BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

HOMEWARD BOUND IN PUYALLUP,
   Petitioner,

v.

CITY OF PUYALLUP,
   Respondent.

Case No. 18-3-0011

FINAL DECISION AND ORDER

SYNOPSIS

Homeward Bound in Puyallup (Petitioner) challenged the City of Puyallup (City) Ordinance No. 3179 (Ordinance), which established zoning standards and requirements for permitting daytime drop-in centers and overnight shelters intended to serve the homeless. The Board concluded that the Ordinance violated RCW 36.70A.170(3)(d) insofar as it is inconsistent with certain City comprehensive plan policies concerning land use, housing and transportation. The Ordinance was remanded to the City for action.

I. INTRODUCTION

Procedural history of the case is detailed in Appendix A. All legal issues as established in the Prehearing Order are set out in Appendix B.

The Petitioner challenges the adoption of Ordinance 3179, enacting a new chapter 20.72 to the Puyallup Municipal Code which provides zoning standards for the permitting of daytime drop-in centers and overnight shelters intended to serve homeless individuals. It imposes zoning district and location limitations, site-specific standards and procedural requirements on the development of a "daytime drop-in center" and/or "overnight shelter" in the City and provides decisional criteria and appeals procedures in permitting these uses.
The Planning Commission’s consideration of zoning for land uses serving the homeless began in late 2016; the Planning Commission forwarded its recommendations for such an approach to the City Council in June 2017. Their recommendation included a 250’ buffer from residential parcels for these land uses, and the parcel level data forwarded to the City Council illustrated potential sites “spatially spread throughout the City, representing multiple zone districts, varying parcel sizes and a wide range of current land uses.”

The City Council scheduled its first reading of the Ordinance on September 11, 2018, which version included various options for the Council’s consideration. At the conclusion of the first reading, Council voted to advance to second reading an Ordinance which limited these types of land uses to the Light Manufacturing (ML) zone and only if set back more than 1,000’ from “sensitive uses,” including all residentially zoned parcels. The second reading was held on October 2, 2018, at which time the Mayor distributed amendments, including an illustrative map, referred to as “Mayor’s Variation.” The Mayor’s amendments included a change to how the setback would be measured; instead of beginning at the property boundary, the setback would be measured from the facility’s location within the parcel. The Mayor’s amendments were adopted, and thereafter the Ordinance itself was adopted, 5-2. This challenge followed.

Petitioner Homeeward Bound in Puyallup operates a daytime drop-in center in Puyallup and also coordinates a program where participating churches rotate providing overnight shelter for homeless adults through the winter months.

Ordinance 3179 applies to two types of land use, a daytime drop-in center and an overnight shelter (hereafter referred to as a center/shelter use).

A daytime drop-in center is defined in the Ordinance as “a center which has a primary purpose of serving homeless individuals, whose clientele may spend time during day or

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1 Petitioner’s Brief pp. 3-5, referencing Ex. 30.
2 Petitioner’s Brief p. 8, referencing Ex. 74.
3 Petitioner’s Brief p. 9, referencing Ex. 76, p. 4.
4 Petitioner’s Brief p. 9-10, referencing Ex. 86A.
5 Petitioner’s Brief p. 11.

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1. Zoning district and location limitations, site-specific standards. Confining the location of these facilities to the Limited Manufacturing ("ML") zone. PMC 20.72.040

Prohibiting any “portion of a permitted facility” from being within 1000’ of a parcel containing a school, public park or trail, public library, licensed daycare or preschool, special needs senior housing facility, or any residentially-zoned parcel, with the exception that these buffer setbacks do not apply across the Puyallup River. PMC 20.72.050(2)

Requiring that any center/shelter must demonstrate “adequate on-site lighting and clear visibility from public rights of way,” “an adequate internal waiting area to accommodate expected visitor and client levels without requiring exterior queuing during operating hours,” “adequate on-site parking,” and “be in general proximity to public transportation.” PMC 20.72.050 (1) and (3).

2. Submittal requirements. Applicants interested in operating such a center/shelter must first participate in a preapplication meeting with City staff. PMC 20.72.030(1)

Thereafter, the applicant must decide whether to proceed with negotiating a Development Agreement (DA) with Council, or a Conditional Use Permit (CUP) under the City’s

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6 Petitioner’s Brief pp. 11-14, describing PMC Chapter 20.72.
administrative processes. Regardless of the avenue chosen by the applicant, both require that any application be accompanied by a number of plans and sub plans:

- **A standard operating procedures plan (SOP)**, which includes but is not limited to 12 separate items. These include a description of the areas around the center/shelter in which the applicant will enforce the code of conduct (COC, described below) and the safety and security plans (SSP), and a map of the proposed travel routes the applicant will "suggest" individuals use when seeking access to the center/shelter. Three other sub plans are required which (1) encourage homeless persons to provide personal identification, ensure that school-aged residents are enrolled in school, and for managing the appearance of the center/shelter onsite and in an undefined ‘vicinity.’ PMC 20.72.060(3).

- **A code of conduct (COC)** that applies within an undefined ‘vicinity’ to all individuals granted access to the shelter/center. The COC must require individuals to use the suggested routes of travel described in the SOP. PMC 20.72.060(4). Other provisions include compliance with “regulations governing public conduct” and requiring compliance with a Good Neighbor Agreement, (GNA) which applies to occupants of the center/shelter but which is to be developed at a later date under a separate code provision, PMC 20.72.070.

- **A safety and security plan (SSP)**, which includes a requirement for sub plans including those listed below. The SSP must also identify performance metrics that will be used to “track compliance,” subject to review and comment by the police department and whose feedback must be incorporated in the SSP. PMC 20.72.060(5). The SSP must include elements which provide for:
  - managing the behavior of homeless individuals excluded from the center/shelter;
  - deploying security patrols;
  - ensuring compliance with individuals’ conditions of parole;
  - addressing "disruptive behavior" within the center/shelter and an undefined
“area;”
  o responding to “reported concerns” and documenting the resolution; and
  o identifying “site specific magnet areas (e.g., greenbelts, parks, libraries, transit facilities, etc.) and addressing behavior that is inconsistent with the Code of Conduct and Puyallup City Code.”

3. Review procedures. Thereafter, if the submittal is complete, there are requirements for a mailed notice “to every property owner in the City Council District where the proposed facility is to be located” of at least one public meeting on the application.

Thereafter, the City must convene a GNA Advisory Committee, charged with the creation of the GNA (Good Neighbor Agreement) to which any center/shelter shall be “subject to.” PMC 20.72.070. The City may approve or approve with modifications a DA or CUP. DAs are approved by the City Council. Should an applicant disagree with the decision reached under the CUP process, they can appeal to the City Council. PMC 20.72.080(4)(b). A CUP can be revoked by a hearing examiner upon cause shown, including that the facility is not compliant with conditions. PMC 20.72.080(6)

II. BOARD JURISDICTION

The Board finds the Petition for Review was timely filed\(^7\) and that Petitioner has standing to appear before the Board.\(^8\) The Board also finds it has jurisdiction to review the issues stated in the complaint for compliance with the Growth Management Act (GMA).\(^9\)

III. STANDARD OF REVIEW

Comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.\(^10\) This presumption creates a high threshold for challengers as the burden is on the petitioner to demonstrate that any action taken by the City fails to

\(^7\) RCW 36.70A.290(2).
\(^8\) RCW 36.70A.280(2).
\(^9\) RCW 36.70A.280(1).
\(^10\) RCW 36.70A.320(1).
comply with the 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 City has achieved compliance with the 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

Preliminary Issues

Number and acreage of available parcels

Petitioner argues that the disparity between the number of parcels identified in the Planning Commission process and the much smaller number of parcels subject to a center/shelter under the challenged Ordinance is important to our analysis, offering up versions of maps created during the Council’s consideration of the Ordinance. The role of these maps and certain numbers within them are offered in support of two allegations: The public participation issue, i.e., significance of the “Mayor’s Variation” and the need for additional public comment after its proffer, and that the Ordinance is extremely restrictive in its identification of potential locations for these facilities.

Indeed, the dearth of parcels or acreage within those parcels illustrates the impact of some aspects of the Ordinance in limiting available locations for the center/shelter use but those numbers are not critical to our analysis. We focus on the words of the Ordinance itself which restrict location to an area of Puyallup’s official zoning map and which set criteria for

11 RCW 36.70A.320(2).
12 RCW 36.70A.280, RCW 36.70A.302.
13 RCW 36.70A.290(1).
14 RCW 36.70A.320(3). In order to find the County’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).
15 Petitioner’s Brief pp. 14-16.
siting and the words of the comprehensive plan policies themselves, in order to answer the critical questions posed about consistency. Using facts not in dispute proves sufficient for our analysis and conclusions concerning resolution of issues concerning the compliance of the Ordinance with the GMA.

**Development agreements**

In its brief, the City takes two approaches in responding to the assertions of inconsistency between the development regulations and the comprehensive plan. First, the City answers by interpreting each comprehensive plan policy in a way which excludes a center/shelter from the subject matter of the policy, arguing that the Petitioner’s position is based on interpretations “out of sync” with the words and context of the policy. In the case of some policies, the argument is persuasive, and the Board will conclude that the development regulations have not been shown to be inconsistent with the policy.

But in many cases, the City argues a distinction that isn’t convincing, e.g., that the challenged Ordinance isn’t inconsistent with H-6.1 (concerning the development of housing with on-site services) because the City’s code also includes a chapter on siting temporary homeless encampments.

In the alternative and as a blanket defense argued strenuously at the hearing, the City contends that the existence of an opportunity to pursue a development agreement under RCW Title 36.70B Local Project Review absolves the City of the consistency requirement under RCW Title 36.70A Growth Management Act.

This argument is presented in some detail and in counter to Petitioner’s argument that this Ordinance so restricts the land available for center/shelter facilities as to conflict with the identified comprehensive plan policies. The City argues that under this development agreement option, centers/shelters could be sited anywhere in the City, subject only to the standards identified in the development agreement. By offering that opportunity, the City

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16 City’s Brief p.19.
17 City’s Brief p. 20.
18 City’s Brief pp. 29-32.
argues that it has expanded the potential for siting center/shelter uses, in contrast to the restrictions laid out in Ordinance 3179. Indeed, the City argues that RCW 36.70B.170 provides flexibility in what development standards apply and how they must be met. RCW 36.70B.170 is a statute apart from the GMA and permits deviation from development standards, but it offers no defense in this case. A development agreement is a discretionary legislative action. It is not a development regulation. While it offers flexibility in how development regulations apply through the agreement on “standards” set out in RCW 36.70B.170(1), that statute also says that “[a] development agreement shall be consistent with applicable development regulations ….”

So while the DA may amend some standards, it still must “be consistent with applicable development regulations …” and thus offers no substantial relief from the GMA’s requirement of consistency between the development regulations and a city’s comprehensive plan goals and policies.

The procedural guidance of WAC 365-196-845 is in accord:

(17)(a)(ii) Development agreements must be consistent with applicable development regulations adopted by a county or city. Development agreements do not provide means of waiving or amending development regulations that would otherwise apply to a project.

If it were otherwise, then many inconsistencies between development regulations and comprehensive plan policies could be rendered functionally consistent by simply pointing to another state law that allows a city the discretion to make an agreement with a property owner that uses some other standards.

The question of what deviations from existing regulations are authorized in a development agreement has caused considerable consternation over the years, so it’s useful to review the standards that are specifically called out in RCW 36.70B.170(3) for negotiation:

19 City’s Brief p. 30.
20 RCW 36.70B.170(4); PMC 1.15.070.
a) Project elements such as permitted uses, residential densities, and intensity of commercial or industrial land uses and building sizes;
b) The amount and payment of fees imposed ..., any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW [SEPA];
d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
e) Affordable housing;
f) Parks and open space preservation;
g) Phasing;
h) Review procedures and standards of implementing decisions;
i) A build-out or vesting period for applicable standards; and
j) Any other appropriate development requirement or procedure.

Historically, these agreements have been used to approve redevelopment or ‘catalyst’ projects that a local government desires to site within its borders and may indeed offer an opportunity for creativity in addressing these and other projects that meet pressing public needs. And we see no particular impediment to the use of this tool to accomplish a city’s goals, including perhaps the siting of center/shelter uses, such as is proposed here. But the potential for such discretionary innovation and creativity cannot serve as a substitute for meeting the consistency requirements of RCW 36.70A.130(1)(d).

Public Participation (Issue 1)

1. Did the City fail to comply with the public participation requirements of the GMA by adopting the Ordinance without providing an additional opportunity for review and comment after the proposed Ordinance was changed by the “Mayor’s Variation” amendments?

RCW 36.70A.035(2) provides:

(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: … (ii) The proposed change is within the scope
of the alternatives available for public comment;

Petitioner argues that the City violated this section by considering certain variations
to the Ordinance offered by the Mayor on second reading, illustrated by the “Mayor’s
Variation.” Substantively, Petitioner argues that these amendments constituted changes
outside the scope of alternatives previously considered.21 The City states that these
amendments fit squarely within the previous discussions and thus did not require additional
opportunity for review and comment.22

Petitioner offers Exhibit 114, an email string, and suggests that it is proof of dubious
intent.23 But this email string appears to be directed only at the map offered by the Mayor,
not at the substance of the Ordinance.

The Board finds and concludes that the Petitioner has failed to carry its burden to
prove that the adoption of Ordinance 3179 violates RCW 36.70A.035(2) concerning public
participation.

Consistency with Comprehensive Plan (Issues 2, 3, 4 and 5)

2. Are the zoning district [.040] and buffer setback [.050(2)] provisions of chapter 20.72
PMC inconsistent with CP Land Use Policies LU-3.5, LU-7.1, LU-16.5, LU-21.2; and with
CP Transportation Policies T-3.1 and T-4.4; because those PMC provisions operate
together to restrict daytime drop-in centers for the City’s homeless population to a
remote corner of an industrial zone?

3. Are the zoning district [.040] and buffer setback [.050(2)] provisions of chapter 20.72
PMC inconsistent with CP Land Use Policies LU 2.2, LU-3.5, LU-7.1, LU-10.1,LU-10.2,
LU-10.4, LU-16.5 and LU 21.2; with Housing Element (Preamble) and Policies H-6,H-
6.1, and H-6.2 (both); and with CP Transportation Policies T-3.1 and T-4.4; because

21 Petitioner’s Brief p. 34, citing Ex. 87.
22 City’s Brief p. 41.
23 Motion and Declaration to Supplement Record on Rebuttal p. 2.
those PMC provisions operate together to restrict **overnight shelters** for the City’s homeless population (which may include a daytime drop-in center) to a remote corner of an industrial zone?

4. Are the required proximity to public transportation [.050(3)], zoning district [.040], and buffer setback [.050(2)] provisions of chapter 20.72 PMC internally inconsistent, and/or inconsistent with CP Land Use, Housing Element and Transportation provisions and policies cited in Legal Issue # 3 above, because those PMC provisions require **daytime drop-in centers and overnight shelters** for the City’s homeless population to be located in general proximity to public transportation, but have restricted such facilities to a location where such transportation and pedestrian safety measures are largely unavailable?

5. Is the Ordinance (including but not limited to the zoning district [.040], zoning standards [.050], submittal requirements [.060], good neighbor agreement [.070], and review procedures [.080] provisions of chapter 20.72 PMC) inconsistent with CP Land Use Policies LU-2.2, LU-10.1, LU-10.2, LU-10.4; and with the CP Housing Element (Preamble), and Policies H-6, H-6.1 and H-6.2 (both), because the Ordinance **fails to insure or encourage development of emergency and other special needs housing** (including overnight shelters for the City’s homeless population); and because the Ordinance **prohibits or discourages** rather than encourages the distribution of overnight shelters throughout the City?

In Petitioner’s briefing and in the City’s Response, the inconsistency issues are dealt with by aggregating the comprehensive plan policies, and the Board will analyze the challenge within that framework.\(^24\)

The challenged Ordinance contains regulations that are categorized as follows:

- **Zoning district and location limitations**, site-specific standards (including 1000’ buffers) PMC 20.72.040, PMC 20.72.050.
- **Submittal requirements**, including sub-plans, approvals PMC 20.72.060 and the Good Neighbor Agreement, PMC 20.72.070
- **Review procedures**, decisional criteria, public hearing, appeals PMC 20.72.080

RCW 36.70A.130(1)(d) requires that any amendment or revision to development

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\(^{24}\) To the extent that the briefing does not provide legal argument for any policy, the challenge is deemed abandoned.
regulations shall be consistent with and implement the comprehensive plan. In applying this requirement of the GMA to any fact situation, the Board looks to the definitions provided for these terms 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.25 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." 26

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 fully the goals, policies, standards and directions contained in the comprehensive plan.27

26 Alberg, et al v. King County, CPMSGMB No. 95-3-0041c (FDO, September 13, 1995) at 15. See also: West Seattle Defense Fund, et al. v. Seattle, CPMSGMB No. 94-3-0016 (FDO, April 4, 1995) at 27; Children’s Alliance v. City of Bellevue, CPMSGMB No. 95-3-0011 (FDO, July 25, 1995).
27 Bertelsen and Raine v. Yakima County, et al., EWGMHB No. 00-1-0009 (FDO, November 2, 2000) at 7.

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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.28

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.29

A finding of inconsistency requires a showing of actual conflict between competing provisions of a city’s planning policies and development regulations.30

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.31

In Cook & Heikkila, 32 the Board identified the three questions that need to be addressed in these cases:

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

**Housing and land use policies**

Here, Petitioner argues that Ordinance 3179 is both inconsistent with and fails to

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28 *Cook & Heikkila v. Winlock*, CPSGMHB No. 09-2-0013c (FDO, October 8, 2009) at 35.
30 *Id.* at 1.
31 *Martin v. Whatcom County*, WWGMHB No. 11-2-0002 (FDO, July 22, 2011) at 17.
32 *Cook & Heikkila v. Winlock*, CPSGMHB No. 09-2-0013c (FDO, October 8, 2009) at 34, 35.
implement the comprehensive plan policies set out below.

H-6, H-6.1, H-6.2

H-6 Promote a variety of housing for people with special needs, such as the elderly, disabled, homeless, and single householders.

H-6.1 Encourage and support the development of emergency, transitional and permanent housing with appropriate on-site services for persons with special needs.

H-6.2 Encourage the distribution of special needs housing throughout the City, recognizing that some clustering may be appropriate if in proximity to public transportation, medical facilities, or other essential services.

Puyallup’s comprehensive plan in H-6 defines “special needs” to include the homeless; in H-6.1, the City is called on to “encourage and support” the development of emergency and transitional housing with appropriate on-site services. In H-6.2, the City commits to distribute this housing “throughout the City” but with some clustering allowed if in proximity to public transportation and other services. The introductory policy requires that the City “promote” the development of emergency and transitional housing.

The zoning and location requirements of Ordinance 3179, even before consideration of the daunting application process, shows the City’s aversion to policy H-6. A single zoning designation, limited manufacturing (“ML”) zone, is identified for these facilities. The official zoning map, appearing throughout the record and the City’s Comprehensive Plan, illustrates that this classification is almost entirely located at the very northwestern-most corner of the City, across the Puyallup River, and as physically removed from the heart of the City as could be imagined. Its physical isolation is apparent.

It is worth noting that while H-6.2 calls for distribution of this housing throughout the City, it recognizes that clustering “may be appropriate if in proximity to public transportation, medical facilities, or other essential services.” Here, however, Ordinance 3179, while requiring a finding that “any property containing a (center/shelter) shall be in proximity to public transportation” PMC 20.72.050(3), calls for clustering that is demonstrably not in...
proximity to public transportation and other services. The City's Comprehensive Plan Transportation Element is replete with maps illustrating the paucity of transportation facilities in the ML zone.\(^{33}\)

The development regulations restrict the center/shelter use to a remote corner of an industrial zone (PMC 20.72.040), and establish large buffer setbacks (PMC 20.72.050(2)) which may further preclude achievement of the goal. These development regulations not only fail to implement the comprehensive plan policies, but they also can be said to preclude achievement of and be in conflict with H-6, H-6.1 and with H-6.2. The regulations do the exact opposite of distributing this type of special needs housing "throughout the City," and add to the dissonance by clustering it without regard to public transportation, in direct opposition to the mandate of the policy.

As noted above, the Board does not consider the potential of the Council entering into a permissive development agreement under Title RCW 36.70B to offer any effective response to the Petitioner's assertions.

**The Board finds and concludes** that the Petitioner has carried its burden of proof in demonstrating that the City's action in adopting Ordinance 3179 violated RCW 36.70A.130(1)(d) as it is inconsistent with, fails to implement, precludes achievement of and is in actual conflict with policies H-6, H-6.1 and H-6.2.

**LU-2.2, LU-10.2, LU-10.4**

LU-2.2 **Encourage a range of housing types and densities to meet the needs of all economic sectors of the population.**

LU-10.2 **Provide, through land use regulation, the potential for a broad range of housing choices and levels of affordability to meet the changing needs of a diverse community.**

LU-10.4 **Housing projects targeted to populations not requiring significant**

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\(^{33}\) There is a single thoroughfare through the ML zone, a major arterial classified T1, carrying over 10 million tons annually. (Official notice Doc. C. at 7.12) There is little/no regular transit in the area (Official Notice Doc. C at 7-10), and future plans indicate no particular improvement in the status quo (for instance, Official Notice Doc. 3, Map 7-13, Yellow Standard Pedestrian Facilities).
outdoor recreation areas and having low private automobile usage (e.g. elderly housing) may have densities exceeding 22 dwelling units per acre. Such developments should be located in close proximity to public transportation services, shopping or medical facilities.

Petitioner’s argument concerning the land use policies LU-2.2, LU-10.2 and LU-10.4 is less compelling. The title of the section of the comprehensive plan under which these policies appear is “Land Use Management” (LU-2.2) and “Residential Land Use” (LU-10.2. and 10.4). The subject matter of this Ordinance is a daytime drop-in center or overnight shelter, not a permanent housing project as appears to be contemplated in these policies. Indeed, the City may be equally ambivalent about the requirements for the creation of a permanent low-income housing development, but that is not the subject of this Ordinance.

The facilities subject to this Ordinance are a daytime drop-in center, with the primary purpose of serving homeless individuals, and an overnight shelter, defined as a facility with sleeping accommodations the primary purpose of which is to provide temporary shelter that may occur in conjunction with the daytime drop-in facilities.

The Board finds and concludes that the Petitioner has failed to meet its burden to establish adoption of the Ordinance resulted in a violation of RCW 36.70A.130(1)(d) in regards to LU-2.2, LU-10.2 and LU-10.4

Near transit centers

LU-7.1 Community services, including schools, community centers, and medical services, should be focused in central locations and/or near transit centers.

The comprehensive plan calls for community services to be in central locations and/or “near transit centers.” The clear intent of the challenged Ordinance, as it evolved and as illustrated by the reduced scope of possible sites between the Planning Commission’s recommendation and the Council’s enactment, is to remove the center/shelter from the downtown and residential areas without serious regard to the availability of transit service in the remote ML location.
Petitioner notes that the Planning Commission recognized the community service nature of this use when it recommended that they be permitted in the same zones as “professional offices and services” and “community facility uses.”\textsuperscript{34}

The City responds by arguing that, by definition, a center/shelter is defined outside of the Ordinance under scrutiny and cannot be analogized to other community uses. The City argues:

Despite analogies that can be conjured, Petitioner’s specialized use is clearly not a hospital, school or community center. As with other types of uses, the uses addressed in Ordinance 3179 may be distant cousins to others, but are in a distinct category.\textsuperscript{35}

This argument relies on splitting definitional hairs to find that centers/shelters aren’t included within the definition of “community services.” Here, the section of the comprehensive plan in which this policy appears is titled “Built Environment and Health.” Looking at the entirety of the Land Use chapter of the comprehensive plan, we find these categories of Goals and Policies:

**General Policies**
- Land Use Management
- Urban Services and Annexation
- Built Environment and Health
- Regional Coordination
- Innovative Technique

**Residential Land Use**

**Commercial Land Use**

**Industrial Land use**

**Regional Growth Centers**

**Agricultural Uses**

**Other Public Uses**
- Fair
- Medical
- Public Facilities
- Open Space/Public parks

\textsuperscript{34} Petitioner's Brief p. 28 referencing Ex. 30 p. 7.
\textsuperscript{35} City's Brief pp. 23-25.
Essential Public Facilities
Water Quality and Drainage

Reviewing this chapter for where policies fit within its general structure, we observe that we have previously found residential policies largely not applicable for definitional reasons (permanent housing versus temporary shelter). Later on, we find the center/shelter use not to be an essential public facility (doesn’t fit within the state’s definition for EPFs that jurisdictions must accommodate). It appears then, that comprehensive plan policies concerning health may well be *apropos* for this use, simply by a process of elimination. The over-arching policy at LU-7 states:

The well-being of all residents is affected by the built form and man-made environment, and use, density, transportation strategies and street design, therefore, the community should be planned and designed to promote physical, social and mental well-being.

The record in this case illustrates a sharp break between the Planning Commission’s recommendations and the City Council’s adopted Ordinance, moving away from a variety of locations to a very limited zone with demonstrably little to no transit. Even if we ignore this sharp difference in scope, it is hard to see how the limited zone and other site-specific standards set out in the Ordinance fulfills this policy for adjacency to transit. Ordinance 3719 not only fails to implement the comprehensive plan policy, but precludes achievement and is in conflict with a policy calling for a centralized location for community services and/or near transit centers.

**The Board finds and concludes** that the Petitioner has carried its burden of proof in demonstrating that the City’s action in adopting Ordinance 3179 violated RCW 36.70A.130(1)(d) as it is inconsistent with, fails to implement, precludes achievement of and is in actual conflict with policy LU-7.1

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36 Petitioner’s Brief p. 4-10.
In industrial areas

LU-21.2 Limit commercial uses in industrial areas to uses that are supportive of and incidental to industries and businesses.

Petitioner here argues that nothing in the record establishes that centers/shelters are supportive of or incidental to the businesses intended to locate in the light industrial zoning. The City points out that a center/shelter use is not necessarily a “commercial” use within the meaning of the policy, based on the PMC definition. The Petitioner here fails to offer a credible legal argument in support of inconsistency between the Ordinance and this policy.

The Board finds and concludes that the Petitioner has failed to meet its burden to establish adoption of the Ordinance resulted in a violation of RCW 36.70A.130(1)(d) in regards to LU-21.2.

Working with other jurisdictions

Second policy labeled H-6.2: Work with other jurisdictions and health and social service organizations to develop a coordinated, regional approach to homelessness.

Petitioner argues that nothing in the record reflects collaboration or a coordinated regional process and relies on a contrast between the Planning Commission’s recommendations and the challenged Ordinance to prove inconsistency and conflict. The City responds by noting the recitation in the Ordinance of the efforts made in outreach.

The comprehensive plan policy here does not call for an outcome, i.e., a “coordinated, regional approach to homelessness.” The policy calls on the City to “[w]ork with other jurisdictions and health and social service organizations …” to develop such an “approach.” The Ordinance’s terms may illustrate a failure of the work, however undertaken, to result in the policy’s desired outcome. But this Board can’t add a required outcome to a policy that depends upon the participation and cooperation of other jurisdictions and separate private entities.

37 Petitioner’s Brief pp. 29-30.
38 City’s Brief p. 22, citing Ex. 18, Attachment A, Findings 4, 5 and 6.
The Board finds and concludes that the Petitioner has failed to meet its burden to establish adoption of the Ordinance resulted in a violation of RCW 36.70A.130(1)(d) in regards to H-6.2 (second policy).

Transportation in commercial and mixed use areas

LU-16.5 Encourage a mixture of uses that reinforce the pedestrian, bicycle, and transit oriented character.

T-3.1 Ensure consistency between land use and the associated transportation system. a. Coordinate land use and transportation plans and policies to ensure they are mutually supportive.

T-4.4 Increase pedestrian safety, emphasize connectivity, and reduce operations and maintenance costs through developing walkways. a. Prioritize pedestrian facilities in the vicinity of schools, retail districts, community centers, health care facilities, parks, transit stops and stations, and other pedestrian generators.

Petitioner argues that the location identified by the challenged Ordinance for the center/shelter uses is inconsistent with the enumerated transportation policies here. Petitioner alleges that the Ordinance requires the center to locate in an area not served by bus routes, sidewalks or curb ramps, and works in opposition to these policies.\textsuperscript{39}

In its initial pleading, Petitioner submitted evidence that a bus line serving the ML zone along Valley Avenue which had been illustrated on all of the City’s option maps had not existed for over three years.\textsuperscript{40} The City declares that general proximity is a flexible proposition, and offers an illustration that acknowledges the absence of the previously-assumed bus line along Valley Avenue, but offers that the transit route along SR 167 (Pierce Transit #402) provides transit service within 1 mile of the zone’s properties, which qualifies as “general proximity.”\textsuperscript{41}

The City argues, further, that the maps used to illustrate the Future Transportation

\textsuperscript{39} Petitioner’s Brief p. 31.
\textsuperscript{40} Petitioner’s Brief p. 9, referencing Ex. 73A.
\textsuperscript{41} City’s Brief p. 31.
Vision\textsuperscript{42} in the comprehensive plan refute inconsistency with LU-16.5 and T-3.1. The City does not cite Map 7-10, the Transit Priority Network or other maps within the Transportation Element, which would tend to confirm the conclusion that a reasonable person might come to: the pedestrian, bike and transit facilities planned for the restricted zone to which centers/shelters are relegated do not realize these policies.

Future plans, whatever they might be, are implemented on a real-time basis. The City’s action in taking a use which is largely pedestrian or transit oriented and siting it in an area that is neither pedestrian nor transit friendly either now or according to future plans certainly cannot be said to be consistent with these policies, and precludes their implementation.

The City argues that the Ordinance is not inconsistent with T-4.4 concerning pedestrian safety because “Petitioner’s argument on this goal is that Ordinance 3179 increases safety risks to its potential clients,” and “the majority of T-4.4 goals do not bear on that.” The argument seems to be that if the Petitioner can point to only a single constituency as being endangered or put at risk by the failure of these policies, then there’s no inconsistency. To accept this argument would make the policy unenforceable for lack of sufficient constituency by any petitioner. The Board is not persuaded that is a useful argument.

Here, we can say that the Ordinance, limiting as it does a pedestrian and transit heavy use to an area that is ill served by either pedestrian or transit facilities, as illustrated by the City’s own Comprehensive Plan Transportation Element, discussed above, does not implement T-4.4 and T-3.1, but rather precludes and is in conflict with them.

As pertains to LU-16.5, however, the City’s policies can be realized despite the existence of the regulations contained in Ordinance 3179, and the Board finds no inconsistency.

\textbf{The Board finds and concludes} that the Petitioner has carried its burden of proof in

\textsuperscript{42} City’s Brief citing Map 7-8 and 7-9.
demonstrating that the City’s action in adopting Ordinance 3179 violated RCW 36.70A.130(1)(d) as it is inconsistent with, fails to implement and precludes achievement of policies T-3.1, T-4.4. The Petitioner has failed to meet its burden as pertains to LU-16.5.

**Removes industrial land**

LU-3.5 Designate and zone lands sufficient to accommodate the projected urban growth, including as appropriate, medical, governmental, institutional, commercial, service, retail, and other non-residential uses.

Petitioner offers only conclusory statements in support of the Ordinance’s inconsistency with this policy insufficient to show that the Ordinance will preclude achievement of LU-3.5.

**The Board finds and concludes** that the Petitioner has failed to meet its burden to establish adoption of the Ordinance resulted in a violation of RCW 36.70A.130(1)(d) in regards to LU-3.5

**Compliance with GMA Goals (Issue 6, 7)**

6. Does the Ordinance fail to comply with GMA Housing Goal, RCW 36.70.020(4), including goals requiring that Puyallup “[e]ncourage the availability of affordable housing to all economic segments of the population… [and] promote a variety of residential densities and housing types…?”

7. Does the Ordinance fail to comply with GMA Economic Development goals RCW 36.70A.020(5), including those requiring Puyallup to “promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons…”?

Petitioner argues that Ordinance 3179 is inconsistent with the specific comprehensive plan policies intended to address the housing goal, as illustrated by the discussion of essential public facilities (EPFs), below, and comprehensive plan inconsistency, above. Thus, Petitioner concludes the Ordinance “cannot have been ‘guided by’ these provisions of the housing goal when it is inconsistent with the very policies the City

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43 Petitioner’s Brief p. 32.
adopted to address those goals." Here, the Board considers whether the Ordinance precludes realization of these housing policies, and concludes that it does not. The Ordinance deals with a narrow land use, drop-in centers and temporary overnight shelters. The City may still realize its policies concerning affordable housing, densities and housing types despite this Ordinance.

Petitioner further argues that the Ordinance "intentionally constrains and discourages the siting of both shelters, which provide needed housing stability to economically disadvantaged persons, and drop-in centers" which provide support to improving the economic circumstances of this population. Further, Petitioner contends that the Ordinance cannot have been guided by the economic development goal "because it sacrifices scarce, valuable industrial land to accommodate disfavored residential or service uses (homeless shelter or centers) that are in no way related to industrial activity.

The City asserts that Petitioner’s argument fails to identify a nexus “between economic opportunity and regulations that may affect location of an employment service,” noting also that the definition of ‘Daytime drop-in center” at PMC 20.72.020(2) does not include employment services on the list of services provided.\[47\]

The legal argument advanced by Petitioner is too thin to support a finding that the City has violated this goal statement. The City may be guided by and focused on providing economic opportunity for the unemployed and for disadvantaged persons in a number of ways despite this Ordinance.

The Board finds and concludes that Petitioner has not met its burden of proof to show that the City was not guided by the GMA goals set out in RCW 36.70A.020 concerning housing or economic development in the adoption of Ordinance 3179.

\[44\] Petitioner’s Brief p. 33.
\[45\] Petitioner’s Brief p. 33.
\[46\] Petitioner’s Brief p. 34.
\[47\] City’s Brief p. 40.
Essential Public Facilities ("EPF") (Issue 8)

8. Does the Ordinance fail to comply with RCW 36.70A.200 and implementing regulations at Chapter 365-196 WAC, because (alone, or together with other provisions of the PMC) it effectively precludes the siting and operation of essential public facilities providing daytime drop-in services or overnight shelter to the homeless?

RCW 36.70A.200 requires local governments to include in its comprehensive plan “a process for identifying and siting essential public facilities” including facilities “typically difficult to site, such as airports, state education facilities and state or regional transportation facilities …, regional transit authority facilities …, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities ….” as defined in RCW 71.09.020.48 No local comprehensive plan or development regulation may preclude the siting of essential public facilities.49

Petitioner argues that homeless centers and shelters are EPFs because they serve a public function and are traditionally hard to site, citing Washington’s Housing Policy Act,50 and in this instance are funded by government in response to a City Task Force that identified the need for such a facility.51 While the Planning Commission had apparently discussed the potential applicability of comprehensive plan policy LU-33.2 regarding EPF siting, it is significant that the Petitioner did not challenge those policies but rather attempts to make the case that these facilities are EPFs because of attributes making them difficult to site.52

Cases cited by the Petitioner in support of the argument that homeless shelters and drop in centers like the ones covered by the challenged Ordinance are EPFs are unpersuasive. Neither Children’s Alliance V. City of Bellevue, CPSGMHB No. 95-3-0011 (FDO, July 25, 1995) nor State Department of Correction Corrections and Department of

48 RCW 36.70A.200(1).
49 RCW 36.70A.200(5)
50 RCW 43.185B.005(1)(b).
51 Petitioner’s Brief p. 19.
52 Petitioner’s Brief pp. 20-22.
Social and Health Services v. City of Tacoma, GPSGMHB No. 00-3-0007 (FDO, November 20, 2000) squarely addressed the question of what constitutes an EPF. In both cases, the issues dealt with whether the regulatory requirements imposed on an agreed-upon EPF were appropriate under the statute’s admonition not to preclude the siting of EPFs.

Peranzi v. City of Olympia, GMHB No. 11-2-0011 (FDO, May 4, 2012) includes the observation that a homeless encampment “may very well constitute an essential public facility …” (at 15), but the comment is dicta. That case focused on whether siting such a facility within a light industrial district created an inconsistency between Olympia’s comprehensive plan policies specifically concerning the protection of industrial land and development regulations concerning the siting of a permanent homeless encampment as a conditional use within the light industrial zoning district. The case also affirmed the Board’s long-held view or the applicability of WAC Chapter 396-196.

That chapter of the Washington Administrative Code does not set forth substantive requirements. Rather, as RCW 36.70A.190(4) provides, chapter 396-196 WAC establishes procedural criteria to assist local jurisdictions in their GMA compliance efforts. That fact is further clarified by WAC 365-196-030(2) [making clear that compliance with procedural criteria is not a prerequisite for compliance with the act].

While the Board will consider the procedural criteria in reviewing Petitioners’ allegations [citing WAC 365-196-030(3)], ultimate resolution of the issues will be based on the GMA itself together with appellate court and Board decisions interpreting same.

This Board has recently considered the scope of its authority to declare uses not mentioned in the statute as meriting EPF protection. In GEO Group v. City of Tacoma, 18-3-0005 (FDO, Sept 20, 2018), the Board declined to find a federal correctional or detention facility to be an EPF in light of the fact that the statute itself only describes state and local

53 Peranzi, at 6.
54 Id.
correctional facilities. “The statute and WAC do not specifically exclude federal facilities, but is the absence of a specific exclusion sufficient to require inclusion of the federal facilities into the state definition by inference? We think not.” GEO Group, at 7.

Likewise here, RCW 36.70A.200(1) includes “inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities …”. Each of the identified uses, “substance abuse facilities, mental health facilities, group homes, and secure community transition facilities (for sexual predators under RCW 71.09.020)” provides a modification of the initial description, “inpatient facilities.”

We cannot say, on the basis of the facts and argument presented here, that the Petitioner met its burden to show that the facilities affected by Ordinance 3179 are EPFs within the meaning of RCW 36.70A.200. While such uses may constitute an essential public facility, we simply do not have the authority to make public policy by adding words to the statute that are not there and cannot be reasonably inferred.55

The Board finds and concludes that the Petitioner has not met its burden of proof that Ordinance 3179 violates RCW 36.70A.200 by precluding the siting of an essential public facility, as defined in state law.

Differential Treatment for Handicapped Persons (Issue 9)

9. Does the Ordinance fail to comply with RCW 36.70A.410 by treating a residential structure occupied by persons with handicaps (an overnight shelter for the homeless) differently than a similar residential structure occupied by a family or other unrelated individuals?

RCW 36.70A.410 prohibits treating handicapped persons, as defined by federal law, differently in regulating or controlling residential structures. Petitioner argues that the homeless populations “are substantially more likely than all persons to have (or to be regarded as having) one more disabilities/handicaps,” and thus, an overnight shelter, as

defined in the challenged Ordinance, is a residential structure for handicapped persons under RCW 36.70A.410.\(^{56}\)

The City argues that this is a logically faulty argument. The fact that some percentage of the potential users of a shelter may be handicapped does not mean that the land use regulation is discriminatory against handicapped persons. RCW 36.70A.410 requires land use regulations for handicapped person be the same as those for residential structure “occupied by a family or other unrelated individuals.” As the City points out, the homeless population includes some persons with disabilities, but also those affected by a low income pricing them out of available housing, job loss, eviction, domestic issues and other reasons.

Both the Petitioner and City use information from Pierce County Point in Time count, Exhibit 68, to underscore their arguments.\(^{57}\) This data, based on self-reporting, illustrates the range of causes for homelessness, which may include handicap or disability but includes many other causes. This data, alone, does not prove the City’s land use regulations discriminate against the handicapped in residential housing as prohibited by RCW 36.70A.410.

**The Board finds and concludes** that the Petitioner has failed to carry its burden of proof that Ordinance 3179 violates RCW 36.70A.410 concerning residential structures for handicapped individuals.

**Invalidity**

The Board may find part or all of a comprehensive plan or development regulation invalid if, on a finding of noncompliance, the Board includes findings of fact and conclusions of law that the continued validity of plan or regulation, or any of its parts, “would substantially interfere with the …goals of this chapter.”\(^{58}\) Invalidity is a discretionary remedy and is seldom invoked unless the continued operation of the plan or regulation would have irreversible negative impacts, such as encroachment on critical areas or building outside a

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\(^{56}\) Petitioner’s Brief p. 24.

\(^{57}\) Petitioner’s Brief pp. 1-2; City of Puyallup’s Prehearing Response Brief p. 16.

\(^{58}\) RCW 36.70A.302.
UGA (citations needed). Here, the effect of the continued validity of the regulation is that the drop-in centers and shelters are unlikely to be sited until the City addresses the noncompliance identified in this Order. Having failed to prove, above, that the Ordinance fails to be guided by any GMA goal, the Board concludes that the continued validity of Ordinance 3179 does not substantially interfere with any GMA goal as required to support a determination of invalidity.

V. ORDER

Based upon review of the petition, 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 that the Petitioner has failed to carry its burden proving violation of RCW 36.70A.035(2) concerning public participation; of violation of RCW 36.70A.130(1)(d) in regards to inconsistency with LU-2.2, LU-10.2, LU-10.4, LU-21.1; H-6.2 (second policy), or LU-3.5 or LU-16.5; concerning violation of the affordable housing goal or economic development goals of the GMA; concerning violation of RCW 36.70A.200 in regards to essential public facilities or RCW 36.70A.410 in regards to residential structures for handicapped individuals.

The Board finds and concludes that Petitioner has carried its burden of proof in demonstrating that the City's action in adopting Ordinance 3179 violated RCW 36.70A.130(1)(d) as it is inconsistent with, fails to implement, precludes achievement of and is in actual conflict with the City's Comprehensive Plan policies H-6, H-6.1 and H-6.2, LU-7.1, T-3.1 and T-4.4.

## COMPLIANCE SCHEDULE

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<tr>
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<tr>
<td>Compliance Due</td>
<td>October 2, 2019</td>
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<tr>
<td>Compliance Report/Statement of Actions Taken to Comply</td>
<td>October 16, 2019</td>
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<td>and Index to Compliance Record</td>
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<tr>
<td>Objections to a Finding of Compliance</td>
<td>October 30, 2019</td>
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<tr>
<td>Response to Objections</td>
<td>November 13, 2019</td>
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<tr>
<td><strong>Telephonic Compliance Hearing</strong></td>
<td><strong>November 18, 2019</strong></td>
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<tr>
<td>1 (800) 704-9804 and use pin code 7864979#</td>
<td>10:00 a.m.</td>
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SO ORDERED this 3rd day of June 2019.

_________________________________  
Deb Eddy, Board Member

_________________________________  
Cheryl Pflug, Board Member

_________________________________  
William Roehl, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300. 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.
Appendix A: Procedural matters

On December 3, 2018, Homeward Bound in Puyallup (Petitioner) filed a petition for review, which was assigned Case No. 18-3-0011.

The presiding officer held a prehearing Conference telephonically on December 20, 2018. On January 16, 2019, the Petitioner filed a motion to supplement the record, and that motion was partially granted. On March 4, 2019, Petitioner filed a motion to take official notice. The decision was deferred until the hearing. On March 4, 2019, there was a Request to Proceed Amicus Curiae. This request was denied. On April 8, 2019, Petitioner filed a Motion and Declaration to Supplement Record on Rebuttal. This motion was deferred until the hearing.

The Briefs and exhibits of the parties filed as follows:

- Petitioner’s Prehearing Brief filed on March 4, 2019.
- City of Puyallup’s Response Brief filed on March 26, 2019.
- Petitioner’s Reply Brief filed on April 8, 2019.

Hearing on the Merits

The board panel convened a hearing on the merits May 1, 2019. The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions to understand the history of the Ordinances, the facts in the case, and the legal arguments of the parties.

At the Hearing on the Merits, the Presiding Officer responded to the following submittals which had been made after the date set out in the prehearing order:

- Petitioner’s Motion to Supplement and Petitioner’s Office Notice Table (Reply), both filed on April 8, 2019; and
- City’s Response to Motion to Supplement, and City’s Opposition to Petitioner’s Official Notice Table, both filed on April 18, 2019.

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60 Petitioner’s Reply to City’s Response/Opposition, filed on April 22, 2019, and City’s Objection, filed on April 23, 2019, were received but were not germane to the resolution of the motions.
The Petitioner had proposed four additions to the official record; the City objected to the additions. The presiding officer ruled on the matters presented as follows:

Proposed Exhibit 113, a memo – The presiding officer noted that this document, if of assistance to the Board in reaching its decision, was of a type that could be subject to official notice. Thus, the motion to supplement the official record is denied.\(^{61}\)

Proposed Exhibit 114 and Proposed Exhibit 115, communications – The Petitioner noted and the City did not refute that these communication items had not been earlier disclosed. For that reason alone, the presiding officer determined that these two items should be included in the official record. Should either item be useful in the Board’s decision, discussion of the justification for the late addition to the record will be made in the Final Decision and Order.

Official Notice Table, Point in Time Count – Again, the presiding officer noted that the Board may take official notice on its own motion of this document referenced in the Reply brief. Should the item be of substantial assistance to the Board in reaching its decision, discussion of the justification for its inclusion will be made in the Final Decision and Order.

\(^{61}\) City’s Response to Motion to Supplement p. 24.
Appendix B: Legal Issues

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

Public Participation - RCW 36.70A.035 and .140; WAC 365-196-600.

1. Did the City fail to comply with the public participation requirements of the GMA by adopting the Ordinance without providing an additional opportunity for review and comment after the proposed Ordinance was changed by the “Mayor’s Variation” amendments?

Consistency with Comprehensive Plan - RCW 36.70A.040(3).

2. Are the zoning district [.040] and buffer setback [.050(2)] provisions of chapter 20.72 PMC inconsistent with CP Land Use Policies LU-3.5, LU-7.1, LU-16.5, LU-21.2; and with CP Transportation Policies T-3.1 and T-4.4; because those PMC provisions operate together to restrict daytime drop-in centers for the City’s homeless population to a remote corner of an industrial zone?

3. Are the zoning district [.040] and buffer setback [.050(2)] provisions of chapter 20.72 PMC inconsistent with CP Land Use Policies LU 2.2, LU-3.5, LU-7.1, LU-10.1,LU-10.2, LU-10.4, LU-16.5 and LU 21.2; with Housing Element (Preamble) and Policies H-6,H-6.1, and H-6.2 (both); and with CP Transportation Policies T-3.1 and T-4.4; because those PMC provisions operate together to restrict overnight shelters for the City’s homeless population (which may include a daytime drop-in center) to a remote corner of an industrial zone?

4. Are the required proximity to public transportation [.050(3)], zoning district [.040], and buffer setback [.050(2)] provisions of chapter 20.72 PMC internally inconsistent, and/or inconsistent with CP Land Use, Housing Element and Transportation provisions and policies cited in Legal Issue # 3 above, because those PMC provisions require daytime drop-in centers and overnight shelters for the City’s homeless population to be located in general proximity to public transportation, but have restricted such facilities to a location where such transportation and pedestrian safety measures are largely unavailable?

5. Is the Ordinance (including but not limited to the zoning district [.040], zoning standards [.050], submittal requirements [.060], good neighbor agreement [.070], and review procedures [.080] provisions of chapter 20.72 PMC) inconsistent with CP Land Use Policies LU-2.2, LU-10.1, LU-10.2, LU-10.4; and with the CP Housing Element (Preamble), and Policies H-6, H-6.1 and H-6.2 (both), because the Ordinance fails to insure or encourage development of
emergency and other special needs housing (including *overnight shelters* for the City’s homeless population); and because the Ordinance prohibits or discourages rather than encourages the distribution of *overnight shelters* throughout the City?

**Compliance with GMA Housing Goals – RCW 36.70A.020(4).**

6. Does the Ordinance fail to comply with GMA Housing Goals, including goals requiring that Puyallup “[e]ncourage the availability of affordable housing to all economic segments of the population… [and] promote a variety of residential densities and housing types…?”

**Compliance with GMA Economic Development Goals – RCW 36.70A.020(5).**

7. Does the Ordinance fail to comply with GMA Economic Development goals, including those requiring Puyallup to “promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons…?”

**Compliance with GMA Essential Public Facilities ("EPF") Requirements.**

8. Does the Ordinance fail to comply with RCW 36.70A.200 and implementing regulations at Chapter 365-196 WAC, because (alone, or together with other provisions of the PMC) it effectively precludes the siting and operation of essential public facilities providing daytime drop-in services or overnight shelter to the homeless?

**Compliance with GMA Prohibition on Differential Treatment of Housing for Handicapped Persons.**

9. Does the Ordinance fail to comply with RCW 36.70A.410 by treating a residential structure occupied by persons with handicaps (an overnight shelter for the homeless) differently than a similar residential structure occupied by a family or other unrelated individuals?