

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

THE CHILDREN'S ALLIANCE and)
LOW INCOME HOUSING INSTITUTE,) **Case No. 95-3-0011**
)
Petitioners,) **FINAL DECISION AND ORDER**
)
v.)
)
CITY OF BELLEVUE,)
)
Respondent.)
)

I. PROCEDURAL HISTORY

On February 2, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from The Children’s Alliance and Low Income Housing Institute (hereafter referred to as the **Alliance**). On March 3, 1995, the Alliance filed its First Amended Petition for Review. The Alliance challenges the City of Bellevue’s (**Bellevue** or the **City**) adoption of Ordinance No. 4696-A (the **Ordinance**) regulating the location and operation of group homes within the City.

On March 23, 1995, the Board held a prehearing conference. The Prehearing Order set forth a statement of legal issues to be decided in the case, set a deadline for the filing of dispositive motions, and specified that the Board would not hold a hearing on motions except upon request of a party.

One dispositive motion was filed in this case when, on April 14, 1995, the City of Bellevue’s Motion for Partial Summary Judgment on Legal Issues 3, 4, 5, 6, 7, and 11 was submitted. As neither party requested a hearing, the Board based its decision on the briefs of the parties.

On May 17, 1995, the Board issued an Order Partially Granting Bellevue’s Dispositive Motion, which granted the City’s Motion regarding Legal Issues Nos. 3, 4, 6, 7 and 11, dismissing those issues, and partially granted the Motion regarding Legal Issue No. 5, dismissing that portion

relating to RCW 36.70A.200(1).

On June 1, 1995, the Board issued its Order on Motion to Supplement the Record and Amended Prehearing Order, in which it ruled on 95 proposed supplemental documents and seven proposed witnesses.

On June 6, 1995, the Board received a Motion for Status as Amicus from the Department of Social and Health Services, State of Washington (**DSHS**). The Motion had two attachments: a Declaration of Richard A. McCartan, and an Amicus Brief of the Department of Social and Health Services, with two attachments. On June 15, 1995, the Board received a statement of support for the Motion from the Children's Alliance, and the City of Bellevue's Response to DSHS' Motion for Amicus Status, opposing the granting of amicus status. The Board issued an Order Granting Amicus Status on June 19, 1995, with participation limited to the brief previously filed.

On June 5, 1995, the Board received the Alliance's Prehearing Brief. On June 19, 1995, the Board received the City of Bellevue's Hearing Brief. On June 22, 1995, the Board received the Alliance's Prehearing Reply Brief.

On June 23, 1995, the Board held a hearing on the merits of the remaining legal issues before it at the Bellevue Regional Library, Bellevue, Washington. The Board's three members were present: M. Peter Philley, Joseph W. Tovar, and Chris Smith Towne, presiding. Steve Frederickson and Michael Mirra represented the Alliance, and David Kahn represented the City. Court reporting services were provided by Cynthia J. LaRose, Robert H. Lewis & Assoc. No witnesses testified. At the commencement of the hearing, the parties presented argument on the admissibility of documents proposed by the Alliance for supplementation of the record. The City's objections fell into three categories: 1) documents protected by attorney/client privilege; 2) documents which are irrelevant or duplicative; and 3) early drafts of the Ordinance at issue. The Alliance argued that the documents in 1) were not identified as being subject to the privilege, and if there were a privilege, it was waived by the City's discussing the contents elsewhere, as in Exhibits 16, 18, 28, 134, 135, 139; and in 3), while the Board is considering only the adopted Ordinance, the documents in question are drafts which the City Council considered, they demonstrate less restrictive alternatives, and they are automatically part of the record. The Alliance withdrew Exhibits Nos. 22 and 165.

The Presiding Officer then admitted documents Nos. 47, 95, 96, 98, 99, 100, 101, 120, 130, 132, 135, 150, 155, 156, 178, 179, 189, and 193; took note of the City's statement that references in the City's Brief to Exhibit 151A should be to Exhibit 151; and deferred ruling on the remaining exhibit in category 1, Exhibit 150. The Presiding Officer now rules that Exhibit 150 will be admitted.

After the hearing, the Board received a letter from DSHS, observing that the listing of attachments to the Amicus Brief set forth in the Board's Order Granting Amicus Status omitted a list of group care facilities in the state of Washington, and requesting that the list be admitted as part of the Amicus Brief. The list in question contains the names and locations of 92 group homes, and it is referred to in the brief. While the original of the Amicus Brief filed with the Board

contains that list, the copies provided for each of the Board Members did not; those copies had attachments as described in the Order Granting Amicus Status. Neither of the parties has commented on the request.

After a review of DSHS's letter, the Amicus Brief, and the attachment in question, the Presiding Officer rules that Attachment 1, a list of group homes, will be admitted.

II. FINDINGS OF FACT

1. On December 6, 1993, the City adopted its Comprehensive Plan to comply with the requirements of the Growth Management Act (**GMA** or the **Act**). It was revised in May, 1994. Exhibit 5.
2. On February 14, 1994, and again on August 17, 1994, the City notified the Department of Community Trade and Economic Development (**DC TED**) that it intended to adopt an ordinance concerning group homes, and on each occasion submitted draft ordinances for review and comment. It did not submit a copy of proposed Ordinance No. 4696-A. Exhibits 77 and 80.
3. On November 21, 1994, the City adopted Ordinance No. 4696-A, the Group Homes Amendment Ordinance of 1994, to be consistent with and implement its Comprehensive Plan, specifically Section IV, Housing Element, including goals and policies related to "Special Needs Housing." The Ordinance amends existing sections and adds a new chapter to the Bellevue City Code (Land Use Code). The Purpose section of the Ordinance states that it is intended to "set forth the conditions under which group homes, group care facilities, and other shared-living arrangements designed to serve persons with identifiable or diagnosable particular or special needs, may be located within the City of Bellevue." The Ordinance designates three (3) classifications of Group Homes. Primarily at issue in this case are Class I Group Homes, which include state-licensed adult family homes; state-licensed homes for the handicapped; state-licensed homes for persons 65 years of age or over; state-licensed foster family homes; state-licensed large foster family homes; and state-licensed group care facilities for children. Exhibit 1.
4. Between August 1992 and May 1993, 99 Eastside children requested shelter from DSHS Division of Children and Family Services. This demand averages 120 requests for placement annually. Friends of Youth reports that in 1991, they sheltered 140 Eastside youths and turned away 479 for lack of space. Child Protective Services received 577 child abuse reports from Bellevue in 1991. Bellevue Police reported that 215 Bellevue children were reported as runaways in 1992, up from 166 in 1991. Fifty-six Bellevue children requested shelter from Friends of Youth in the 7/92 - 6/93 fiscal year; 18 of these children were housed and 36 had to be turned away for lack of space. Exhibit 112 (memo from Department of Community Development to the Planning Commission).

III. GENERAL DISCUSSION

This is the first case before the Board which challenges the validity of a development regulation within the purview of the residential land use and housing requirements of the GMA. In such matters of first impression, it is helpful to summarize and clarify the relevant provisions of the Act and previous Board decisions that describe the decision-making framework into which such residential development regulations fit. Following this general discussion, the Board then answers the specific legal issues in the instant case.

A. THE GMA requires communities to manage

change and to change to manage

Unlike the statutory planning framework that preceded the GMA, the Act is based on the premises that growth will occur, that growth must be managed, and that a long term view is required to manage that growth. *Kitsap County v. Office of Financial Management*, CPSGMHB Case No. 94-3-0014 (1995), at 7. The growth addressed by the GMA largely focuses on the increase in the absolute population that is projected to occur over the next 20 years. This is why the Act requires a quantitative analysis of the land supply and infrastructure needed to serve that increased population. See RCW 36.70A.040 and .110. However, “growth” as a concept encompasses more than simply a numeric increase in population. It also includes the related and important dynamic of *change*, and the GMA accordingly requires local governments to plan for and respond to the *changing character and needs* of the population for which they are planning. In the case before us, the specific issue is housing. See RCW 36.70A.070(2).

The GMA acknowledged that the “old way of doing things” (i.e., non-GMA planning and decision-making) threatened the quality of life enjoyed by Washington’s residents, and that in order to meet this threat, new and important steps needed to be taken. RCW 36.70A.010^[1] describes a legislatively preferred future for our state, just as the subsequent sections of the Act mandate that communities manage the problems of growth and change in a new way.

In effect, the GMA requires local governments both to manage change and change to manage.^[1] While the GMA recognizes that a community’s values and preferences form the core of its comprehensive plan, there are limitations on the exercise of local discretion. See *Aagaard v. Bothell*, CPSGMHB Case No. 94-3-0011 (1995), at 9. The Act prohibits local prerogatives, whether expressed in policy documents or development regulations, from thwarting legitimate regional and state interests. See RCW 36.70A.070(2), RCW 36.70A.200, RCW 36.70A.210, RCW 36.70A.400, and RCW 36.70A.410. See also *Happy Valley et al. v. King County*, CPSGPHB Case No. 93-3-0008 (1993), at 19. Therefore, when compared to the past, the “change” that the GMA will sometimes require in local plans and development regulations is nothing less than *transformational*. ^[1]

B. GMA, Housing and Residential Land Use

As society and technology have changed over time, so too have communities and residential neighborhoods changed. This has been reflected in changes in statute and case law at both the federal and state levels.^[1] In the GMA, there are a number of specific references that address housing and residential land uses, some of them more explicit and directive than others. There are at least five sections of the Act that are on point. When these sections are read together, they describe a legislatively preferred residential landscape that, compared with the past, will be less homogeneous, more diverse, more compact and better furnished with facilities and services to support the needs of the changing residential population.

RCW 36.70A.020(4)

The planning goals, set forth at RCW 36.70A.020, provide direction to a variety of local government policy and implementing actions. Many of the goals are amplified and detailed in subsequent sections of the Act regarding specific requirements and mechanisms.

RCW 36.70A.020(4) appears to be one of the less directive goals because it uses the verbs “encourage” and “promote,” rather than more directive verbs like “ensure” or “protect.” It provides:

(4)Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

There are at least three related subjects contained in this section. The first is housing affordability, the second is “residential densities and housing types,” and the third is the preservation of existing housing stock. It is the second portion that now bears some analysis.

It is clear that “densities” refers to the number of dwelling units or people within a given geographic unit. Less obvious is the meaning of “housing types.” This could refer to the physical form of residential structures, e.g., attached vs. detached or stacked units. However, when read in the context of RCW 36.70A.070(2), it becomes apparent that “housing types” refers also to the characteristics of segments of the population and/or their specific housing needs. Thus, among the types of housing that the goal speaks to are: “government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities.” RCW 36.70A.070(2).

RCW 36.70A.070(2)

RCW 36.70A.070(2) describes the mandatory housing element of a comprehensive plan. It provides:

A housing element recognizing the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs; (b) includes a statement of goals, policies, and objectives for the preservation, improvement, and development of housing; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

Subsection (d) regarding “economic segments” repeats the “affordability” clause of the planning goal, while the “preservation” language of subsection (b) parallels the “preservation of existing housing stock” phrase of the planning goal. As referenced above, the list of housing “types” in subsection (c) gives meaning to the “densities and housing types” phrase in the planning goal. A key component of this section is the preamble, which makes reference to “residential neighborhoods.” While this is not a defined term in the Act, there is a reasonably clear meaning derived from dictionaries.

Webster’s II New Riverside University Dictionary (2d ed., 1988), at 1000, defines “residential” as: “1. Of, pertaining to, or having residence. 2. Of or appropriate for residences <residential sections of the city.”

Webster’s (supra) defines “residence” as: “1. The place in which one lives.”

Webster’s (supra), at 789) defines “neighborhood” as: “1. A district or area with distinctive characteristics. 2. The people who live in a particular district or area.”

Thus, the housing element of a comprehensive plan must recognize the vitality and character of areas in which people live, and the distinctive characteristics of those areas.^[1]

RCW 36.70A.200

This section provides:

1. The comprehensive plan of each county and city that is planning under this chapter shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, and group homes.
2. The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list. No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

The definition of “essential public facilities” is contained in this section, rather than in RCW 36.70A.030. By the terms of subsection (1), “essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, and group homes.” (Emphasis added.)

The word “include” implies that there are other unnamed facilities that are difficult to site that may qualify as “essential public facilities.” Subsection (2) makes reference to “essential state public facilities that are required or likely to be built within the next six years” and directs the Office of Financial Management (**OFM**) to prepare a list of these. The Board holds that “essential state public facilities” are a subset of “essential public facilities.”

Significantly, essential public facilities may be large or small, many or few, and may be either capital projects (e.g., airports and prisons) or uses of land and existing structures (e.g., mental health facilities and group homes). The characteristic they share is that they are essential to the common good, but their local siting has traditionally been thwarted by exclusionary land use policies, regulations, or practices. For this reason, RCW 36.70A.200 has, in effect, pre-empted such behavior.

RCW 36.70A.400

This section provides:

Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3).

In turn, RCW 43.63A.215 deals with accessory apartments. Subsection (3) provides:

Unless provided otherwise by the legislature, by December 31, 1994, local governments shall incorporate in their development regulations, zoning regulations or official controls the recommendations contained in subsection (1) of this section. The accessory apartment provisions shall be part of the local government’s development regulation, zoning regulation, or official control. To allow local flexibility, the recommendations shall be subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority.

RCW 43.63A.215 effectively requires local governments to permit the siting of accessory apartments in areas zoned for single-family residential use. By making reference to this statute in RCW 36.70A.400, the GMA acknowledges that other statutes also direct local governments to plan for and accommodate an increasingly diverse population in residential neighborhoods.

RCW 36.70A.410

This section provides:

No county or city that plans or elects to plan under this chapter may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3602). (Emphasis added.)

The emphasized language essentially focuses on the people who would make use of residential structures, as opposed to the physical structures themselves. It directs that cities and counties, in their plans and regulations, may not treat handicapped people differently than anyone else.

Summary

Growth is more than simply a quantitative increase in the numbers of people living in a community and the addition of "more of the same" to the built environment. Rather, it encompasses the related and important dynamic of *change*. Because the characteristics of our population have changed with regard to age, ethnicity, culture, economic, physical and mental circumstances, household size and makeup, the GMA requires that housing policies and residential land use regulations follow suit. This transformation in our society must be reflected in the plans and implementing measures adopted to manage growth and change.

Compared to the traditionally homogeneous and sometimes exclusionary zoning of the past, this means no less than a *transformation in residential land use regulation*. This transformation is directed by RCW 36.70A.020(4), .070(2), .200, .400 and .410. Only by transforming local land use regulations to reflect both the Act's direction and our changing population will it be possible to meet pressing human needs, site needed facilities and assure the quality of life to all residents of the state.

IV. DISCUSSION OF LEGAL ISSUES

LEGAL ISSUE NO. 1

Does Ordinance No. 4696-A (the Ordinance) violate or conflict with RCW 36.70A.410 and WAC 365-195-860?

Positions of the Parties

Children's Alliance

The Alliance asserts that the Ordinance violates RCW 36.70A.410 by imposing discriminatory requirements and restrictions on group homes for handicapped individuals, particularly group

care facilities for children, that it does not impose on similar structures occupied by other unrelated individuals (such as adult family homes, domestic violence shelter homes, and foster family homes) or a family. The Alliance maintains that many of the potential occupants of group care facilities for children suffer from a variety of physical, mental, and emotional handicaps or disabilities, and notes that the Ordinance defines group care facilities for children as those facilities children need because of their handicaps. The Alliance argues that the Ordinance is discriminatory on its face in a number of ways with respect to housing occupied by handicapped persons: the Ordinance prohibits siting of a group care facility for children in any residential district, excludes such facilities from the definition of “family,” imposes occupancy maximums that may require the facilities to obtain conditional use permits to exceed such maximums, and imposes a dispersal and registration requirement.

City of Bellevue

The City maintains that the Ordinance does not violate RCW 36.70A.410 because it provides for the reasonable accommodation of handicapped persons so as to afford them the equal opportunity to use and enjoy a dwelling. The City asserts that such accommodation could include permitting a handicapped youth to reside in a residential district in a group care facility, allowing the maximum number of residents in a group care facility to be exceeded, and waiving the conditional use permit requirement. The City argues that Alliance’s argument is flawed because it incorrectly assumes that every youth that would be housed in a group care facility for children would qualify as handicapped as defined in the federal Fair Housing Act Amendments of 1988. The City points out that the Ordinance, by its terms, allows individual consideration of a youth’s housing options if the youth has a qualifying handicap.

Discussion

RCW 36.70A.410 provides:

No county or city that plans or elects to plan under this Chapter may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this Section, “handicaps” are as defined in the federal Fair Housing Amendments Act of 1988 (42 U.S.C. 3602).^[1]

As a preliminary matter, the Board wishes to clarify its interpretation of the phrase “residential structure occupied by persons with handicaps.” One of the basic tenets of statutory construction is that statutory terms should be interpreted so as to avoid an absurd result. Therefore, the Board holds that the phrase “residential structure occupied by persons with handicaps” means the use to which the structure is put, rather than the building itself. In other words, RCW 36.70A.410 addresses the individuals occupying the residential structure, and under what circumstances they are doing so. The provision is not concerned with how the physical structure is treated, e.g., what specific building codes apply to it. In the context of a provision addressing the prevention of

discriminatory housing practices, such a literal interpretation would be absurd. In addition, the Board will interpret the phrase broadly so that it operates prospectively, covering residential structures that are someday intended to be occupied by handicapped persons, not just residences that may already be occupied by handicapped persons. The issue, then, is whether the restrictions and requirements that Bellevue's Ordinance places on group homes for persons who may be handicapped constitute different treatment.

Bellevue's Ordinance^[1] defines "group home" as follows:

GROUP HOME: A staffed living facility for a group of persons with identifiable or diagnosable particular or special needs. A group home is a residence and as such is exempt from the provisions of Chapter 20.30N of this Code (Home Occupation regulations). (Emphasis added.) Exhibit 1, at 9.

The definition of "group care facility for children" provides in relevant part:

Section 8. A new definition is added to Section 20.50.022 of the Land Use Code, as follows:

GROUP CARE FACILITY FOR CHILDREN: A state-licensed group care facility serving children 17 years of age and younger who need foster care but cannot ordinarily adjust to the close, personal relationships normally required by a foster family home, . . . or who are emotionally disturbed or physically or mentally handicapped. . . (Emphasis added.) Exhibit 1, at 8.

Group care facilities for children are classified as CLASS I group homes:

CLASS I

State-licensed adult family homes; state-licensed homes for the handicapped; state-licensed homes for persons 65 years of age or over; state-licensed foster family homes; state-licensed large foster family homes; and state-licensed group care facilities for children. Class I homes may be subject to the dispersal and registration requirements set forth at 20.10.440 of this Code. (Emphasis added.)

Residence Maximums. Residence maximums for Class I group homes shall be those maximums established by state-licensing laws and regulations, including the Uniform Building and Housing Codes as adopted by the City. In no event shall the occupancy exceed the following maximums:

Residential zones—a maximum of six (6) residents (including live-in staff) in addition to the minor children of the residents shall be permitted to occupy a Class I group home at any one time. This maximum may be raised to 8 if a large group home permit is issued in accordance with Chapter 20.30T.

Commercial zones—a maximum of twenty (20) residents plus a maximum of five (5) live-

in staff, are permitted to occupy a Class I group home at any one time.

The limitation on the number of residents in a Class I group home shall not be applied so as to prevent the City from making reasonable accommodations as may be necessary to afford persons with handicaps equal opportunity to use and enjoy a dwelling as required by the Fair Housing Amendments act of 1988, 42 U.S.C. 3604(f)(3)(b).

A group home is a living facility for persons with special needs. Group care facilities for children are living facilities for youths with special needs relating to their age, their emotional state, and/or their physical or mental handicaps. Therefore, group care facilities for children are a subset within group homes. The above cited language shows that the Ordinance contemplates housing handicapped children within group care facilities for children. The language of RCW 36.70A.410 unequivocally states that residential structures occupied by handicapped persons cannot be treated differently than any other similar residential structure. However, the Ordinance places numerous restrictions and requirements on residential structures used for group homes that it does not place on similar residential structures occupied by related or unrelated individuals.

First, the City amended its definition of “family”^[1] to read as follows:

FAMILY: One or more persons (but not more than six unrelated persons) living together as a single nonprofit housekeeping unit. For the purposes of this Section, a housekeeping unit is not nonprofit if it is operated by or under the sponsorship of an entity which receives payment per resident on a monthly or other periodic basis from any governmental or private agency to provide care or shelter for any resident of the unit who is unrelated to the care giver. However, adult family homes as defined in Section 20.50.010; domestic violence shelter homes as defined in Section 20.50.016; foster family homes as defined in Section 20.50.020; and state-licensed homes for persons 65 years of age or older shall be considered to be nonprofit housekeeping units. Nothing in this definition shall be applied so as to prevent the City from making reasonable accommodations as may be necessary to afford persons with handicaps equal opportunity to use and enjoy a dwelling as required by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3604(3)(b). Exhibit 1, at 7.

Although the Ordinance creates an exception for other types of group homes so that they may be considered to be within the definition of “family,” it does not provide the same exclusion for group care facilities for children. Moreover, the City provides no rational basis for distinguishing between group care facilities for children and these other types of group homes. Explaining why Bellevue chose to revise the proposed draft of the Ordinance’s definition of “family,” the City Attorney stated,

One of the concerns we’ve had with an outright exclusion of group care facilities for children from residential areas is, that given the existing definition of family, those group care facilities for children which house six or fewer unrelated people would be within the definition of family, and therefore, there’d be no rational basis for excluding them and not excluding other uses. The purpose of changing the definition of family is to eliminate an

inconsistency in the ordinance that would result if you tried to exclude them. . . .We found a basis for distinguishing between those things that could be included within a family and those things that might not be, based upon the notion that these things like the foster homes are in fact a family setting, whereas group care facilities for children don't have all those same characteristics of a family setting. The, so, yes, in a sense it's a technicality, but it's a necessary change to avoid what we think would be an unlawful inconsistency. Exhibit 39, at 29-30.

Even if the City had articulated a legitimate rationale, RCW 36.70A.410 does not permit treating handicapped persons differently.

The Ordinance further discriminates against group care facilities for children by absolutely prohibiting them from being sited in Bellevue's residential areas. The Ordinance provides:

- Section 2. Land Use Code 20.10.440, Notes: Uses In Land Use Districts— Residential:

Note 13: "Group care facilities for children are not permitted in any residential district." Exhibit 1, at 6.

- Section 8. A new definition is added to Section 20.50.022 of the Land Use Code, as follows:

"GROUP CARE FACILITY FOR CHILDREN: . . . Group care facilities for children shall not be permitted in any residential district." Exhibit 1, at 8-9.

The City explicitly states that group homes are residences. Exhibit 1, at 9. It nevertheless categorically excludes one type of group home, group care facilities for children, from being located in the areas where one would most logically expect to find them—in residential districts. Exhibit 1, at 6.

The Ordinance also imposes occupancy maximums on Class I group homes and requires an operator of such a facility to obtain a conditional use permit in order to increase the home's

occupancy limit.^[1] Group homes, however, are considered to be residences.^[1] The City does not monitor or set a limit on the number of people residing in other types of housing, nor does it require any other group of related or unrelated people living together in a residence to undergo a conditional use permit process in order to increase the number of occupants in the household. By imposing occupancy limits and conditional use permit requirements, the Ordinance treats residential structures occupied by handicapped persons differently than similar residential structures occupied by a family or unrelated individuals.

In addition, the Ordinance establishes a potential registration requirement on all group homes except domestic violence shelters. Before a group home can be established in a neighborhood, the City requires the owner or operator to disclose certain information about the home, such as the telephone number and address, the maximum number of occupants, and a brief description of who will be residing there. No comparable registration requirement is imposed on any other group of persons who might wish to occupy a residential structure within Bellevue, whether it is a traditional nuclear family unit or a group of unrelated college students. Indeed, such a requirement

is antithetical to fundamental notions of freedom and privacy. The City does not have a provision to monitor the occupancy levels of, or the individuals residing in, other types of housing. The Ordinance's registration requirement singles out housing for those with mental and/or physical handicaps, and in so doing discriminates against them.

In defense of its exclusion of group care facilities for children from residential districts, the City asserted that it would make "reasonable accommodations as may be necessary to afford persons with handicaps equal opportunity to use and enjoy a dwelling" as required by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3604(3)(b). (Emphasis added.) What the City has done is graft language from FHA law onto a definition of "family" in a GMA enactment without providing any definition of "reasonable accommodation." Under the FHA, "reasonable accommodation" encompasses special modifications of otherwise **nondiscriminatory** rules, policies, practices, or services when those modifications are necessary for the handicapped person's equal use and enjoyment of a dwelling. 42 U.S.C. 3604(f)(3)(b). The Board agrees with the Alliance that the usual purpose of reasonable accommodation is not to afford the City the opportunity to correct otherwise discriminatory treatment, as would be the case here.^[1] The fact that the Ordinance forces handicapped children or their care providers to seek an individualized reasonable accommodation is itself discriminatory.

Assuming for the sake of argument that the City's interpretation of "reasonable accommodation" is valid, the practical effect of the ordinance is discriminatory nonetheless. The City asserts that it could provide "reasonable accommodation" of persons with handicaps in a number of ways, such as permitting a handicapped child to reside in a group care facility in a residential district. However, in oral argument, the City conceded that there are neither criteria for evaluating such a request nor a process in place for performing an individualized assessment and granting a waiver to a youth seeking to reside in a group home in a residential area.

Even if the City established criteria, developed a review process, and subsequently granted a waiver to a handicapped youth to live in a group care facility in a residential district, one glaring problem would remain: group care facilities for children presumably do not exist in residential areas because the City's Ordinance precludes them. Thus, the "reasonable accommodation" proffered by the City is in fact meaningless, since the Ordinance flatly prohibits siting a group care facility for children in any residential district and fails to provide authorization for variances, conditional use permits, or other waivers to overcome that prohibition. The practical effect of the Ordinance is also to discriminate against individuals with handicaps.

Conclusion No. 1

Bellevue Ordinance No. 4696-A treats group care facilities for children under the age of 17, including those who have a physical or mental handicap, differently than other facilities.

Therefore, the Ordinance violates RCW 36.70A.410.^[1]

Legal Issue No. 2

Does the Ordinance violate RCW 36.70A.020(4) and WAC 365-195-070(6)?

Positions of the Parties

Children's Alliance

The Alliance argues that the Ordinance, by prohibiting the siting of group care facilities for children in residential districts, fails to promote the housing planning goal set forth in RCW 36.70A.020(4). The Alliance contends that the Ordinance discourages the availability of affordable housing to an economic segment of the population (i.e., children) and does not promote a variety of housing types, including short-term and long-term shelter care for children.

City of Bellevue

The City asserts that, overall, it has encouraged the availability of affordable housing to all economic segments of the population. The City points out that the Ordinance permits many types of group home facilities in residential zones and argues that the GMA does not require a municipality to meet the needs of every conceivable lower income group. Further, the City contends that the Board must consider all the actions the City has taken, through development regulations or land use planning policy, to encourage affordable housing, and cannot consider the Ordinance in isolation.

Conclusion No. 2

Because the Board has determined that the Ordinance is in violation of RCW 36.70A.410, .200, and .040, it need not and will not rule on this issue.

Legal Issue No. 5

Does the Ordinance violate RCW 36.70A.200(2) and WAC 365-195-340(1)(a) and (c)?

Positions of the Parties

Children's Alliance

The Alliance argues that group homes are specifically referenced as essential public facilities and that the Ordinance's restrictions and requirements with respect to group homes directly or indirectly preclude them from being sited within the City of Bellevue. For example, the Alliance asserts that nonresidential property is unsuitable for group homes and is largely unavailable. The Alliance further argues that siting group homes in nonresidential districts is financially infeasible. The Alliance contends that the Ordinance's restrictions and requirements could compromise group homes' economic viability to the point that they are effectively precluded in Bellevue.

City of Bellevue

The City asserts that the Ordinance does not preclude the siting of an essential public facility

because the Alliance failed to show that local group homes are among the essential public facilities listed by the Office of Financial Management. The City argues that the Alliance improperly confuses the descriptions of essential public facilities in RCW 36.70A.200(1) with the more narrow description of state essential public facilities in RCW 36.70A.200(2). Even if RCW 36.70A.200(2) could be construed to cover non-state essential public facilities, the City argues that the Ordinance does not preclude their siting within the city but merely limits them to certain land use zones.

Discussion

RCW 36.70A.200(2) provides:

(2) The Office of Financial Management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The Office of Financial Management may at any time add facilities to the list. No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

The City contends that group care facilities for children must first be listed by OFM in order to be considered an essential public facility. However, as the Board stated in the General Discussion, “essential state public facilities” are a subset of “essential public facilities.” Group homes are one of the types of essential public facilities enumerated in RCW 36.70A.200(1).

The City would have the Board interpret the last sentence of RCW 36.70A.200(2) to mean that a municipality need only be concerned with essential public facilities that appear on the list maintained by OFM. However, the result of this interpretation is that no mechanism would remain to prevent municipalities from precluding the siting of those public facilities enumerated in RCW 36.70A.200(1) which do not appear on OFM’s list. Therefore, the Board will read the last sentence of 200(2) independently, as if it were a third subsection.

The Ordinance’s absolute prohibition against the siting of group homes for children in residential areas relegates such facilities to commercial land, which is unsuitable for group homes^[1] and in scarce supply.^[1] The Ordinance’s occupancy maximums may adversely affect the economic

viability of Class I group homes such that they are financially infeasible in Bellevue.^[1] The City characterizes these factors as reasons why a provider of group care for children might choose not to site a group care facility in a commercial zone. However, the Board rejects this rationale based upon the policy considerations behind RCW 36.70A.200.

The legislature included RCW 36.70A.200 in the GMA for a reason: “essential public facilities” such as group homes are typically difficult to site. They are precisely the types of land uses which provoke “NIMBY” (Not in My Backyard) responses. The City argues that because the Ordinance does not prohibit group homes from being sited anywhere in Bellevue, it has not precluded the siting of an essential public facility. However, such a narrow interpretation of section .200 would not accomplish the legislature’s goal.

Importantly, the legislature selected the verb “preclude” rather than “prohibit.” A comparison between the meanings of “prohibit” and “preclude” is useful at this point:

prohibit:1.To forbid by authority.2. To prevent: debar.*Webster’s II New Riverside University Dictionary* (2d. ed., 1988); at 940.

preclude:To make impossible or impracticable by prior action: prevent.*Webster’s, supra*, at 926.

At the very least, the Ordinance makes the siting of group homes in Bellevue impracticable. The Ordinance forces group care providers to site facilities for children in nonresidential areas, denying the children the therapeutic benefits of a living in a residential community and

effectively thwarting the purpose of group care.^[1] The unsuitability of commercial areas for the siting of group homes for children means that group care providers will more than likely choose not to site in Bellevue, and the City’s documented need^[1] for group care facilities for children will continue to go unmet. The Board holds that the City has effectively precluded the siting of an essential public facility.

Conclusion No. 5

The Ordinance violates RCW 36.70A.200(2) since it precludes the siting of group homes for children, which are essential public facilities, in the City.

Legal Issue No. 8

Does the Ordinance violate RCW 36.70A.040(3)(d) and WAC 365-195-500?

Conclusion No. 8

The Board concludes that it need not and will not rule on this issue because the Alliance has not briefed it, and the issue of compliance with section 040(3)(d) will be discussed under Legal Issue 12, compliance with RCW 36.70A.040 and WAC 365-195-800.

Legal Issue No. 9

Did the City violate RCW 36.70A.106 and WAC 365-195-620 and WAC 365-195-820 by failing to notify DCTED of intent to adopt this development regulation and Ordinance 60 days prior to adoption?

Positions of the Parties

Children’s Alliance

The Alliance states that the Act requires a planning jurisdiction to notify DCTED of its intent to adopt a development regulation at least 60 days prior to its adoption, and the statutory requirement applies each time any implementation regulation or amendment is proposed for adoption. The Alliance concedes that Bellevue sent DCTED drafts of a proposed group homes ordinance in February, 1994, and August, 1994, but points out that the Ordinance finally adopted was considerably more restrictive than either of these two drafts. The Alliance argues that the changes that the City made in the intervening months went far beyond minor changes that could be seen as “procedural” or “ministerial,” and therefore the DCTED did not receive meaningful notice of the City’s intent to adopt the group homes ordinance in its final form.

City of Bellevue

The City argues that it has fully complied with the requirements of RCW 36.70A.106(1) because it provided draft ordinances in February, 1994, and August, 1994; both of these notifications came at least 60 days prior to the Ordinance’s final adoption on November 21, 1994. The City asserts that RCW 36.70A.106(3) and WAC 365-195-620(3) do not apply in this case because the City was not proposing or adopting any amendments to the Ordinance. Furthermore, the City argues, it is not required to submit every iteration of the regulation during the legislative process to DCTED for review 60 days prior to passage. To do so, the City argues, would result in an interminable legislative process.

Discussion

RCW 36.70A.106 sets out the general notification procedures that municipalities planning under the Act must follow. In particular, subsection 1 provides in relevant part:

(1) Each county and city proposing adoption of a comprehensive plan or development regulations under this chapter shall notify the department of its intent to adopt such plan or regulation at least sixty days prior to final adoption.

The issue is whether the City’s submittal of draft versions of the Ordinance on February 14, 1994, and August 17, 1994, constituted notification, even though the final adopted Ordinance was significantly different from the earlier drafts.

The Act does not require a planning jurisdiction to submit any draft copies of proposed plans or regulations, much less a copy of each and every revision that a comprehensive plan or development regulation undergoes during the legislative process. All that the Act requires of a city proposing to adopt development regulations is that it provide notice of its intent. In this case, Bellevue went beyond its statutory duty by submitting to DCTED two draft copies of the Ordinance in February, 1994, and August, 1994. Bellevue also complied with the time requirement of RCW 36.70A.106(1) since its notification on August 17, 1994, was more than 60 days prior to the final adoption. DCTED was fully apprised that Bellevue intended to adopt an ordinance regulating group homes.^[1]

Conclusion No. 9

The Board concludes that the City provided DCTED with timely notice of its intent to adopt a development regulation concerning group homes and therefore did not violate RCW 36.70A.106 (1).^[1]

Legal Issue No. 10

Does the Ordinance violate WAC 365-195-840 by failing to include a process for identifying and siting essential public facilities?

Conclusion No. 10

Because the Board has ruled that the Ordinance is in violation of RCW 36.70A.200(2), it need not and will not rule on this issue.

Legal Issue No. 12

Does the Ordinance fail to implement and achieve consistency with the City's Comprehensive Plan, pursuant to RCW 36.70A.040 and WAC 365-195-800?

Positions of the Parties

Children's Alliance

The Alliance asserts that the Ordinance not only fails to implement and achieve consistency with Bellevue's Comprehensive Plan, but also thwarts the achievement of and directly conflicts with many of the goals and policies set forth in the Plan. The Alliance contends that it is impossible to reconcile the Ordinance, insofar as it prohibits the siting of group care facilities in residential districts, with the Plan's identification of "youth at risk"^[1] as a special needs population^[1] and the Plan's direction that group homes for these very same youth be dispersed throughout the community and integrated into the neighborhoods.

City of Bellevue

The City contends that the group care facilities regulation cannot be isolated from the rest of the Ordinance or all of the Comprehensive Plan policies. The City points out that the goals and policies cited by the Alliance provide general guidelines for future legislative action and do not dictate the adoption of any specific implementing regulations. The City asserts that the Framework Goals in its Comprehensive Plan must be viewed in a comprehensive manner and one goal must not be pursued to the exclusion of the others.

Discussion

RCW 36.70.040(3)(d) provides that a county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan. Among the goals and policies of Bellevue's Comprehensive Plan that the group homes Ordinance allegedly violates, the following are the most germane:

Framework Goals at I-13:

- Protect and enhance our single-family and multifamily neighborhoods.
- Support diverse housing opportunities.
- Assist people and families in need.
- Provide the needed community services and facilities. Exhibit 5, at I-13.

Housing Element Goal at IV-1:

- To maintain the strength, vitality, and stability of single-family and multifamily neighborhoods and to promote a variety of housing opportunities to meet the needs of all members of the community. Exhibit 5, at IV-1.

Special Housing Needs Goal at IV-9:

- To encourage and support a variety of housing opportunities for those with special needs, particularly those with challenges relating to age, health, or disability. Exhibit 5, at IV-9.
- “Special needs housing should be dispersed throughout the community and integrated into the neighborhoods. Some clustering of special needs housing may be appropriate. . . .” (Emphasis added.) Exhibit 5, at IV-9 (text).

Special Housing Needs Policies at IV-9:

- Policy HO-33. Disperse throughout the community the housing required by residents with special needs
- Policy HO-34. Encourage and support social and health service organizations that offer programs and facilities for people with special needs, particularly those programs that address homelessness and help people remain in the community.
- Policy HO-35. Assist social service organizations in their efforts to obtain funds and to operate emergency housing in the community.
- Policy HO-36. Support housing for families with children throughout the City.
- Policy HO-38. Encourage a variety of local incentives and support activities that help promote housing that is affordable and meets the needs of special populations. Exhibit 5, at IV-9.

Human Services Policies at X-3:

- Policy HS-11. Foster a community free of discrimination and prejudice.
- Policy HS-15. Consider the human services impacts of proposed legislation prior to formal adoption and provide mechanisms which encourage human services objectives in developing City regulations and codes. Exhibit 5, at X-3.

Bellevue asserts that a comprehensive plan is a general policy statement guiding future land use decisions, not a “compendium of mandated actions.” City’s Brief, at 33. The Board agrees that prior to the enactment of the GMA, a comprehensive plan was merely a “statement” of policy, and a city was free to ignore its own comprehensive plan when formulating development regulations. This is no longer the case under the GMA since the legislature, in the interests of accountability and predictability, inserted language requiring consistency between comprehensive plans and development regulations. In *Snoqualmie v. King County*, CPSGPHB Case No. 92-3-0004 (1993), at 14, the Board stated, “[u]nder the GMA, the very nature of policy documents has changed. Policy statements, in both the CPPs and comprehensive plans, are now substantive and directive.” A city retains discretion in deciding how exactly to implement its comprehensive plan through development regulations, but this discretion has its legal and practical limits. *Aagaard, supra*. When, as here, a city exercises its discretion to the point that its development regulations fail to implement and are inconsistent with its Comprehensive Plan, it has exceeded these limits. The City’s primary rationale for asserting there is no inconsistency between the Comprehensive Plan and the group homes Ordinance is this concept of discretion. Relying on *Gutschmidt v. City of Mercer Island*, CPSGPHB 92-3-0006 (1993), the City argues that it has not acted inconsistently with the Plan, but instead has lawfully exercised its discretion to achieve a result not favored by the Alliance. The City asserts that the Framework Goals are not intended to direct any specific implementation approach. The City argues that in order to achieve balance in its development, it must view the Framework Goals in a comprehensive manner without pursuing one to the exclusion of the others.

The Board rejects the City’s argument. First of all, the City neglects to mention which of the Framework Goals are mutually exclusive. Second, as the Alliance points out, this implies a conflict between provisions of the Plan. The internal consistency of Bellevue’s Comprehensive Plan is not at issue here. Since no appeal was brought challenging the Plan, it has become irrefutably valid. Third, even if the Plan were before the Board, a careful reading of it shows that the goals and policies cited in this matter complement and are consistent with each other. The Plan recognizes that “neighborhoods are not static over time and that they evolve to meet the changing needs of the residents and the community.” Exhibit 5, at IV-2-3. The Plan then acknowledges that the types of group homes the Ordinance excludes are compatible with and belong in residential areas, stating that “Special needs housing should be dispersed throughout the community and integrated into the neighborhoods.” (Emphasis added.) Exhibit 5, at IV-9. After reading Bellevue’s Comprehensive Plan, one gains the impression that when the document was adopted, Bellevue was aware that group homes for children are a viable housing option in residential areas. The Board can find no conflict between the policies that relate to the preservation and enhancement of single-family neighborhoods and the policies that apply to group homes. On the contrary, Bellevue has articulated laudable goals in its Plan with respect to ensuring that the housing needs of all members of the community are met. It appears that the Framework Goals are consistent with each other; the issue here is whether the Ordinance is consistent with the Plan.

WAC 365-195-060(7) provides in the definition of consistency that “the phrase ‘not incompatible with’ conveys the meaning of ‘consistency’ most suited to preserving flexibility for local variations.” The Board discussed the Act’s internal consistency requirement in *West Seattle Defense Fund v. Seattle*, CPSGMHB Case No 94-3-0016 (1995), stating that “consistency can also mean more than one policy not being a roadblock for another; it can also mean that the policies of a comprehensive plan, for instance, must work together in a coordinated fashion to achieve a common goal.” *WSDF, supra*, at 27.

As the definition of “group homes” in the Ordinance indicates, group care facilities for children are a type of special needs housing intended to serve youth at risk, including those with disabilities. The Ordinance provides in relevant part:

- Section 2. Land Use Code 20.10.440, Uses in Land Use Districts—Residential, Note 13. “Group care facilities for children are not permitted in any residential district.” Exhibit 1, at 6.
- Section 8. A new definition is added to Section 20.50.022 of the Land Use Code, as follows:
“GROUP CARE FACILITY FOR CHILDREN: . . . Group care facilities for children are not permitted in any residential district.” Exhibit 1, at 8-9.

By restricting group care facilities for children from residential areas, the Ordinance neither “disperses them throughout the community” nor “integrates them into the neighborhood.” In the context of the Plan’s Housing Element, which emphasizes the presence in Bellevue of “strong neighborhoods in which the residents care about their community,” the dictionary meaning of “neighborhood” previously cited is appropriate. As used here, the term “neighborhood” means a residential area, where people interact with each other frequently and share a definite sense of community. Commercial areas clearly do not fit with this connotation of a “neighborhood.” Restricting group homes for children to commercial zones is not consistent with the Plan’s direction to integrate special needs housing into Bellevue’s neighborhoods.

In the Comprehensive Plan, the City asserts that one of its goals is to meet the needs of all members of the community. However, its relegation of group homes to commercial districts in fact thwarts the needs of members of the community which it acknowledges have special housing needs - youth at risk, including those with disabilities. Convincing evidence has been presented regarding the beneficial effects that living in a residential atmosphere provides for these youths.

Indeed, such interaction with the community is vital for their treatment. [1]

The City asserts that the policy statement “special needs housing should be dispersed throughout the community and integrated into the neighborhoods” cannot be read as a requirement to permit all types of special needs housing in all residential neighborhoods. The City is incorrect in this assertion. In *Snoqualmie, supra*, the Board discussed the weight and meaning that are attached to the words ‘shall’ and ‘should’ in policy documents. The Board held that the use of either auxiliary verb in a GMA policy document must be construed to have specific directive meaning. *Snoqualmie, supra*, at 14. Such a construction is necessary in order to fulfill the Act’s requirement that development regulations are consistent with and implement a city’s comprehensive plan.

Conclusion No. 12

The Board concludes that the portions of the Ordinance listed below are directly inconsistent with and fail to implement the Plan's Framework Goals, Housing Element Goal, Special Housing Needs Goal, Special Needs Housing Policies HO-33, -34, -35, -36, -38, and the direction in the Special Housing Needs section to disperse and integrate special needs housing into the neighborhoods:

Ordinance Provisions

1. At page 6 of the Ordinance (Exhibit 1), the following provision under Section 2. Land Use Code 20.10.440 Uses In Land Use Districts Residential:

- “13.Group care facilities for children are not permitted in any residential district.”

2. At page 7 of the Ordinance, under Section 6 - Land Use Code 20.50.020, the definition of “family.”

3. At page 9 of the Ordinance, the following statement under Section 8, definition of Group Care Facility for Children:

- “Group care facilities for children shall not be permitted in any residential district.”

4. At page 9 of the Ordinance, under Section 20.50.022, definition of Class I Group Homes:

- “Class I homes may be subject to the dispersal and registration requirements set forth at 20.10.440 of this Code.”
- “Residential zones—a maximum of six (6) residents (including live-in staff) in addition to the minor children of the residents shall be permitted to occupy a Class I group home at any one time.This maximum may be raised to 8 if a large group home permit is issued in accordance with Chapter 20.30T.”

5. At Section 20.30T, page 11, the Ordinance sets forth a conditional use permit (CUP) process that must be followed by Class I group homes proposing to exceed the occupancy maximums established for residential districts in Section 20.50.022.The provisions below detail the permit process.

- “20.30TLarge group home permit”;
- “20.30T.110Scope”;

- “20.30T.115Applicability”;
- “20.30T.120 Purpose”;
- “20.30T.125Applicable Procedure”;
- “20.30T.130Decision Criteria”;
- “20.30T.140 Time Limitation”;
- “20.30T.150Revocation of Permit”.

V.ORDER

Having reviewed the above-referenced documents and the file in this case, having considered the oral arguments of the parties, and having deliberated on the matter, the Board finds that the provisions listed below in the City of Bellevue’s Ordinance No. 4696-A are **not in compliance** with the requirements of the Growth Management Act. The Board therefore orders the City to take actions necessary to bring the Ordinance into compliance with the GMA, as interpreted by the Board in this decision. The City must repeal or amend the following provisions:

1. At page 6 of the Ordinance (Exhibit 1), the following provision under Section 2. Land Use Code 20.10.440, Notes: Uses In Land Use Districts - Residential:
 - “Note 13. Group care facilities for children are not permitted in any residential district.”
2. At page 7 of the Ordinance, under Section 6 - Land Use Code 20.20.020, the definition of “family.”
3. At page 9 of the Ordinance, the following statement under Section 8, definition of Group Care Facility for Children:
 - “Group care facilities for children shall not be permitted in any residential district.”
4. At page 9 of the Ordinance, under Section 20.50.022, definition of Class I Group Homes:
 - Class I homes may be subject to the dispersal and registration requirements set forth at 20.10.440 of this Code.”
 - “Residential zones—a maximum of six (6) residents (including live-in staff) in addition to the minor children of the residents shall be permitted to occupy a Class I group home at

any one time. This maximum may be raised to 8 if a large group home permit is issued in accordance with Chapter 20.30T.”

5. At pages 11-14 of the Ordinance, the following sections relating to the large group home permit:

- “20.30T Large group home permit”;
- “20.30T.110 Scope”;
- “20.30T.115 Applicability”;
- “20.30T.120 Purpose”;
- “20.30T.125 Applicable Procedure”;
- “20.30T.130 Decision Criteria”;
- “20.30T.140 Time Limitation”;
- “20.30T.150 Revocation of Permit”.

Pursuant to RCW 36.70A.300(1)(b), the City is given until **5:00 p.m.** on **Friday September 1, 1995** to repeal or amend the above identified provisions of Ordinance No. 4696-A as necessary to achieve compliance with the Board’s Final Decision and Order and the requirements of the Act and to be consistent with and implement the Comprehensive Plan. The City shall file by **5:00 p.m.** on **Tuesday, September 5, 1995**, one original and three copies with the Board and serve a copy on Children’s Alliance of a statement of actions taken to comply with the Final Decision and Order. The Board will then promptly schedule a compliance hearing to determine whether the City has complied with this Order.

So ORDERED this 25th day of July, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne,
Presiding Officer

NOTE: This Final Decision and Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

[1]

RCW 36.70A.010 provides:

The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth. (Emphasis added.)

[1]

In *Twin Falls, et al., v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), the Board held that:

The most fundamental premise of the GMA is that the planning that was done under the authority of Chapter 36.70 RCW was insufficient to serve the quality of life enjoyed by residents of this state. *Twin Falls*, at 39.

[1]

The Board has previously held that other provisions of the Act require no less than a transformation of the expectations, roles and behaviors of the past. For example, with regard to city and county roles in service delivery, the Board held:

A major precept of the Act is that change is required in the way that plans are related to land use and service delivery issues, in the way that plans are related to one another, and indeed, in the very role that cities and counties play. The most succinct and accurate word to describe the change that the Act directs is "transformation". *Poulsbo, et al, v. Kitsap County*, CPSGPHB Case No. 92-3-0009 (1993), Order Granting Kitsap County's Petition for Reconsideration and Modifying Final Decision and Order. (Emphasis added.)

[1]

The Board takes official notice of planning literature that chronicles this phenomenon, including The Practice of Local Government Planning, 2d ed., Frank So and Judith Getzels, Editors, International City Management Association, Washington D.C., 1988, at 368-370; and The Political Culture of Planning, J. Barry Cullingworth, Routledge Press, New York, 1993, at 64-69.

[1]

The Board notes that the legislature amended RCW 36.70A.070 in the 1995 session. The effective date of the new legislation is July 23, 1995. The amended language focused on subsection (b) and did not amend the subsection at issue in the instant appeal, subsection (c). Sec. 1 of SSB 5567 provides:

A housing element ensuring the vitality and character of established residential neighborhoods that "(a) includes an inventory and analysis of existing and projected housing needs; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single family residences;...

[1]

HANDICAP: With respect to a person:

1. A physical or mental impairment which substantially limits one or more of such a person's major life activities.
2. A record of having such an impairment, or
3. Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction

to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)), provided further that the term does not apply to a person solely because that person is a transvestite.”42 U.S.C. 3602.

[1]

The manner in which the Ordinance was drafted made deciphering and citing to it very difficult. It was especially confusing where the Ordinance regulated within a definition, i.e., under the definition of “group care facility for children,” there is a prohibition against siting these facilities in residential areas. Ex. 1, at 9.

[1]

In the original draft of the Ordinance, the definition of “family” read:

20.50.020 FAMILY. One or more persons living together. It may include household employees. In no case shall it include more than six unrelated persons living together as a single, nonprofit housekeeping unit. Exhibit 31, at 9.

[1]

See the definition of Class I Group Home, *supra*, at 11-12.

[1]

Id.

[1]

If the Legislature intended to use “reasonable accommodation” as the standard in RCW 36.70A.410 rather than “different treatment,” it could have done so. The Legislature is clearly aware of the concept of reasonable accommodation since it cited a federal statute that utilizes the concept. In addition, RCW 49.60.222 (Unfair practices with respect to real estate transactions, facilities, or services) utilizes the phrase and Washington case law is replete with cases interpreting it.

[1]

The Board reviewed Chapter 365-195 WAC Growth Management Act, Procedural Criteria for Adopting Comprehensive Plans and Development Regulations, in *Children’s Alliance and Low Income Housing Institute v. Bellevue*, CPSGMHB Case No. 95-3-0011, Order Partially Granting Bellevue’s Dispositive Motion. Subsequently, the Alliance has discussed only the following procedural criteria set forth in the legal issues: WAC 365-195-820 and -620 (relating to notification to DCTED); 365-195-800 (relating to consistency between the Ordinance and the Comprehensive Plan); and 365-195-840 (relating to procedures for siting essential public facilities). The Alliance abandoned that portion of Legal Issue No. 1 addressing WAC 365-195-860, that portion of Legal Issue No. 5 dealing with WAC 365-195-340, and that portion of Legal Issue No. 8 citing WAC 365-195-500.

[1]

“Those [Bellevue youth] in need of shelter generally are victims of dysfunctional families and are not criminals. They are runaways and throwaways in need of a neighborhood environment, not a commercial environment. They need to believe they are part of the community.” Ex. 6, at 4. (statement of Bob Pennel, Treasurer for Friends of Youth)

“Friends of Youth has provided both short- and long-term housing for youth for many years. Of most interest in Bellevue lately has been short-term housing, and that type of service is best provided in residential settings. The youth come from families and hopefully will be returning to their families. That likelihood is increased if the kids are maintained in their school setting and familiar surroundings.” Ex. 8, at 7 (statement of Joan Campbell, Associate Director of Friends of Youth).

“The residential settings [of existing treatment programs in Washington] serve to create a community kind of experience for the kids so that they can learn to live successfully in a community.” Ex. 19, at 9 (statement of Nancy Zahn, DSHS).

“Children need as close an approximation of a family as possible when their own family is not sufficient, and sending children to live in commercial zones is not acceptable.” Ex. 38, at 8 (statement of Peter Berliner, Children’s Alliance).

“The Department has a commitment to provide community-based services in closest proximity to the child’s home because we know that children are best served when treatment and new behavior patterns are integrated into the child’s own community. Without this connection, children return to their own communities after treatment with new skills, but lacking the ability to apply these new behaviors in their old environments.” Ex. 162, at 1-2 (statement of Assistant Secretary, Children’s Administration, DSHS)

“Single family homes may be the most desirable sites for special needs housing. A house can accommodate people living together in a family setting, a neighborhood location brings residents into contact with the community, and houses are by far the most obtainable building type for project sponsors.” Ex. 190, at 55-56 (Affordable Housing Task Force of the King County Growth Management Planning Council, *Affordable Housing in King County*)

[1]

Of the remaining 1,900 acres of undeveloped land [in Bellevue], over 90 percent is planned for residential use. The remaining 10 percent is designated for non-residential use. Ex. 5, at III-2 (Bellevue’s Comprehensive Plan).

[1]

The state licensing process requires the number of staff be doubled when the number of youth served is increased from four to six. No additional staff are needed for homes serving up to eight youths. Ex. 8, at 15. In order to exceed the occupancy maximums, a group home operator would have to go through the conditional use permit (CUP) process set out in Section 20.30T of the Ordinance. Ex. 1, at 11-13. However, the State and a number of agencies have testified that the CUP process is prohibitive to the point of being exclusionary for the following reasons: 1.) additional costs (\$6,000 or more for the process, plus potential legal appeals); 2.) the length of the process (six to twelve months, plus potential appeals); 3.) loss of confidentiality needed to protect residents who may be fleeing abusive situations. Because the process is discretionary, predictability is reduced and care providers may have difficulty finding and holding suitable properties for the duration of the process. Ex. 132, at 5.

[1]

See Note 13, *supra*.

[1]

Between August 1992 and May 1993, 99 Eastside children requested shelter from DSHS Division of Children and Family Services. This demand averages 120 requests for placement annually. Friends of Youth reports that in 1991, they sheltered 140 Eastside youths and turned away 479 for lack of space. Child Protective Services received 577 child abuse reports from Bellevue in 1991. Bellevue Police reported that 215 Bellevue children were reported as runaways in 1992, up from 166 in 1991. Fifty-six Bellevue children requested shelter from Friends of Youth in the 7/92 - 6/93 fiscal year; 18 of these children were housed and 36 had to be turned away for lack of space. Ex. 112 (memo from Department of Community Development to the Planning Commission).

[1]

RCW 36.70A.106(2) requires cities and counties to transmit to DCTED a complete and accurate copy of its comprehensive plan or development regulations within ten days of adoption. The State thus receives individualized notice of adoption not afforded other entities (*compare* with RCW 36.70A.290(2)). In addition, DSHS is an *amicus* in this case.

[1]

The Board reviewed WAC 365-195-820 and -620 in the Order Partially Granting Bellevue’s Dispositive Motion and has considered them here.

[1]

The phrase “youth at risk” refers to homeless, runaway, or throwaway youths. Ex. 85, at 1 (Friends of Youth Bellevue Shelter Fact Sheet).

[1]

“Bellevue residents have a variety of special housing needs. In general, special needs populations include people who require some assistance in their day-to-day living, such as the physically or mentally disabled, victims of domestic violence, people living with AIDS, youth at risk, and seniors. Ex. 5, at IV-9 (Emphasis added.)

[1]

See Note 13, *supra*.