



option, no later than September 11, 1996. This Order also invited responses to DSHS' motion for amicus status.

On September 13, 1996, the Board received "City of Bellevue's Prehearing Brief" (**City's PHB**).

On September 20, 1996, the Board received "Petitioners' Prehearing Reply Brief" (**Reply Brief**).

On September 23, 1996, the Board received "City of Bellevue's Response to Amicus Brief of Department of Social and Health Services" (**Response to Amicus**).<sup>[1]</sup> Bellevue did not oppose amicus status for DSHS.

On September 24, 1996, the Board held a hearing on the merits at the Bellevue Regional Library. Present for the Board were Edward G. McGuire, Joseph W. Tovar, and Chris Smith Towne, Presiding Officer. Children's Alliance was represented by Steve Fredrickson and Michael Mirra. The City was represented by Eric Laschever, Stephen A. Smith, and Robert B. Mitchell. Dana Marie Reid was present for amicus DSHS. Court reporting services were provided by Cynthia J. LaRose of Robert H. Lewis & Associates, Tacoma.

## **II. FINDINGS OF FACT**

1. On November 21, 1994, the City adopted Ordinance No. 4696-A, the Group Homes Amendment Ordinance of 1994, amending sections of the Bellevue's Land Use Code. The Purpose section of that Ordinance stated that it was 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 designated three classifications of Group Homes. *Children's Alliance and Low Income Housing Institute v. City of Bellevue (Children's Alliance I)*, CPSGMHB Case No. 95-3-0011 (July 25, 1995), Final Decision and Order, Finding of Fact 3.
2. Children's Alliance petitioned the Board to review the City's adoption of Ordinance 4696-A. *Children's Alliance I*, at 1. In *Children's Alliance I*, the Board found that Ordinance 4696-A was not in compliance with the Growth Management Act (the **GMA** or the **Act**). The Board ordered the City to repeal or amend specific sections of Ordinance 4696-A, including the Ordinance's mandate that "[g]roup care facilities for children shall not be permitted in any residential district," by September 1, 1995. *Children's Alliance I*, at 27-28.
3. On February 2, 1996, following a hearing on compliance, the Board found that the City was not in compliance with the requirements of the GMA. *Children's Alliance I*, Finding of Noncompliance, at 6.

4. On March 18, 1996, the City adopted Ordinance 4861 (the **Land Use Code Ordinance**). Exhibit (**Ex.**) II-1. This Ordinance amended the City's Land Use Code in order to "set forth the conditions under which Group Facilities may be located within the City of Bellevue, to address pending issues under the Growth Management Act [i.e., the Board's Order in *Children's Alliance I*], and to implement the City's Comprehensive Plan with respect to those uses." *Id.* at 2.

Ordinance 4861<sup>[1]</sup> creates two classes of group facilities:

- Class I includes (a) adult family homes; (b) domestic violence shelter homes; (c) foster family homes and large foster family homes; and (d) group facilities established solely for persons with a handicap. *Id.* at 4.
- Class II consists of all group facilities that are not Class I facilities. *Id.*

All Class I facilities are permitted in residential districts. *Id.*

Class II facilities are generally permitted in residential districts. However, the Ordinance excludes Class II facilities from residential districts if any one of three circumstances exists:

- (a) the facility is not operated by Resident Staff;
- (b) the facility accepts Short Term Occupants; or
- (c) the facility houses one or more persons who do not have a handicap and who are a danger to others.<sup>[1]</sup> *Id.*

All Class II facilities are required to obtain a permit from the City. *Id.*

1. Group care facilities for children are "maintained and operated for the care of children on a twenty-four hour basis." WAC 388-73-014(1). A group care facility solely for handicapped children is a Class I facility. Ex. II-1, at 4. All other group care facilities for children are Class II facilities. *Id.*

2. Except for domestic violence shelter homes, foster family homes, and large foster family homes, group facilities "may not be established within 1,000 feet in any direction of any other like facility." *Id.* at 9.

3. Ordinance 4861 contains an occupancy maximum that applies to Class I and Class II group facilities. The Ordinance, at 10, provides:

Subject to the provisions for Reasonable Accommodations in Section 20.50.044, Group Facilities located in R-1 through R-7.5 districts are limited to six (6) Residents plus not more than two (2) Resident Staff in addition to the minor children of the residents.

4. Ordinance 4861 also contains a Reasonable Accommodation clause which provides for waiver of a requirement of the Land Use Code in circumstances where strict adherence to the Land Use Code would conflict with the Fair Housing Amendments Act of 1988 or the Washington Law Against Discrimination. *Id.* at 5.

5. On May 6, 1996, the City adopted Ordinance 4877 (the **Plan Ordinance**), amending the housing element of the City's Plan. This Ordinance amended the Housing Element, Special Needs Goal, by, among other things, deleting:

Special needs housing should be dispersed throughout the community and integrated into the neighborhoods. Some clustering of special needs housing may be appropriate if proximity to public transportation, medical facilities, or other essential services is necessary.

The above language was replaced with:

Housing for people with special needs should be sited to protect residential neighborhoods from adverse impacts and avoid concentrations of such housing. Ongoing stable family living situations for people with special needs can be compatible with other residential uses in neighborhoods. Ex. II-2, at 1-2; City's PHB, at 5.

6. Ordinance 4877 also amended Plan Policy HO-33 by deleting:

Disperse throughout the community the housing required by residents with special needs.

It then inserted:

Plan for housing for people with special needs. Avoid concentrations of such housing and protect residential neighborhoods from adverse impacts. Encourage ongoing stable family living situations for people with special needs. Provide in all areas for the siting of facilities devoted to the care of people with handicaps. Ex. II-2, at 2; City's PHB, at 5.

### **Iii. DISCUSSION AND CONCLUSIONS**

#### **A. LEGAL ISSUE NO. 1**

***Did the City's adoption of the Ordinances violate RCW 36.70A.410?***

#### **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. Sec. 3602).(Emphasis added).<sup>[1]</sup>

GMA counties and cities may not treat structures that house handicapped people differently than structures that house anyone else.The question is whether the restrictions and requirements that Bellevue’s Ordinances place on group facilities result in treating structures housing handicapped people differently than structures that house anyone else.

“Handicaps,” as used in RCW 36.70A.410, are those handicaps defined in 42 U.S.C. § 3602, which provides:

(h) “Handicap” means, 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 [21 U.S.C. § 802]).

The Washington Supreme Court examined the definition of “handicapped,” as used in 42 U.S.C. § 3602.<sup>[1]</sup> *See Sunderland Servs. v. Pasco*, 127 Wn.2d 782, at 789-92 (1995).In *Sunderland*, the City of Pasco denied a special use permit to locate a group home for abused and neglected teenagers in a single-family residential zoning district. The teenagers to be served in *Sunderland* were “abused, homeless, neglected, or [had] nowhere else to go.”The court found that Pasco’s denial did not constitute handicap discrimination under the state housing policy act.*Id.* at 790, 798.

The *Sunderland* court rejected the argument that these children were handicapped, concluding “they are not handicapped because abuse and neglect are environmental and cultural factors. These factors may undoubtedly produce physical or mental effects.However, these effects do not in every case limit the victim’s participation in major life activities.”*Sunderland*, 127 Wn.2d, at 791.Accordingly, **the Board holds that RCW 36.70A.410 protects handicapped persons as defined in 42 U.S.C. § 3602 as interpreted by *Sunderland*; therefore, it does not protect all abused and neglected persons.**

Petitioners quote the City’s environmental checklist prepared for Ordinance 4877 for the proposition that the Plan amendment violates RCW 36.70A.410.Reply Brief, at 5.In response to the checklist question regarding the effect of the proposal on land and shoreline use, the City’s

checklist provides that:

Modifying Policy HO-33 as proposed may result in certain types of special needs housing that are deemed to have an adverse impact on residential neighborhoods being concentrated in non-residential areas, rather than dispersed throughout the community. The policy direction contained in this proposal amends the City's philosophy of integrating special needs housing into the neighborhoods by excluding certain types of special needs housing from neighborhoods. Ex. II-89 (emphasis added).

Petitioners' argument might be meritorious if "special needs" were synonymous with "handicapped"; however, it is not. A person is "handicapped" if he or she fits within one of the three criteria of 42 USC § 3602(h). "Special needs" includes handicapped people as well as people who do not meet the statutory definition of handicapped.

Similarly, Petitioners' argument fails to show how Ordinance 4861 violates RCW 36.70A.410. Petitioners state that "non-dangerous, handicapped youth are consigned to commercial zones." Petitioners' PHB, at 14. The text of the Ordinance contradicts Petitioners' argument. If the group facility meets the criteria of a Class I facility, it is permitted in all residential zones. If the group facility meets the criteria of a Class II facility, it is permitted in all residential zones unless the facility is not operated by resident staff; the facility accepts short term occupants; or the facility houses non-handicapped persons who are a danger to others. Even then, the Ordinance's Reasonable Accommodation provision may allow such facilities to locate in residential zones. *See* Finding of Fact 6.

Class I facilities include all group facilities "established solely for persons with a Handicap." Class I facilities are allowed in all residential areas and do not require a City permit to operate. Class II facilities include integrated facilities housing both handicapped and non-handicapped. Those integrated facilities without resident staff, providing short-term occupancy, or housing non-handicapped persons dangerous to others are excluded from residential areas, unless granted a waiver under the Reasonable Accommodation provision. If the exclusionary criteria applied because a Class II facility is occupied by handicapped persons, RCW 36.70A.410 would clearly be violated. Such is not the case. The exclusionary criteria apply whether or not a Class II facility is occupied by handicapped persons. **The Board holds that the conditions included in Ordinance 4861 that exclude Class II group facilities from residential zones do not violate RCW 36.70A.410.**

Next, Petitioners challenge the permitting requirements for Class II facilities. Petitioners state that "The requirement of developers of group care facilities for children to obtain a Class II permit will greatly increase the uncertainty, time and cost of development." Petitioners' PHB, at 17-18.

Class I facilities are not required to obtain a permit from the City. All Class II facilities must obtain a permit to operate in the City. Since Class II facilities include integrated facilities housing

both handicapped and non-handicapped, some facilities housing handicapped persons will be required to obtain a Class II permit. The Class II permit requirement applies whether or not the group facility houses a handicapped person. Group facilities, as identified in Finding of Fact 3, occupied by persons with handicaps are not treated differently than similar residential structures. **The Board holds that the Class II permit requirement of Ordinance 4861 does not violate RCW 36.70A.410.**

In addition to the Class II group facility permit, the operator of a group facility must complete the business registration requirements of the City. Petitioners state that the GMA “mandates that residential structures occupied by handicapped persons be treated the same as other residential structures, not the same as other businesses.” Reply Brief, at 15. Petitioner does not refute the City’s statement that the business registration requirement applies to all home enterprises. City’s PHB, at 17. Petitioner also does not dispute that “[o]perating a group living facility is a business use of property.” *Id.* (citing *Mains Farm Homeowners v. Worthington*, 121 Wn.2d 810, 820-21 (1993)). Therefore, the business registration requirement of Ordinance 4861 applies whether or not the residential structure is occupied by persons with handicaps. **The Board holds that the business registration requirement does not violate RCW 36.70A.410.**

Petitioners also challenge the City’s dispersal requirement. Petitioners’ PHB, at 19-20. The dispersal requirement applies to Class I and Class II group facilities. *See* Finding of Fact 5. However, the dispersal requirement does not apply to domestic violence shelter homes, foster family homes and large foster family homes. **The Board holds that adult family homes and group facilities established solely for persons with a handicap (Class I group facilities), and all Class II group facilities are subject to the City’s dispersal requirement of Ordinance 4861.**

In *Familystyle of St. Paul v. City of St. Paul*, the eighth circuit reviewed a challenge to a Minnesota statute and a St. Paul ordinance requiring that residential facilities for the mentally impaired be located at least a quarter of a mile apart. 923 F.2d 91, 93 (1991). In finding that the challenged statute and ordinance do not violate the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3602, the court stated:

Congress did not intend to abrogate a state’s power to determine how facilities for the mentally ill must meet licensing standards. Minnesota’s dispersal requirements address the need of providing residential services in mainstream community settings. The quarter-mile spacing requirement guarantees that residential treatment facilities will, in fact, be “in the community,” rather than in neighborhoods completely made up of group homes that re-create an institutional environment . . . .

. . . [W]e conclude that the Minnesota Human Services Licensing Act and the St. Paul zoning code do not violate the Fair Housing Amendments Act of 1988. *Familystyle of St.*

*Paul*, 923 F.2d at 94.

Bellevue's dispersal requirement is similar to the dispersal requirement in *Familystyle of St. Paul*. Bellevue's dispersal requirement applies to some group facilities that solely house persons with handicaps. The dispersal requirement also applies to group facilities that house no persons with handicaps. Clearly the dispersal requirement is not triggered because a group facility houses handicapped persons; the dispersal requirement applies whether or not a group facility houses handicapped persons. The dispersal requirement adopted by Ordinance 4861 does not treat group facilities for handicapped persons differently than facilities for non-handicapped persons. Thus, **the Board holds that the dispersal requirement of Ordinance 4861 does not violate RCW 36.70A.410.**

Just as the City's dispersal requirement does not violate the Act because it applies to all group facilities whether or not the group facility houses handicapped persons, the City's occupancy maximum applies to all group facilities whether or not the group facility houses handicapped persons. Therefore, **the Board holds that the occupancy maximum of Ordinance 4861 does not violate RCW 36.70A.410.**

In *Children's Alliance I*, the Board concluded:

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. *Children's Alliance I*, at 15 (footnote omitted).

**Such is not the case here. The Board holds that under the challenged Ordinances, group facilities for persons who have a physical or mental handicap, as defined by federal law, are not treated differently than other facilities.**

### **Conclusion No. 1**

Petitioners have failed to meet their burden to show, by a preponderance of the evidence, that Ordinance 4877, the Plan amendment, and Ordinance 4861, the Land Use Code amendment, fail to comply with the requirements of RCW 36.70A.410.

### **B. LEGAL ISSUE NO. 2**

***When the City adopted the Ordinances, did it fail to be guided by RCW 36.70A.020(4)?***

### **Discussion**

Children's Alliance argues that the City was not guided by the Act's housing goal. In Legal Issue No. 3, Children's Alliance argues that the City did not comply with the section that implements

the housing goal, RCW 36.70A.070. This Board has held that:

[W]here a petition alleges noncompliance with both the public participation goal and the specific public participation requirements of the Act, the Board will scrutinize only the latter. *Litowitz v. Federal Way*, CPSGMHB Case No. 96-3-0005, Final Decision and Order (July 22, 1996), at 7.

The holding in *Litowitz* is applicable here. **The Board holds that, where a petition alleges noncompliance with both the housing goal and the specific housing element requirement of the Act, the Board will scrutinize only the latter.**

Therefore, the Board will not address Legal Issue No. 2.

### **Conclusion No. 2**

Because petitioners have challenged the City's action under the housing goal of RCW 36.70A.020 and the housing element requirement of RCW 36.70A.070, the Board will address only the challenge under RCW 36.70A.070 in Legal Issue No. 3. Therefore, the Board will not address Legal Issue No. 2.

### **c. LEGAL ISSUE NO. 3**

***Did the City's adoption of Ordinance 4877 violate RCW 36.70A.070, specifically the first paragraph and subsection (2) thereof?***

### **Discussion**

Petitioners here challenged the Plan Ordinance. A comprehensive plan "shall be an internally consistent document." RCW 36.70A.070. This statute further provides:

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

. . . (2) A housing element ensuring the vitality and character of established residential neighborhoods that: . . . (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.

Thus, Petitioners' challenge under RCW 36.70A.070 raises two issues: (1) Is the amended Plan internally consistent; and (2) Is the housing element, as amended, in compliance with RCW 36.70A.070(2)?

**Internal Consistency**

Petitioner offers only conclusory statements that the amended Plan is internally inconsistent. *See* Petitioners' PHB, at 22-23 *and* Reply Brief, at 7. Petitioners have not explained how the amended Plan is internally inconsistent.

### Housing Element

Petitioners state that the Ordinance discourages the availability of affordable housing to youth "who will be predominately low and moderate income, and by failing to promote a variety of housing types, including short-term and long-term shelter care for children." Petitioners' PHB, at 21. Petitioners summarily conclude that the amended Plan fails to satisfy the housing element of RCW 36.70A.070(2). Petitioners' conclusory statements are based on the erroneous assumption that, under the amended regulations, all group care facilities for children will be forced to locate in commercial zones. Petitioners' PHB, at 23. Petitioners have not explained how the amended Plan violates RCW 36.70A.070(2).

**The Board holds that Petitioners have failed to meet their burden to show, by a preponderance of the evidence, that the City has violated RCW 36.70A.070.**

### Conclusion No. 3

Petitioners have failed to meet their burden to show, by a preponderance of the evidence, that the City has violated RCW 36.70A.070.

### **d. LEGAL ISSUE NO. 4**

*Did the City's adoption of the Ordinances violate RCW 36.70A.200?*

### Discussion

In their PFR, Petitioners challenged both the Plan Ordinance and the Land Use Code Ordinance. Petitioner has failed to brief the adoption of the Plan Ordinance, and to show how it violates RCW 36.70A.200.<sup>[1]</sup> Pursuant to Part X of the Board's Prehearing Order, issues not briefed are deemed abandoned. Consequently, the Board limits its discussion to the Land Use Code Ordinance as it relates to RCW 36.70A.200(2).

RCW 36.70A.200 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 . . . group homes.

(2) The office of financial management shall maintain a list of those essential public facilities that are required or likely to be built within the next six years. . . . No local

comprehensive plan or development regulation may preclude the siting of essential public facilities.

The sole question before the Board is whether Ordinance 4861 precludes the siting of group homes.

In *Children's Alliance I*, the Board found that Bellevue's Group Homes Amendment Ordinance of 1994 precluded the siting of an essential public facility -- group care facilities for children. *Children's Alliance I*, at 19. That ordinance prohibited group care facilities for children in residential districts. *Id.* at 14. Because this subset of group homes was forced to locate in commercial districts, "[t]he 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 for group care facilities for children will continue to go unmet." *Id.* at 19.

Unlike the challenge in *Children's Alliance I*, the ordinances challenged here allow group homes, including group care facilities for children, in residential districts. Petitioners assert that the City "prohibits [group care facilities for children] from being sited in any residential district." Petitioners' PHB, at 13. The language of Ordinance 4861 contradicts Petitioners' assertion. Group care facilities solely for handicapped persons, including handicapped children, are Group I facilities and are allowed in residential zones. Group care facilities for children that are not Class I facilities are Class II facilities. The only group facilities prohibited from residential districts are those Class II facilities that (1) are not operated by resident staff; (2) accept short-term occupants; or (3) house non-handicapped dangerous persons.

If the excluded Class II facilities included most or all group care facilities for children and there were no commercial sites available, then these facilities would be effectively precluded from locating in Bellevue. However, neither the City's record nor Petitioners' briefs informs the Board of the proportion of group facilities that the ordinance excludes from residential districts. Without such a showing, the Board cannot conclude that the challenged ordinances preclude the siting of group facilities in violation of RCW 36.70A.200(2).

In addition, the record does not support Petitioners' argument that too few commercial properties exist on which to site those Class II facilities prohibited from residential districts. *See* Petitioners' PHB, at 26. Although expensive, "[t]here are suitable sites within commercial districts." Ex. II-23 (newspaper article quoting Howard Finck, president of Friends of Youth). The City has demonstrated its willingness to offset this high cost by committing \$814,000 to assist in the development of a "Teen Shelter." Ex. II-36.

**The Board holds that Petitioners have not met their burden by showing, by a preponderance of the evidence, that the City has precluded the siting of group homes within**

**Bellevue, and therefore violated RCW 36.70A.200(2).**

#### **Conclusion No. 4**

Petitioners have not met their burden of proof by showing, by a preponderance of the evidence, that the City has precluded the siting of group homes within Bellevue, and therefore violated RCW 36.70A.200(2).

#### **e. LEGAL ISSUE NO. 5**

***Did the City violate RCW 36.70A.100 when it adopted Ordinance 4877, specifically because the amended provisions are inconsistent with County-wide Planning Policies FW-24; CC-4; CC-5; FW-28; AH-1; AH-2; and AH-2B?***

#### **Discussion**

The Act requires a city's comprehensive plan to be coordinated and consistent with the comprehensive plan of the county and cities with which it has common borders or related regional issues. RCW 36.70A.100. This consistency is ensured by the framework of county-wide planning policies (CPPs). *City of Snoqualmie v. King County*, CPSGPHB Case No. 92-3-0004 (March 1, 1993), Final Decision and Order, at 7-8. Thus, the City's Plan must be consistent with the King County CPPs.

Petitioners state "Ordinance 4877 is not consistent with a number of framework policies, community character policies and affordable housing policies contained in the county-wide planning policies." Petitioners' PHB, at 27. This conclusory statement is footnoted with quotations of certain King County CPPs. Petitioners' PHB, at 27 n.6. Petitioner fails to explain how the challenged ordinance is inconsistent with the quoted CPPs. See Petitioners' PHB, at 27-29 and Reply Brief, at 8-9.

**The Board holds that Petitioners have not met their burden by showing, by a preponderance of the evidence, that the challenged amendments are inconsistent with the King County CPPs and that the City has violated RCW 36.70A.100.**

#### **Conclusion No. 5**

Petitioners have not met their burden of proof by showing, by a preponderance of the evidence, that the challenged amendments are inconsistent with the King County CPPs and that the City has violated RCW 36.70A.100.

#### **f. LEGAL ISSUE NO. 6**

***Did the City’s adoption of Ordinance 4861 violate RCW 36.70A.130?***

**Discussion**

Legal Issue No. 6 is included in the discussion of Legal Issue No. 8, below.

**g. LEGAL ISSUE NO. 7**

***When the City adopted the Ordinances, did it violate RCW 36.70A.106(3)?***

**Discussion**

RCW 36.70A.106 provides:

(1) Each county and city proposing adoption of a comprehensive plan or development regulations under this chapter shall notify [the Department of Community, Trade, and Economic Development (**CTED**)] of its intent to adopt such plan or regulations at least sixty days prior to final adoption. State agencies including the department may provide comments to the county or city on the proposed comprehensive plan, or proposed development regulations, during the public review process prior to adoption.

(2). . .

(3) Any amendments for permanent changes to a comprehensive plan or development regulation that are proposed by a county or city to its adopted plan or regulations shall be submitted to the department in the same manner as initial plans and development regulations under this section.

The question is whether the City notified CTED of the proposed amendments contained in the challenged ordinances as required by RCW 36.70A.106(3), which directs the local jurisdiction to follow the procedure established by RCW 36.70A.106(1).<sup>[1]</sup>

The record indicates that CTED received notification of the City’s intent to adopt a group homes ordinance. On January 16, 1996, CTED wrote a letter to the City stating “It has come to our notice that the City of Bellevue’s draft ordinance regulating group homes is scheduled for public hearing and possible action later today -- January 16, 1996.” Ex. II-66. This letter was dated 62 days before the City adopted Ordinance 4861; therefore, CTED received notice “at least sixty days prior to final adoption” of the challenged ordinances. Absent evidence to the contrary, the Board will presume that it was the City that notified CTED of its proposed amendments.

**The Board holds that the City notified CTED of its proposed amendments and satisfied the requirements of RCW 36.70A.106(3).**

## Conclusion No. 7

The City notified CTED of its proposed amendments and did not violate the requirements of RCW 36.70A.106(3).

### **h. LEGAL ISSUE NO. 8**

*Did the City violate RCW 36.70A.130 when it adopted Ordinance 4861, specifically because the ordinance is inconsistent with and fails to implement the City's Comprehensive Plan policies (p. 1-13), LU-2, LU-8, LU-18, HO-23, HO-25, HO-30, HO-33, HO-34, HO-35, HO-36, HO-38, HS-1, HS-2, HS-4, HS-5, HS-6, HS-7, HS-10, HS-11, HS-12, HS-13, HS-15, HS-16, PA-34, PA-35, and PA-36; and goals (p. IV-1), (p. IV-7), (p. IV-9), (p. X-1) and (p. XI-1)?*

### Discussion

Amendments to development regulations “shall be consistent with and implement the comprehensive plan.”RCW 36.70A.130(1).Petitioners assert that Ordinance 4861 is inconsistent with the City's Plan.Petitioners' PHB, at 30-39.

Petitioners quote sections of the Plan and offer conclusory statements that Ordinance 4861 is inconsistent with the Plan.For example, Petitioners quote a Plan framework policy, then conclude that “the Ordinance's requirements and restrictions on group homes, group home operators, and the people with special needs that they serve, frustrate these laudable goals and policies.”Petitioners' PHB, at 32.Petitioners fail to explain how the Ordinance is inconsistent with that and other goals and policies.

Similarly, Petitioners quote several land use policies and conclude “All of these land use policies are frustrated by the restrictions and requirements imposed on group homes.”Petitioners' PHB, at 33.Again, Petitioners fail to explain how the ordinance is inconsistent with these Plan policies.

Nowhere do Petitioners provide any analysis explaining why Ordinance 4861 is inconsistent with the City's Plan.Therefore, **the Board holds that Petitioners have failed to meet their burden to show, by a preponderance of the evidence, that the City has violated RCW 36.70A.130.**

## Conclusion No. 8

Petitioners have failed to meet their burden to show, by a preponderance of the evidence, that the City has violated RCW 36.70A.130.

### iv. ORDER

Having reviewed and considered the above-referenced documents, having considered the

arguments of the parties, and having deliberated on the matter, the Board finds that Ordinances 4861 and 4877 **comply** with the requirements of the challenged portions of the Growth Management Act.

So ORDERED this 13 day of November, 1996.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Joseph W. Tovar, AICP  
Board Member

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Chris Smith Towne  
Board Member

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.

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[1] DSHS did not request intervenor status.

[1] Ordinance 4861 provides the following definitions:

**ADULT FAMILY HOME:** The regular family abode of a person or persons providing state-licensed personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An adult family home which is not the regular family abode of a person or persons licensed to provide and providing such care is not within the definition of Adult Family Home for purposes of this Code.

**DOMESTIC VIOLENCE SHELTER HOME:** A facility which provides housing for adults and their dependent children, if any, who are victims of domestic violence perpetrated by the spouse, domestic partner or significant other of the adult victim.

**FAMILY:** One or more persons (but not more than six unrelated persons) living together as a single housekeeping unit.

**FOSTER FAMILY HOME:** A person or persons regularly providing state-licensed foster care on a 24-hour per day basis to one or more, but not more than four, children, expectant mothers, or developmentally disabled persons in the family abode of the person or persons under whose direct care and supervision the child, expectant mother or developmentally disabled person is placed.

**FOSTER FAMILY HOME, LARGE:** A state-licensed foster family home with at least two adult residents in the home providing foster care on a 24-hour per day basis to five or six children or developmentally disabled persons.

**RESIDENT STAFF, GROUP FACILITY:**One or more Staff whose regular family abode is in the a [sic] Group Facility, who hold(s) all required license(s) for that Group Facility, who is/are primarily responsible for the daily operation of the Group Facility and for the care and supervision of its Residents, and who personally provide(s) a substantial part of the care for such Residents.

**SHORT TERM OCCUPANT:**A person who is placed or resides in a Group Facility for a period of less than thirty (30) days.

[1]

Ordinance 4861 describes a person who is “a danger to others” as one:

- i)[Whose] behavior is assaultive, physically violent, psychopathic, sexually deviant, sexually aggressive, or impaired by drug or alcohol dependency; or
- ii)[who has] committed a crime or offense involving a serious threat to the person or property of another, including, but not limited to, rape, incest, theft or arson.Ex. II-1.

[1]

The Board has previously stated:

[T]he 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. . . .*Children’s Alliance I*, at 11.

[1]

In *Sunderland*, the court reviewed specific challenges under the Washington Housing Policy Act (WHPA), 1993 Wash. Laws ch. 478, codified at RCW 35.63.220 and RCW 35A.63.240.The language of both sections is identical, providing:

No city 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).

[1]

The Board notes that Petitioners’ challenge under RCW 36.70A.200(1) could be construed as a failure-to-act challenge that the Plan does not include a process for identifying and siting essential public facilities.*See generally, Hapsmith v. Auburn*, CPSGMHB Case No. 95-3-0075c, Final Decision and Order (May 10, 1996), at 37-38. However, as Petitioners have not presented a failure-to-act argument, this Board cannot determine whether or not the Plan contains a process that complies with RCW 36.70A.200(1).

[1]

The Act does not require a city to submit draft copies of proposed amendments, “much less a copy of each and every revision” that the proposal undergoes during the legislative process.*Children’s Alliance I*, at 21.All that the Act requires of a city proposing to adopt development regulations is that it provide notice of its intent.*Id.*As a practical matter, CTED should be provided with copies of proposals, in addition to notice, so that it has the opportunity to comment and share its expertise with local governments.