

1 *taken as disagreement with or criticism of the intent behind the City's action. The City's goal*
2 *of infilling is necessary, laudable and achievable.*

3 Procedural matters relevant to the case are detailed in Appendix A. The Legal Issues
4 raised are set forth in Appendix B and some of the City's comprehensive plan policies are
5 included in Exhibit C.
6

7 **I. INTRODUCTION**

8 The Petitioners challenged the City of Olympia's adoption of Ordinance 7160 (the
9 "Missing Middle¹ regulations" or the "Ordinance") which was comprised of numerous
10 amendments of the City's development regulations intended to allow "infill" of residential
11 neighborhoods. The Board previously found and concluded that the City's action in adopting
12 the Ordinance violated RCW 43.21C.030 by basing its issuance of a Declaration of Non
13 Significance (DNS) for the Ordinance on an inadequate Checklist.² The Petitioners
14 requested the imposition of invalidity based on the violation of RCW 43.21C.030 but the
15 Board deferred ruling on that request to the Hearing on the Merits. In this order, the Board
16 has considered the remaining issues as well as the deferred invalidity request.
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19 **II. BOARD JURISDICTION**

20 The Board finds the Petition for Review was timely filed pursuant to RCW 36.70A.290
21 (2). The Board finds the Petitioners have standing to appear before the Board pursuant to
22 RCW 36.70A.280(2)(b). The Board also finds it has jurisdiction over the subject matter of the
23 petition pursuant to RCW 36.70A.280(1).
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26 **III. STANDARD OF REVIEW**

27 Comprehensive plans and development regulations, and amendments to them, are
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30 ¹ Ex. 425 at 1: The term "Missing Middle" refers to a range of multi-unit housing types that are compatible in
31 scale with single-family homes.

32 ² *Olympians v. City of Olympia*, GMHB No. 19-2-0002c (Order Denying Motion to Dismiss, Granting Summary
Judgment, March 29, 2019).

1 presumed valid upon adoption.³ This presumption creates a high threshold for challengers
2 as the burden is on the Petitioners to demonstrate that any action taken by the City is not in
3 compliance with the Growth Management Act (GMA).⁴ The Board is charged with
4 adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and
5 development regulations.⁵

6
7 The scope of the Board's review is limited to determining whether a jurisdiction has
8 achieved compliance with the Growth Management Act (GMA), only with respect to those
9 issues presented in a timely petition for review.⁶ The Board is directed to find compliance
10 unless it determines that the challenged action is clearly erroneous in view of the entire
11 record before the Board and in light of the goals and requirements of the GMA.⁷

12 13 **IV. ANALYSIS AND DISCUSSION**

14 The Board has previously granted summary judgment on Issue 1 which alleged
15 violations of RCW 43.21C.030.⁸ All remaining issues allege GMA violations related to
16 inconsistencies between Comprehensive Plan goals/policies and the development
17 regulations adopted with the challenged ordinance together with related arguments that the
18 development regulations fail to implement the Comprehensive Plan goals/policies.

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21 _____
22 ³ RCW 36.70A.320(1).

23 ⁴ RCW 36.70A.320(2).

24 ⁵ RCW 36.70A.280, RCW 36.70A.302.

25 ⁶ RCW 36.70A.280(1): The growth management hearings board shall hear and determine only those petitions
26 alleging either: (a) That, except as provided otherwise by this subsection, a state agency, county, or city
27 planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as
28 it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it
29 relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58
30 RCW . . .

31 ⁷ RCW 36.70A.320(3). In order to find the City's action clearly erroneous, the Board must be "left with the firm
32 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?

1 RCW 36.70A.130(1)(d) requires that any amendment or revision to development
2 regulations shall be consistent with and implement the comprehensive plan. Those terms are
3 defined in the Washington Administrative Code.

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

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

17 The consistency required between development regulations and comprehensive plans
18 means that no feature of the plan or regulation is incompatible with any other feature of a
19 plan or regulation.⁹ The Board has analyzed the meaning of these terms and applied them in
20 numerous decisions.

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

25 Growth Management Act (GMA) also requires that development regulations
26 "implement" the policies and provisions of the comprehensive plan.
27 "Implement" has a more affirmative meaning than merely "consistent with."
28 Implement connotes not only a lack of conflict but sufficient scope to carry out
29

30 ⁹ WAC 365-195-210(8); *CMV, et al. v. Mount Vernon*, WWGMHB No. 98-2-0006 (FDO, July 23, 1998).

31 ¹⁰ *Alberg, et al v. King County*, CPSGMHB No. 95-3-0041c (FDO, September 13, 1995) at 15. *See also: West*
32 *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).

1 fully the goals, policies, standards and directions contained in the
2 comprehensive plan.¹¹

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

7
8 In determining when an inconsistency exists between various parts of a local
9 jurisdiction's planning policies and regulations, we have held that consistency
10 means that no feature of the plan or regulation is incompatible with any other
11 feature of the plan or regulation. ... Said another way, no feature of one plan
12 may preclude achievement of any other feature of that plan or any other plan.¹³

13 A finding of inconsistency requires a showing of actual conflict between
14 competing provisions of a city's planning policies and development
15 regulations.¹⁴

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

20 In *Cook & Heikkila*¹⁶ the Board identified the three questions that need to be
21 addressed in such cases:

- 22
- 23 • Do the development regulations **implement** the comprehensive plan goals and
 - 24 policies?
 - 25 • Do any of the development regulation's features **preclude achievement** of any of
 - 26 the Comprehensive Plan policies?
 - 27 • Have the Petitioners shown **actual conflict** between Comprehensive Plan policies
- 28

29 ¹¹ *Bertelsen and Raine v. Yakima County, et al.*, EWGMHB No. 00-1-0009 (FDO, November 2, 2000) at 7.

30 ¹² *Cook & Heikkila v. Winlock*, CPSGMHB No. 09-2-0013c (FDO, October 8, 2009) at 35.

31 ¹³ *Ray, et al. v. City of Olympia and Dept. of Ecology*, WWGMHB No. 02-2-0013 (FDO, June 11, 2003) at 9.

32 ¹⁴ *Id.* at 1.

¹⁵ *Martin v. Whatcom County*, GMHB No. 11-2-0002 (FDO, July 22, 2011) at 17.

¹⁶ *Cook & Heikkila v. Winlock*, WWGMHB No. 09-2-0013c (FDO, October 8, 2009) at 34, 35.

1 and the new developments regulations?

2 **Relevant statutes:**

3
4 RCW 36.70A.120: Each county and city that is required or chooses to plan under RCW
5 36.70A.040 shall perform its activities and make capital budget decisions in conformity with
6 its comprehensive plan.

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

10 In briefing, the Petitioners first focused on Issues 2.1, 2.2, 2.3, and 2.8, making varied
11 arguments. They assert violations of the GMA's consistency/implementation requirements
12 set forth in RCW 36.70A.130(1)(d) and RCW 36.70A.120 arising from the Ordinance's
13 failure to concentrate increased development in districts other than the City's Low-Density
14 Neighborhoods, their failure to protect existing Low-Density Neighborhoods and, finally, the
15 Ordinance's allowance of greater density in Low-Density Neighborhoods than provided for
16 by the comprehensive plan. The Board will address each of those separate arguments in
17 turn.
18

19 The Issue statements also alleged violations of RCW 36.70A.040(3) and WAC 365-
20 196-500(3). RCW 36.70A.040(3) established the requirement that jurisdictions adopt initial
21 comprehensive plans and implementing development regulations.¹⁷ The City of Olympia
22 adopted the required comprehensive plan and development regulations many years ago.
23 The Board finds and concludes that the Petitioners are unable to establish the Ordinance
24 violated RCW 36.70A.040(3). Allegations of violations of that statute in all issues will be
25 dismissed. Similarly, the Board will dismiss allegations of WAC 365-196-500(3). That rule is
26 included in chapter 365-196 WAC, the procedural criteria for compliance with the GMA.
27
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30 ¹⁷ *Peranzi v. City of Olympia*, GMHB No. 11-2-0011 (FDO, May 4, 2012) at 6: "Neither will the Board consider
31 alleged violations of RCW 36.70A.040(3). That statute specifically sets forth initial county and city
32 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."

1 While the Board considers the procedural criteria, any determination of compliance must be
2 based on the requirements of the GMA itself.¹⁸

3
4 **Issue Statements:**

5 2. Is the Ordinance inconsistent with and does it fail to implement the following
6 Olympia Comprehensive Plan goals and policies in violation of RCW
7 36.70A.040(3), RCW 36.70A.120; RCW 36.70A.130(1)(d); and WAC 365-196-
8 500(3)?

9 2.1 Goals and policies that require compatible housing types and densities,
10 maintenance of neighborhood character, and buffers between incompatible
11 uses, *e.g.*, PL 1.8, PL 3.2, PL 3.5, PL 3.6, PL 3.8, GL 5, PL 5.5, PL 5.7, PL
12 6.2, PL 6.4, PL 13.5, PL 13.6, PL 14.3, PL 16.9, PL 16.10, PL 16.11, GL 20,
13 PL 20.1, and PS9.4.

14 2.2 Goals and policies that seek protection of designated historic properties and
15 districts and properties and neighborhoods that reflect the city's heritage, *e.g.*,
16 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
17 6, PL 7.4, and PS 4.1, GE 8, PE 8.1, PE 8.2, PE 8.3, PE 8.4.

18 2.3 Goals and policies which seek to promote more housing in commercial areas,
19 high density corridors and in three designated high-density neighborhoods
20 (i.e., High Density Neighborhood Overlay), *e.g.*, PL 1.3, PL 11.1, PL 11.2, PL
21 11.3, PL 11.5, PL13.3, PL 13.6, PL 14.2, PL15.4, PS 9.4 and GT 14.

22 2.8 Provisions that stipulate maximum unit density and housing types in Low-
23 Density Neighborhoods. See, *e.g.*, Appendix A and Future Land Use Map in
24 the Land Use and Urban Design Chapter of the 2014 Olympia
25 Comprehensive Plan.

26 **A. Concentrating Development**

27 The Petitioners argue that the Ordinance's regulations fail to implement the
28 Comprehensive Plan's policies supporting the concentration of growth and higher densities
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32 ¹⁸ WAC 365-196-030(3).

1 in areas of the City¹⁹ other than the Low-Density Neighborhoods.²⁰ The Petitioners
2 succinctly set forth their argument: “. . . the Missing Middle does not make any provisions at
3 all to concentrate growth in the designated districts and, thereby, violates the
4 Comprehensive Plan.”²¹ Here, the Petitioners fail to acknowledge that the Ordinance was
5 neither designed nor intended to address the zoning, nor related densities, throughout all
6 areas of the City. Simply put, the Missing Middle ordinance was not required to make any
7 such provisions, as the City observes “. . . not every regulation must carry out all of the
8 City’s policies and goals.”²² Other development regulations may in fact implement those
9 policies. The Missing Middle development regulations neither preclude achievement of the
10 cited comprehensive plan policies nor have the Petitioners shown actual conflict between
11 those policies and the development regulations. The Petitioners have failed to meet their
12 burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120
13 related to those policies which seek to concentrate development in areas other than Low-
14 Density Neighborhoods as alleged in Issues 2.1, 2.2, 2.3 and 2.8.
15
16

17 **B. Protection of Existing Neighborhoods**

18 The Petitioners’ arguments regarding impacts on neighborhood character arise from
19 the Ordinance’s allowance of increased densities, allowance of housing of a size, type and
20 scale allegedly out of character with the existing single-family nature of Low-Density
21
22

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

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

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

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

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

²¹ *Id.*

²² City of Olympia’s Response Brief at 9.

1 Neighborhoods, and impacts to parking, privacy, and sunlight access. The Board will first
2 address the questions regarding allowed densities followed by the remaining arguments.

3
4 **1. Density**

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

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

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

13
14 Low-Density Neighborhoods.

15
16 This designation provides for low-density residential development, primarily
17 single-family detached housing and low-rise multi-family housing, in densities
18 ranging from twelve units per acre to one unit per five acres depending on
19 environmental sensitivity of the area. Where environmental constraints are
20 significant, to achieve minimum densities extraordinary clustering may be
21 allowed when combined with environmental protection. Barring environmental
22 constraints, densities of at least four units per acre should be achieved.
23 Supportive land uses and other types of housing, including accessory dwelling
24 units, townhomes and small apartment buildings, may be permitted. Specific
25 zoning and densities are to be based on the unique characteristics of each
26 area with special attention to stormwater drainage and aquatic habitat.
27 Medium Density Neighborhood Centers are allowed within Low Density
28 Neighborhoods. Clustered development to provide future urbanization
29 opportunities will be required where urban utilities are not readily available.

30
31 Medium-Density Neighborhoods:

32 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

²³ Ex. 1 at 144.

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

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

7
 8 Table: Future Land Use Designations

| FUTURE LAND USE DESIGNATION | PRIMARY USE ¹ | RESIDENTIAL DENSITY ² | BUILDING HEIGHTS ³ | ESTIMATED ACREAGE ⁴ | PERCENTAGE OF UGA ⁵ |
|------------------------------------|---------------------------|----------------------------------|-------------------------------|--------------------------------|--------------------------------|
| Low-Density Neighborhoods (LDN) | Single-family Residential | Up to 12 units per acre | 2 to 3 stories | 11,495 ac. | 71% |
| Medium-Density Neighborhoods (MDN) | Multi-family Residential | 13 to 24 units per acre | Up to 3 stories | 615 ac. | 4% |

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 18 The Petitioners' density contention is that the regulations included in the Ordinance
 19 allow densities far in excess of those provided for in the comprehensive plan for the City's
 20 Low-Density Neighborhoods. The City claims that allowed density in the Low-Density
 21 Neighborhoods has not been increased²⁵ and, additionally, that there is no applicable
 22 density maximum, citing Footnote 2 in the above Table which provides:

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

26 The Board is not persuaded by the City's assertion that Footnote 2 somehow negates
 27 the comprehensive plan's maximum density limit of 12 applicable to the Low-Density
 28

29
 30 ²⁴ Ex. 1 at 147.

31 ²⁵ City of Olympia's Response Brief at 11: "The Comprehensive Plan does not rigidly fix the densities allowed
 32 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."

1 Neighborhoods. The footnote does indeed provide for a range of densities; within the Low-
2 Density Neighborhoods that range is between “twelve units per acre to one unit per five
3 acres depending on environmental sensitivity of the area.” The Board further observes that
4 the City’s development regulations refer to “maximum densities” as either 8 units per acre or
5 12 units per acre within the R 4-8 and R 6-12 zones, respectively.²⁶ Staff documents also
6 reference maximum Low-Density Neighborhood densities.²⁷ Finally, the Board notes that
7 deviation within the density range authorized by Footnote 2 is to be based on “site
8 suitability,” and is not applicable throughout the Low-Density Neighborhoods as the
9 challenged regulations authorize. The City’s claim that there is no maximum density
10 provided in the comprehensive plan for its Low-Density Neighborhoods is not credible.

11 Having so concluded, the question is then whether the challenged Ordinance
12 authorizes densities to exceed 12 units per acre within the Low-Density Neighborhoods, a
13 contention that the City initially denies.²⁸ Interestingly, after having argued that the Missing
14 Middle (MM) regulations do not increase density as it contended, the City then states that
15 “The MM Ordinance does increase density limits as claimed by [the Petitioners]” in their
16 Brief at pages 8-10.²⁹ The Petitioners’ claims referenced by the City and which the City
17 acknowledges serve to increase density include the following:

- 18 • On parcels of a half-acre or less, maximum housing densities no longer apply for
19 duplexes, triplexes, fourplexes and courtyard apartments.³⁰
- 20 • On lots with 10,000 square feet or less of land, maximum housing densities do not
21 apply for townhomes.³¹

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26 ²⁶ *Ex. 535* at 51; The amendments in the challenged ordinance also refer to maximum densities at *Ex. 635* at
27 57, Olympia Municipal Code (OMC) Sec. 18.04.080 (A)(1)(a) See also a Staff report, *Ex. 887* at 21;

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

30 ²⁸ City of Olympia’s Response Brief at 12: “Densities are not increased by the MM Ordinance”. Also see City
31 Brief at 5 where the City states that the challenged ordinance did not amend “many other adopted regulations .
32 . . . 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).

²⁹ City of Olympia’s Response Brief at 13.

³⁰ *Ex. 635* at 57: OMC 18.04.080(A)(1)(b)

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,

³² Ex. 635 at 57: OMC 18.04.080(A)(4).

³³ Ex. 635 at 16: OMC 18.04.060.

³⁴ OMC 18.04.080(A)(5)(b).

³⁵ OMC 18.04.080(A)(1); .080(A)(1)(a).

³⁶ OMC 18.02.180.

³⁷ OMC 18.04.080(A)(1.080(A)(1)(a).

³⁸ Ex. 592 at 2: "With multiplexes such as are being proposed here . . . so if you're creating a fourplex lot, it has to meet that minimum lot size and then its counted as four units as part of that density calculation . . ."

1 the maximum density limits do not apply.³⁹ Thus, if a 6,000 square foot lot located
2 in the R 6-12 density area includes one SFR and it is converted to a duplex, the
3 resulting density would be 14 units per acre. (See *Ex. 635*, Table 4.04 at 51)

- 4 • Cottage housing provides an additional example. A “cottage housing development”
5 is defined as “four or more dwelling units sharing a commonly owned
6 courtyard/common area . . .”⁴⁰ A cottage housing development must include no
7 less than four and no more than 12 dwelling units.⁴¹ Dwellings in cottage housing
8 developments may, but are not required to be, located on individual lots.⁴² A
9 cottage housing development is entitled to a 50% density bonus.⁴³ The minimum
10 lot size applicable to a cottage housing development in the R 6-12 zone is 2,000
11 square feet.⁴⁴ Assuming the minimum lot size applies to one “cottage” (i.e. 1 unit),
12 a 10,000 square foot lot would allow 6 cottages after application of the 50%
13 density bonus. The result is a density of 24 units per acre.
14
15

16 The Petitioners provided an exhibit which includes some of the calculations set forth in
17 the preceding paragraphs.⁴⁵ It illustrates the effect on densities with application of the
18 challenged Ordinance. While the City states that the exhibit “is based on incorrect
19 assumptions and contains many inaccuracies, including assuming multi-unit buildings can be
20 placed on a single lot, inaccurate rounding and misapplication of OMC 18.04.080,” the City
21 fails to refute the conclusion that densities are allowed to exceed 12 units per acre in the
22 Low-Density Neighborhoods under certain scenarios.⁴⁶ Significantly, counsel for the City,
23 Jeffrey S. Meyers, acknowledged during the hearing on the merits that densities could
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26

27 _____
28 ³⁹ OMC 18.04.080(A)(4).

29 ⁴⁰ *Ex. 635* at 92.

30 ⁴¹ *Ex. 635* at 23.

31 ⁴² *Id.*

32 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.

1 exceed 12 units per acre in the Low-Density Neighborhoods with application of the new
2 regulations.⁴⁷

3 The Missing Middle development regulations fail to implement and preclude
4 achievement of the cited comprehensive plan density polices and provisions and the
5 Petitioners have shown actual conflict between those policies and the development
6 regulations. The Petitioners have met their burden of proof to establish violations of RCW
7 36.70A.130(1)(d) and RCW 36.70A.120 related to those density policies and provisions that
8 provide for maximum Low-Density Neighborhood densities as alleged in Issues 2.1 and 2.8.
9

10 **2. Size, Type and Scale of Development Allowed**

11 The Petitioners argue that the Missing Middle regulations are inconsistent with and
12 fail to implement comprehensive plan polices designed to protect neighborhood character.
13 They assert that the Ordinance actually serves to erode those policies by eliminating
14 existing protections.⁴⁸ They reference increased density, scale, reduced setbacks, loss of
15 parking and loss of sunlight and privacy.
16
17

18 The question of density has been previously addressed insofar as the allowance of
19 densities in excess of those contemplated by the comprehensive plan. Increased densities
20

21 ⁴⁷ See Partial Transcript of Hearing on the Merits, May 23, 2019, at 33, lines 11-16 and 19-21 and at 34, lines
22 1-3 and 9-13:

23 BRICKLIN: So on the minimum lot size, 13,000 square feet for an acre, that's three-plus lots of that size you
24 can have on one acre. The city acknowledges you can, on any given lot 13,000-square-foot lot, you can put 12
25 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
26 36 units in that acre. . . .

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

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

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

32 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.

1 within existing single family neighborhoods will undoubtedly have some impact on
2 “neighborhood character.”⁴⁹ However, this portion of the Petitioners’ argument focuses on
3 the type of development, asserting that allowing more diverse types of housing will fail to
4 “preserve and enhance” neighborhood character and will fail to “maintain or improve the
5 character . . . of the neighborhood.”

6
7 The City disputes the assertion that the regulations will fail to protect existing
8 neighborhoods. It cites comprehensive plan policies and statements that not only encourage
9 a variety of housing types and opportunities but which remain subject to other
10 policies/statements as well as implementing development regulations. For example, it
11 references the comprehensive plan:

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

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

24 In all residential areas, allow small cottages and townhouses, and one
25 accessory housing unit per home -- all subject to siting, design and parking
26 requirements that ensure neighborhood character is maintained.⁵²

27
28
29
30 The City then references regulations implementing those policies, including “Infill and
31 Other Residential” design review mandated to consider both neighborhood scale and
32

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.

1 character,⁵³ the more generalized design review included in chapter 18.100 OMC,⁵⁴ and the
2 City's Historic Preservation Ordinance.⁵⁵

3 As with increases in density, allowing housing choices other than single family homes
4 will affect the character of a neighborhood. "Neighborhood character" is a nebulous,
5 subjective concept. The City's comprehensive plan policies seek to "preserve and enhance"
6 character (PL 4.2), and require development to be "of a type, scale, orientation, and a
7 design that maintains or improves the character, aesthetic quality, and livability" (PL 20.1).
8 Do the development regulations fail to implement those comprehensive plan policies? The
9 Board does not believe so. Neighborhoods change over time, whether or not additional
10 housing types are authorized. It appears that the City has taken steps to minimize the effects
11 of change by imposing design review standards specifically focused on maintaining
12 neighborhood scale and character. Nor do the development regulations included in the
13 Ordinance preclude achievement of the policies. Maintenance of neighborhood character is
14 possible with the understanding or acknowledgement that that character is not a static
15 concept.
16

17
18 The Missing Middle regulations do implement certain comprehensive plan policies
19 and do not preclude achievement of the comprehensive plan policies cited by the
20 Petitioners. No actual conflict between those policies and the development regulations has
21 been established. The Petitioners have failed to meet their burden of proof to establish
22 violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 related to those policies which
23 seek to maintain and enhance neighborhood character in Low-Density Neighborhoods
24

25
26
27 ⁵³ OMC chapter 18.175., OMC 18.175.020 requires, for example, as follows: Minimize the appearance of
28 building scale differences between proposed dwelling unit(s) and existing neighborhood residential units.
29 Reflect the architectural character of neighboring residences (within 300' on the same street) through use of
30 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
31 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.
32

1 resulting from changes in development type, scale or size as alleged in Issues 2.1, 2.2, 2.3
2 and 2.8.

3 4 **3. Impacts to Parking, Privacy and Sunlight, Historic Resources**

5 **2.1** Goals and policies that require compatible housing types and densities,
6 maintenance of neighborhood character, and buffers between incompatible
7 uses, *e.g.*, PL 1.8, PL 3.2, PL 3.5, PL 3.6, PL 3.8, GL 5, PL 5.5, PL 5.7, PL
8 6.2, PL 6.4, PL 13.5, PL 13.6, PL 14.3, PL 16.9, PL 16.10, PL 16.11, GL
9 20, PL 20.1, and PS9.4.

10 The Petitioners' argument regarding impacts to sunlight and privacy consist of a
11 single, conclusory sentence.⁵⁶ The Board will dismiss those claims due to inadequate
12 briefing/abandonment in accordance with WAC 242-03-590(1). Included in this Issue the
13 Petitioners also allege that the Missing Middle regulations fail to protect historic properties.
14 That argument fails to acknowledge the City's application of the Historic Preservation
15 Ordinance as well as its design review process and the criteria implementing the process
16 included in OMC 18.100.090 and OMC 18.100.100.⁵⁷ The Petitioners have failed to meet
17 their burden to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 related
18 to those policies which address protection of historic properties.

19
20 Another aspect of the Petitioners' argument in which they allege the Missing Middle
21 regulations fail to protect existing Low-Density Neighborhoods and their character involves
22 on-street automobile parking. While the Petitioners observe that the Low-Density
23 Neighborhoods currently "enjoy adequate on-street parking,"⁵⁸ they contend that the Missing
24 Middle Ordinance's on-site parking requirement reductions were made without realistically
25 estimating the number of additional vehicles that would be generated by the allowed new
26 development and without analyzing current on-site parking capacity. They assert that the
27 significant number of additional cars added to their neighborhoods combined with reduced
28
29

30
31 ⁵⁶ Petitioners' Prehearing Brief at 20.

⁵⁷ *Ex. 635*, Sections 14 and 15, at 183-186.

32 ⁵⁸ Petitioners' Prehearing Brief at 18.

1 parking requirements will fail to protect neighborhood character as required by various
2 comprehensive plan goals and policies.⁵⁹

3 The Missing Middle regulations eliminated off-street parking requirements for
4 accessory dwelling units (ADUs)⁶⁰, reduced the number of off-street spaces from two to one
5 for single family detached homes of 800 square feet or less⁶¹, reduced the off-street
6 requirements for duplexes, triplexes, fourplexes, courtyard apartments and townhouses
7 from 1 ½ per unit to 1 per unit⁶², single-family residence detached homes equal to or less
8 than 800 ft.² are reduced from 2 spaces to 1, and Single Room Occupancies⁶³ (SROs)
9 require only one parking space per four every units.⁶⁴

10
11 The Petitioners observe that the City neither analyzed existing on-street parking
12 capacity nor the resulting impacts of the regulations on that capacity. Due to that lack of
13 analysis, the Eastside Neighborhood Association (ENA) conducted its own detailed analysis
14 of the impact of the Missing Middle regulations on parking requirements for additional cars
15 which concluded that in its neighborhood alone, the Missing Middle draft regulations had the
16 potential to generate 1165 residential units and 991 additional cars.⁶⁵ Following the ENA's
17 calculations the City further modified the requirements which led the ENA to raise its
18
19

20 _____
21 ⁵⁹ GL 20 Development maintains and improves neighborhood character and livability.

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

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

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

31 ⁶⁰ Ex. 635, Section 1, OMC 18.38.100, Table 38.01 at 173.

32 ⁶¹ Ex. 635, Section 1, OMC 18.38.100, Table 38.01 at 175.

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. See Ex. 635, Table 38.01 at 173.

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.)

⁶⁴ Ex. 635, Section 1, OMC 18.38.100, Table 38.01 at 175.

⁶⁵ Ex. 465 at 000017.

1 estimates, concluding that an additional 1121 cars would be added.⁶⁶ The Petitioners also
2 noted the current lack of sufficient curbing in much of the neighborhood.⁶⁷

3 The City acknowledges the reduction in parking requirements.⁶⁸ However, its
4 response to the Petitioners' argument merely cites and quotes one of the comprehensive
5 plan policies:⁶⁹

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

9
10 It also refers to the City Council's Findings in Ordinance 7160 where the Council found the
11 Missing Middle development regulations were consistent with Comprehensive Plan Policy
12 16.9 and that the regulations implemented that policy.⁷⁰ However, the City does not dispute
13 the ENA data regarding potentially inadequate parking. It merely references Policy PL 16.9,
14 states the parking requirements were "changed multiple times throughout the process and
15 [parking] was an area of particularly lengthy discussion at the Planning Commission,"⁷¹ and
16 suggests that the Petitioners have "trivialized the role that existing city processes will play to
17 protect [neighborhood] character . . ." ⁷²

18
19 The Board also notes the failure of the City's SEPA analysis to analyze the number of
20 additional parking spaces that would be required by the City's "non-project action." The
21 City's SEPA Checklist posed the following specific questions: "How many additional parking
22 spaces with the completed project or non-project proposal have? How many will the project
23 or proposal eliminate?" The City's response was:

24 Does not apply, as this is a non-project action. However, future residential
25 development would continue to be required to provide off-street parking
26 spaces in accordance with existing city codes, with one exception – accessory
27

28 ⁶⁶ Ex. 876.

29 ⁶⁷ Ex. 465 at 000017 and 000019.

30 ⁶⁸ City of Olympia's Response Brief at 5; Ex. 635, Section 1, OMC 18.38.100, Table 38.01 at 173-175.

31 ⁶⁹ City of Olympia's Response Brief at 21.

32 ⁷⁰ Ex. 635 at 1.

⁷¹ City of Olympia's Response Brief at 29.

⁷² City of Olympia's Response Brief at 21.

1 dwelling units would no longer be required to provide an off-street parking
2 space.⁷³

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

11
12 Based on a review of Goal GL 20 and policies PL 14.3, PL 16.9, and PL 20.1, the
13 Missing Middle Ordinance's provisions increasing densities, the additional density bonuses
14 provided, allowances of additional housing types, reduced lot setbacks and reduced on-site
15 parking requirements, combined with review of the data prepared by the ENA and other
16 portions of the record, the SEPA Checklist, and further combined with the City's failure to
17 dispute the data provided by the ENA, the Board is left with the firm conviction that a
18 mistake has been made. The Petitioners have met their burden to establish that the
19 regulations are inconsistent with, fail to implement, and are in actual conflict with Goal GL
20 20 and policies PL 14.3, PL 16.9, and PL 20.1 as they fail to address parking necessary to
21 ensure that Low-Density Neighborhood character is maintained in regards to parking as
22 alleged in Issue 2.1.
23
24

25 The Petitioners have failed to meet their burden of proof to establish violations of
26 RCW 36.70A.130(1)(d) and RCW 36.70A.120 related to those policies which address
27 impacts to sunlight, privacy and protection of historic properties as alleged in Issue 2.1
28
29
30

31 ⁷³ Ex. 322 at 17.

32 ⁷⁴ Order Denying Motion to Dismiss, Allowing Supplementation of the Record, Granting Summary Judgment, and Deferring Consideration of Invalidity at 5 (March 29, 2019).

1 **C. Affordable Housing Issue 2.4**

2 2. Is the Ordinance inconsistent with and does it fail to implement the following
3 Olympia Comprehensive Plan goals and policies in violation of RCW
4 36.70A.040(3), RCW 36.70A.120; RCW 36.70A.130(1)(d); and WAC 365-196-
5 500(3)?

6 **2.4** Goals and policies which seek to encourage the development of housing for
7 people with low income (by encouraging the demolition of existing low-cost
8 housing and replacing it with more expensive housing), *e.g.*, GS 3, PS 3.2,
9 PS 3.3, PS 4.2, and PS 5.3.

10 With issue 2.4 the Petitioners contend that the MM regulations will fail to implement
11 and preclude comprehensive plan policies aimed at preserving affordable housing.⁷⁵ They
12 focus primarily on Policy PS 3.2 which “encourage[s] the preservation of existing houses,”
13 arguing that demolition of existing housing is allowed and encouraged, and that while the
14 regulations seek to increase the types of housing available they fail to consider the
15 affordability of such housing. They cite data that indicates newer housing tends to be
16 significantly more expensive than housing it replaces.⁷⁶ They also stress that while housing
17 supply may indeed increase, the record fails to support any consideration of affordability.
18

19 As has been stated previously and as argued by the City, not every regulation is
20 required to implement all of a jurisdiction’s comprehensive plan policies. Here, the Board
21 finds that the challenged Ordinance does not preclude attainment of the cited goals and
22 policies addressing the affordability of housing. The Petitioners have failed to meet their
23 burden of proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120
24

25
26 ⁷⁵ PS 3.2 Encourage preservation of existing houses.

27 GS 3 Affordable housing is available for all income levels throughout the community.

28 PS 3.3 Take steps to ensure housing will be available to all income levels based on projected community
29 needs.

30 PS 4.2 Provide assistance and incentives to help low-income residents rehabilitate properties they cannot
31 afford to maintain.

32 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.

1 related to those policies which seek to address housing affordability as alleged in Issue 2.4.

2
3 **D. Public Participation Issues 2.5 and 2.9**

4 2. Is the Ordinance inconsistent with and does it fail to implement the following
5 Olympia Comprehensive Plan goals and policies in violation of RCW
6 36.70A.040(3), RCW 36.70A.120; RCW 36.70A.130(1)(d); and WAC 365-196-
7 500(3)?

8 **2.5** Goals and policies which require a “bottom up” process, with neighborhoods
9 identifying “priorities, assets and challenges” in designated sub-areas and
10 where Neighborhood Centers emerge from a neighborhood process, not from
11 planners in City Hall. See, PP 5.1, PL 14.4, GL 23, PL 23.1 and PL 23.2.

12 **2.9** Goals and policies that recognize the importance of public participation in City
13 decisions, especially around land use. See e.g., GP1, PP 1.1, GP 3, PP 3.3,
14 GP 4, PP 4.1, PP 4.2, PP 5.1, PP 5.2, PP 5.5, PL 23.1, PL 23.2.

15 While the Petitioners assert the City failed to provide adequate “public participation,”
16 they have not alleged GMA violations of RCW 36.70A.035 and RCW 36.70A.140. Rather,
17 these issues again argue that the process leading to the ultimate adoption of the challenged
18 Ordinance was inconsistent with and failed to implement numerous comprehensive plan
19 policies.⁷⁷ The Petitioners deride that process, saying it was not created from the "bottom-
20 up" but rather was imposed upon the neighborhoods. The argument appears to be that the
21 challenged Ordinance was neither crafted to implement Comprehensive Plan goals and
22 policies nor was it a result of a City Council directive.⁷⁸ Rather, it was first "conceptualized"
23 in June, 2016 and the public was not apprised of the concept until much later. The
24 Petitioners claim the public process was flawed: the specifics of the ordinance were
25 constantly changing, were difficult to understand, the public was deprived of opportunities
26 for adequate input and the faulty SEPA process added to the lack of opportunity to provide
27 input.⁷⁹
28
29

30
31 ⁷⁷ The lengthy list of Comprehensive Plan policies related to Issue 2.5 are set forth on *Ex. C*.

32 ⁷⁸ Petitioners' Prehearing Brief at 25

⁷⁹ Petitioners' Prehearing Brief at 24-29.

1 The City takes strong exception to the Petitioners' assertions, contending it provided
2 extensive public involvement opportunities. It references the establishment of a "dedicated
3 webpage," a newsletter to provide updates, establishment of a citizenship group, 14
4 neighborhood association meetings, open houses, Planning Commission meetings and
5 hearing, City Council committee meetings, and City Council meetings.⁸⁰
6

7 The public participation observations of the parties are of interest. However, the
8 Board observes that these issues do not present the typical "public participation" claim
9 based on allegations of non-compliance with RCW 36.70A.035 and/or RCW 36.70A.140.⁸¹
10

11 _____
12 ⁸⁰ City of Olympia's Response Brief at 27.

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

19 (a) Posting the property for site-specific proposals;
20 (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where
21 the proposal is located or that will be affected by the proposal;
22 (c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal
23 being considered;

24 (d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and
25 (e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general
26 lists or lists for specific proposals or subject areas.

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

32 (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.

1 Rather, the claims are that the crafting and consideration of the challenged Ordinance were
2 not “in keeping with the policies of the Comprehensive Plan.”⁸²

3 The specific GMA violation alleged is that the Ordinance is “inconsistent with
4 comprehensive plan goals and policies.” The Ordinance consists of the adopted specific
5 regulations, not the process leading up to the Ordinance’s adoption. GMA public
6 participation process violations typically relate to the requirements of RCW 36.70A.035
7 and/or RCW 36.70A.140. Establishing a violation such as alleged here would require a
8 specific comprehensive plan policy process mandate; such a mandate does not appear in
9 any of the goals and policies cited by the Petitioners. The Petitioners are unable to establish
10 violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 in regards to the allegations
11 included in Issues 2.5 and 2.9.
12
13

14 **E. Environmental Impacts/Public Services Issue 2.6**

15 **2.** Is the Ordinance inconsistent with and does it fail to implement the following
16 Olympia Comprehensive Plan goals and policies in violation of RCW
17 36.70A.040(3), RCW 36.70A.120; RCW 36.70A.130(1)(d); and WAC 365-196-
18 500(3)?

19 **2.6** Goals and policies which seek to “focus development in locations that will
20 enhance the community and have capacity and efficient supporting services,
21 and where adverse environmental impacts can be avoided or minimized,”
22 protect solar access, and otherwise make adequate provision for public

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

25 **RCW 36.70A.140** Each county and city that is required or chooses to plan under RCW 36.70A.040 shall
26 establish and broadly disseminate to the public a public participation program identifying procedures providing
27 for early and continuous public participation in the development and amendment of comprehensive land use
28 plans and development regulations implementing such plans. The procedures shall provide for broad
29 dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective
30 notice, provision for open discussion, communication programs, information services, and consideration of and
31 response to public comments. In enacting legislation in response to the board's decision pursuant to RCW
32 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.

⁸² Petitioners’ Prehearing Brief at 29.

1 services and facilities. See, e.g., GL 1, PL 1.2, PL 1.3, PL 2.5, GN 4, PN
2 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.

3 Petitioners allege in Issue 2.6 that the Missing Middle regulations are inconsistent
4 with and fail to implement many comprehensive plan goals and policies that seek to focus
5 development to areas that would minimize negative environmental impacts, protect solar
6 access and ensure adequate public services. Initially, they cite the following policies:
7

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

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

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

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

17
18 The Petitioners raise significant questions regarding the potential environmental
19 impacts resulting from development authorized by the Missing Middle regulations, primarily
20 involving the City's combined storm/sewer system and increases in impervious surfaces.⁸³
21 Those questions relate to the potential environmental impacts resulting from the level of
22 development authorized by the Missing Middle regulations. Can the "adverse environmental
23 impacts . . . be avoided or minimized"? (PL 1.2) Will the "rate of expansion of impervious
24 surface" be reduced? (PN 5.1) Will impacts to "sensitive drainage basins" be avoided? (PL
25 1.3) The Petitioners observe that increased allowed densities will lead to increased
26 impervious surfaces which will in turn impact stormwater runoff with consequent effects on
27 the City's combined storm/sewer system and potential increased runoff to Puget Sound.⁸⁴
28

29 The record includes a review prepared by Tom Holz, P. E. which addresses runoff
30

31 ⁸³ Petitioners' Prehearing Brief at 30-32.

32 ⁸⁴ Ex. 659 at 115-117.

1 impacts and sewage overflow risks related to the regulations. Also in the record is a 2015
2 technical report from the Lacey Olympia Tumwater Thurston County Clean Water Alliance
3 (LOTT) which addresses a "Peak Flow Reduction Evaluation"⁸⁵ and which notes that some
4 areas slated for increased density and lot coverage by the Missing Middle regulations are
5 within the areas of the City with the highest amounts of inflow and infiltration⁸⁶ into the
6 combined storm/sewer system.⁸⁷
7

8 The Board has previously determined that the Declaration of Non-Significance (DNS)
9 was inadequate, having been based on a faulty Environmental Checklist. The DNS and the
10 Checklist failed to address the questions the Petitioners now raise and which were posed by
11 the Environmental Checklist. The City asserted in numerous instances on the Checklist that
12 the proposed regulations constituted a non-project action and also that "potential impacts of
13 future, specific development proposals will be addressed through regulations and/or project
14 specific environmental review."⁸⁸
15

16 The SEPA checklist included no information regarding the possible impacts on the
17 City's combined storm/sewer system. Responses to checklist questions regarding water
18 runoff were as follows:⁸⁹
19

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

22 Question: Water runoff (including storm water): 1) Describe the source of runoff
23 (including storm water) and method of collection and disposal, if any... Where will this
24 water flow? Will this water flow into other waters? Answer: No-this is a non-project
25 action.
26

27 ⁸⁵ Ex. 659 at 33-82.

28 ⁸⁶ Inflow happens when groundwater and stormwater seep into a sanitary sewer system through private and
29 public defects within the collection system. Infiltration is when groundwater enters the sanitary sewer system
30 through faulty pipes or manholes. Inflow and infiltration render treatment plants less efficient and strains such
31 systems.

32 ⁸⁷ Ex. 659 at 000038.

⁸⁸ Ex. 322 at 11.

⁸⁹ Ex. 322 at 5 and 7.

1 Question: Does the proposal alter or otherwise affect drainage patterns in the vicinity
2 of the site? If so, describe. Answer: No-this is a non-project action.

3 The City argues in many instances that densities will not be increased⁹⁰ and also that
4 impervious surfaces will not increase.⁹¹ A segment from the City's Brief is illustrative of its
5 argument on impervious surface:
6

7 The MM Ordinance did not change the City's limits on maximum building
8 coverage, impervious surface coverage, or hard surface coverage. The
9 developable portion of any lot was not changed in any way by this
10 ordinance. The limits on all surfaces that would generate stormwater
11 runoff remain in effect and apply to all Missing Middle development.
12 Bluntly, Ordinance 7160 makes no change in the area of a lot that can be
13 developed, nor in potential stormwater runoff.

14 Petitioners' arguments again prey on public fears, speculatively claiming
15 that the MM Ordinance will result in increased runoff and sewage
16 overflows will result, especially considering sea level rise. . . Mr. Holz'
17 comments generally discuss DDECM and NPDES requirements but are
18 premised "if the so-called 'Missing Middle' initiative led to areas of
19 impervious surface . . ." Since the lot coverage areas are not increased
20 and the low-impact development regulation, NPDES permit and other
21 standards continue to apply, it becomes clear that the speculation
22 advanced by OSDLN is just another scare tactic.⁹² (citations to the record
23 deleted)

24 It is true, as the City states, that "the City's limits on maximum building
25 coverage, impervious surface coverage, or hard surface coverage" did not change.
26 However, the areas of the City to which the Missing Middle regulations apply are for the
27 most part already developed with single family residences.⁹³ The lots on which those
28 residences are built are currently well below the maximums allowed for impervious
29 surfaces. The additional densities and housing types allowed with lower minimum lot
30

31 ⁹⁰ See discussion above.

32 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.

1 sizes,⁹⁴ reduced minimum lot widths for duplexes, triplexes and fourplexes,⁹⁵ reduced
2 side yard setbacks for triplexes, fourplexes and townhouses,⁹⁶ and reduced open
3 space requirements for cottage housing⁹⁷ will, in combination, allow increased
4 coverage of lots with impervious surface, albeit up to the current limits for impervious
5 surfaces. Contrary to the City's contention, lot coverage areas will increase.

6
7 Having made those observations, the Board is unable to find that the Missing Middle
8 regulations will fail to implement or preclude achievement of the comprehensive plan goals
9 and policies cited by the Petitioners in Issue 2.6⁹⁸ based on the record before it. It may be
10 possible to avoid or minimize environmental impacts (Policy PL 1.2). The rate of expansion
11 of impervious surfaces in "the community" could be reduced (Policy 5.1). An adequate
12 SEPA analysis could have answered those questions. The Board's prior finding of an
13 inadequate SEPA environmental analysis is underscored by the argument and the record
14 which indicates significant potential environmental impacts which have not been adequately
15 addressed. The Board addresses those inadequacies in the section on invalidity below.

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17
18 **F. Green Space/Open Space Issue 2.7**

19 2. Is the Ordinance inconsistent with and does it fail to implement the following
20 Olympia Comprehensive Plan goals and policies in violation of RCW
21 36.70A.040(3), RCW 36.70A.120; RCW 36.70A.130(1)(d); and WAC 365-196-
22 500(3)?

23 **2.7** Goals and policies that preserve green space, open space, and protect
24 trees. See, e.g., PL 6.11, PL 7.4, GL 22, PL 22.1, PL 22.2, PL 22.3, PL 25.7,
25 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
26 3, PN 3.2, PN 3.3, PN 3.4, PN 3.5, PN 3.6, PE 3.4, and PE 9.3.

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

29
30 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.

1 ordinance's regulations, which increase density and decrease building setbacks, fails to
2 implement that policy:

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

5 Not every regulation is required to implement every comprehensive plan policy. The
6 City will continue to be guided by that policy notwithstanding increased lot coverage
7 resulting from the development resulting from the Missing Middle regulations. The
8 challenged Ordinance does not preclude attainment of PL 7.4 although implementation of
9 that policy will be rendered more difficult. The Petitioners have failed to meet their burden of
10 proof to establish violations of RCW 36.70A.130(1)(d) and RCW 36.70A.120 related to
11 those policies which seek to increase the amount of green space and urban tree canopy
12 commensurate with increased population as alleged in Issue 2.7.
13
14

15 **G. Invalidity**

16 The Board concluded in its prior order that the City's action violated RCW
17 43.21C.030 by basing its issuance of a Declaration of Non Significance (DNS) on an
18 inadequate Checklist.⁹⁹ The City failed to establish that environmental factors were
19
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21 _____
22 ⁹⁹ The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and
23 laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth
24 in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public
25 corporations, and counties shall:

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

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

32 (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

1 considered in a manner sufficient to amount to *prima facie* compliance with the procedural
2 requirements of SEPA.¹⁰⁰ In this order, the Board has further found and concluded that:

- 3 • The Petitioners have met their burden of proof to establish violations of RCW
4 36.70A.130(1)(d) and RCW 36.70A.120 as the Missing Middle density regulations
5 allow maximum Low-Density Neighborhood densities as established by the
6 comprehensive plan to be exceeded as alleged in Issues 2.1 and 2.8, and;
- 7 • The Petitioners have met their burden of proof to establish violations of RCW
8 36.70A.130(1)(d) and RCW 36.70A.120 related to the Missing Middle density
9 regulations as the regulations related to reduced parking requirements fail to
10 ensure that Low-Density Neighborhood character is maintained as alleged in
11 Issue 2.1.
12

13 Beyond those specific findings of GMA violations, the briefs, argument of counsel and
14 the record before the Board have provided further details regarding the insufficiency of the
15

16
17
18 (v) any irreversible and irretrievable commitments of resources which would be involved in the
19 proposed action should it be implemented;

20 (d) Prior to making any detailed statement, the responsible official shall consult with and obtain the
21 comments of any public agency which has jurisdiction by law or special expertise with respect to any
22 environmental impact involved. Copies of such statement and the comments and views of the appropriate
23 federal, province, state, and local agencies, which are authorized to develop and enforce environmental
24 standards, shall be made available to the governor, the department of ecology, the ecological commission,
25 and the public, and shall accompany the proposal through the existing agency review processes;

26 (e) Study, develop, and describe appropriate alternatives to recommended courses of action in any
27 proposal which involves unresolved conflicts concerning alternative uses of available resources;

28 (f) Recognize the worldwide and long-range character of environmental problems and, where
29 consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to
30 maximize international cooperation in anticipating and preventing a decline in the quality of the world
31 environment;

32 (g) Make available to the federal government, other states, provinces of Canada, municipalities,
institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality
of the environment;

(h) Initiate and utilize ecological information in the planning and development of natural resource-
oriented projects.

¹⁰⁰ Order Denying Motion to Dismiss, Allowing Supplementation of the Record, Granting Summary Judgment, and Deferring Consideration of Invalidity at 7, 8 (March 29, 2019), citing *Chuckanut Conservancy v. Dep't of Natural Resources*, 156 Wn. App. 274, 286 – 87 (2010); *Juanita Bay Valley Cmty. Ass'n v. City of Kirkland*, 9 Wn. App. 59, 73 (1973).

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

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

11
12 Thus, when a county or city amends its comprehensive plan or changes zoning, as
13 was done here, a detailed and comprehensive SEPA environmental review is required.¹⁰³
14 SEPA is to function "as an environmental full disclosure law,"¹⁰⁴ and the City must
15 demonstrate environmental impacts were considered in a manner sufficient to show
16 "compliance with the procedural requirements of SEPA."¹⁰⁵ Although the City decision is
17 afforded substantial weight,¹⁰⁶ environmental documents prepared under SEPA require the
18 consideration of "environmental" impacts with attention to impacts that are likely, not merely
19 speculative,¹⁰⁷ and "shall carefully consider the range of probable impacts, including short-
20 term and long-term effects."¹⁰⁸

21
22
23 In *King County v. Washington State Boundary Review Board for King County*, the
24 Supreme Court recognized the purpose of SEPA is "to provide consideration of
25 environmental factors at the earliest possible stage to allow decisions to be based on

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27 _____
28 ¹⁰¹ RCW 43.21C.030.

29 ¹⁰² RCW 43.21C.030; RCW 36.70A.035; *Norway Hill Pres. & Prot. Assn. v. King County Council*, 87 Wn.2d
30 267 (1976).

31 ¹⁰³ WAC 197-11-704(b)(ii).

32 ¹⁰⁴ *Moss v. Bellingham*, 109 Wn. App. 6 (2001).

¹⁰⁵ *Sisley v. San Juan County*, 89 Wn.2d 78, 64, 569 P.2d 712 (1977).

¹⁰⁶ RCW 43.21C.090.

¹⁰⁷ WAC 197-11-060(4)(a).

¹⁰⁸ WAC 197-11-060(4)(c).

1 complete disclosure of environmental consequences,"¹⁰⁹ and SEPA is to provide agencies
2 environmental information prior to making decisions, not after they are made.¹¹⁰

3 Generally, the first step, the "earliest possible stage", in the SEPA analysis is the
4 preparation of an Environmental Checklist.¹¹¹ The checklist is designed to provide
5 information to the City about the proposal and its probable environmental effects on the
6 natural and built environments. As the SEPA Environmental Checklist form states:
7

8 Government agencies use this checklist to help determine whether the
9 environmental impacts of your proposal are significant. This information is also
10 helpful to determine if available avoidance, minimization or compensatory
11 mitigation measures will address the probable significant impacts or if an
12 environmental impact statement will be prepared to further analyze the
13 proposal.¹¹²

13 SEPA requires analysis of the environmental impacts when those impacts can be
14 reasonably identified.¹¹³ Ordinance 7160 was a non-project action but such actions must still
15 be accompanied by compliant SEPA analysis. The City's DNS was based on a Checklist
16 which failed to demonstrate *prima facie* SEPA compliance. In this matter the City failed to
17 "evaluate the impacts allowed under the changed designation at the time of that non-project
18 action"¹¹⁴ as is evidenced by the fact that the City responded to the Checklist nearly 50
19 times with statements such as the question did not apply in that the proposal was a non-
20 project action.
21

22 It also bears repeating that the 2014 Supplemental Environmental Impact Statement
23 (SEIS) prepared for the City's comprehensive plan amendments which established policy
24 guidance for the Missing Middle regulations included the following statement:
25

26 Because this Plan is as a "high level" and specific impacts cannot be
27

28 ¹⁰⁹ *King County v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 664, 860 P.2d 1024 (1993). See also,
Lassila v. Wenatchee, 89 Wn.2d 804 (1978).

29 ¹¹⁰ *Id.*

30 ¹¹¹ WAC 197-11-960.

31 ¹¹² *Ex. 322* at 1.

32 ¹¹³ WAC 197-11-055(2).

¹¹⁴ *Whidbey Environmental Action Network v. Island County*, GMHB No. 03-2-0008 (FDO, August 25, 2003) at
39.

1 predicted, most analysis is in a qualitative rather than a quantitative form.
2 Further environmental review would be conducted when implementing
3 measures, such as regulations, more detailed plans, or specific construction
4 activities are proposed. The level of detail of subsequent review will vary
5 based upon the specific provisions of those later proposals.¹¹⁵ (emphasis
6 added).

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

14 In the present case, the Board determined that the City had failed to demonstrate
15 *prima facie* SEPA compliance and that determination has been buttressed by the additional
16 information and argument presented for the Hearing on the Merits. The City's issuance of a
17 DNS meant it had determined that preparation of a full Environmental Impact Statement
18 (EIS) was not required for the proposed action; rather, the City relied on the SEPA Checklist
19 and accompanying documentation to satisfy SEPA's environmental review requirements.¹¹⁸
20 (It is important to state, however, that the Board has not held that the City must prepare an
21 EIS but rather that initial SEPA compliance failed to meet the requirements of SEPA.) Here,
22 the Board restates its finding and conclusion that the City of Olympia violated RCW
23 43.21C.030(2)(c) when it failed to conduct a compliant SEPA environmental review prior to
24 adoption of Ordinance 7160. The City of Olympia's approval of Ordinance 7160 was clearly
25 erroneous in view of the entire record before the Board and in light of the goals and
26 requirements of the GMA and SEPA.
27
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29

30 ¹¹⁵ Ex. 2 (Exhibit A attached to the Petitioners' Motion for Summary Judgment) at 7.

31 ¹¹⁶ *Boehm v. City of Vancouver*, 111 Wn. App. 711, 718 (2002).

32 ¹¹⁷ *Id.*

¹¹⁸ WAC 197-11-340.

1 **Invalidity**

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

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

5 The board may determine that part or all of a comprehensive plan or
6 development regulations are invalid if the board:

7 (a) Makes a finding of noncompliance and issues an order of remand under
8 RCW 36.70A.300;

9 (b) Includes in the final order a determination, supported by findings of fact and
10 conclusions of law, that the continued validity of part or parts of the plan or
11 regulation would substantially interfere with the fulfillment of the goals of this
12 chapter, and

13 (c) Specifies in the final order the particular part or parts of the plan or
14 regulation that are determined to be invalid, and the reasons for their invalidity.

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

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

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

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

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31 ¹¹⁹ A request first made in the Petitioners' Motion for Summary Judgment filed February 26, 2019.

32 ¹²⁰ Order Denying Motion to Dismiss, Allowing Supplementation of the Record, Granting Summary Judgment, and Deferring Consideration of Invalidity (March 29, 2019).

1 the foreseeable environmental effects of some of the Missing Middle regulations and it had
2 virtually no information regarding the foreseeable effects of those regulations on its public
3 facilities and services. The Board hereby finds and concludes that the continued validity of
4 Ordinance 7160 would substantially interfere with the fulfillment of GMA Planning Goals 10
5 and 12.
6

7 FINDINGS OF FACT

- 8
- 9 1. The City adopted Ordinance 7160 which is comprised of numerous
10 amendments of the City's development regulations intended to allow "infill" of
11 residential neighborhoods, including its Low-Density Neighborhoods.
 - 12 2. The comprehensive plan includes policy PL 14.3 which states: Preserve and
13 enhance the character of existing, established Low-density Neighborhoods.
14 Disallow medium or high-density development in existing Low-density
15 Neighborhood areas except for Neighborhood Centers.
 - 16 3. The City's comprehensive plan limits density in the Low-Density Neighborhoods
17 to 12 units per acre.
 - 18 4. The comprehensive plan provides for densities in the Medium-Density
19 Neighborhoods between 13 and 24 units per acre.
 - 20 5. Ordinance 7160's regulations allow potential densities in the Low-Density
21 Neighborhoods to exceed 12 units per acre and even to exceed in some
22 scenarios 24 units per acre.
 - 23 6. The City's comprehensive plan includes the following policies:

24
25 PL 14.3 Preserve and enhance the character of existing, established
26 Low-density Neighborhoods. Disallow medium or high-density
27 development in existing Low-density Neighborhood areas except for
28 Neighborhood Centers. (emphasis added)

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

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

- 5 7. Ordinance 7160's regulations reduce on-site parking requirements.
- 6 8. The reductions in parking requirements were adopted without estimating the
7 number of additional vehicles that would be generated by the allowed new
8 development and without analyzing current on-site parking capacity.
- 9 9. Ordinance 7160's regulations eliminated off-street parking requirements for
10 accessory dwelling units, reduced the number of off-street spaces from two to
11 one for single family detached homes of 800 square feet or less, reduced the
12 off-street requirements for duplexes, triplexes, fourplexes, courtyard apartments
13 and townhouses from 1 ½ per unit to 1 per unit, single-family residence
14 detached homes equal to or less than 800 ft.² are reduced from 2 spaces to 1,
15 and Single Room Occupancies require only one parking space per four every
16 units.
- 17 10. The record establishes that implementation of the Ordinance 7160 regulations
18 will add a significant number of additional cars to the Low-Density
19 Neighborhoods.
- 20 11. The City neither analyzed existing on-street parking capacity nor the resulting
21 impacts of the regulations on that capacity.
- 22 12. The Board previously granted summary judgment on Legal Issue 1 finding that
23 the City's action in adopting Ordinance 7160 violated RCW 43.21C.030 by
24 basing its issuance of a Declaration of Non Significance on an inadequate
25 SEPA Environmental Checklist.
- 26 13. The City's SEPA analysis did not analyze the number of additional parking
27 spaces that would be required by the City's "non-project action", adoption of
28 Ordinance 7160.
- 29 14. Implementation of Ordinance 7160 regulations will increase impervious surface
30 coverage in the Low-Density Neighborhoods.
- 31 15. The City's combined sewer/stormwater system is subject to inflow and
32 infiltration and some of the areas slated for increased density under the

1 Ordinance 7160 regulations are within the areas of the City with the highest
2 amounts of inflow and infiltration into the combined storm/sewer system.

- 3 16. RCW 36.70A.120 requires that local jurisdictions which are required or choose
4 to plan under RCW 36.70A.040 must perform its activities and make capital
5 budget decisions in conformity with its comprehensive plan.
- 6 17. RCW 36.70A.130(1)(d) requires that any amendment or revision to development
7 regulations shall be consistent with and implement the comprehensive plan.
- 8 18. The record fails to address whether “adverse environmental impacts [can] . . .
9 be avoided or minimized” (PL 1.2), whether the “rate of expansion of impervious
10 surface” can be reduced (PN 5.1), or whether impacts to “sensitive drainage
11 basins” can be avoided (PL 1.3).
- 12 19. The Declaration of Non Significance and the Checklist failed to address the
13 questions regarding impervious surface and drainage basins which were posed
14 by the Environmental Checklist.
- 15 20. The SEPA analysis (a Supplemental Environmental Impact Statement)
16 prepared for the City’s 2014 comprehensive plan update which established
17 policy guidance for Ordinance 7160 regulations included a statement that
18 “Further environmental review would be conducted when implementing
19 measures, such as regulations, more detailed plans, or specific construction
20 activities are proposed.”
- 21 21. The “environmental review” prior to adoption of Ordinance 7160 consisted of a
22 Declaration of Non Significance based on an inadequate SEPA Environmental
23 Checklist.
- 24 22. The SEPA Environmental checklist included no information regarding the
25 possible impacts on the City’s combined storm/sewer system or drainage
26 basins.
- 27 23. The potential environmental impacts on parking and on the City’s combined
28 sewer/ stormwater system were reasonably identifiable.
- 29 24. The State Environmental Policy Act (SEPA) requires all government agencies to
30 consider the environmental effects of a proposed action.
- 31 25. Ordinance 7160 was a non-project action.
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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.

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CONCLUSIONS OF LAW

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- 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.

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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)

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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)

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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)

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- 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 buttresses the Board’s conclusion that the City violated

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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

1 Neighborhood densities (as alleged in Issues 2.1 and 2.8) fail to implement and
2 preclude achievement of the comprehensive plan density polices and provisions
3 which limit density in the Low-Density Neighborhoods to 12 units per acre. There
4 is an actual conflict between those policies and the development regulations. The
5 City has violated RCW 36.70A.130(1)(d) and RCW 36.70A.120.

- 6 **H.** The City violated RCW 36.70A.130(1)(d) and RCW 36.70A.120 as Ordinance
7 7160's regulations are inconsistent with, fail to implement, and are in actual conflict
8 with policies PL 14.3, PL16.9, and PL 20.1 as they fail to ensure that Low-Density
9 Neighborhood character is maintained as alleged in Issue 2.1.
- 10 **I.** The failure to conduct a compliant SEPA review and the consequent failure to
11 consider the potential environmental significance of the regulations included in
12 Ordinance 7160 mandate a finding and conclusion that Ordinance 7160 is invalid.
- 13 **J.** The continued validity of Ordinance 7160 would substantially interfere with the
14 fulfillment of Goals 10 and 12, RCW 36.70A.020 (10) and (12).

15 **V. ORDER**

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

- 20 • Alleged violations of RCW 36.70A.040(3) and WAC 365-196-500(3) in all issues
21 are dismissed;
- 22 • The Petitioners have met their burden of proof to establish violations of RCW
23 36.70A.130(1)(d) and RCW 36.70A.120 as the Missing Middle density regulations
24 allow maximum Low-Density Neighborhood densities as established by the
25 comprehensive plan to be exceeded as alleged in Issues 2.1 and 2.8;
- 26 • The Petitioners have met their burden of proof to establish violations of RCW
27 36.70A.130(1)(d) and RCW 36.70A.120 related to the Missing Middle density
28 regulations as the regulations related to reduced parking requirements fail to
29 ensure that Low-Density Neighborhood character is maintained as alleged in
30 Issue 2.1;
- 31
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- 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.

| Item | Date Due |
|---|--|
| Compliance Due | December 18, 2019 |
| Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record | January 3, 2020 |
| Objections to a Finding of Compliance | January 17, 2020 |
| Response to Objections | January 27, 2020 |
| Telephonic Compliance Hearing 1 (800) 704-9804 and use pin code 7757643# | February 6, 2020 10:00 a.m. |

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**

1 to Comply shall be limited to 20 pages, 30 pages for Objections to Finding of
2 Compliance, and 5 pages for the Response to Objections.

3
4 SO ORDERED this 10th day of July 2019.

5
6 _____
William Roehl, Board Member

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Nina Carter, Board Member

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12 _____
Cheryl Pflug, Board Member

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

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30 ¹²¹ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
31 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved
32 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.
- Petitioners' Reply Brief filed May 17, 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)?
 - 2.1 Goals and policies that require compatible housing types and densities, maintenance of neighborhood character, and buffers between incompatible uses, *e.g.*, PL 1.8, PL 3.2, PL 3.5, PL 3.6, PL 3.8, GL 5, PL 5.5, PL 5.7, PL 6.2, PL 6.4, PL 13.5, PL 13.6, PL 14.3, PL 16.9, PL 16.10, PL 16.11, GL 20, PL 20.1, and PS9.4.
 - 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.
 - 2.4 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

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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.

1 **APPENDIX C: Comprehensive Plan policies related to Issue 2.5**

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

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

7 **PL 14.4** In low-density Neighborhoods, allow medium-density Neighborhood Centers that
8 include civic and commercial uses that serve the neighborhood. Neighborhood centers

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

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

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

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

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

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

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

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

31 **PP 4.2** Replace or complement the three-minute, one-way testimony format with an
32 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.

1 **PP 5.5** Encourage collaboration between neighborhoods and City representatives.

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

6 **PL 23.2** Create sub-area strategies that address provisions and priorities for community
7 health, neighborhood centers and places of assembly, streets and paths, cultural resources,
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