

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

SHAG, et al.,)	
)	Case No. 01-3-0014
)	
Petitioners,)	<i>(SHAG)</i>
)	
v.)	
)	
CITY OF LYNNWOOD,)	ORDER ON MOTIONS
)	
Respondent.)	
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I. Background

On June 8, 2001, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Senior Housing Assistance Group; Lynwood RM Investors, LLC; Alderwood Court Associates, Limited Partnership; [\[1\]](#) Alderwood Condominiums, LLC; Sundquist Homes, Inc.; and Carlyle Condominiums, LLC. The Case was captioned *SHAG, et al., v. City of Lynnwood*, CPSGMHB Case No. 01-3-0014.

On June 14, 2001, the Board issued a notice of hearing; on July 9, 2001, the Board held a prehearing conference, and on July 10, 2001, the Board issued the prehearing order setting forth the case schedule and issues to be resolved in this matter.

On July 9, 2001, the Board received Lynnwood’s “A Document Index” (**Index**). The Index listed 69 items.

On July 18, 2001, the Board received “Petitioners’ Motion to Supplement (Senior Housing Assistance Group; Lynwood RM Investors; Alderwood Court Associates; Alderwood Condominiums)” (**Motion to Supplement**); and “Declaration of Duana Koloušková for Petitioners’ Motion to Supplement (**Koloušková Declaration**). The Motion to Supplement Attached to the Motion to Supplement were 19 items, labeled A-U. The Board also received “Joinder of Sundquist Homes Inc. and Carlyle Condominiums, LLC in Petitioners’ Motion to Supplement,” supporting the Motion to Supplement. Later the same day, the Board received, via telefacsimile, Petitioners’ “Erratum to Motion to Supplement” (**Erratum**). The erratum noted

four items (C, H, L and N) included in the motion were already in the Index.

Also on July 18, 2001, “Respondent City of Lynnwood’s Motion to Dismiss All Claims and the ‘Legal Issues’ Set Forth in the Pre-hearing Order” (**Motion to Dismiss**).

On July 25, 2001, the Board received “Petitioners’ Supplemental Motion to Include Additional Items to Index” (**2nd Motion to Supplement**); “Response to Petitioners’ Motion to Supplement Including Respondents Additional Motion to Supplement Index” (**Lynnwood Response – Supp.**); and “Declaration of Greg A Rubstello” (**Rubstello Declaration**).

Also on July 25, 2001, the Board received SHAG’s “Response to City’s Motion to Dismiss” (**SHAG Response - Dismiss**); and “Joinder of Sundquist Homes, Inc. and Carlyle Condominiums, LLC. in Petitioners’ Response to Motion to Dismiss.” The latter filing merely adopted and concurred in the SHAG Response; it offered no new argument.

On July 31, 2001, the Board received “Reply in Petitioners’ Motion to Supplement (Senior Housing Assistance Group; Lynnwood RM Investors, LLC; Alderwood Court Associates, Limited Partnership; Alderwood Condominiums, LLC)” (**SHAG Reply – Supp.**); “Response to Petitioners’ Supplemental Motion to Include Additional Items to Index” (**Lynnwood 2nd Response – Supp.**); and “City’s Reply Brief in Support of Its Motion to Dismiss” (**Lynnwood Reply – Dismiss**).

The Board did not hold a hearing on the motions. The Board first addresses the Motions to Supplement, then the Motion to Dismiss.

II. DISCUSSION

A. Motions to Supplement

SHAG asks the Board to supplement the record with 15 items, require Lynnwood to prepare a complete index, transcribe certain hearings, and allow additional supplementation of the record. (Motion to Supplement, at 1-10; and Erratum, at 1-3. Additionally, SHAG asks that 7 additional items be added to the record. 2nd Motion to Supplement, at 1-2. The proposed exhibits generally were produced after the April 9, 2001 adoption of Ordinance No. 2364, prior to May 14, 2001, and before the date the PFR was filed. The City of Lynnwood does not object to the inclusion of the items from the initial motion or the 2nd motion, contending that most were inadvertently omitted from the Index, however the City objects to the request to produce transcriptions of certain meeting tapes. Lynnwood Response – Supp., at 1-4; and Lynnwood 2nd Response - Supp., at 1.

Given the context for the present case, involving a post-adoption public hearing and having

reviewed the items submitted by Petitioners and the response of the City the Board **grants** the motion to supplement as summarized in the following table. The Board has determined that these items may be necessary and of substantial assistance in reaching its decision. However, the request to transcribe meeting tapes is **denied**.

Proposed Exhibit: Documents	Revised Index No.
<i>SHAG 6/18/01 Motion:</i>	
A. City Council Meeting Minutes 4/23/01	Admitted – Index No. A
B. Notice of 5/10/01 Planning Commission Public Hearing	Admitted – Index No. B
C. Notice of City Council 5/14/01 Public Hearing	Already in Record – Index No. C [2]
D. 5/29/01 City Council Agenda	Admitted – Index No. D
E. 6/4/01 City Council Work Session Agenda	Admitted – Index No. E
F. 4/16/01 public record request letter from Mock to Frame	Admitted – Index No. F
G. 5/15/01 memo from Rubstello to Mayor and Council Members	Admitted – Index No. G
H. 5/8/01 e-mail from Riley to Hough	Already in Record – Index No. H
I. Undated memo from Rubstello to Cutts, faxed from Cutts to Frame 4/12/01	Admitted – Index No. I
J. 5/31/01 memo from Riley to Hough	Admitted – Index No. J
K. Draft Ordinance with handwritten note indicating “Smith introduced June 4, 2001 – Denied 4-3”	Admitted – Index No. K
L. Fact Sheet “Additional Information Related to the Multiple Family Housing Moratorium”	Already in Record – Index No. L
M. Undated SHAG request for reconsideration – fax note 4/23/01	Admitted – Index No. M
N. 5/12/01 letter from neighbors to Mayor and Council Members (multiple neighbors signatures)	Already in Record - Index No. N
O. 5/14/01 letter from Temples to Council Members	Inadvertently Omitted – Index No. O

P. 5/14/01 letter from Anderson to Council Members	Admitted – Index No. P
Q. Draft Ordinance	Admitted – Index No. Q
R. Draft Ordinance	Admitted – Index No. R
S. 6/11/01 letter from Martin to Cutts	Admitted – Index No. S
T. 6/12/01 letter from Lumsden to Mayor	Admitted – Index No. T
U. Undated City Council Work Session Item “D” including Draft Ordinance and additional findings of fact [The ordinance is noted by the City of Lynnwood as Ordinance No. 2382 adopted 7/23/01.]	Admitted – Index No. U
Koloušková Declaration	Admitted – Index No. V
<i>SHAG 6/25/01 Motion:</i>	
A. 6/4/01 Notice of 6/4/01 Special City Council Meeting	Admitted – Index No. AA
B. Undated City Council Agenda Item 80.D	Admitted – Index No. BB
C. 6/1/01 letter from Martin to Mayor and Council	Admitted – Index No. CC
D. Draft Ordinance indicated as No. 2372	Admitted – Index No. DD
E. 6/4/01 City Council Meeting minutes	Admitted – Index No. EE
F. Minutes of 6/4/01 City Council Work Session	Admitted – Index No. FF
<i>City of Lynnwood Items:</i>	
A. Ordinance No. 2382 adopted 7/23/01	Already in Record – Index No. U
B. Rubstello Declaration	Admitted – Index No. GG

The Record for CPSGMHB Case No. 01-3-0014 (*SHAG*) consists of the items listed in the City of Lynnwood’s Index and the supplemental exhibits (A-V and AA-GG) noted above.

B. Motion to Dismiss

Applicable Law and Discussion

The subject of Petitioners’ challenge is the City of Lynnwood’s adoption of a moratorium on the acceptance of applications for certain (multi-family) project permits, via Ordinance No. 2364.

The City of Lynwood quotes extensively from the provisions of the Ordinance to support its contention that Ordinance No. 2364 was properly adopted, pursuant to the provisions of the GMA as set forth in RCW 36.70A.390. Therefore, Lynwood argues, Petitioners claims should be dismissed. Motion to Dismiss, at 1-8.

In response, Petitioners argue that the Motion to Dismiss is premature and asks the Board to await a full record (including transcripts), full briefing and argument and delay resolution of this matter until after the hearing on the merits. SHAG Response, at 1-2. SHAG also disputes that the City adopted findings of fact when it adopted Ordinance No. 2364 or after the May 14, 2001 public hearing. Petitioner contends that the recitals in Ordinance No. 2364 go to the adoption of an emergency, not justification of a moratorium. SHAG Response, at 3-8. SHAG also withdraws its assertion that Ordinance No. 2364 failed to comply with RCW 36.70A.140, but continues to assert that .020(11), .120, .130 and SEPA (Chapter 43.21C RCW) apply. SHAG Response, at 2, 9-11.

Lynnwood replies that the City's motion is not premature and reiterates and amplifies on its arguments from the original motion.

RCW 36.70A.390 falls squarely within this Board's subject matter jurisdiction; the Board has clear authority to determine whether its provisions have been met. This section is unique in the GMA context; it is a blunt instrument within a statute containing very detailed and refined requirements. It allows for temporary, interim or stopgap measures to manage development activity while appropriate analysis and planning can occur.

This section also explicitly authorizes local jurisdictions to undertake the rather draconian measure of placing a freeze on development, *i.e.* a development moratorium, to maintain the *status quo* while it undertakes the necessary planning to analyze and address the perceived issue (s). However, to successfully impose such a moratorium, the jurisdiction must adhere to the section's procedural provisions. Therefore, the question before the Board is whether the City of

Lynnwood complied with the procedural requirements of RCW 36.70A.390.^[3] If it did, the case must be dismissed.

RCW 36.70A.390 provides, in relevant part, as follows:

Moratoria, interim zoning controls – Public hearing – Limitation on length – Exceptions. A county or *city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received*

a recommendation on the matter from the planning commission or department. *If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing.* A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this subsection may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

(Emphasis supplied).

Petitioner asks the Board to defer its decision regarding the challenge to Ordinance No. 2364 until after the Hearing on the Merits (**HOM**), and proceed according to the Board's established schedule for this case. The Board rejects this argument for several reasons.

First, the Ordinance largely speaks for itself and the record, as supplemented by this Order, provides an adequate factual basis for the Board to address the motion to dismiss. Second, unnecessary delay is an inefficient use of Board resources and can be needlessly costly to those awaiting resolution of the matter. Finally, the HOM is scheduled for October 1, 2001 and the Final Decision and Order is slated for issuance on December 5, 2001. *See:* Board's July 10, 2001 Prehearing Order, at 2. Consistent with the provisions of RCW 36.70A.390, the moratorium imposed by Ordinance No. 2364, by its own terms, is effective for only six months from its adoption – until approximately October 9, 2001. *See:* Ex. 35, Ordinance No. 2364, Sections 3 and 7. Consequently, the challenge to the adoption of the Ordinance could become moot before the Board rendered its decision – an inefficient use of Board resources. Given the existing record, the Board can address the motion at this time and not delay its resolution of this matter.

If a jurisdiction chooses to impose a moratorium pursuant to .390, it must adopt findings of fact justifying its action and hold a public hearing on the moratorium. The public hearing may occur either at the adoption hearing or no later than sixty-days thereafter. If the jurisdiction did not adopt findings of fact supporting its action at adoption, or prior to the public hearing, it must do so immediately after the [within 60-days] public hearing.

It is undisputed that on April 9, 2001, the City of Lynnwood adopted Ordinance No. 2364 imposing a moratorium on accepting certain project permit applications. It is also undisputed that the City did *not* hold a public hearing on the Ordinance on April 9, 2001. Motion to Dismiss, at 1-2; and SHAG Response, at 3-4.

To resolve whether the City adopted findings of fact justifying its action and determine whether the City held a public hearing within 60-days of April 9, resort to the text of Ordinance No. 2364 is instructive.

Did the City adopt findings of fact justifying its action?

Section 1, of Ordinance No. 2364, adopted April 9, 2001 provides:

Purpose/Findings. The purpose of this moratorium is to allow the City Council sufficient time to review the policies in the City’s Comprehensive Plan relating to residential and other land uses and to implement any changes to the Comprehensive Plan relating to the City’s development regulations. *The council adopts the statements made above in the recitals* ^[4] *as findings setting forth the need for this emergency ordinance.*

Ex. 35, Ordinance No. 2364, at 2 (emphasis supplied).

SHAG argues these recitals justify “the need for the emergency ordinance, but not for the moratorium.” SHAG Response, at 5. The title of the Ordinance states:

AN ORDINANCE RELATING TO LAND USE AND ZONING; DECLARING A PUBLIC HEALTH, WELFARE AND SAFETY EMERGENCY NECESSITATING AN IMMEDIATE MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR PROJECT PERMITS, REZONES, AND BUILDING PERMITS FOR NEW MULTIPLE FAMILY RESIDENTIAL USES TO BE EFFECTIVE FOR A PERIOD OF UP TO SIX MONTHS; SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM; AND PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.

Ex. 35, Ordinance No. 2364, at 1, (emphasis supplied.) The Board finds SHAG’s argument to be a distinction without a difference.

Section 1’s incorporation of the Ordinance’s recitals, does, in fact, adopt findings of fact explaining and justifying the need for the City’s adoption of the moratorium via emergency ordinance. ^[5] These findings were adopted as part of the April 9, 2001 enactment of Ordinance No. 2364. Therefore, the City of Lynwood has **complied** with the requirement that the “jurisdiction adopt findings of fact justifying its action” provision of RCW 36.70A.390.

Did the City hold a public hearing within sixty-days of April 9, 2001?

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The sixtieth day following the April 9 action was June 11, 2001.^[6] To determine whether the City conducted a public hearing within this timeframe, resort to the Ordinance is again, relevant. Section 4 of the April 9, 2001 Ordinance provides:

Public Hearing on Moratorium. Pursuant to RCW 36.70A.390, *the City Council shall hold a public hearing on this moratorium on May 14, 2001 at 7:30 p.m. or as soon thereafter as may be heard.* Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or cancel the moratorium.

Ex. 35, Ordinance No. 2364, at 2, (emphasis supplied).

Documentation from the record indicates that the City Council for the City of Lynnwood, did in fact notice and hold a public hearing on May 14, 2001, to take testimony concerning the moratorium imposed by Ordinance No. 2364. Index No. O, P; Ex. 41, 46, 47, 48, 58 (especially Ex. 58, at 3-4 listing correspondence entered into the record and names of those testifying for and against the moratorium). The record is conclusive and Petitioners do not refute this fact. Consequently, since the City held the public hearing required by RCW 36.70A.390, on May 14, 2001, it **complied** with the “public hearing within sixty days” procedural requirements for moratoria as set forth in .390.

Did the City fail to comply with RCW 36.70A.390 when it did not adhere to the provisions of Section 4 of Ordinance No. 2364?

SHAG argues the City was compelled to follow its own mandate, namely, “Immediately after the [May 14, 2001] public hearing, the City Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or cancel the moratorium.” SHAG Response, at 5-8, *citing* Ex. 35, Ordinance No. 2364, Section 4, at 2. It is undisputed that immediately following the May 14, 2001 public hearing, the City Council did not adopt findings of fact justifying or canceling the moratorium.^[7] However, as discussed *supra*, the Council did adopt findings of fact justifying its action on April 9, 2001, which satisfies the .390 “findings of fact justifying action requirement.” The language of .390 that states, “If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing” is inoperative, since the requirement was met on April 9, 2001. Failure to adopt additional findings following the May 14, 2001 public hearing is not a failure to comply with the requirements of RCW 36.70A.390.

The Board notes with interest that numerous draft ordinances considered by the City on May 14,

2001 and thereafter, and apparently supported by Petitioners if the moratorium was to remain in effect, relied upon the findings of fact contained in Ordinance No. 2364.^[8] Further, the City indicates that on July 23, 2001, it adopted Ordinance No. 2382, which included “Additional Findings of Fact Justifying the Moratorium on New Multiple Family Residential Units.” Seven findings are listed numerically. Index No. U, Ordinance No. 2384.

Do the provisions of RCW 36.70A.020(11), .140, .130, .120 and SEPA apply to the City’s adoption of Ordinance No. 2364?

In *McVittie v. Snohomish County (McVittie V)*, CPSGMHB Case No. 00-3-0016, Final Decision and Order, (Apr. 12, 2001), the Board addressed the applicability of most of these GMA sections to the adoption of temporary or interim development regulations. The Board applies the *McVittie V* analysis here.

RCW 36.70A.020(11) [Goal 11 – the public participation goal] applies to the adoption of temporary/interim emergency development regulations or amendments thereto. *McVittie V*, at 16, 21, 25 and 37. As discussed *supra*, the record demonstrates that the City of Lynnwood provided the opportunity for public participation and in fact conducted the public hearing as required by RCW 36.70A.390. Therefore, for the six-month review moratorium period, the City has been **guided** by goal 11.

RCW 36.70A.140 does not apply to the adoption of temporary/interim emergency development regulations. *McVittie V*, at 16-17, 21, 26 and 37. Petitioners **withdrew** the challenge to Ordinance No. 2364’s compliance with RCW 36.70A.140. SHAG Response, at 3.

The Board held that the provisions of RCW 36.70A.130(2), governing the amendment process applied only to plan amendments, not development regulations. *McVittie*, at 18, 21 and 37. Its provisions do not apply to the adoption of temporary/interim emergency development regulations. RCW 36.70A.130(1) requires continuing review and evaluation of plans and development regulations to ensure that they are complying with the requirements of the GMA. Section 1 of Ordinance No. 2364 provides, “*The purpose of this moratorium is to allow the City Council sufficient time to review the City’s Comprehensive Plan relating to residential and other land uses and to implement any changes to the Comprehensive Plan and the City’s development regulations.*” Ex. 35, at 2, (emphasis supplied). The City’s intent to review its Plan and development regulations, albeit during a six-month moratorium, is **not inconsistent** with the conformity or continuing review and evaluation requirement of .130(1). However, any permanent amendment or revision to either the Plan or development regulations must be consistent.

RCW 36.70A.120 requires that GMA planning jurisdictions “shall perform its activities . . . in

conformity with its comprehensive Plan.” The City contends that the moratorium is not an “activity” that must be performed in conformity with its plan. Motion to Dismiss, at 8. SHAG argues the City’s statement is without support and contends that while “activity” is not defined in the GMA, the term certainly encompasses any development regulation. SHAG Response – Dismiss, at 10. The Board agrees that adoption of a permanent development regulation, or amendment thereto, would be a “planning activity” as that term is used in .120.

However, the adoption of a temporary/interim regulation to be in place for a limited six-month period to maintain the status quo while perceived concerns with existing Plan and development review occurs does not rise to the status of a “planning activity.” Indeed, the very nature of moratoria is that they are an attempt to “buy time” to enable the jurisdiction to undertake that very “planning activity” i.e., developing and implementing long-term, permanent policies and regulations. This is consistent with prior Board rulings cited *supra*, that the Board lacks jurisdiction to inquire into basis for a local government’s declaration of emergency. Nevertheless, at some point the rote, rather than reasoned, extension of six-month moratoria with no reasonable end point in sight very well could constitute a “planning activity” that falls within the ambit of .120.

Regarding SEPA compliance, the City contends that the adoption of Ordinance No. 2364, an emergency ordinance, falls within the Categorical Exemption provisions in WAC 197-11-800 for emergencies. Motion to Dismiss, at 7. Petitioners dispute whether an emergency exists to support the declaration of emergency and contend WAC 197-11-800 does not exempt Ordinance No. 2364 from SEPA review. Based on this Board’s prior decisions referenced in footnote 5, *supra*, the Board agrees with the City.

Conclusion

The City of Lynnwood’s enactment of Ordinance No. 2364, adopted April 9, 2001, included findings of fact justifying the City’s action. The City of Lynnwood held a public hearing within sixty days of adoption of Ordinance No. 2364 to take testimony concerning the moratorium imposed. The City of Lynnwood’s adoption of Ordinance No. 2364, adopting the multi-family residential development moratorium **complies** with the provisions of RCW 36.70A.390. Further, the Board concludes that Ordinance No. 2364 complies with the applicable provisions of the GMA for the six-month period while it is in effect [approximately until October 9, 2001].

Consequently, the City’s Motion to Dismiss is **granted**.

The Board’s conclusion that the City of Lynnwood has complied with the moratorium provisions of RCW 36.70A.390, neither condemns nor condones the substantive effect of the moratorium

during the six-month [approximately, October 9, 2001] moratorium and review period, nor whether any future *permanent* revision to the City's development regulations based upon the rationale set forth in the findings supporting the moratorium would comply with the applicable requirements of the Act.

III. Order

Based upon review of the PFR, PHO, Index, motions, briefs and exhibits submitted by the parties, the Act, and prior decisions of this Board, the Board enters the following ORDER:

Petitioners' Motion to Supplement the Record is **granted** as noted in the summary table *supra*. The motion to require transcription of meeting tapes is **denied**.

The adoption of Ordinance No. 2364 **complies** with the applicable requirements of the GMA for the six-month period while it is in effect [approximately until October 9, 2001]. Respondent City of Lynnwood's Motion to Dismiss is **granted**. Petitioners' PFR, CPSGMHB Case No. 01-3-0014 (*SHAG, et al., v. City of Lynnwood*), is **dismissed**.

The hearing on the merits scheduled for October 1, 2001 is **canceled**.

So ORDERED this 3rd day of August, 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD [\[9\]](#)

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Note: This Order constitutes a final order as specified in RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

[1] On July 19, 2001, the Board received a fax noting an error in, and correcting, the address for Lynnwood RM Investors, LLC and Alderwood Court Associates Limited Partnership.

[2] For simplicity sake, the Board will assign new consecutive Index numbers to those items attached to the motions to supplement, but already in the index or inadvertently omitted.

[3] This question provides the underpinning of Petitioners' Legal Issues as stated in the PFR and PHO.

[4] The recitals from Ordinance No. 2364, state as follows:

WHEREAS, the City of Lynnwood is currently reviewing the residential land use policies in its Comprehensive Plan; and

WHEREAS, the city council believes that its is in the public interest, safety and welfare that Lynwood have effective residential land use policies that will achieve in the foreseeable future a stable ratio of land within the city that is zoned for residential purposes and developed sixty percent with single-family residential units and developed forty percent with multiple family residential units; and

WHEREAS, current development regulations, land use policies and zoning designations appear in conflict with achieving the desired ratio of single-family to multiple-family residential units and to prevent a decline in the number of single family residential units in the city; and

WHEREAS, the City needs to further study the appropriate locations of the various land uses in the city and develop zoning that will encourage the desired ratio of single-family to multi-family units; and

WHEREAS, the Department of Community Development has reported that there are pending permit applications for 152 units of multi-family housing and only 5 of single-family residences and that there are 215 more units of multi-family housing in pre-development (awaiting permit application); and

WHEREAS, immediate action is needed to prevent a significant decline in the number of single-family residential units to the number of multi-family residential units while the Planning Commission, City Council and staff review the Comprehensive Plan policies and receive public comment to determine whether zoning and other development regulations must be revised to fulfill the desired policies; and

WHEREAS, RCW 36.70A.390 authorizes the City Council to adopt a moratorium on specified land use applications and permits during periods of land use review and study; NOW, THEREFORE, [adoption of the moratorium - Ordinance No. 2364].

Ex. 35, at 1-2.

[5] The Board has previously held that it does not have jurisdiction to review a "declaration of emergency as it relates to the adoption of [an emergency] ordinance; and "the facts, circumstances, situations or events that may precipitate a proposed [emergency] amendment." *See: Wallock v. City of Everett*, CPSGMHB Case No 96-3-0025, Final Decision

and Order, (Dec. 3, 1996), at 10; and *McVittie v. Snohomish County*, CPSGMHB Case No. 00-3-0016, Order on Dispositive Motions, (Jan. 22, 2001), at 5. Note, however, that once permanent [non-temporary, non-interim] GMA development regulations, or amendments thereto, are enacted, the Board scrutinizes the record supporting such permanent action.

[6] The sixtieth day following the date of action fell on a Saturday; therefore, pursuant to RCW 1.16.050 (and WAC 242-02-060) Monday, June 11, 2001 would be the public hearing deadline.

[7] The minutes of the May 14, 2001 Council meeting indicate that although the Council attempted to amend Ordinance No. 2364, it failed to do so due to a tie vote. Consequently, the motion to adopt the amendatory ordinance failed. Ex. 58, at 5.

[8] Several Draft Ordinances considered by the City contained the following language:

Adoption of Findings of Fact. Based upon the findings made by the Council as expressed in Ordinance No. 2364, and in consideration of the relevant input received and considered during the public hearing on May 14, 2001, the City Council hereby adopts as findings of fact the following: 1) the findings expressed by the Council in Ordinance No. 2364, which findings are adopted and incorporated herein as if fully set forth, continue to be held by the Council as an accurate and valid assessment of the concerns and the facts upon which the moratorium is based; 2) the purpose of the moratorium continues to be the purposes stated in Section 1 of Ordinance No. 2364, which is to allow the City Council sufficient time to review the policies in the City's Comprehensive Plan relating to residential and other land uses and to implement any changes to the Comprehensive Plan and the City's development regulations; 3) except as otherwise provided in this ordinance, [the draft ordinance included exceptions for certain vested permit applications] the moratorium imposed by Ordinance No. 2364 shall continue to be in effect so as to prevent the acceptance or issuance of all applications for project permits, rezones, and building permits, for new multifamily residential units; and 4) the findings of fact adopted by the Council herein justify the continued imposition of said moratorium, as modified by this ordinance.

Index No. DD [Ordinance 2372], Section 1; Index No. K, Section 1; Index No. Q, Section 1; and Index No. R, Section 1.

[9] Because of temporary leave for medical reasons, Board Member North did not participate in this decision.