BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

OLYMPIANS FOR SMART DEVELOPMENT
& LIVABLE NEIGHBORHOODS, et al.,

Petitioners,

v.

CITY OF OLYMPIA,

Respondent.

Case No. 19-2-0002c

FINAL DECISION AND ORDER

SYNOPSIS

Like many of Washington State’s cities and towns, a significant percentage of the City of Olympia has developed over time in relatively low-density, single family residential neighborhoods. In order to achieve the Growth Management Act’s (GMA) goals of encouraging development in urban areas, reducing sprawl, and conserving our natural resource lands, our cities and towns must “build in and up” and not “build out.” That is clearly what Olympia sought to achieve with the adoption of Ordinance 7160, the Missing Middle regulations. Those regulations provide for a greater mix of housing types and sizes, and an increase in density in order to accommodate our state’s anticipated population growth while avoiding sprawl and preserving our natural resource lands.

Having said that, it is incumbent upon jurisdictions to act in full compliance with the requirements of the GMA when they take legislative action designed to further the goals of the GMA. In this case, the Board has concluded that the City of Olympia’s action in adopting Ordinance 7160 failed to comply with the requirements of RCW 43.21C.030 as it relates to the adoption of the Missing Middle regulations and RCW 36.70A.130(1)(d) and RCW 36.70A.120 and determined that Ordinance 7160 is invalid. That, however, should not be
taken as disagreement with or criticism of the intent behind the City’s action. The City’s goal of infilling is necessary, laudable and achievable.

Procedural matters relevant to the case are detailed in Appendix A. The Legal Issues raised are set forth in Appendix B and some of the City’s comprehensive plan policies are included in Exhibit C.

I. INTRODUCTION

The Petitioners challenged the City of Olympia’s adoption of Ordinance 7160 (the “Missing Middle” regulations or the “Ordinance”) which was comprised of numerous amendments of the City’s development regulations intended to allow “infill” of residential neighborhoods. The Board previously found and concluded that the City’s action in adopting the Ordinance violated RCW 43.21C.030 by basing its issuance of a Declaration of Non Significance (DNS) for the Ordinance on an inadequate Checklist. The Petitioners requested the imposition of invalidity based on the violation of RCW 43.21C.030 but the Board deferred ruling on that request to the Hearing on the Merits. In this order, the Board has considered the remaining issues as well as the deferred invalidity request.

II. BOARD JURISDICTION

The Board finds the Petition for Review was timely filed pursuant to RCW 36.70A.290 (2). The Board finds the Petitioners have standing to appear before the Board pursuant to RCW 36.70A.280(2)(b). The Board also finds it has jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1).

III. STANDARD OF REVIEW

Comprehensive plans and development regulations, and amendments to them, are

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1 Ex. 425 at 1: The term “Missing Middle” refers to a range of multi-unit housing types that are compatible in scale with single-family homes.
2 Olympians v. City of Olympia, GMHB No. 19-2-0002c (Order Denying Motion to Dismiss, Granting Summary Judgment, March 29, 2019).
presumed valid upon adoption. This presumption creates a high threshold for challengers as the burden is on the Petitioners to demonstrate that any action taken by the City is not in compliance with the Growth Management Act (GMA). The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.

The scope of the Board’s review is limited to determining whether a jurisdiction has achieved compliance with the Growth Management Act (GMA), only with respect to those issues presented in a timely petition for review. The Board is directed to find compliance unless it determines that the challenged action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.

IV. ANALYSIS AND DISCUSSION

The Board has previously granted summary judgment on Issue 1 which alleged violations of RCW 43.21C.030. All remaining issues allege GMA violations related to inconsistencies between Comprehensive Plan goals/policies and the development regulations adopted with the challenged ordinance together with related arguments that the development regulations fail to implement the Comprehensive Plan goals/policies.

3 RCW 36.70A.320(1).
4 RCW 36.70A.320(2).
5 RCW 36.70A.280(1): The growth management hearings board shall hear and determine only those petitions alleging either: (a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW . . .
6 RCW 36.70A.320(3). In order to find the City’s action clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” Dep’t of Ecology v. PUD 1, 121 Wn.2d 179, 201 (1993).
8 Olympians v. City of Olympia, GMHB No. 19-2-0002c (Order Denying Motion to Dismiss, Granting Summary Judgment, March 29, 2019). Issue 1: Did the City violate RCW 43.21C.030 (requiring an EIS to accompany "every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment") and WAC 365-196-620 by failing to prepare an environmental impact statement to inform the Planning Commission and City Council as they deliberated on and made recommendations and decisions on the proposed legislation that became Ordinance No. 7160?
RCW 36.70A.130(1)(d) requires that any amendment or revision to development regulations shall be consistent with and implement the comprehensive plan. Those terms are defined in the Washington Administrative Code.

WAC 365-196-210(8) "Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

WAC 365-196-800 Relationship between development regulations and comprehensive plans. (1) Development regulations under the act are specific controls placed on development or land use activities by a county or city. Development regulations must be consistent with and implement comprehensive plans adopted pursuant to the act. "Implement" in this context has a more affirmative meaning than merely "consistent." See WAC 365-196-210. "Implement" connotes not only a lack of conflict but also a sufficient scope to fully carry out the goals, policies, standards and directions contained in the comprehensive plan.

The consistency required between development regulations and comprehensive plans means that no feature of the plan or regulation is incompatible with any other feature of a plan or regulation. The Board has analyzed the meaning of these terms and applied them in numerous decisions.

The Board has stated that "consistency can also mean more than one policy not being a roadblock for another; it can also mean that the policies of a comprehensive plan … must work together in a coordinated fashion to achieve a common goal." 10

Growth Management Act (GMA) also requires that development regulations "implement" the policies and provisions of the comprehensive plan. "Implement" has a more affirmative meaning than merely "consistent with." Implement connotes not only a lack of conflict but sufficient scope to carry out

10 Alberg, et al v. King County, CPSGMHB No. 95-3-0041c (FDO, September 13, 1995) at 15. See also: West Seattle Defense Fund, et al. v. Seattle, CPSGMHB No. 94-3-0016 (FDO, April 4, 1995) at 27; Children's Alliance v. City of Bellevue, CPSGMHB No. 95-3-0011 (FDO, July 25, 1995).
fully the goals, policies, standards and directions contained in the comprehensive plan.\textsuperscript{11}

Perceived inconsistencies between a specific development regulation and specific, isolated comprehensive plan goals does not violate RCW 36.70A.040. Rather, an 040 violation results if the development regulations preclude attainment of planning goals/policies.\textsuperscript{12}

In determining when an inconsistency exists between various parts of a local jurisdiction’s planning policies and regulations, we have held that consistency means that no feature of the plan or regulation is incompatible with any other feature of the plan or regulation. … Said another way, no feature of one plan may preclude achievement of any other feature of that plan or any other plan.\textsuperscript{13}

A finding of inconsistency requires a showing of actual conflict between competing provisions of a city’s planning policies and development regulations.\textsuperscript{14}

In analyzing whether there is a lack of consistency between a plan provision and a development regulation, arising to a violation of the GMA, this Board has held that such a violation results if the development regulations preclude attainment of planning goals and policies.\textsuperscript{15}

In \textit{Cook & Heikkila}\textsuperscript{16} the Board identified the three questions that need to be addressed in such cases:

- Do the development regulations \textbf{implement} the comprehensive plan goals and policies?
- Do any of the development regulation’s features \textbf{preclude achievement} of any of the Comprehensive Plan policies?
- Have the Petitioners shown \textbf{actual conflict} between Comprehensive Plan policies

\textsuperscript{11} Bertelsen and Raine \textit{v. Yakima County, et al.}, EWGMHB No. 00-1-0009 (FDO, November 2, 2000) at 7.
\textsuperscript{12} \textit{Cook & Heikkila v. Winlock}, CPSGMHB No. 09-2-0013c (FDO, October 8, 2009) at 35.
\textsuperscript{14} \textit{Id.} at 1.
\textsuperscript{15} \textit{Martin v. Whatcom County}, GMHB No. 11-2-0002 (FDO, July 22, 2011) at 17.
\textsuperscript{16} \textit{Cook & Heikkila v. Winlock}, WWGMHB No. 09-2-0013c (FDO, October 8, 2009) at 34, 35.
Relevant statutes:

RCW 36.70A.120: Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan.

RCW 36.70A.130(1)(d): Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

In briefing, the Petitioners first focused on Issues 2.1, 2.2, 2.3, and 2.8, making varied arguments. They assert violations of the GMA’s consistency/implementation requirements set forth in RCW 36.70A.130(1)(d) and RCW 36.70A.120 arising from the Ordinance’s failure to concentrate increased development in districts other than the City’s Low-Density Neighborhoods, their failure to protect existing Low-Density Neighborhoods and, finally, the Ordinance’s allowance of greater density in Low-Density Neighborhoods than provided for by the comprehensive plan. The Board will address each of those separate arguments in turn.

The Issue statements also alleged violations of RCW 36.70A.040(3) and WAC 365-196-500(3). RCW 36.70A.040(3) established the requirement that jurisdictions adopt initial comprehensive plans and implementing development regulations. The City of Olympia adopted the required comprehensive plan and development regulations many years ago. The Board finds and concludes that the Petitioners are unable to establish the Ordinance violated RCW 36.70A.040(3). Allegations of violations of that statute in all issues will be dismissed. Similarly, the Board will dismiss allegations of WAC 365-196-500(3). That rule is included in chapter 365-196 WAC, the procedural criteria for compliance with the GMA.

Peranzi v. City of Olympia, GMHB No. 11-2-0011 (FDO, May 4, 2012) at 6: “Neither will the Board consider alleged violations of RCW 36.70A.040(3). That statute specifically sets forth initial county and city requirements following passage of the GMA over twenty years ago, including adoption of county-wide planning policies, development regulations protecting natural resource lands, designation of urban growth areas, comprehensive plans and implementing development regulations.”
While the Board considers the procedural criteria, any determination of compliance must be based on the requirements of the GMA itself.\(^\text{18}\)

**Issue Statements:**

2. Is the Ordinance inconsistent with and does it fail to implement the following Olympia Comprehensive Plan goals and policies in violation of RCW 36.70A.040(3), RCW 36.70A.120; RCW 36.70A.130(1)(d); and WAC 365-196-500(3)?


2.2 Goals and policies that seek protection of designated historic properties and districts and properties and neighborhoods that reflect the city’s heritage, \(e.g.,\) GL 3, PL 3.2, PL 3.4, PL 3.5, PL 3.6, PL 3.8, GL 4, PL 4.2, PL 5.5, PL 5.7, GL 6, PL 7.4, and PS 4.1, GE 8, PE 8.1, PE 8.2, PE 8.3, PE 8.4.

2.3 Goals and policies which seek to promote more housing in commercial areas, high density corridors and in three designated high-density neighborhoods (i.e., High Density Neighborhood Overlay), \(e.g.,\) PL 1.3, PL 11.1, PL 11.2, PL 11.3, PL 11.5, PL13.3, PL 13.6, PL 14.2, PL15.4, PS 9.4 and GT 14.

2.8 Provisions that stipulate maximum unit density and housing types in Low-Density Neighborhoods. See, \(e.g.,\) Appendix A and Future Land Use Map in the Land Use and Urban Design Chapter of the 2014 Olympia Comprehensive Plan.

**A. Concentrating Development**

The Petitioners argue that the Ordinance’s regulations fail to implement the Comprehensive Plan’s policies supporting the concentration of growth and higher densities

\(^{18}\) WAC 365-196-030(3).
in areas of the City\textsuperscript{19} other than the Low-Density Neighborhoods.\textsuperscript{20} The Petitioners succinctly set forth their argument: “... the Missing Middle does not make any provisions at all to concentrate growth in the designated districts and, thereby, violates the Comprehensive Plan.”\textsuperscript{21} Here, the Petitioners fail to acknowledge that the Ordinance was neither designed nor intended to address the zoning, nor related densities, throughout all areas of the City. Simply put, the Missing Middle ordinance was not required to make any such provisions, as the City observes “... not every regulation must carry out all of the City’s policies and goals.”\textsuperscript{22} Other development regulations may in fact implement those policies. The Missing Middle development regulations neither preclude achievement of the cited comprehensive plan polices nor have the Petitioners shown actual conflict between those policies and the development regulations. The Petitioners have failed to meet their burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 related to those policies which seek to concentrate development in areas other than Low-Density Neighborhoods as alleged in Issues 2.1, 2.2, 2.3 and 2.8.

B. Protection of Existing Neighborhoods

The Petitioners’ arguments regarding impacts on neighborhood character arise from the Ordinance’s allowance of increased densities, allowance of housing of a size, type and scale allegedly out of character with the existing single-family nature of Low-Density Neighborhoods.

\textsuperscript{19} Policies referenced by the Petitioners include: PL 1.3 Direct high-density development to areas with existing development where the terrain is conducive to walking, bicycling and transit use and where sensitive drainage basins will not be impacted.

PL 11.1 Encourage increasing the intensity and diversity of development in existing commercial areas by mixing commercial and multi-family development along with entertainment and cultural centers in a way that will reduce reliance on cars and enable people to work, shop, recreate and reside in the same area.

PL 13.6 Focus public intervention and incentives on encouraging housing and walking, biking and transit improvements in the portions of the urban corridors nearest downtown and other areas with substantial potential for redevelopment...

PL 14.2 Concentrate housing into three high-density Neighborhoods: Downtown Olympia, Pacific/Martin/Lily Triangle; and the area surrounding Capital Mall.

\textsuperscript{20} Petitioners’ Prehearing Brief at 14 “… the urban corridors, commercial neighborhoods, and the three neighborhoods designated to receive further growth.”

\textsuperscript{21} Id.

\textsuperscript{22} City of Olympia’s Response Brief at 9.
Neighborhoods, and impacts to parking, privacy, and sunlight access. The Board will first
address the questions regarding allowed densities followed by the remaining arguments.

1. Density

The primary comprehensive plan policy related to density is Policy 14.3:

PL 14.3 Preserve and enhance the character of existing established Low-density Neighborhoods. **Disallow medium or high-density development in existing Low-density Neighborhood areas except for Neighborhood Centers.** (emphasis added)

The City’s land use map designations include Low-Density Neighborhoods, Medium-Density Neighborhoods, as well as numerous other categories. Those two neighborhoods are defined in the comprehensive plan as follows:23

**Low-Density Neighborhoods.**

This designation provides for low-density residential development, primarily single-family detached housing and low-rise multi-family housing, in densities ranging from twelve units per acre to one unit per five acres depending on environmental sensitivity of the area. Where environmental constraints are significant, to achieve minimum densities extraordinary clustering may be allowed when combined with environmental protection. Barring environmental constraints, densities of at least four units per acre should be achieved. Supportive land uses and other types of housing, including accessory dwelling units, townhomes and small apartment buildings, may be permitted. Specific zoning and densities are to be based on the unique characteristics of each area with special attention to stormwater drainage and aquatic habitat. Medium Density Neighborhood Centers are allowed within Low Density Neighborhoods. Clustered development to provide future urbanization opportunities will be required where urban utilities are not readily available.

**Medium-Density Neighborhoods:**

This designation provides for townhouses and multi-family residential **densities ranging from thirteen to twenty-four units per acre.** Specific zoning is to be based on proximity to bus routes and major streets, land use compatibility, and

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23 Ex. 1 at 144.
environmental constraints. Specific zoning will include minimum and maximum densities to ensure efficient use of developable land and to ensure provision of an adequate variety of types of housing to serve the community. Higher densities should be located close to major employment or commercial areas. Clustering may be permitted.

In addition, the following comprehensive plan table repeats those allowed densities in the two neighborhoods.24

<table>
<thead>
<tr>
<th>FUTURE LAND USE DESIGNATION</th>
<th>PRIMARY USE</th>
<th>RESIDENTIAL DENSITY</th>
<th>BUILDING HEIGHTS</th>
<th>ESTIMATED ACREAGE</th>
<th>PERCENTAGE OF UGA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low-Density Neighborhoods</td>
<td>Single-family Residential</td>
<td>Up to 12 units per acre</td>
<td>2 to 3 stories</td>
<td>11,495 ac.</td>
<td>71%</td>
</tr>
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<td>(LDN)</td>
<td></td>
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</tr>
<tr>
<td>Medium-Density Neighborhoods</td>
<td>Multi-family Residential</td>
<td>Up to 13 to 24 units per acre</td>
<td>Up to 3 stories</td>
<td>615 ac.</td>
<td>4%</td>
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<td>(MDN)</td>
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The Petitioners’ density contention is that the regulations included in the Ordinance allow densities far in excess of those provided for in the comprehensive plan for the City’s Low-Density Neighborhoods. The City claims that allowed density in the Low-Density Neighborhoods has not been increased25 and, additionally, that there is no applicable density maximum, citing Footnote 2 in the above Table which provides:

Residential Density is a general range for planning purposes and subject to variation based on site suitability. Specific allowed ranges should be established by development regulations.

The Board is not persuaded by the City’s assertion that Footnote 2 somehow negates the comprehensive plan’s maximum density limit of 12 applicable to the Low-Density Neighborhoods.

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24 Ex. 1 at 147.
25 City of Olympia’s Response Brief at 11: “The Comprehensive Plan does not rigidly fix the densities allowed in the low density residential areas with a hard cap of 12 units per acre . . . City of Olympia’s Response Brief at 14: “Similarly as shown above, the maximum units per acre was not changed. Because the Comprehensive Plan provides that actual densities are established in development regulations, this statement has no merit.”
Neighborhoods. The footnote does indeed provide for a range of densities; within the Low-Density Neighborhoods that range is between “twelve units per acre to one unit per five acres depending on environmental sensitivity of the area.” The Board further observes that the City’s development regulations refer to “maximum densities” as either 8 units per acre or 12 units per acre within the R 4-8 and R 6-12 zones, respectively.\textsuperscript{26} Staff documents also reference maximum Low-Density Neighborhood densities.\textsuperscript{27} Finally, the Board notes that deviation within the density range authorized by Footnote 2 is to be based on “site suitability,” and is not applicable throughout the Low-Density Neighborhoods as the challenged regulations authorize. The City’s claim that there is no maximum density provided in the comprehensive plan for its Low-Density Neighborhoods is not credible.

Having so concluded, the question is then whether the challenged Ordinance authorizes densities to exceed 12 units per acre within the Low-Density Neighborhoods, a contention that the City initially denies.\textsuperscript{28} Interestingly, after having argued that the Missing Middle (MM) regulations do not increase density as it contended, the City then states that “The MM Ordinance does increase density limits as claimed by [the Petitioners]” in their Brief at pages 8-10.\textsuperscript{29} The Petitioners’ claims referenced by the City and which the City acknowledges serve to increase density include the following:

- On parcels of a half-acre or less, maximum housing densities no longer apply for duplexes, triplexes, fourplexes and courtyard apartments.\textsuperscript{30}

- On lots with 10,000 square feet or less of land, maximum housing densities do not apply for townhomes.\textsuperscript{31}

\textsuperscript{26} Ex. 535 at 51; The amendments in the challenged ordinance also refer to maximum densities at Ex. 635 at 57, Olympia Municipal Code (OMC) Sec. 18.04.080 (A)(1)(a) See also a Staff report, Ex. 887 at 21;

\textsuperscript{27} See, for example Ex. 887 at 21: “Much of Olympia is zoned for low density development with over 50% of the community zoned R 4-8 that limits density to maximum of 8 units per acre.” Ex. 592 at 1, 2.

\textsuperscript{28} City of Olympia’s Response Brief at 12: “Densities are not increased by the MM Ordinance”. Also see City Brief at 5 where the City states that the challenged ordinance did not amend “many other adopted regulations . . . including . . . the allowed base density of all zoning districts” (with the sole exception being allowance of up to 9 units with the use of transferrable development rights-footnote 21).

\textsuperscript{29} City of Olympia’s Response Brief at 13.

\textsuperscript{30} Ex. 635 at 57: OMC 18.04.080(A)(1)(b)

\textsuperscript{31} Id.
• If a house is remodeled into a duplex and the footprint of the building is not changed, the new duplex is not subject to the maximum density limit; therefore, a duplex doubles the number of housing units, but it still counts as only one unit.32

• Accessory dwelling units do not count towards the maximum density limits.33

• Cottage housing receives a 50% density bonus, an increase from a 20% density bonus. This bonus is not subject to a density cap.34

Whether or not those regulation amendments allow densities to exceed 12 units per acre can be calculated. Maximum housing densities are determined based on the total area of the entire site with some exceptions as noted above and elaborated here:35

• The challenged Ordinance exempts townhouses from the maximum housing density requirements on lots 10,000 square feet or less. A townhome is defined as single-family dwelling units which are part of a group of two or more such units separated by a completely independent structural wall.36 Townhomes are allowed in the R 6-12 area and are subject to a minimum lot size of 2,400 square feet. A 10,000 square foot lot could be developed with 4 townhomes (4 units) resulting in a density of 16 units per acre.

• The Ordinance also provides a maximum density exemption for duplexes, triplexes, fourplexes and courtyard apartments within Low-Density Neighborhoods on lots ½-acre (21,760 square feet) or less.37 Fourplexes, for example, require a 9,600 square foot minimum lot size in the R 6-12 zones. On a ½-acre lot one could build two fourplexes (8 units) resulting in a density of 16 units per acre.38

• In addition, if an existing single family residence (SFR) is converted to a duplex,
the maximum density limits do not apply. Thus, if a 6,000 square foot lot located in the R 6-12 density area includes one SFR and it is converted to a duplex, the resulting density would be 14 units per acre. (See Ex. 635, Table 4.04 at 51)

- Cottage housing provides an additional example. A “cottage housing development” is defined as “four or more dwelling units sharing a commonly owned courtyard/common area . . .” A cottage housing development must include no less than four and no more than 12 dwelling units. Dwellings in cottage housing developments may, but are not required to be, located on individual lots. A cottage housing development is entitled to a 50% density bonus. The minimum lot size applicable to a cottage housing development in the R 6-12 zone is 2,000 square feet. Assuming the minimum lot size applies to one “cottage” (i.e. 1 unit), a 10,000 square foot lot would allow 6 cottages after application of the 50% density bonus. The result is a density of 24 units per acre.

The Petitioners provided an exhibit which includes some of the calculations set forth in the preceding paragraphs. It illustrates the effect on densities with application of the challenged Ordinance. While the City states that the exhibit “is based on incorrect assumptions and contains many inaccuracies, including assuming multi-unit buildings can be placed on a single lot, inaccurate rounding and misapplication of OMC 18.04.080,” the City fails to refute the conclusion that densities are allowed to exceed 12 units per acre in the Low-Density Neighborhoods under certain scenarios. Significantly, counsel for the City, Jeffrey S. Meyers, acknowledged during the hearing on the merits that densities could

40 Ex. 635 at 92.
41 Ex. 635 at 23.
42 Id.
43 Ex. 635 at 58.
44 Id. at 51.
45 Petitioners’ Prehearing Brief at 10 and also Ex. 659 at 000029.
46 City of Olympia’s Response Brief at 14.
exceed 12 units per acre in the Low-Density Neighborhoods with application of the new regulations.\textsuperscript{47}

The Missing Middle development regulations fail to implement and preclude achievement of the cited comprehensive plan density policies and provisions and the Petitioners have shown actual conflict between those policies and the development regulations. The Petitioners have met their burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 related to those density policies and provisions that provide for maximum Low-Density Neighborhood densities as alleged in Issues 2.1 and 2.8.

2. Size, Type and Scale of Development Allowed

The Petitioners argue that the Missing Middle regulations are inconsistent with and fail to implement comprehensive plan polices designed to protect neighborhood character. They assert that the Ordinance actually serves to erode those policies by eliminating existing protections.\textsuperscript{48} They reference increased density, scale, reduced setbacks, loss of parking and loss of sunlight and privacy.

The question of density has been previously addressed insofar as the allowance of densities in excess of those contemplated by the comprehensive plan. Increased densities

\textsuperscript{47} See Partial Transcript of Hearing on the Merits, May 23, 2019, at 33, lines 11-16 and 19-21 and at 34, lines 1-3 and 9-13:

BRICKLIN: So on the minimum lot size, 13,000 square feet for an acre, that's three-plus lots of that size you can have on one acre. The city acknowledges you can, on any given lot 13,000-square-foot lot, you can put 12 units. . . . So you've got three lots at 13,000 square feet each. You've got 12 units on each of those lots. That's 36 units in that acre. . . .

ROEHL: I'm going to continue the tennis match, Mr. Myers. I'll bounce it over to you. Tell me what's wrong with Mr. Bricklin's analysis.

ROEHL: . . . Is it not true that there's a potential that you could have 36 units per acre in the low-density neighborhood?

MYERS: If it meets all the other development requirements, I think that's correct.

\textsuperscript{48} Policies referenced by the Petitioners include:

PL 4.2 Facilitate the preservation of historic neighborhood identity and important historic resources.

PL 14.3 Preserve and enhance the character of existing, established Low-density Neighborhoods. Disallow medium or high-density development in existing Low-density Neighborhood areas except for Neighborhood Centers.

PL 20.1 Require development in established neighborhoods to be of a type, scale, orientation, and a design that maintains or improves the character, aesthetic quality, and livability of the neighborhood.
within existing single family neighborhoods will undoubtedly have some impact on
“neighborhood character.”\(^{49}\) However, this portion of the Petitioners’ argument focuses on
the type of development, asserting that allowing more diverse types of housing will fail to
“preserve and enhance” neighborhood character and will fail to “maintain or improve the
color . . . of the neighborhood.”

The City disputes the assertion that the regulations will fail to protect existing
eighborhoods. It cites comprehensive plan policies and statements that not only encourage
a variety of housing types and opportunities but which remain subject to other
policies/statements as well as implementing development regulations. For example, it
references the comprehensive plan:

The strategies of this chapter depend on well-formulated design standards to
promote flexibility and stimulate innovation while preserving and enhancing the
character of neighborhoods. We seek to establish and encourage diversity in
housing opportunities and link diverse neighborhoods. With a strong
foundation in preserving our heritage, our community can incorporate new
housing and other developments in a manner that continues our legacy of
well-planned neighborhoods.\(^{50}\)

Many of our neighborhoods are more than 50 years old and our downtown is
older still. These established neighborhoods provide the 'sense of place’ and
character of Olympia. To preserve this character, new buildings incorporated
into the existing fabric must reflect both their own time-period and what’s come
before.\(^{51}\)

In all residential areas, allow small cottages and townhouses, and one
accessory housing unit per home -- all subject to siting, design and parking
requirements that ensure neighborhood character is maintained.\(^{52}\)

The City then references regulations implementing those policies, including “Infill and
Other Residential” design review mandated to consider both neighborhood scale and

\(^{49}\) The Board assumes that even without allowing densities in excess of 8 or 12 units per acre within the Low-
Density Neighborhoods, density could potentially increase up to those limits through redevelopment.
\(^{50}\) Comprehensive Plan, Ex. 1 at 128.
\(^{51}\) Comprehensive Plan, Ex. 1 at 105.
\(^{52}\) Comprehensive Plan, Ex. 1 at 132, PL16.9.
character, the more generalized design review included in chapter 18.100 OMC, and the City's Historic Preservation Ordinance.

As with increases in density, allowing housing choices other than single family homes will affect the character of a neighborhood. "Neighborhood character" is a nebulous, subjective concept. The City's comprehensive plan policies seek to "preserve and enhance" character (PL 4.2), and require development to be "of a type, scale, orientation, and a design that maintains or improves the character, aesthetic quality, and livability" (PL 20.1).

Do the development regulations fail to implement those comprehensive plan policies? The Board does not believe so. Neighborhoods change over time, whether or not additional housing types are authorized. It appears that the City has taken steps to minimize the effects of change by imposing design review standards specifically focused on maintaining neighborhood scale and character. Nor do the development regulations included in the Ordinance preclude achievement of the policies. Maintenance of neighborhood character is possible with the understanding or acknowledgement that that character is not a static concept.

The Missing Middle regulations do implement certain comprehensive plan policies and do not preclude achievement of the comprehensive plan policies cited by the Petitioners. No actual conflict between those policies and the development regulations has been established. The Petitioners have failed to meet their burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 related to those policies which seek to maintain and enhance neighborhood character in Low-Density Neighborhoods.

53 OMC chapter 18.175., OMC 18.175.020 requires, for example, as follows: Minimize the appearance of building scale differences between proposed dwelling unit(s) and existing neighborhood residential units. Reflect the architectural character of neighboring residences (within 300' on the same street) through use of related building features. On narrow lots (30 feet wide or less), the average height of the adjacent residences shall not be exceeded unless the apparent scale of the proposed building is reduced through modulation.

54 OMC 18.100.040, for example, requires that new development maintains or improves neighborhood character. There are other design standards specifically applicable to townhomes (OMC 18.64), garages (18.04.060(EE)(3)), and ADUs (OMC 18.175.080 and .090).

55 Chapter 18.105 OMC.
resulting from changes in development type, scale or size as alleged in Issues 2.1, 2.2, 2.3 and 2.8.

3. **Impacts to Parking, Privacy and Sunlight, Historic Resources**


   The Petitioners’ argument regarding impacts to sunlight and privacy consist of a single, conclusory sentence.\[^{56}\] The Board will dismiss those claims due to inadequate briefing/abandonment in accordance with WAC 242-03-590(1). Included in this Issue the Petitioners also allege that the Missing Middle regulations fail to protect historic properties. That argument fails to acknowledge the City’s application of the Historic Preservation Ordinance as well as its design review process and the criteria implementing the process included in OMC 18.100.090 and OMC 18.100.100.\[^{57}\] The Petitioners have failed to meet their burden to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 related to those policies which address protection of historic properties.

   Another aspect of the Petitioners’ argument in which they allege the Missing Middle regulations fail to protect existing Low-Density Neighborhoods and their character involves on-street automobile parking. While the Petitioners observe that the Low-Density Neighborhoods currently "enjoy adequate on-street parking,"\[^{58}\] they contend that the Missing Middle Ordinance’s on-site parking requirement reductions were made without realistically estimating the number of additional vehicles that would be generated by the allowed new development and without analyzing current on-site parking capacity. They assert that the significant number of additional cars added to their neighborhoods combined with reduced

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\[^{56}\] Petitioners’ Prehearing Brief at 20.

\[^{57}\] Ex. 635, Sections 14 and 15, at 183-186.

\[^{58}\] Petitioners’ Prehearing Brief at 18.
parking requirements will fail to protect neighborhood character as required by various comprehensive plan goals and policies.\textsuperscript{59}

The Missing Middle regulations eliminated off-street parking requirements for accessory dwelling units (ADUs)\textsuperscript{60}, reduced the number of off-street spaces from two to one for single family detached homes of 800 square feet or less\textsuperscript{61}, reduced the off-street requirements for duplexes, triplexes, fourplexes, courtyard apartments and townhouses from 1 ½ per unit to 1 per unit\textsuperscript{62}, single-family residence detached homes equal to or less than 800 ft.\textsuperscript{2} are reduced from 2 spaces to 1, and Single Room Occupancies\textsuperscript{63} (SROs) require only one parking space per four every units.\textsuperscript{64}

The Petitioners observe that the City neither analyzed existing on-street parking capacity nor the resulting impacts of the regulations on that capacity. Due to that lack of analysis, the Eastside Neighborhood Association (ENA) conducted its own detailed analysis of the impact of the Missing Middle regulations on parking requirements for additional cars which concluded that in its neighborhood alone, the Missing Middle draft regulations had the potential to generate 1165 residential units and 991 additional cars.\textsuperscript{65} Following the ENA’s calculations the City further modified the requirements which led the ENA to raise its

\textsuperscript{59} GL 20 Development maintains and improves neighborhood character and livability.

PL 14.3 Preserve and enhance the character of existing, established Low-density Neighborhoods. Disallow medium or high-density development in existing Low-density Neighborhood areas except for Neighborhood Centers. (emphasis added)

PL 16.9 In all residential areas, allow small cottages and townhouses, and one accessory housing unit per home -- all subject to siting, design and parking requirements that ensure neighborhood character is maintained. (emphasis added)

PL 20.1 Require development in established neighborhoods to be of a type, scale, orientation, and a design that maintains or improves the character, aesthetic quality, and livability of the neighborhood. (emphasis added)

\textsuperscript{60} Ex. 635, Section 1, OMC 18.38.100, Table 38.01 at 173.

\textsuperscript{61} Ex. 635, Section 1, OMC 18.38.100, Table 38.01 at 175.

\textsuperscript{62} Ex. 635, Section 1, OMC 18.38.100, Table 38.01 at 173. That reduction is only allowed if paved on-street parking is available along street frontage.\textit{See Ex. 635, Table 38.01 at 173.}

\textsuperscript{63} OMC 18.02.180(D)(a)(x.v) Dwelling, Conventional Single-Room Occupancy. A housing type consisting of one room with shared bathroom facilities, and cooking facilities that are either in the room or shared. (See also Boarding Home, Lodging House and Bed and Breakfast.)

\textsuperscript{64} Ex. 635, Section 1, OMC 18.38.100, Table 38.01 at 175.

\textsuperscript{65} Ex. 465 at 000017.
estimates, concluding that an additional 1121 cars would be added. The Petitioners also noted the current lack of sufficient curbing in much of the neighborhood.

The City acknowledges the reduction in parking requirements. However, its response to the Petitioners’ argument merely cites and quotes one of the comprehensive plan policies:

PL16.9 In all residential areas, allow small cottages and townhouses, and one accessory housing unit per home -- all subject to siting, design and parking requirements that ensure neighborhood character is maintained.

It also refers to the City Council’s Findings in Ordinance 7160 where the Council found the Missing Middle development regulations were consistent with Comprehensive Plan Policy 16.9 and that the regulations implemented that policy. However, the City does not dispute the ENA data regarding potentially inadequate parking. It merely references Policy PL 16.9, states the parking requirements were “changed multiple times throughout the process and [parking] was an area of particularly lengthy discussion at the Planning Commission,” and suggests that the Petitioners have “trivialized the role that existing city processes will play to protect [neighborhood] character . . .”

The Board also notes the failure of the City’s SEPA analysis to analyze the number of additional parking spaces that would be required by the City’s “non-project action.” The City’s SEPA Checklist posed the following specific questions: “How many additional parking spaces with the completed project or non-project proposal have? How many will the project or proposal eliminate?”. The City’s response was:

Does not apply, as this is a non-project action. However, future residential development would continue to be required to provide off-street parking spaces in accordance with existing city codes, with one exception – accessory

66 Ex. 876.
67 Ex. 465 at 000017 and 000019.
68 City of Olympia’s Response Brief at 5; Ex. 635, Section 1, OMC 18.38.100, Table 38.01 at 173-175.
69 City of Olympia’s Response Brief at 21.
70 Ex. 635 at 1.
71 City of Olympia’s Response Brief at 29.
72 City of Olympia’s Response Brief at 21.
dwellings would no longer be required to provide an off-street parking space.73

That response was inaccurate or, at best, misleading: off-street parking spaces are no longer required to be provided "in accordance with existing city codes," the applicable city codes were amended. Beyond that, those amendments are now applied to types of housing other than ADUs. Nor did the response address the question of the scope of the elimination of off-street parking. As the Board previously observed in an earlier order in this matter in which it determined the City’s SEPA process violated RCW 43.21C.030, “the City appears to have assumed that as a “non-project action,” impacts would be properly addressed at a later date.”74

Based on a review of Goal GL 20 and policies PL 14.3, PL 16.9, and PL 20.1, the Missing Middle Ordinance’s provisions increasing densities, the additional density bonuses provided, allowances of additional housing types, reduced lot setbacks and reduced on-site parking requirements, combined with review of the data prepared by the ENA and other portions of the record, the SEPA Checklist, and further combined with the City’s failure to dispute the data provided by the ENA, the Board is left with the firm conviction that a mistake has been made. The Petitioners have met their burden to establish that the regulations are inconsistent with, fail to implement, and are in actual conflict with Goal GL 20 and policies PL 14.3, PL 16.9, and PL 20.1 as they fail to address parking necessary to ensure that Low-Density Neighborhood character is maintained in regards to parking as alleged in Issue 2.1.

The Petitioners have failed to meet their burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 related to those policies which address impacts to sunlight, privacy and protection of historic properties as alleged in Issue 2.1.

73 Ex. 322 at 17.
74 Order Denying Motion to Dismiss, Allowing Supplementation of the Record, Granting Summary Judgment, and Deferring Consideration of Invalidity at 5 (March 29, 2019).
C. Affordable Housing Issue 2.4

2. Is the Ordinance inconsistent with and does it fail to implement the following Olympia Comprehensive Plan goals and policies in violation of RCW 36.70A.040(3), RCW 36.70A.120; RCW 36.70A.130(1)(d); and WAC 365-196-500(3)?

2.4 Goals and policies which seek to encourage the development of housing for people with low income (by encouraging the demolition of existing low-cost housing and replacing it with more expensive housing), e.g., GS 3, PS 3.2, PS 3.3, PS 4.2, and PS 5.3.

With issue 2.4 the Petitioners contend that the MM regulations will fail to implement and preclude comprehensive plan policies aimed at preserving affordable housing.75 They focus primarily on Policy PS 3.2 which “encourage[s] the preservation of existing houses,” arguing that demolition of existing housing is allowed and encouraged, and that while the regulations seek to increase the types of housing available they fail to consider the affordability of such housing. They cite data that indicates newer housing tends to be significantly more expensive than housing it replaces.76 They also stress that while housing supply may indeed increase, the record fails to support any consideration of affordability.

As has been stated previously and as argued by the City, not every regulation is required to implement all of a jurisdiction’s comprehensive plan policies. Here, the Board finds that the challenged Ordinance does not preclude attainment of the cited goals and policies addressing the affordability of housing. The Petitioners have failed to meet their burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120

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75 PS 3.2 Encourage preservation of existing houses.
GS 3 Affordable housing is available for all income levels throughout the community.
PS 3.3 Take steps to ensure housing will be available to all income levels based on projected community needs.
PS 4.2 Provide assistance and incentives to help low-income residents rehabilitate properties they cannot afford to maintain.
PS 5.3 Evaluate the possibility of providing density bonuses to builders who provide low-income housing in market-rate developments, and of tying the bonus to affordability.
PS 5.6 Retain existing subsidized housing.

76 Petitioners’ Brief at 22-23.
related to those policies which seek to address housing affordability as alleged in Issue 2.4.

D. Public Participation Issues 2.5 and 2.9

2. Is the Ordinance inconsistent with and does it fail to implement the following Olympia Comprehensive Plan goals and policies in violation of RCW 36.70A.040(3), RCW 36.70A.120; RCW 36.70A.130(1)(d); and WAC 365-196-500(3)?

2.5 Goals and policies which require a “bottom up” process, with neighborhoods identifying “priorities, assets and challenges” in designated sub-areas and where Neighborhood Centers emerge from a neighborhood process, not from planners in City Hall. See, PP 5.1, PL 14.4, GL 23, PL 23.1 and PL 23.2.

2.9 Goals and policies that recognize the importance of public participation in City decisions, especially around land use. See e.g., GP1, PP 1.1, GP 3, PP 3.3, GP 4, PP 4.1, PP 4.2, PP 5.1, PP 5.2, PP 5.5, PL 23.1, PL 23.2.

While the Petitioners assert the City failed to provide adequate “public participation,” they have not alleged GMA violations of RCW 36.70A.035 and RCW 36.70A.140. Rather, these issues again argue that the process leading to the ultimate adoption of the challenged Ordinance was inconsistent with and failed to implement numerous comprehensive plan policies. The Petitioners deride that process, saying it was not created from the “bottom-up” but rather was imposed upon the neighborhoods. The argument appears to be that the challenged Ordinance was neither crafted to implement Comprehensive Plan goals and policies nor was it a result of a City Council directive. Rather, it was first "conceptualized" in June, 2016 and the public was not apprised of the concept until much later. The Petitioners claim the public process was flawed: the specifics of the ordinance were constantly changing, were difficult to understand, the public was deprived of opportunities for adequate input and the faulty SEPA process added to the lack of opportunity to provide input.

77 The lengthy list of Comprehensive Plan policies related to Issue 2.5 are set forth on Ex. C.
78 Petitioners’ Prehearing Brief at 25
79 Petitioners’ Prehearing Brief at 24-29.
The City takes strong exception to the Petitioners' assertions, contending it provided extensive public involvement opportunities. It references the establishment of a "dedicated webpage," a newsletter to provide updates, establishment of a citizenship group, 14 neighborhood association meetings, open houses, Planning Commission meetings and hearing, City Council committee meetings, and City Council meetings.80

The public participation observations of the parties are of interest. However, the Board observes that these issues do not present the typical "public participation" claim based on allegations of non-compliance with RCW 36.70A.035 and/or RCW 36.70A.140.81

80 City of Olympia's Response Brief at 27.
81 RCW 36.70A.035 (1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, group A public water systems required to develop water system plans consistent with state board of health rules adopted under RCW 43.20.050, and organizations of proposed amendments to comprehensive plans and development regulation. Examples of reasonable notice provisions include:

(a) Posting the property for site-specific proposals;
(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;
(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
(d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and
(e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

(2)(a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

(b) An additional opportunity for public review and comment is not required under (a) of this subsection if:

(i) An environmental impact statement has been prepared under chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
(ii) The proposed change is within the scope of the alternatives available for public comment;
(iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;
(iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or
(v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.
Rather, the claims are that the crafting and consideration of the challenged Ordinance were not “in keeping with the policies of the Comprehensive Plan.”

The specific GMA violation alleged is that the Ordinance is “inconsistent with comprehensive plan goals and policies.” The Ordinance consists of the adopted specific regulations, not the process leading up to the Ordinance’s adoption. GMA public participation process violations typically relate to the requirements of RCW 36.70A.035 and/or RCW 36.70A.140. Establishing a violation such as alleged here would require a specific comprehensive plan policy process mandate; such a mandate does not appear in any of the goals and policies cited by the Petitioners. The Petitioners are unable to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 in regards to the allegations included in Issues 2.5 and 2.9.

E. Environmental Impacts/Public Services Issue 2.6

2. Is the Ordinance inconsistent with and does it fail to implement the following Olympia Comprehensive Plan goals and policies in violation of RCW 36.70A.040(3), RCW 36.70A.120; RCW 36.70A.130(1)(d); and WAC 365-196-500(3)?

2.6 Goals and policies which seek to “focus development in locations that will enhance the community and have capacity and efficient supporting services, and where adverse environmental impacts can be avoided or minimized,” protect solar access, and otherwise make adequate provision for public

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(3) This section is prospective in effect and does not apply to a comprehensive plan, development regulation, or amendment adopted before July 27, 1997.

RCW 36.70A.140 Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. In enacting legislation in response to the board’s decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board’s order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

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82 Petitioners’ Prehearing Brief at 29.
services and facilities. See, e.g., GL 1, PL 1.2, PL 1.3, PL 2.5, GN 4, PN 4.2, GN 5, PN 5.1, PN 5.8, PU 8.2, PU 10.1, GT 9, PT 9.1 and PT 22.3.

Petitioners allege in Issue 2.6 that the Missing Middle regulations are inconsistent with and fail to implement many comprehensive plan goals and policies that seek to focus development to areas that would minimize negative environmental impacts, protect solar access and ensure adequate public services. Initially, they cite the following policies:

PL 1.2 Focus development in locations that will enhance the community and have capacity and efficient supporting services, and where adverse environmental impacts can be avoided or minimized.

PL 1.3 Direct high-density development to areas with existing development where the terrain is conducive to walking, bicycling and transit use and where sensitive drainage basins will not be impacted.

PN 5.1 Reduce the rate of expansion of impervious surface in the community.

PN 5.8 Encourage existing septic systems to connect to sewer, and limit the number of new septic systems.

The Petitioners raise significant questions regarding the potential environmental impacts resulting from development authorized by the Missing Middle regulations, primarily involving the City's combined storm/sewer system and increases in impervious surfaces.\(^3\) Those questions relate to the potential environmental impacts resulting from the level of development authorized by the Missing Middle regulations. Can the “adverse environmental impacts . . . be avoided or minimized”? (PL 1.2) Will the “rate of expansion of impervious surface” be reduced? (PN 5.1) Will impacts to “sensitive drainage basins” be avoided? (PL 1.3) The Petitioners observe that increased allowed densities will lead to increased impervious surfaces which will in turn impact stormwater runoff with consequent effects on the City’s combined storm/sewer system and potential increased runoff to Puget Sound.\(^4\)

The record includes a review prepared by Tom Holz, P. E. which addresses runoff

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\(^3\) Petitioners’ Prehearing Brief at 30-32.

\(^4\) Ex. 659 at 115-117.
impacts and sewage overflow risks related to the regulations. Also in the record is a 2015 technical report from the Lacey Olympia Tumwater Thurston County Clean Water Alliance (LOTT) which addresses a "Peak Flow Reduction Evaluation" and which notes that some areas slated for increased density and lot coverage by the Missing Middle regulations are within the areas of the City with the highest amounts of inflow and infiltration into the combined storm/sewer system.

The Board has previously determined that the Declaration of Non-Significance (DNS) was inadequate, having been based on a faulty Environmental Checklist. The DNS and the Checklist failed to address the questions the Petitioners now raise and which were posed by the Environmental Checklist. The City asserted in numerous instances on the Checklist that the proposed regulations constituted a non-project action and also that "potential impacts of future, specific development proposals will be addressed through regulations and/or project specific environmental review."

The SEPA checklist included no information regarding the possible impacts on the City’s combined storm/sewer system. Responses to checklist questions regarding water runoff were as follows:

Question: About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)? Answer: Not Applicable.

Question: Water runoff (including storm water): 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any… Where will this water flow? Will this water flow into other waters? Answer: No-this is a non-project action.

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85 Ex. 659 at 33-82.
86 Inflow happens when groundwater and stormwater seep into a sanitary sewer system through private and public defects within the collection system. Infiltration is when groundwater enters the sanitary sewer system through faulty pipes or manholes. Inflow and infiltration render treatment plants less efficient and strains such systems.
87 Ex. 659 at 000038.
88 Ex. 322 at 11.
89 Ex. 322 at 5 and 7.
Question: Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe. Answer: No—this is a non-project action.

The City argues in many instances that densities will not be increased\(^{90}\) and also that impervious surfaces will not increase.\(^{91}\) A segment from the City’s Brief is illustrative of its argument on impervious surface:

The MM Ordinance did not change the City’s limits on maximum building coverage, impervious surface coverage, or hard surface coverage. The developable portion of any lot was not changed in any way by this ordinance. The limits on all surfaces that would generate stormwater runoff remain in effect and apply to all Missing Middle development.  
Bluntly, Ordinance 7160 makes no change in the area of a lot that can be developed, nor in potential stormwater runoff. 
Petitioners’ arguments again prey on public fears, speculatively claiming that the MM Ordinance will result in increased runoff and sewage overflows will result, especially considering sea level rise... Mr. Holz’ comments generally discuss DDECM and NPDES requirements but are premised "if the so-called 'Missing Middle' initiative led to areas of impervious surface..." Since the lot coverage areas are not increased and the low-impact development regulation, NPDES permit and other standards continue to apply, it becomes clear that the speculation advanced by OSDLN is just another scare tactic.\(^{92}\) (citations to the record deleted)

It is true, as the City states, that “the City’s limits on maximum building coverage, impervious surface coverage, or hard surface coverage” did not change. However, the areas of the City to which the Missing Middle regulations apply are for the most part already developed with single family residences.\(^{93}\) The lots on which those residences are built are currently well below the maximums allowed for impervious surfaces. The additional densities and housing types allowed with lower minimum lot

\(^{90}\) See discussion above.

\(^{91}\) City of Olympia’s Response Brief at 5, 14, 30-31.

\(^{92}\) City of Olympia’s Response Brief at 30, 31.

\(^{93}\) Exs. 440, 325, 876.
sizes,\(^{94}\) reduced minimum lot widths for duplexes, triplexes and fourplexes,\(^{95}\) reduced side yard setbacks for triplexes, fourplexes and townhouses,\(^{96}\) and reduced open space requirements for cottage housing\(^ {97}\) will, in combination, allow increased coverage of lots with impervious surface, albeit up to the current limits for impervious surfaces. Contrary to the City’s contention, lot coverage areas will increase.

Having made those observations, the Board is unable to find that the Missing Middle regulations will fail to implement or preclude achievement of the comprehensive plan goals and policies cited by the Petitioners in Issue 2.6\(^ {98}\) based on the record before it. It may be possible to avoid or minimize environmental impacts (Policy PL 1.2). The rate of expansion of impervious surfaces in “the community” could be reduced (Policy 5.1). An adequate SEPA analysis could have answered those questions. The Board’s prior finding of an inadequate SEPA environmental analysis is underscored by the argument and the record which indicates significant potential environmental impacts which have not been adequately addressed. The Board addresses those inadequacies in the section on invalidity below.

F. Green Space/Open Space Issue 2.7

2. Is the Ordinance inconsistent with and does it fail to implement the following Olympia Comprehensive Plan goals and policies in violation of RCW 36.70A.040(3), RCW 36.70A.120; RCW 36.70A.130(1)(d); and WAC 365-196-500(3)?

2.7 Goals and policies that preserve green space, open space, and protect trees. See, e.g., PL 6.11, PL 7.4, GL 22, PL 22.1, PL 22.2, PL 22.3, PL 25.7, GN 3, PN 3.2, PN 3.3, PN 3.4, PN 3.5, PN 3.6, PE 3.4, and PE 9.3.25.7, GN 3, PN 3.2, PN 3.3, PN 3.4, PN 3.5, PN 3.6, PE 3.4, and PE 9.3.

The Petitioners cite approximately 15 comprehensive plan goals and policies, but the only one on which they focus their argument is PL 7.4. They allege that the challenged

\(^{94}\) Ex. 635 at 51, 52.
\(^{95}\) Ex. 635 at 52.
\(^{96}\) Ex. 635 at 53.
\(^{97}\) Ex. 635 at 55.
\(^{98}\) Inconsistency/failure to implement policy PN 5.8 was not addressed by the Petitioners.
ordinance’s regulations, which increase density and decrease building setbacks, fails to implement that policy:

PL 7.4 Increase the area of urban green space and tree canopy within each neighborhood proportionate to increased population in that neighborhood.

Not every regulation is required to implement every comprehensive plan policy. The City will continue to be guided by that policy notwithstanding increased lot coverage resulting from the development resulting from the Missing Middle regulations. The challenged Ordinance does not preclude attainment of PL 7.4 although implementation of that policy will be rendered more difficult. The Petitioners have failed to meet their burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 related to those policies which seek to increase the amount of green space and urban tree canopy commensurate with increased population as alleged in Issue 2.7.

G. Invalidity

The Board concluded in its prior order that the City’s action violated RCW 43.21C.030 by basing its issuance of a Declaration of Non Significance (DNS) on an inadequate Checklist.99 The City failed to establish that environmental factors were

99 The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

(a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on the environment;

(b) Identify and develop methods and procedures, in consultation with the department of ecology and the ecological commission, which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations;

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
considered in a manner sufficient to amount to *prima facie* compliance with the procedural requirements of SEPA. In this order, the Board has further found and concluded that:

- The Petitioners have met their burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 as the Missing Middle density regulations allow maximum Low-Density Neighborhood densities as established by the comprehensive plan to be exceeded as alleged in Issues 2.1 and 2.8, and;

- The Petitioners have met their burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 related to the Missing Middle density regulations as the regulations related to reduced parking requirements fail to ensure that Low-Density Neighborhood character is maintained as alleged in Issue 2.1.

Beyond those specific findings of GMA violations, the briefs, argument of counsel and the record before the Board have provided further details regarding the insufficiency of the

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City’s SEPA analysis, all as addressed above in regards to impervious surfaces and the City’s combined stormwater/sewer system.

The State Environmental Policy Act (SEPA) requires all government agencies to consider the environmental effects of a proposed action.\textsuperscript{101} The Supreme Court has referred to SEPA as an environmental full disclosure law. SEPA requires agencies to identify, analyze, disclose, and consider mitigation of impacts on both the natural and built environments resulting from a proposed action. The disclosure of environmental impact information to county or city decision-makers and to the public promotes the policy of fully informed decision-making by government bodies and better opportunities for meaningful public participation.\textsuperscript{102}

Thus, when a county or city amends its comprehensive plan or changes zoning, as was done here, a detailed and comprehensive SEPA environmental review is required.\textsuperscript{103} SEPA is to function “as an environmental full disclosure law,”\textsuperscript{104} and the City must demonstrate environmental impacts were considered in a manner sufficient to show “compliance with the procedural requirements of SEPA.”\textsuperscript{105} Although the City decision is afforded substantial weight,\textsuperscript{106} environmental documents prepared under SEPA require the consideration of "environmental" impacts with attention to impacts that are likely, not merely speculative,\textsuperscript{107} and “shall carefully consider the range of probable impacts, including short-term and long-term effects.”\textsuperscript{108}

In \textit{King County v. Washington State Boundary Review Board for King County}, the Supreme Court recognized the purpose of SEPA is “to provide consideration of environmental factors at the earliest possible stage to allow decisions to be based on

\begin{itemize}
\item \textsuperscript{101} RCW 43.21C.030.
\item \textsuperscript{102} RCW 43.21C.030; RCW 36.70A.035; \textit{Norway Hill Pres. & Prot. Assn. v. King County Council}, 87 Wn.2d 267 (1976).
\item \textsuperscript{103} WAC 197-11-704(b)(ii).
\item \textsuperscript{104} \textit{Moss v. Bellingham}, 109 Wn. App. 6 (2001).
\item \textsuperscript{105} \textit{Sisley v. San Juan County}, 89 Wn.2d 78, 64, 569 P.2d 712 (1977).
\item \textsuperscript{106} RCW 43.21C.090.
\item \textsuperscript{107} WAC 197-11-060(4)(a).
\item \textsuperscript{108} WAC 197-11-060(4)(c).
\end{itemize}
complete disclosure of environmental consequences," and SEPA is to provide agencies environmental information prior to making decisions, not after they are made. Generally, the first step, the "earliest possible stage", in the SEPA analysis is the preparation of an Environmental Checklist. The checklist is designed to provide information to the City about the proposal and its probable environmental effects on the natural and built environments. As the SEPA Environmental Checklist form states:

Government agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

SEPA requires analysis of the environmental impacts when those impacts can be reasonably identified. Ordinance 7160 was a non-project action but such actions must still be accompanied by compliant SEPA analysis. The City's DNS was based on a Checklist which failed to demonstrate prima facie SEPA compliance. In this matter the City failed to “evaluate the impacts allowed under the changed designation at the time of that non-project action” as is evidenced by the fact that the City responded to the Checklist nearly 50 times with statements such as the question did not apply in that the proposal was a non-project action.

It also bears repeating that the 2014 Supplemental Environmental Impact Statement (SEIS) prepared for the City's comprehensive plan amendments which established policy guidance for the Missing Middle regulations included the following statement:

Because this Plan is as a "high level" and specific impacts cannot be

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110 *Id.*
111 WAC 197-11-960.
112 Ex. 322 at 1.
113 WAC 197-11-055(2).
predicted, most analysis is in a qualitative rather than a quantitative form. Further environmental review would be conducted when implementing measures, such as regulations, more detailed plans, or specific construction activities are proposed. The level of detail of subsequent review will vary based upon the specific provisions of those later proposals.\textsuperscript{115} (emphasis added).

A SEPA Threshold Determination is reviewed under the "clearly erroneous" standard --when applying this standard, the Board must determine whether substantial evidence supports the decision, and the Board must consider the public policy and environmental values of SEPA.\textsuperscript{116} The City must demonstrate that it actually considered relevant environmental factors before reaching a decision, and the record must demonstrate that the City adequately considered the environmental factors in a manner sufficient to be \textit{prima facie} compliance with the procedural dictates of SEPA.\textsuperscript{117}

In the present case, the Board determined that the City had failed to demonstrate \textit{prima facie} SEPA compliance and that determination has been buttressed by the additional information and argument presented for the Hearing on the Merits. The City's issuance of a DNS meant it had determined that preparation of a full Environmental Impact Statement (EIS) was not required for the proposed action; rather, the City relied on the SEPA Checklist and accompanying documentation to satisfy SEPA's environmental review requirements.\textsuperscript{118} (It is important to state, however, that the Board has not held that the City must prepare an EIS but rather that initial SEPA compliance failed to meet the requirements of SEPA.) Here, the Board restates its finding and conclusion that the City of Olympia violated RCW 43.21C.030(2)(c) when it failed to conduct a compliant SEPA environmental review prior to adoption of Ordinance 7160. The City of Olympia's approval of Ordinance 7160 was clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA and SEPA.

\textsuperscript{115} Ex. 2 (Exhibit A attached to the Petitioners' Motion for Summary Judgment) at 7.
\textsuperscript{116} \textit{Boehm v. City of Vancouver}, 111 Wn. App. 711, 718 (2002).
\textsuperscript{117} Id.
\textsuperscript{118} WAC 197-11-340.
Invalidity

The Petitioners have restated their request that the Board issue an order of invalidity for Ordinance 7160,119 a question that the Board deferred to the Hearing on the Merits.120

Invalidity may be imposed pursuant to RCW 36.70A.302(1) which provides:

The board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:
(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter, and
(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

A determination of invalidity can only be issued if the Board finds the City of Olympia’s adoption of Ordinance 7160 failed to comply with the GMA and/or SEPA and that its continued validity would substantially interfere with fulfillment of the GMA’s goals. The GMA Planning Goals included in RCW 36.70A.020 relevant to this matter include 10 and 12 which provide as follows:

(10) Environment. Protect the environment and enhance the state’s high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

The Board has determined that the City of Olympia failed to comply with both the GMA and SEPA and has remanded this matter to the City to achieve compliance under RCW 36.70A.300. Without SEPA analysis, the City had virtually no information regarding...

119 A request first made in the Petitioners’ Motion for Summary Judgment filed February 26, 2019.  
120 Order Denying Motion to Dismiss, Allowing Supplementation of the Record, Granting Summary Judgment, and Deferring Consideration of Invalidity (March 29, 2019).
the foreseeable environmental effects of some of the Missing Middle regulations and it had virtually no information regarding the foreseeable effects of those regulations on its public facilities and services. The Board hereby finds and concludes that the continued validity of Ordinance 7160 would substantially interfere with the fulfillment of GMA Planning Goals 10 and 12.

FINDINGS OF FACT

1. The City adopted Ordinance 7160 which is comprised of numerous amendments of the City’s development regulations intended to allow “infill” of residential neighborhoods, including its Low-Density Neighborhoods.

2. The comprehensive plan includes policy PL 14.3 which states: Preserve and enhance the character of existing, established Low-density Neighborhoods. Disallow medium or high-density development in existing Low-density Neighborhood areas except for Neighborhood Centers.

3. The City’s comprehensive plan limits density in the Low-Density Neighborhoods to 12 units per acre.

4. The comprehensive plan provides for densities in the Medium-Density Neighborhoods between 13 and 24 units per acre.

5. Ordinance 7160’s regulations allow potential densities in the Low-Density Neighborhoods to exceed 12 units per acre and even to exceed in some scenarios 24 units per acre.

6. The City’s comprehensive plan includes the following policies:

   PL 14.3 Preserve and enhance the character of existing, established Low-density Neighborhoods. Disallow medium or high-density development in existing Low-density Neighborhood areas except for Neighborhood Centers. (emphasis added)

   PL16.9 In all residential areas, allow small cottages and townhouses, and one accessory housing unit per home -- all subject to siting, design and parking requirements that ensure neighborhood character is maintained (emphasis added)
PL 20.1 Require development in established neighborhoods to be of a type, scale, orientation, and a design that maintains or improves the character, aesthetic quality, and livability of the neighborhood. (emphasis added)

7. Ordinance 7160’s regulations reduce on-site parking requirements.

8. The reductions in parking requirements were adopted without estimating the number of additional vehicles that would be generated by the allowed new development and without analyzing current on-site parking capacity.

9. Ordinance 7160’s regulations eliminated off-street parking requirements for accessory dwelling units, reduced the number of off-street spaces from two to one for single family detached homes of 800 square feet or less, reduced the off-street requirements for duplexes, triplexes, fourplexes, courtyard apartments and townhouses from 1 ½ per unit to 1 per unit, single-family residence detached homes equal to or less than 800 ft.² are reduced from 2 spaces to 1, and Single Room Occupancies require only one parking space per four every units.

10. The record establishes that implementation of the Ordinance 7160 regulations will add a significant number of additional cars to the Low-Density Neighborhoods.

11. The City neither analyzed existing on-street parking capacity nor the resulting impacts of the regulations on that capacity.

12. The Board previously granted summary judgment on Legal Issue 1 finding that the City’s action in adopting Ordinance 7160 violated RCW 43.21C.030 by basing its issuance of a Declaration of Non Significance on an inadequate SEPA Environmental Checklist.

13. The City’s SEPA analysis did not analyze the number of additional parking spaces that would be required by the City’s “non-project action”, adoption of Ordinance 7160.

14. Implementation of Ordinance 7160 regulations will increase impervious surface coverage in the Low-Density Neighborhoods.

15. The City’s combined sewer/stormwater system is subject to inflow and infiltration and some of the areas slated for increased density under the
Ordinance 7160 regulations are within the areas of the City with the highest amounts of inflow and infiltration into the combined storm/sewer system.

16. RCW 36.70A.120 requires that local jurisdictions which are required or choose to plan under RCW 36.70A.040 must perform its activities and make capital budget decisions in conformity with its comprehensive plan.

17. RCW 36.70A.130(1)(d) requires that any amendment or revision to development regulations shall be consistent with and implement the comprehensive plan.

18. The record fails to address whether “adverse environmental impacts [can] . . . be avoided or minimized” (PL 1.2), whether the “rate of expansion of impervious surface” can be reduced (PN 5.1), or whether impacts to “sensitive drainage basins” can be avoided (PL 1.3).

19. The Declaration of Non Significance and the Checklist failed to address the questions regarding impervious surface and drainage basins which were posed by the Environmental Checklist.

20. The SEPA analysis (a Supplemental Environmental Impact Statement) prepared for the City’s 2014 comprehensive plan update which established policy guidance for Ordinance 7160 regulations included a statement that “Further environmental review would be conducted when implementing measures, such as regulations, more detailed plans, or specific construction activities are proposed.”

21. The “environmental review” prior to adoption of Ordinance 7160 consisted of a Declaration of Non Significance based on an inadequate SEPA Environmental Checklist.

22. The SEPA Environmental checklist included no information regarding the possible impacts on the City’s combined storm/sewer system or drainage basins.

23. The potential environmental impacts on parking and on the City’s combined sewer/stormwater system were reasonably identifiable.

24. The State Environmental Policy Act (SEPA) requires all government agencies to consider the environmental effects of a proposed action.

25. Ordinance 7160 was a non-project action.
26. The City failed to “evaluate the impacts allowed under the changed designation at the time of the non-project action as required by SEPA.

27. The City’s decision makers had inadequate information regarding the foreseeable environmental effects of Ordinance 7160’s regulations (GMA Goal 10-Environment) and it had inadequate information regarding the foreseeable effects of those regulations on its public facilities and services (GMA Goal 12-Public facilities and services) based on the SEPA analysis done in conjunction with Ordinance 7160.

CONCLUSIONS OF LAW

A. Ordinance 7160’s regulations which allow increases in density combined with reduced parking requirements and increased lot coverage will fail to protect neighborhood character and are inconsistent with, fail to implement, and are in actual conflict with comprehensive plan goals/policies-Goal GL 20 and PL 14.3, PL 16.9, and PL 20.1.

GL 20 Development maintains and improves neighborhood character and livability.

PL 14.3 Preserve and enhance the character of existing, established Low-density Neighborhoods. Disallow medium or high-density development in existing Low-density Neighborhood areas except for Neighborhood Centers. (emphasis added)

PL16.9 In all residential areas, allow small cottages and townhouses, and one accessory housing unit per home -- all subject to siting, design and parking requirements that ensure neighborhood character is maintained. (emphasis added)

PL 20.1 Require development in established neighborhoods to be of a type, scale, orientation, and a design that maintains or improves the character, aesthetic quality, and livability of the neighborhood. (emphasis added)

B. The SEPA analysis failed to adequately consider the impacts on the City’s combined sewer/stormwater system and drainage basins and while the Board cannot find that the development regulations are inconsistent with or fail to implement comprehensive plan policies PL 1.2, PL 1.3 or PN 5.1, the shortcomings of the SEPA analysis in regards to the sewer/stormwater system and its drainage basins butresses the Board’s conclusion that the City violated
RCW 43.21C.030.

PL 1.2 Focus development in locations that will enhance the community and have capacity and efficient supporting services, and where adverse environmental impacts can be avoided or minimized.

PL 1.3 Direct high-density development to areas with existing development where the terrain is conducive to walking, bicycling and transit use and where sensitive drainage basins will not be impacted.

PN 5.1 Reduce the rate of expansion of impervious surface in the community.

C. Allowing potential densities in the Low-Density Neighborhoods to exceed 12 units per acre fails to implement, is inconsistent with, and conflicts with comprehensive plan policy 14.3 which provides: Preserve and enhance the character of existing, established Low-density Neighborhoods. Disallow medium or high-density development in existing Low-density Neighborhood areas except for Neighborhood Centers. That action violates RCW 36.70A.120 and RCW 36.70A.130(1)(d).

D. The SEPA Environmental checklist failed to demonstrate prima facie SEPA compliance.

E. The City violated RCW 43.21C.030 by basing its issuance of a Declaration of Non Significance on an inadequate Environmental Checklist.

F. The City’s action in adopting Ordinance 7160 implicated GMA Planning Goals 10 and 12 which provide as follows:

(10) Environment. Protect the environment and enhance the state’s high quality of life, including air and water quality, and the availability of water.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

G. Ordinance 7160’s development regulations related to those comprehensive plan density policies and provisions that provide for maximum Low-Density
Neighborhood densities (as alleged in Issues 2.1 and 2.8) fail to implement and preclude achievement of the comprehensive plan density polices and provisions which limit density in the Low-Density Neighborhoods to 12 units per acre. There is an actual conflict between those policies and the development regulations. The City has violated RCW 36.70A.130(1)(d) and RCW 36.70A.120.

H. The City violated RCW 36.70A.130(1)(d) and RCW 36.70A.120 as Ordinance 7160’s regulations are inconsistent with, fail to implement, and are in actual conflict with policies PL 14.3, PL16.9, and PL 20.1 as they fail to ensure that Low-Density Neighborhood character is maintained as alleged in Issue 2.1.

I. The failure to conduct a compliant SEPA review and the consequent failure to consider the potential environmental significance of the regulations included in Ordinance 7160 mandate a finding and conclusion that Ordinance 7160 is invalid.

J. The continued validity of Ordinance 7160 would substantially interfere with the fulfillment of Goals 10 and 12, RCW 36.70A.020 (10) and (12).

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board FINDS AND CONCLUDES as follows:

- Alleged violations of RCW 36.70A.040(3) and WAC 365-196-500(3) in all issues are dismissed;
- The Petitioners have met their burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 as the Missing Middle density regulations allow maximum Low-Density Neighborhood densities as established by the comprehensive plan to be exceeded as alleged in Issues 2.1 and 2.8;
- The Petitioners have met their burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 related to the Missing Middle density regulations as the regulations related to reduced parking requirements fail to ensure that Low-Density Neighborhood character is maintained as alleged in Issue 2.1;
- The Board has determined that the City of Olympia failed to comply with both the GMA and SEPA and remands this matter to the City to achieve compliance under RCW 36.70A.300;
- All other allegations not addressed in this section of the Order are dismissed.

**INVALIDITY**

- The Board restates its finding and conclusion from its order of March 29, 2019, where it stated: **The Board concludes** that the City’s action violated RCW 43.21C.030 by basing its issuance of a DNS on an inadequate Checklist.
- The Board hereby finds and concludes that the continued validity of Ordinance 7160 would substantially interfere with the fulfillment of the GMA Planning Goals 10 and 12 and imposes invalidity on Ordinance 7160.
- All other allegations not addressed in this section of the Order are dismissed.

<table>
<thead>
<tr>
<th>Item</th>
<th>Date Due</th>
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<tbody>
<tr>
<td>Compliance Due</td>
<td>December 18, 2019</td>
</tr>
<tr>
<td>Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record</td>
<td>January 3, 2020</td>
</tr>
<tr>
<td>Objections to a Finding of Compliance</td>
<td>January 17, 2020</td>
</tr>
<tr>
<td>Response to Objections</td>
<td>January 27, 2020</td>
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<tr>
<td><strong>Telephonic Compliance Hearing</strong></td>
<td><strong>February 6, 2020 10:00 a.m.</strong></td>
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<td>1 (800) 704-9804 and use pin code 7757643#</td>
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Length of Briefs – A brief of 15 pages or longer shall have a table of exhibits and a table of authorities. WAC 242-03-590(3) states: “Clarity and brevity are expected to assist a board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.” **Compliance Report/Statement of Actions Taken**
to Comply shall be limited to 20 pages, 30 pages for Objections to Finding of Compliance, and 5 pages for the Response to Objections.

SO ORDERED this 10th day of July 2019.

_________________________________
William Roehl, Board Member

_________________________________
Nina Carter, Board Member

_________________________________
Cheryl Pflug, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.121

121 Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.
Appendix A: Procedural matters

On January 10, 2019, Olympians for Smart Development & Livable Neighborhoods filed a petition for review. The petition was assigned Case No. 19-2-0001. On January 11, 2019, Eric Swanstrom filed a petition for review. The petition was assigned Case No. 19-2-0002. On January 28, 2019, the Board consolidated the cases and the case was assigned Case No. 19-2-0002c.

A prehearing conference was held telephonically on January 25, 2019. Petitioners appeared through their attorney David A. Bricklin. Respondent City of Olympia appeared through its attorney Jeffrey S. Meyer.

On February 25, 2019, Petitioners filed Olympians’ Motion for Summary Judgment. The motion was granted. On February 25, 2019, Petitioners filed Olympians’ Motion to Supplement the Record. This motion was partially granted. On February 25, 2019, Respondent City of Olympia filed a Motion to Dismiss SEPA claims. This motion was denied. On March 29, 2019, Futurewise filed a Motion for Amicus Curiae Status. This motion was granted.

The Briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- Petitioners’ Prehearing Brief filed April 10, 2019.
- City’s Response Brief filed May 1, 2019.
- Futurewise’s Amicus Brief filed May 1, 2019.

Hearing on the Merits

The hearing on the merits was convened May 23, 2019. The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions seeking to thoroughly understand the history of the proceedings, the important facts in the case, and the legal arguments of the parties.
Appendix B: Legal Issues

Per the Prehearing Order, legal Issues in this case were as follows:

1. Did the City violate RCW 43.21C.030 (requiring an EIS to accompany “every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment”) and WAC 365-196-620 by failing to prepare an environmental impact statement to inform the Planning Commission and City Council as they deliberated on and made recommendations and decisions on the proposed legislation that became Ordinance No. 7160?

2. Is the Ordinance inconsistent with and does it fail to implement the following Olympia Comprehensive Plan goals and policies in violation of RCW 36.70A.040(3), RCW 36.70A.120; RCW 36.70A.130(1)(d); and WAC 365-196-500(3)?


   2.2 Goals and policies that seek protection of designated historic properties and districts and properties and neighborhoods that reflect the city’s heritage, e.g., GL 3, PL 3.2, PL 3.4, PL 3.5, PL 3.6, PL 3.8, GL 4, PL 4.2, PL 5.5, PL 5.7, GL 6, PL 7.4, and PS 4.1, GE 8, PE 8.1, PE 8.2, PE 8.3, PE 8.4.

   2.3 Goals and policies which seek to promote more housing in commercial areas, high density corridors and in three designated high-density neighborhoods (i.e., High Density Neighborhood Overlay), e.g., PL 1.3, PL 11.1, PL 11.2, PL 11.3, PL 11.5, PL 13.3, PL 13.6, PL 14.2, PL 15.4, PS 9.4 and GT 14.

   2.4 Goals and policies which seek to encourage the development of housing for people with low income (by encouraging the demolition of existing low-cost housing and replacing it with more expensive housing), e.g., GS 3, PS 3.2, PS 3.3, PS 4.2, and PS 5.3.

   2.5 Goals and policies which require a “bottom up” process, with neighborhoods identifying “priorities, assets and challenges” in designated sub-areas and
where Neighborhood Centers emerge from a neighborhood process, not from planners in City Hall. See, PP 5.1, PL 14.4, GL 23, PL 23.1 and PL 23.2.

2.6 Goals and policies which seek to “focus development in locations that will enhance the community and have capacity and efficient supporting services, and where adverse environmental impacts can be avoided or minimized,” protect solar access, and otherwise make adequate provision for public services and facilities. See, e.g., GL 1, PL 1.2, PL 1.3, PL 2.5, GN 4, PN 4.2, GN 5, PN 5.1, PN 5.8, PU 8.2, PU 10.1, GT 9, PT 9.1 and PT 22.3.

2.7 Goals and policies that preserve green space, open space, and protect trees. See, e.g., PL 6.11, PL 7.4, GL 22, PL 22.1, PL 22.2, PL 22.3, PL 25.7, GN 3, PN 3.2, PN 3.3, PN 3.4, PN 3.5, PN 3.6, PE 3.4, and PE 9.3.

2.8 Provisions that stipulate maximum unit density and housing types in Low-Density Neighborhoods. See, e.g., Appendix A and Future Land Use Map in the Land Use and Urban Design Chapter of the 2014 Olympia Comprehensive Plan.

2.9 Goals and policies that recognize the importance of public participation in City decisions, especially around land use. See e.g., GP1, PP 1.1, GP 3, PP 3.3, GP 4, PP 4.1, PP 4.2, PP 5.1, PP 5.2, PP 5.5, PL 23.1, PL 23.2.
APPENDIX C: Comprehensive Plan policies related to Issue 2.5

**Issue 2.5:** PP 5.1 Work with neighborhoods to identify the priorities, assets and challenges of designated sub-area(s), as well as provide information to increase understanding of land-use decision-making processes and the existing plans and regulations that could affect them.

**GL 23** Each of the community’s major neighborhoods has its own priorities.

**PL 14.4** In low-density Neighborhoods, allow medium-density Neighborhood Centers that include civic and commercial uses that serve the neighborhood. Neighborhood centers emerge from a neighborhood public process.

**PL 23.1** In cooperation with residents, landowners, businesses, and other interested parties, establish priorities for the planning sub-areas. The specific area, content, and process for each sub-area is to be adapted to the needs and interests of each area. (See Goal 5 of Public Participation and Partners chapter.)

**PL 23.2** Create sub-area strategies that address provisions and priorities for community health, neighborhood centers and places of assembly, streets and paths, cultural resources, forestry, utilities, open space and parks.

**Issue 2.9:** GP1 The City, individual citizens, other agencies and organizations all have a role in helping accomplish the vision and goals of the Comprehensive Plan.

**PP 1.1** Develop a strategy to implement the Comprehensive Plan goals and policies. Collaborate with partners, including City Advisory Committees and Commissions, neighborhoods, and other community groups, so that the strategy reflects community priorities and actions.

**GP 3** City decision processes are transparent and enable effective participation of the public.

**PP 3.3** Give citizens, neighborhoods, and other interested parties opportunities to get involved early in land use decision-making processes. Encourage or require applicants to meet with affected community members and organizations.

**GP 4** Citizens and other key stakeholders feel their opinions and ideas are heard, valued, and used by policy makers, advisory committees, and staff.

**PP 4.1** Build trust among all segments of the community through collaborative and inclusive decision making.

**PP 4.2** Replace or complement the three-minute, one-way testimony format with an approach that allows meaningful dialogue between and among citizens, stakeholders, City Council members, advisory boards, and staff.

**PP 5.1** Work with neighborhoods to identify the priorities, assets and challenges of designated sub-area(s), as well as provide information to increase understanding of land-use decision-making processes and the existing plans and regulations that could affect them.

**PP 5.2** Encourage wide participation in the development and implementation of sub-area plans.
**PP 5.5** Encourage collaboration between neighborhoods and City representatives.

**PL 23.1** In cooperation with residents, landowners, businesses, and other interested parties, establish priorities for the planning sub-areas. The specific area, content, and process for each sub-area is to be adapted to the needs and interests of each area. (See Goal 5 of Public Participation and Partners chapter.)

**PL 23.2** Create sub-area strategies that address provisions and priorities for community health, neighborhood centers and places of assembly, streets and paths, cultural resources, forestry, utilities, open space and parks.