

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

THE CHILDREN’S ALLIANCE and)	Case No. 95-3-0011
LOW INCOME HOUSING)	FINDING OF NONCOMPLIANCE
INSTITUTE,)	[Sanctions Recommended]
Petitioners,)	
v.)	
CITY OF BELLEVUE,)	
Respondent.)	
)	
)	
)	
)	
)	
)	

I. Procedural Background

On July 25, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued a Final Decision and Order (**FDO**) in the above referenced case. The Order set a compliance deadline of September 1, 1995 for the city of Bellevue (**City**) to repeal or amend certain enumerated provisions of City of Bellevue Ordinance No. 9646-A, the Group Homes Amendment Ordinance of 1994, (the **Ordinance**) in order to achieve compliance with the FDO and the requirements of the Growth Management Act (**GMA** or the **Act**).

On August 17, 1995, in response to a motion filed by the City, the Board issued an “Order Granting Extension of Time for Compliance,” extending the compliance deadline to October 16, 1995.

Subsequently, the City appealed the Board’s FDO to the Thurston County Superior Court (the **Court**), Cause No. 95-2-02601-7. In September 1995, the Board received a copy of the Court’s “Stipulated Order Staying Judicial and Administrative Proceedings,” staying further proceedings until December 6, 1995.

On November 28, 1995, the Board received a copy of the City’s “Motion for a Brief Stay of Proceedings by the City of Bellevue,” filed in the Court proceeding.

On December 4, 1995, the Court entered an “Order Staying Judicial and Administrative Proceedings,” staying the City’s compliance deadline to December 20, 1995. The order indicated that “[T]his extension is final and non-negotiable and no further extension of the compliance

deadline will be granted under any circumstances absent agreement of the Board and all necessary parties.” Exhibit A to Children Alliance’s Motion for Determination of Noncompliance.

On December 20, 1995, the Board received the City’s “Statement Regarding Compliance by the City of Bellevue” (the **City’s Statement**). The City stated that it had not yet passed an ordinance in response to the Board’s FDO.

On December 21, 1995, the Board received “Petitioners’ Motion for Determination of Noncompliance,” asking the Board to promptly schedule a compliance hearing.

On January 4, 1996, the Board issued a Notice of Compliance Hearing.

On January 18, 1996, the Board held a compliance hearing at its offices in Seattle. Chris Smith Towne, Presiding Officer in this case, M. Peter Philley and Joseph W. Tovar were present from the Board. Michael Mirra and Steve Fredrickson appeared on behalf of Children’s Alliance; Stephen A. Smith represented the City. Court reporting services were provided by Nancy A. Poppe, CSR of Robert H. Lewis & Associates, Tacoma. No witnesses testified at the hearing. In response to a question from Board Member Tovar, the parties discussed whether the Board could issue a determination of invalidity on a portion of the Ordinance. Consequently, the parties were given additional time to brief the subject of invalidity.

On January 29, 1996, Children’s Alliance filed “Petitioners’ Post-Compliance Hearing Brief on Invalidation.” On the same day, the “City of Bellevue’s Supplemental Memorandum Regarding Compliance Issues Raised by the Board” (**City’s Supplemental Memorandum**) was also filed.

On January 31, 1996, the “Reply of the City of Bellevue to Petitioners’ Post-Compliance Hearing Brief on Invalidation” as well as the “Petitioners’ Reply Brief on Invalidation and Sanctions” were filed with the Board.

II. STATEMENT OF FACTS

1. 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.FDO, Finding of Fact No. 3, at 3.

2.On February 2, 1995, the Board received a Petition for Review from the Children’s Alliance and Low Income Housing Institute (**Children’s Alliance**) appealing the Ordinance.On March 3, 1995, the Children’s Alliance filed its First Amended Petition for Review.

3.On July 25, 1995, the Board entered its FDO in this case.

4.Immediately following issuance of the Board’s FDO, the City retained outside legal counsel to, in part, draft an ordinance in response to the FDO.City’s Statement, at 2.

5.On September 1, 1995, legal counsel for the City and Children’s Alliance met to review a draft proposal of a new ordinance.City’s Statement, at 2.

6.On October 5, 1995, the Washington State Department of Social and Health Services (**DSHS**), an *amicus* in this case, responded to a request for information from the City.

Appendix B to City’s Statement.

7.On October 6, 1995, legal counsel for the City and DSHS met to discuss the draft ordinance.City’s Statement, at 2.

8.On November 3, 1995, John Reynolds, Director of DSHS Lands and Buildings Division, prepared a letter to Mayor Donald Davidson with comments on the proposed ordinance.

Appendix C to City’s Statement.

9.On November 6, 1995, the City held a public hearing on the proposed ordinance. DSHS’s letter was delivered at this hearing.City’s Statement, at 3.

10.On November 13, 1995, the City decided to seek additional outside legal counsel to draft a second version of the proposed ordinance in response to the FDO.This second proposal was subsequently prepared.City’s Statement, at 3.

11.On December 11, 1995, three new members of the Bellevue City Council took their oath of office.The City Council also determined that a public hearing on the new, second proposed ordinance was necessary and appropriate.City’s Statement, at 4.

12.On January 8, 1996, the City Council held its first meeting with its three new members.*See* City’s Statement, at 4.

13.On January 16, 1996, the City held a public hearing on the second proposed ordinance.*See* Appendix D to City’s Statement.The City’s representative indicated to the Board that following this public hearing, the City Council requested that a third proposed ordinance be prepared by January 29, 1996.He further indicated that the earliest the City could hold a public

hearing on such a proposal would be February 12, 1996. [\[1\]](#)

III. DISCUSSION

Compliance

Part V of the Board’s July 25, 1995 FDO, at 28, is the subject of this compliance determination.

The relevant portion is set forth below:

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

Of most import in the above-quoted portion of the Final Decision and Order was the Board’s directive that the City repeal or amend the listed portions of the Ordinance by the compliance deadline. The City has readily acknowledged that, although it has made an effort to comply, it has been unable to either repeal or amend the specified sections of the Ordinance by the compliance deadline. The City stated that it has not yet passed an ordinance in response to the Board’s FDO, not for lack of effort but because of “... the difficulty of that task and other issues involving the siting of group homes within the City.” City’s Statement, at 1. Accordingly, the Board can only reach one conclusion: the City has not complied.

Invalidity

The Board notes that, although Children’s Alliance has made a strong showing that continued validity of the Ordinance might substantially interfere with certain *requirements* of the Act, RCW 36.70A.300(2) mandates that for the Board to invalidate an enactment, it must find that substantial interference will occur with the fulfillment of the *goals* of the GMA, set forth at RCW 36.70A.020. Children’s Alliance has not met its burden of persuading the Board that the non-complying portions of the Ordinance substantially interfere with the fulfillment of the Act’s goals.

Sanctions

The Board notes that the Ordinance found not in compliance was originally adopted on November 21, 1994 -- well over a year ago. The Board determined that portions of the Ordinance did not comply on July 25, 1995. The City has subsequently gone well past the Board’s deadline for complying (October 16, 1995) and the Court’s deadline (December 20, 1995) without taking formal legal action. In light of these facts the Board must recommend the imposition of sanctions by the Governor. The Board is aware that achieving compliance with portions of the Board’s Final Decision and Order are politically sensitive issues in the City; nonetheless, the political difficulty in adopting an ordinance that complies with the Act cannot excuse the City from complying with the Act’s clear directives.

IV. FINDING OF NONCOMPLIANCE

Having considered the above-referenced documents as well as the parties’ arguments at the

compliance hearing, the Board concludes that the City **has not complied** with the Board's FDO since it has not repealed or amended the Ordinance by the compliance deadline. Therefore, the Board finds that the City of Bellevue is not in compliance with the requirements of the Growth Management Act.

V. DETERMINATION OF INVALIDITY

Having considered the above-referenced documents, the Board concludes that it is inappropriate to make a determination of invalidity. Petitioners have not met their burden of showing how the continued validity of the portions of the Ordinance that were found not in compliance in the Board's Final Decision and Order would substantially interfere with the fulfillment of the goals of the GMA.

VI. SANCTIONS

RCW 36.70A.330(3) requires that the Board transmit its finding of noncompliance to the Governor, and authorizes it to recommend to the Governor that sanctions be imposed. The Governor, upon receiving such a recommendation, is authorized by RCW 36.70A.340 to impose appropriate sanctions. The Board will forward this finding of noncompliance to the Governor, with a **recommendation that sanctions be imposed to the extent necessary to bring about compliance** if the City does not promptly repeal and/or amend the noncomplying provisions in the Ordinance and otherwise bring the Ordinance into compliance with the requirements of the GMA.

So ordered this 2nd day of February, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member

[\[1\]](#) The City subsequently has indicated that it will consider this proposal on February 5, 1996 and hold a public hearing "shortly thereafter" and "as soon as legally practicable." City's Supplemental Memorandum, at 3 and 6.