

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

MUDGE, PANESKO, ZIESKE, et al.,	)	
	)	No. 01-2-0010c
Petitioner,	)	
	)	FINAL DECISION
v.	)	AND ORDER
	)	
	)	
LEWIS COUNTY,	)	
	)	
Respondent,	)	
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On December 18, 2000, the Lewis County Board of County Commissioners (BOCC) adopted Ordinances 1175 and 1176 along with Resolutions 00-434 and 00-435. Timely petitions for review (PFRs) were filed. An order of consolidation was entered March 2, 2001. After a telephonic prehearing conference, a prehearing order was entered April 13, 2001. An order relating to supplemental evidence was entered April 26, 2001. The hearing on the merits (HOM) was held in Centralia on June 27, 2001.

**Presumption of Validity, Burden of Proof, and Standard of Review**

Pursuant to RCW 36.70A.320(1), Ordinances 1175 and 1176 and Resolutions 00-434 and 00-435 are presumed valid upon adoption.

The burden is on Petitioners to demonstrate that the action taken by Lewis County is not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), we “shall find compliance unless it determines that the action by [Lewis County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” In order to find the County’s action clearly erroneous, we must be “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

## **Ordinance 1176**

Ordinance 1176 was adopted pursuant to RCW 36.70A.390. That section allows adoption of an interim ordinance without a public hearing if such public hearing is held within 60 days of the adoption and initial findings are entered. The interim ordinance may not be “effective” for longer than six months but may be subject to renewal if subsequent public hearings are held and findings are entered at each renewal stage. Lewis County held no public hearings at any time after the December 18, 2000 adoption. The six-month expiration date occurred on June 18, 2001.

The ordinance itself dealt with proposed rural densities and the need for variety as required by RCW 36.70A.070(5). At the time of the ordinance’s adoption the County’s previous rural element adoptions and development regulations (DRs) under Ordinance 1170B were being challenged in *Panesko v. Lewis County, 00-2-0031c (Panesko)*. We issued our final decision and order (FDO) in that case on March 5, 2001.

On May 7, 2001, the BOCC decided to allow Ordinance 1176 to expire without any efforts at renewal. The concepts embodied in the ordinance were referred to the planning commission (PC) as part of the summer work program, which is detailed below.

The County contended that since the ordinance expired, we were unable to grant any relief, and thus the matter was moot. Petitioners contended that even if the matter was moot, the County had indicated that it would consider the substance of the ordinance in future re-examinations and therefore an opinion should be rendered as the concepts embodied in the ordinance were likely to recur.

This is not a case of mootness, but one of jurisdiction. RCW 36.70A.280 and .290 require that the Growth Management Act (GMA, Act) action that has been challenged must still be in effect at the time the FDO is issued. While there is some question as to whether Ordinance 1176 was ever “in effect” since no public hearing within 60 days after adoption was held, it is clear that the ordinance is no longer in effect because of its expiration on June 18, 2001. Thus, no jurisdiction exists for us to render a decision.

Any decision we might render as to Ordinance 1176 would be in contravention of the legislative prohibition against “advisory opinions” embodied in RCW 36.70A.290(1).

The work in Petitioners’ brief is not in vain. The County now has specific notice as to the claimed deficiencies of Ordinance 1176.

### **Current GMA Planning**

Subsequent to the *Panesko* FDO, as shown by the BOCC letter of May 14, 2001, to the PC, the County decided to re-examine its GMA planning as an alternative to its current decision to have the Court of Appeals resolve the issues. The County has committed, with the help of an Office of Community Development grant, to completing a full environmental impact statement including a variety of alternatives and their potential impact for all comprehensive plan (CP) and development regulation (DR) invalidities and noncompliance. The County’s current rural element is under a determination of invalidity.

The County has also contracted for a traffic study update regarding its responsibilities under the GMA. Previously, we have found noncompliance of the County’s traffic element. We have also indicated that we would strongly consider a determination of invalidity depending on what actions, if any, the County took. While Petitioners here argued that it was time for a finding of invalidity, we decline to do so at this time. We will await the result from the County’s efforts during this summer review period.

The County has also committed to re-examine its position on agriculture resource lands in light of recent Supreme Court cases. Additionally, the summer re-examination is intended to be a “compliance review” embodying a variety of topics. Presumably, this will include a public participation program adoption as discussed under Resolution 00-435 below.

### **Ordinance 1175**

Ordinance 1175 adopted certain amendments to the County’s DRs, particularly regarding recreational vehicle locations and standards. Subsequent to the March 5, 2001 FDO, the County determined to not pursue use of Ordinance 1175 but rather to submit it as part of the summer “compliance review” package. At the HOM the County stipulated that review of the ordinance in

this case would result in the same findings of noncompliance and invalidity relating to the issues of the rural element set forth in the March 5, 2001 FDO.

### **Resolution 00-435**

Resolution 00-435 adopted a public participation program for Lewis County. In the March 5, 2001 FDO, we noted that insofar as the resolution was submitted as a compliance matter for the previous case, it did not comply with the Act. The County has stipulated that we would find the same result in this proceeding. While a new public participation program was not specifically mentioned in the May 14, 2001 letter from the BOCC, we are sure that it is part of the “compliance review” program.

### **Resolution 00-434**

Resolution 00-434 adopted amendments to the CP. Many of the amendments were covered either explicitly or implicitly in the March 5, 2001 FDO. The County stipulated that noncompliance and invalidity findings would result from a complete review of portions of this resolution.

The County noted that as part of the resolution, the Klein Bicycle site in rural Lewis County had been changed to a “rural industrial area”, a category not covered in the March 5, 2001 FDO. That designation allows continuation of the existing uses, but does not allow expansion beyond current property boundaries. No determination of invalidity was found as to the site in the March 5, 2001 FDO.

Petitioners specifically agreed that this designation was not challenged in any of the PFRs. That being the case, the presumption of validity controls a finding of compliance as to the new designation.

### **Expansion of Urban Growth Areas**

The only contested issues in this case involved the portions of Resolution 00-434 which expanded urban growth areas (UGAs). Three areas were added to the existing UGAs. In Chehalis most of the existing Jackson Highway suburban enclave found noncompliant and

invalid in the previous cases was re-designated, along with some additional acreage, as an UGA. In Centralia, areas surrounding Harrison Avenue and Cook Hill were added. The Cook's Hill property had previously been designated as a suburban enclave and found noncompliant and invalid.

Additionally, the County amended Table 3.3 of its CP regarding population forecast and allocations to comply with the countywide planning policy (CPP) that requires a majority of new growth to be located in urban areas.

Petitioners attacked the actions of the County on the grounds of lack of compliance with the State Environmental Policy Act (SEPA). The County noted that while the designated areas would ultimately be subject to city DR coverage, until that time would have a default designation of one dwelling unit per 5-acre (1:5).

The initial step regarding SEPA compliance is to determine whether the new action could result in a probable adverse environmental impact. Here, the areas of Jackson Highway and Cook's Hill were previously designated for an intensity of one dwelling unit per 0.5-acre. The change in designation to the default one of 1:5, under the record here, would not have a probable adverse environmental impact. At the time Centralia engages in planning to make these areas more intense, SEPA analysis will be required. That would be the appropriate time for Petitioners to participate and if necessary, file a PFR.

Petitioners also challenged inclusion of the three areas under public participation deficiencies. We have previously held that Lewis County has not complied with the public participation goals and requirements of the Act in many respects, primarily relating to a lack of any public participation program. While it is very difficult for a local government to comply with the public participation goals and requirements of the Act without such an adopted program, it is not impossible. And as we reviewed the record here as to the UGA expansions only, we conclude that Petitioners have failed to sustain their burden of proof.

We note that the PC meetings involving redesignation of these areas to UGAs occurred June 20, 22, and 27, 2000. The BOCC hearing occurred September 11, 2000, but final action on

Resolution 00-434 was not taken until December 18, 2000. We are aware that the Petitioners and the County did engage in settlement negotiations during September and October 2000. While we do find compliance here, such a wide gap between PC and BOCC hearings and legislative actions by the BOCC would often have difficulty complying with GMA public participation goals and requirements.

Likewise, as seems to occur in every hearing involving Lewis County, a claim that information was not available to the public, was made. We note that the GMA requires that information be made “available” to the public in an “early and continuous” manner. We caution the County that merely telling members of the public that they could access the information if they only ask the right questions to the right people, may well not be sufficient. Access and availability are not the same things and the County has an affirmative duty to dispense as much accurate information to as many people as it possibly can. Under this record for these specific issues, we find Petitioners have not sustained their burden of proof.

In deciding to include these areas within their respective UGAs the County noted that as to the Cook’s Hill and Jackson Highway areas, municipal services regarding sewer and water were in existence or could be efficiently provided. The Harrison Avenue area had been dropped out of consideration for UGAs very near the end of the CP process in 1999. However, the selection of a new sewer plant along Harrison Avenue, outside the major floodplain area of Centralia, has now been made by the city. Significant urbanization of Harrison Avenue has already occurred and from this record, municipal services in addition to water and sewer, appear to be efficiently available. How Centralia intends to provide those services to these areas once the city DRs become effective, remains part of the city’s planning process.

The Cook’s Hill area of Centralia, a previously designated suburban enclave, is adjacent to urbanized areas of the city and has efficient access to water and sewer. Additional municipal services are likely to be efficiently available, but the specifics and timing of that availability will be subject to the city’s planning process.

The Jackson Highway UGA designation in the city of Chehalis is at least arguably characterized by urban growth. It is in an area immediately adjacent to a 1,000-acre industrial zone for new

growth as designated in the city's existing CPs and DRs. Environmental constraints were analyzed by the County as well as potential designations for the area that do not include residential use. Ultimately, about 135 of the approximately 480 acres will be available for new residential growth.

While there are some questions remaining, we find that the Petitioners have failed in their burden of showing that the County did not comply with the GMA in designating the areas as municipal UGAs, particularly because the County also imposed a 1:5 minimum lot size until each city completes its planning process. At that point, the County will automatically incorporate each city's implementing DRs for the new UGAs. Existing sewer and water municipal services are available or can be efficiently provided. The areas are outside the floodplain, which very often restricts any kind of development for both Centralia and Chehalis. Each city's planning process for the areas must include a very detailed urbanization plan with capital facilities planning to ensure infrastructure and other municipal urban services will be available at the time the services are required. The Cities must address infill for the previous UGA areas, as well as these new ones, and adopt appropriate tiering DRs for efficient transformance of governance within the UGAs.

Our finding here does not in any way relieve the County of its duty to comply with previously found noncompliance issues involving sprawl, a lack of policies to encourage growth to urban areas, appropriate densities within UGAs, as well as infill and tiering responsibilities.

We find the portions of Resolution 00-434 relating to UGA expansion, population allocations and designation of the Klein Bicycle property to comply with the Act. In all other respects, Ordinance 1175, Resolution 00-434 and Resolution 00-435 do not comply with the Act. Insofar as they may relate to previously-found determinations of invalidity, they are likewise determined to substantially interfere with the goals of the Act. The County's compliance schedule will be the same as that established in *Panesko*. The findings in *Panesko* are adopted by reference.

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 10<sup>th</sup> day of July, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen  
Board Member

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Les Eldridge  
Board Member

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Nan A. Henriksen  
Board Member