al., ) No. 00-2-0031c  
)  
Petitioners, ) **AMENDED**  
) **RECONSIDERATION**  
v. ) **ORDER**  
)  
LEWIS COUNTY, )  
)  
Respondent )  
)  
and )  
)  
LEWIS COUNTY ECONOMIC DEVELOPMENT )  
COUNCIL & INDUSTRIAL LANDS ADVISORY TASK )  
FORCE, )  
)  
)  
Intervenors. )  
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EUGENE BUTLER, et al., ) No. 99-2-0027c  
)  
Petitioners, ) **AMENDED**  
) **RECONSIDERATION**  
v. ) **ORDER**  
)  
LEWIS COUNTY, )  
)  
Respondent. )  
)  
and )  
)  
CITY OF CENTRALIA, et al., )  
)  
)  
Intervenors. )  
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DANIEL SMITH, et al., VINCE PANESKO, and )  
JOHN T. MUDGE, ) No. 98-2-0011c  
Petitioners, ) **AMENDED**  
) **RECONSIDERATION**  
) **ORDER**  
LEWIS COUNTY, )  
)



that there was arguably some question as to the burden of proof for the invalidity findings. What is clear is that at the HOM the County and EDC stated that they accepted that it was the County's burden to remove invalidity as found in the *Butler* FDO. Nonetheless, at page 9 of the order, we specifically assigned the burden of showing invalidity as to any differences of the DRs from the *Butler* CP to petitioners. In all issues involving invalidity found in the March 5, 2001 order we also stated that if petitioners had the burden of proof it had been carried. We observe the County has not filed a similar motion for reconsideration on this or any other issue.

EDC also asked for reconsideration of its oral request at the HOM to remove invalidity from the Curtis "IUGA" found in the *Smith* FDO and CO. EDC pointed out that after the *Smith* FDO the County "did not amend Ordinance #1159 in response to the *Smith* FDO and did not adopt Ordinances #1170/1170B in response to the *Smith* FDO." We have never received a written request from the County (or EDC) to remove the *Smith* invalidity. We did receive an oral request from the County and EDC during the HOM in this case.

As noted by EDC the language of RCW 36.70A.320(4) places the burden on the County to remove invalidity when it has enacted an ordinance or resolution "in response" to the determination of invalidity. According to EDC, and perhaps the County, the County has never enacted an ordinance "in response" to either the *Smith* or the *Butler* findings of invalidity. That being the case, we are at a loss to understand how the County, or EDC, could ever expect us to rule that the invalidity should be modified and/or rescinded. Since there is no "ordinance or resolution in response to the findings of invalidity," there is nothing for us upon which to base a decision to modify and/or rescind.

If we considered the LAMIRD designation of the Curtis poleyard area to be a "response" to the invalidity finding, we have consistently found, with the burden on petitioners, that the LAMIRD designation did not comply with RCW 36.70.070(5)(d) or (e) and substantially interfered with the goals of the Act. Ordinances #1170/1170B adopted prior to the FDO in *Butler* were adopted subsequent to the FDO in *Smith*. Since the finding of invalidity in *Smith* and the subsequent adoption of comprehensive plan development regulations were adopted after the initial determination of invalidity in *Smith*, a question arises as to whether the County's self-serving statement that the ordinances were not adopted "in response" to *Smith* can be legally effective. Regardless of the resolution of that question, the fact remains that the County has never adopted any ordinance or resolution that removed the Curtis poleyard invalidity regardless of which party had the burden of proof. See also *Smith* CO July 13, 2000 discussion beginning at page 6.

EDC's motions for reconsideration are denied.

Finally, EDC observes that in the March 5, 2001 Order under the heading "compliance with previous cases" we cited *Panesko I* when the reference should have been to the *Smith* case. Clearly that observation is correct and the reference to "Panesko I" should be a reference to the July 13, 2000, CO in *Smith*.

Regarding the *Butler* CO section of the March 5, 2001 Order, Petitioner Panesko requested that we determine the "locations included in the urban industrial land bank on December 31, 1999, are no longer available for major industrial development" under the provisions of RCW 36.70A.367(7). We do not read that section of the Act to authorize or impose a duty on a Growth Management Hearings Board (GMHB) to make the determination requested by Panesko. The job of a GMHB is to determine compliance or noncompliance. The motion is denied.

Regarding the FDO portion of the March 5, 2001 Order, Panesko requested that we reconsider his argument

that the adopted maps for critical areas in Ordinance #1170B did not adequately identify the areas and were thus noncompliant. Panesko pointed out that the maps associated with this case “have been replaced with new critical areas in the map associated with Ordinance #1176 (an issue in Case #01-2-0010c).” Because the most current maps on critical areas are an issue in the new case, we will address it in that process. We specifically did not address the issue in this case because of the timing of the adoption of Ordinance #1176. Panesko’s motion for reconsideration is denied.

Panesko also requested reconsideration of our order concerning industrial land bank (ILB) changes with regard to Issue 42 as to whether the provisions of RCW 36.70A.365 were used. The County, and EDC, responded that ILBs were designated under the provisions of RCW 36.70A.367 not .365. In any event, since the provisions of Resolution 00-434 are part of the new case we will address the issues raised there and deny Panesko’s motion for reconsideration.

Although not noted by any party in this case, we observe that no specific timeframe for compliance under the March 5, 2001 Order was specified. We grant Lewis County the full 180 days from the date of this order in order to achieve compliance with the Act.

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

So ORDERED this 18<sup>th</sup> day of April, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen  
Board Member

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Les Eldridge  
Board Member