

**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 RE:
COUNTY'S MOTION
TO DISMISS**

THIS matter came before the Board upon the County's Motion to Dismiss certain issues from the Petition for Review filed on August 29, 2003. The County's Motion to Dismiss was filed on October 8, 2003. Petitioners opposed the County's motion in Petitioners' Response to Lewis County's Motion to Dismiss dated October 18, 2003 (filed with the Board on October 20, 2003).

A hearing was held telephonically on the County's motion on October 24, 2003. Petitioners Susan Roth, Richard Roth, Edward Smethers, Valerie Gore, Eugene Butler, Dorothy Smith, Karen Knutsen, June Wristen-Mooney and Deanna Zieske were present telephonically. Mr. Alexander Mackie appeared telephonically for the County. All three board members were in attendance.

An Amended Petition for Review was filed on October 7, 2003. The numbering of issues in the County's motion was based upon the initial Petition for Review but will be revised to reflect the numbering sequence in the Prehearing Order dated October 17, 2003.

Issues No. 1 and 2

The County moves to dismiss the following 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 I 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 Board lacks jurisdiction to decide these issues because Ordinance 1179C does not amend LCC 17.30.420. Petitioners respond that the County was required by prior Board orders to re-adopt its forest resource land designations and development regulations.

In response to Board questions, the parties agreed to provide supplemental briefing on the following points:

1. Whether the unchallenged findings in *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c (Final Decision and Order, June 30, 2000 and Compliance Order, July 10, 2002) that the County failed to readopt RL [resource lands] designations and DRs [development regulations] and therefore hadnot complied with the GMA are the law of the case in the compliance cases pending before the Board.
2. Whether the issue of designation of forest resource lands was ever raised in the underlying petitions for review or the prehearing orders in the compliance cases.
3. Whether RCW 36.70A.060(1) and 36.70A.060(3) provide that the failure to re-adopt resource lands designations at the time of adoption of the comprehensive plan causes the earlier (interim) ordinance designating resource lands to expire.

The parties have been given until November 3, 2003 to provide supplemental briefing on these points. Because this will result in a Board decision very close in time to the due date for Petitioners' Brief in this matter, both parties have been given an extension of ten days in which to file their briefs on Issues No. 1 and 2 if the Board does not dismiss them pursuant to the County's motion.

Issues No. 3, 4, 5, 15, 16, 17, and 18

The County argues that these issues represent challenges to uses in resource lands. Because the issue of allowable uses in resource lands is before the Board in *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c; *Panesko v. Lewis County*, WWGMHB Case No. 00-2-0031c; and *Yanisch v. Lewis County*, WWGMHB Case No. 02-2-0007c (“the compliance cases” hereafter), the County argues that the Board should dismiss these issues as duplicative. Petitioners respond that they needed to file a petition for review of Ordinance 1179C to be sure that the specific issues they raise with respect to the County’s enactment are decided.

We are aware of no provision in the GMA which authorizes the Board to dismiss issues raised in a petition for review because those issues are also pending in a compliance case. RCW 36.70A.290 provides that the Board shall hold a hearing unless the Board dismisses the petition as frivolous or finds that the person filing the petition lacks standing. It also provides that the Board shall not render opinions on issues not presented to the Board in the statement of issues.

Here, Petitioners have presented a statement of issues now embodied in the Prehearing Order. The County has not presented authority for the proposition that those issues may be dismissed because similar issues are pending in a related compliance hearing. The County’s Motion to Dismiss these issues is therefore denied.

Issues 9, 19 and 20

The County also argues that the issues relating to essential public facilities in resource lands is already the subject of a compliance order and are duplicative of issues now pending before the Board in the compliance cases. We reiterate our discussion above and deny the County’s Motion to Dismiss on these grounds.

Issues 6, 7 and 8

With respect to the ordinance provisions relating to residential subdivisions as an incidental use on resource lands, the County again argues that these issues are already before the Board in the compliance cases. In addition, the County argues that Petitioners are attempting to open an issue that has already been resolved in the County’s favor. The County argues that the Petitioners

should have raised the issue of the interference of neighboring uses with the conservation of resource lands in conjunction with the County ordinances dealing with rural uses. Petitioners respond that until the County had purported to enact legislation to ensure that adjacent uses do not interfere with the conservation of resource lands, the issue was not appealable.

We agree with Petitioners that the issue of assuring that adjacent uses will not interfere with the conservation of resource lands is one that should be raised in the context of resource lands. Until the County had enacted legislation dealing with designation and conservation of resource lands, the Petitioners could not appeal what the County had or had not done. The County's Motion to Dismiss on these grounds is therefore denied as well.

ORDER

For the reasons stated above, the County's Motion to Dismiss Issues 3-9 and 15-20 is DENIED and those issues will be heard at the hearing on the merits.

At the same time, the Board is sympathetic to the County's desire to avoid the necessity for briefing the same issues in more than one case. In the event that the argument and exhibits are identical as to any issues raised in the pending compliance cases and in the instant case (all of which are set for hearing December 9 and 10), the parties may make those arguments and submit those exhibits once and incorporate them by reference into the other brief or briefs submitted.

So Ordered this 29th day of October, 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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