

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

EDWARD G. SMETHERS, SUSAN ROTH,
RICHARD ROTH, KAREN KNUTSEN,
BRENDA BOARDMAN, VALERIE GORE,
DOUGLAS H. HAYDEN, ANNETTE H.
YANISCH, EUGENE BUTLER, DOROTHY
SMITH, DEANNA M. ZIESKE, JOHN T.
MUDGE, DEBRA ERTEL BURRIS, MICHAEL
T. VINATIERI, EVALINE COMMUNITY
ASSOCIATION,

Petitioners,

v.

LEWIS COUNTY,

Respondent.

No. 03-2-0018

**ORDER GRANTING
COUNTY'S MOTION
TO DISMISS ISSUES
NOS. 1 AND 2**

This Matter came before the Board on the County's Motion to Dismiss. The County filed its Motion to Dismiss certain issues on October 3, 2003. Petitioners filed Petitioners' Response to Lewis County's Motion to Dismiss on October 20, 2003. The Board heard argument on the County's motion telephonically on October 24, 2003. Alexander Mackie represented the County. Petitioners Susan Roth, Richard Roth, Edward Smethers, Valerie Gore, Eugene Butler, Dorothy Smith, Karen Knutsen, June Wristen-Mooney (representing Evaline Community Association), and Deanna Zieske attended the telephonic hearing. The Board allowed the parties to submit supplemental briefing on Issues 1 and 2 after the hearing.

The Board entered an order denying the County's motion to dismiss issues 3-9 and 15-20 on October 31, 2003. On November 3, 2003, both parties submitted supplemental briefing regarding Issues 1 and 2. Based on the submissions of the parties and the argument of counsel, the Board hereby enters the following decision and order:

I. DECISION

The County moves to dismiss Issues No. 1 and 2 on the basis that the Board lacks jurisdiction to decide those issues:

Issue 1: Do LCC 17.30.420(1)(e) and .420(6) fail to comply with RCW 36.70.A.170(2) by failing to include Forest Land Grade 1 Areas in those areas to be designated as forest lands of long-term commercial significance?

Issue 2: Does the failure to include Forest Land Grade I areas substantially interfere with the fulfillment of Goal 8 of the GMA by failing to conserve productive forest lands?

The County argues that the ordinance challenged in this case, Ordinance 1179C, did not affect the designation of forest resource lands and therefore these issues are not now properly before the Board. The County states that the County adopted designations of forest resource lands in 1996 and since then has adopted the natural resource section and maps of the comprehensive plan (June 1999), recodified the resource land rules as part of Chapter 17.30 LCC (May 2000, Ordinance 1170B), and adopted resource land maps identifying the designated forest resource lands in the zoning code to implement the comprehensive plan in LCC 17.200.20 (May 2000, Ordinance 1170B). Lewis County's Supplemental Memorandum at 17. The Petitioners' challenge, the County argues, is not timely.

The Petitioners respond that the County's 1996 designation of forest resource lands lapsed as a result of the County's failure to readopt the designations when it adopted its 1999 comprehensive plan. Petitioners cite RCW 36.70A.060(1) and (3) for the proposition that the County's original designation of forest resource lands expired upon adoption of the comprehensive plan. Petitioners' Supplemental Brief to County's Motion to Dismiss, at.3-4.

Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the

continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

RCW 36.70A.060(1)(in pertinent part)

Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

RCW 36.70A.060(3)

Petitioners argue that the language in the statute stating that development regulations adopted on or before September 1, 1991 “shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040” means that those initial regulations expire upon adoption of the comprehensive plan. Petitioners’ Supplemental Brief at. 4. The County responds that when the Legislature wishes to provide that a regulation expires, it uses express language to that effect as it did in RCW 36.70.780 and .790. Lewis County’s Supplemental Memorandum at 16. Further, the County argues that the codification of the forest resource land criteria into Chapter 17.30 LCC in 2000 “did integrate the criteria into the permanent land use regulations of the County” and should have been challenged within 60 days of that adoption, rather than in the challenge to the present ordinance. *Ibid.*

We do not agree with Petitioners that the language of RCW 36.70A.060(3) means that development regulations enacted to assure conservation of resource lands expire upon adoption of the comprehensive plan. The statute provides that the initial development regulations stay in effect until new ones are adopted. The clear intent of the legislation is to ensure that development regulations are always in place to assure conservation of resource lands. Petitioners essentially argue the reverse: that the statute causes the County’s development regulations to lapse due to the failure of the County to readopt its designations and development regulations at the time it adopted the comprehensive plan in 1999. Such a reading of the statute flies in the face of the overall structure of the GMA, whose mandates begin with the requirement to designate and conserve resource lands. *See* RCW 36.70A.170; RCW 36.70A.040(3) and (4); *King County v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 555, 14 P.3d 133 (2000).

Ordinance 1179C, the ordinance challenged in this petition for review, does not purport to designate forest resource lands. Nor does it substantively amend those provisions of the Lewis County Code that establish the criteria for designation of those lands. The County asserts that the criteria for designation of forest resource lands were adopted into the permanent development regulations of Lewis County in 2000. The challenge raised to them here is not timely.

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II. ORDER

Based on the foregoing decision, Issues Nos. 1 and 2 of the Prehearing Order in this case are hereby DISMISSED.

SO ORDERED this 6th day of November, 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Margery Hite, Board Member

Holly Gadbow, Board Member

Nan Henriksen, Board Member