

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

HOMeward BOUND IN PUYALLUP,

Petitioner,

v.

CITY OF PUYALLUP,

Respondent.

**CASE No. 18-3-0011**

**ORDER ON COMPLIANCE**

**I. INTRODUCTION**

On June 3, 2019, the Board issued its Final Decision and Order (FDO) in this case. Homeward Bound in Puyallup (Petitioner) had challenged the City of Puyallup (City) Ordinance No. 3179, which established zoning standards and requirements for permitting daytime drop-in centers and overnight shelters intended to serve the homeless. The Board concluded that the Ordinance violated RCW 36.70A.130(1)(d) insofar as it was inconsistent with certain City comprehensive plan policies concerning land use, housing and transportation. The Ordinance was remanded to the City for action.

On September 24, 2019, the Puyallup City Council adopted Ordinance No. 3195 (Ordinance). On October 16, 2019, the City filed its Compliance Report, providing a copy of the Compliance Ordinance and attached exhibits. The City also filed the original proceeding index and compliance index. Petitioner filed its Objections to a Finding of Compliance on October 30, 2019. Pursuant to RCW 36.70A.330(1) and (2), the Board conducted a telephonic compliance hearing on November 18, 2019. Board members Cheryl Pflug and William Roehl attended the hearing. Deb Eddy convened the hearing as the Presiding Officer. Peter Eglick represented the City in the proceeding; John Purbaugh of the

1 Northwest Justice Project represented the Petitioner.

## 2 3 **II. OFFICIAL NOTICE MOTION**

4 The City requested the Board to take official notice of a floodway map attached to its  
5 Response Brief.<sup>1</sup> The Petitioner objected as the map was not part of the record considered  
6 by the City.<sup>2</sup> The Board deferred ruling on the request stating it would address it in this Final  
7 Decision and Order.

8 The factual issue involves the amount of land available for siting daytime drop-in  
9 centers or overnight shelters. The proffered map depicts a narrow band of land along the  
10 course of the Puyallup River within which the City asserts that it regulates development to  
11 comply with floodway requirements. The Petitioner presented a map from the record, Exhibit  
12 17, which illustrates a much larger area, an area the City states is a Pierce County floodway  
13 designation. The Petitioner stated at the Hearing on the Merits that it “questioned” whether  
14 the City only regulated the narrower strip. The Board was presented with no reason to doubt  
15 the City’s assertion.  
16

17 The Board will allow the map to supplement the record pursuant to RCW 36.70A.290  
18 as it will be of substantial assistance to the Board in reaching its decision. The Board further  
19 observes that the floodway area shown on the map appears to be similar if not identical to  
20 the narrower floodway area depicted on Exhibit 17 in a blue hue overlaying the broader  
21 black cross-hatched floodway area. The map will be designated as Exhibit 211.  
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## 23 24 **III. STANDARD OF REVIEW**

25 After the Board has entered a finding of noncompliance, the local jurisdiction is given  
26 a period of time to adopt legislation to achieve compliance.<sup>3</sup> After the period for compliance  
27 has expired, the Board is required to hold a hearing to determine whether the local  
28 jurisdiction has achieved compliance.<sup>4</sup> For purposes of Board review of the comprehensive  
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31 <sup>1</sup> Puyallup’s Response to Petitioner’s Objections to a Finding of Compliance at 17, footnotes 14, 15. The map  
32 is entitled “Second Ordinance Reading Map – FEMA Floodway and attached map legend”.

<sup>2</sup> RCW 36.70A.290(4).

<sup>3</sup> RCW 36.70A.300(3)(b).

<sup>4</sup> RCW 36.70A.330(1) and (2).

1 plans and development regulations adopted by local governments in response to a  
2 noncompliance finding, the presumption of validity applies and the burden is on the  
3 Petitioner, should it challenge compliance, to establish that the new adoption is clearly  
4 erroneous in view of the entire record before the board and in light of the goals and  
5 requirements of the GMA.<sup>5</sup>

6 The Board's role in compliance proceedings is not identical to its role during initial  
7 consideration of a Petition for Review. Even if the Petitioner should fail to challenge  
8 compliance actions, when the Board has identified non-complying provisions of a local  
9 jurisdiction's plan or regulations, the jurisdiction is under an obligation to bring those  
10 provisions into compliance. The Board is therefore required to make a determination as to  
11 compliance.<sup>6</sup> In order to find the City's action clearly erroneous, the Board must be "left with  
12 the firm and definite conviction that a mistake has been made."<sup>7</sup>

13 Where a jurisdiction's development regulations have been found to be inconsistent  
14 with its comprehensive plan policies, as here, the Board will use the same standard of  
15 review in evaluating compliance actions as it used in the original analysis. Simply stated, the  
16 Board poses three questions in these cases:  
17

- 18 • Do the development regulations **implement** the comprehensive plan goals and  
19 policies?
- 20 • Do any of the development regulation's features **preclude achievement** of any of  
21 the Comprehensive Plan policies?
- 22 • Have Petitioners shown **actual conflict** between Comprehensive Plan policies  
23 and the new developments regulations?<sup>8</sup>

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27 <sup>5</sup> RCW 36.70A.320(1), (2), and (3).

28 <sup>6</sup> See RCW 36.70A.300(3)(b) and RCW 36.70A.330; "The issue in compliance proceedings is somewhat  
29 different than it is during an original adoption. In compliance proceedings, the Board has identified an area of  
30 the local jurisdiction's comprehensive plan or development regulations that do not comply with the GMA. The  
31 local jurisdiction is under an obligation to bring those areas into compliance and demonstrate that fact to the  
32 Board. While the ordinance that is adopted to cure non-compliance is entitled to a presumption of validity,  
nevertheless, the local jurisdiction must still demonstrate to the Board that it has addressed the area of non-  
compliance identified in the FDO." *Skagit County Growthwatch, et al v. Skagit County*, GMHB No. 07-2-0002  
(Order Denying Motion for Reconsideration, January 21, 2009) at 4-6.

<sup>7</sup> *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

<sup>8</sup> *Cook & Heikkila v. City of Winlock*, WWGMHB No. 09-2-0013c (FDO, October 8, 2009) at 35.

1 **IV. REMANDED ISSUES**

2 **Policies concerning housing and land use**

3  
4 **H-6 Promote a variety of housing for people with special needs, such as the**  
5 **elderly, disabled, homeless, and single householders.**

6 **H-6.1 Encourage and support the development of emergency, transitional and**  
7 **permanent housing with appropriate on-site services for persons with special**  
8 **needs.**

9 **H-6.2 Encourage the distribution of special needs housing throughout the City,**  
10 **recognizing that some clustering may be appropriate if in proximity to public**  
11 **transportation, medical facilities, or other essential services.**

12  
13 The Board remanded Ordinance 3179 for inconsistencies with housing policies H-6,  
14 H-6.1 and H-6.2. In so doing, the Board noted that the Ordinance limited the siting of  
15 emergency and transition housing with appropriate on-site services to “a single zoning  
16 designation (ML) ... almost entirely located at the very northwestern-most corner of the City  
17 ... as physically removed from the heart of the City as could be imagined. Its physical  
18 isolation is apparent.”<sup>9</sup>

19  
20 Although H-6.2 recognizes that clustering “may be appropriate if in proximity to public  
21 transportation, medical facilities, or other essential services,” Ordinance 3179 called for  
22 clustering not in proximity to public transportation and other services, as illustrated by maps  
23 in the City’s Transportation Element.<sup>10</sup> The Board concluded that the development  
24 regulations “not only fail to implement the comprehensive plan policies, but they also can be  
25 said to preclude achievement of and be in conflict with H-6, H-6.1 and with H-6.2. The  
26 regulations do the exact opposite of distributing this type of special needs housing  
27 ‘throughout the City’, and add to the dissonance by clustering it without regard to public  
28 transportation, in direct opposition to the mandate of the policy.”<sup>11</sup>

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32 <sup>9</sup> FDO at 14, referencing the Official Zoning Map at Appendix B.

<sup>10</sup> FDO at 15, noting that the single thoroughfare through the single zone identified for these uses had little to no regular transit service.

<sup>11</sup> FDO at 15.

1 **Policies concerning proximity to transit centers**

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3 LU-7.1 Community services, including schools, community centers, and medical  
4 services, should be focused in central locations and/or near transit centers.

5 T-3.1 Ensure consistency between land use and the associated transportation  
6 system.

- 7 a. Coordinate land use and transportation plans and policies to ensure they  
8 are mutually supportive.

9 T-4.4 Increase pedestrian safety, emphasize connectivity, and reduce operations and  
10 maintenance costs through developing walkways.

- 11 a. Prioritize pedestrian facilities in the vicinity of schools, retail districts,  
12 community centers, health care facilities, parks, transit stops and stations,  
13 and other pedestrian generators.

14 By limiting the receiving zones for daytime drop-in centers and overnight shelters to  
15 locations with demonstrably little to no transit, the Board found that Ordinance 3719 failed to  
16 implement LU-7.1, precluded its achievement and actually conflicted with a policy calling for  
17 centralized location for community services and/or near transit centers.<sup>12</sup>

18 Concerning policies related to transportation in commercial and mixed use areas, the  
19 Board said that “the Ordinance, limiting as it does a pedestrian and transit heavy use to an  
20 area that is ill served by either pedestrian or transit facilities ... does not implement T-4.4  
21 and T-3.1, but rather precludes and is in conflict with [these policies].”<sup>13</sup>

22  
23 **City’s Compliance Action**

24 Originally challenged Ordinance No. 3179 added a new chapter to the City’s  
25 Municipal Code, Chapter 20.72, entitled Homeless Drop-In Centers and Overnight Shelters.  
26 In addressing the Board’s findings of noncompliance, the City adopted Ordinance No. 3195  
27 amending the provisions of Ordinance No. 3179, and consequently amending Puyallup  
28 Municipal Code Chapter 20.72.

29 Specifically, the amendments included the following:  
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<sup>12</sup> FDO at 18.

<sup>13</sup> FDO at 21.

- 1 1. The ordinance amended PMC Section 20.72.040 by allowing the siting of daytime  
2 drop-in centers or overnight shelters in the general commercial (CG) and  
3 community business (CB) zone districts in addition to the previously allowed  
4 limited manufacturing (ML) zone.  
5  
6 2. The ordinance amended PMC Section 20.72.050(2) by reducing the required  
7 setback from defined sensitive uses from 1000' to 500' with the exception of  
8 schools, licensed day care centers and licensed preschool facilities which  
9 retained a 1000' buffer.<sup>14</sup>  
10  
11 3. The ordinance also modified some of the daytime drop-in center and overnight  
12 shelter permit application requirements and the performance standards applicable  
13 to their ongoing operation although those amendments did not directly address  
14 the Board's findings of GMA noncompliance.<sup>15</sup>

15 The City contends that those amendments provide more than double the amount of  
16 land potentially available to site daytime drop-in centers and overnight shelters (not taking  
17 into account the possibility of siting through use of Development Agreements), allows their  
18 location in more centralized portions of the City, and provides reasonable transit and  
19 pedestrian access.  
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22 **Petitioner's Objections**

23 While the Petitioner acknowledges that the issue to be addressed is whether the  
24 amendments included in Ordinance No. 3195 meet the RCW 36.70A.130(1)(d)  
25 requirements,<sup>16</sup> it argues they fall short.<sup>17</sup> The Petitioner continues to allege that the  
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28 <sup>14</sup> Sensitive uses include public and private schools, public parks and trails, public libraries, licensed day care  
29 and preschool facilities, special needs senior housing facilities, including assisted living, rehabilitation centers,  
30 and memory care facilities, and residentially zoned parcels. PMC 20.72.050(2).

31 <sup>15</sup> The Board did not base its findings of violations of RCW 36.70A.130(1)(d) on the application processes and  
32 performance standards.

<sup>16</sup> Petitioner's Objections to a Finding of Compliance at 13.

<sup>17</sup> RCW 36.70A.130(1)(d): Any amendment of or revision to a comprehensive land use plan shall conform to  
this chapter. Any amendment of or revision to development regulations shall be consistent with and implement  
the comprehensive plan.

1 amendments fail to implement and are inconsistent with Policies H-6, H-6.1, H-6.2, LU-7.1,  
2 T-3.1, and T-4.4.

3 It challenges the City's assertion that the available acreage was more than doubled  
4 with the amendments. It further contends that much of the acreage is either fully developed  
5 or developed in a manner negating the claimed "availability". It also challenges the fact that  
6 daytime drop-in centers and overnight shelters are not allowed in any residential zones and  
7 that the 500' and 1000' buffers from residential zones further reduce available land.  
8

9 Finally, the Petitioner interprets the provisions of Ordinance No. 3195 to preclude  
10 duplexes and triplexes within residential zones intended to provide transitional housing for  
11 previously "homeless" individuals/families.<sup>18</sup>  
12

### 13 **Board's Analysis**

14 The Board first observes that the City's compliance actions are presumed to be valid.  
15 It is incumbent upon the Petitioner to overcome that presumption by establishing that the  
16 amendments are clearly erroneous in view of the entire record before the board and in light  
17 of the goals and requirements of the GMA.  
18

19 As stated above, the questions that must be addressed are:

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

26 The three housing policies at issue here all refer to "special needs" housing. The  
27 City's Comprehensive Plan defines "special needs housing":

28 Special Needs Housing. The Housing Element includes policies to insure that  
29 Puyallup accommodates special needs housing and encourages its location  
30 throughout the community. Special needs housing is defined in the  
31 Countywide Planning Policies as "supportive housing opportunities for  
32 populations with specialized requirements, such as the physically and mentally

<sup>18</sup> Petitioner's Objections to a Finding of Compliance at 21, 22.

1 disabled, the elderly, people with medical conditions, victims of domestic  
2 violence, foster youth, refugees, and others". Puyallup has already  
3 implemented a number of land uses measures to address special needs  
4 housing and will continue to support those measures. Development  
5 regulations permit adult family homes, residential care facilities, and various  
6 senior housing facilities within residential zones; however, these regulations  
7 could be expanded to more thoroughly address the various needs of members  
8 of the community.<sup>19</sup> (emphasis added)

9 Comprehensive Plan Policy H-6 then provides:

10 Promote a variety of housing for people with special needs, such as the elderly,  
11 disabled, homeless, and single householders.

12 It is thus clearly apparent that special needs housing is not limited to housing the  
13 homeless but is much broader in scope. Neither the Comprehensive Plan's incorporated  
14 definition nor Policies H-6, H-6.1 and H-6.2 require or imply that all types of special needs  
15 housing must be allowed in all zones throughout the City. For example, it may be more  
16 appropriate to promote the clustering of residential care facilities and other types of senior  
17 housing facilities in the vicinity of medical services but to not encourage them in or near  
18 industrial zones. Similarly, it is not incumbent upon the City, based on its Plan policies, to  
19 encourage daytime drop-in centers and overnight shelters in all districts. It is, however,  
20 necessary for it to "encourage the distribution of special needs housing [in general]  
21 throughout the City" pursuant to Policy H-6.2.

22 The Petitioner's contention that the preclusion of daytime drop-in centers and  
23 overnight shelters in residential or medical zones is inconsistent with the Plan's Housing  
24 policies is not well taken.<sup>20</sup> Such decisions lie within the City legislative body's prerogative  
25 absent a comprehensive plan mandate. A related contention raised by the Petitioner is that  
26 the City's action prohibits duplexes and triplexes within residential zones which are used for  
27 the purpose of providing temporary housing for families who would otherwise be homeless  
28 notwithstanding that such residences are otherwise allowed outright.<sup>21</sup> The definitions of both  
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32 <sup>19</sup> Puyallup Comprehensive Plan, p. 4.10, Section III.

<sup>20</sup> Petitioner's Objections to a Finding of Compliance at 1, 11, 20-21, 28-30.

<sup>21</sup> Petitioner's Objections to a Finding of Compliance at 21, 22.



1 daytime drop-in centers and overnight shelters refute that argument. Drop-in centers do not  
2 include overnight stays and overnight shelters are defined as temporary.<sup>22</sup> While the  
3 Petitioner argues that PMC 20.72.020(2) does not define the word “temporary”, the City’s  
4 observation in its brief and at the Hearing on the Merits that such facilities were not intended  
5 to be included is entitled to some weight.<sup>23</sup>

6 The amendments included in Ordinance No. 3195 now allow the siting of daytime  
7 drop-in centers or overnight shelters in the general commercial (CG) and community  
8 business (CB) zone districts in addition to the previously allowed limited manufacturing (ML)  
9 zone. No longer are they “located at the very northwestern-most corner of the City . . . as  
10 physically removed from the heart of the City as could be imagined.”<sup>24</sup> Compliance Exhibit 25  
11 illustrates that daytime drop-in centers and overnight shelters are now allowed within  
12 additional areas within the City and buffers have been reduced, the possible acreage having  
13 been increased from 198 to 417.<sup>25</sup> The addition of the two additional zones also addressed  
14 the Board’s observation that the limited manufacturing (ML) zone lacked pedestrian<sup>26</sup> and  
15 public transportation access.<sup>27</sup> Those amendments further serve to address the  
16 inconsistencies found by the Board in regards to Comprehensive Plan Policies LU-7.1, T-3.1  
17 and T-4.4. “Community services”, including drop-in centers and overnight shelters, are now  
18 allowed in more centralized locations. Pedestrian safety has been increased and there is  
19 greater consistency between such uses and the transit transportation system.  
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22 The Petitioner also contends that the acreage available for the potential siting of  
23 daytime drop-in centers and overnight shelters is exaggerated due to existing  
24 development<sup>28</sup> and that many potential acres are located in floodways.<sup>29</sup> While the Board  
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28 <sup>22</sup> Ordinance 3195, PMC 20.72.020(1) and (2).

29 <sup>23</sup> The City’s clarification of the definition of “temporary” as used in PMC 20.72.020(2) would be appropriate.

30 <sup>24</sup> FDO at 14, referencing the Official Zoning Map at Appendix B.

31 <sup>25</sup> Compliance Exhibit 25; Puyallup’s Response to Petitioner’s Objections to Finding of Compliance at 11.

32 <sup>26</sup> See Compliance Exhibit 25. See also Compliance Exhibit 18 at 4 where City staff states: “. . . we also spent quite a bit of time both in the field and through GIS layers looking at where we have sidewalks, where we have walkable shoulders . . . ”

<sup>27</sup> Compliance Exhibit 25 illustrates transit routes in relationship to potential allowed sites.

<sup>28</sup> Petitioner’s Objections to a Finding of Compliance at 24, 25. Compliance Exhibit 16 at 5, 6.

<sup>29</sup> Petitioner’s Objections to a Finding of Compliance at 11, 23, and 28. Compliance Exhibit 16 at 7.

1 agrees that existing development will reduce the number of potential sites, some parcels and  
2 acreage will be available and developed uses can and do change over time. Finally, the City  
3 points out that the Petitioner's argument regarding the impact of floodways is inaccurate. It  
4 cites PMC 21.07.040(2) and PMC 21.07.060(3), stating that the City does not regulate to the  
5 much wider Pierce County Floodway designation.<sup>30</sup>

6  
7 Another factor which potentially serves to increase the availability of sites to  
8 accommodate the siting of daytime drop-in centers and overnight shelters are the provisions  
9 included in Ordinance No. 3195 for Development Agreements.<sup>31</sup> That code section provides  
10 an option to locate such uses in other City zones, beyond those allowed by PMC 20.72.040.  
11 As the City observed in its Prehearing Brief, development agreements are authorized by  
12 RCW 36.70B.170 and provide flexibility in the application of applicable development  
13 standards.<sup>32</sup> While the Board did not find that the potential for Development Agreements, in  
14 the absence of any centrally located areas in which shelter facilities were permitted outright,  
15 was sufficient to prevent a finding of inconsistency between Ordinance 3179 and the City's  
16 Comprehensive Plan policies, the existence of this option for siting daytime drop-in centers  
17 and overnight shelters may offer an opportunity for additional sites.

18  
19 Based on the foregoing analysis, the Board finds and concludes that the Petitioner has  
20 failed to satisfy its burden of proof to show that the amendments to PMC Chapter 20.72  
21 adopted by Ordinance 3195 violate the GMA.  
22

## 23 V. ORDER

24  
25 Based upon review of the June 3, 2019, Final Decision and Order, City of Puyallup's  
26 Compliance Report and Ordinance No. 3195, the Growth Management Act, prior Board  
27 orders and case law, having considered the arguments of the parties offered in the briefing  
28 and at the compliance hearing, and having deliberated on the matter, the Board Orders:

- 29
- The City of Puyallup is in compliance with the Growth Management Act; and
- 30

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32 <sup>30</sup> Puyallup's Response to Petitioner's Objections to a Finding of Compliance at 17 and footnotes 14 and 15.  
Exhibit 211.

<sup>31</sup> Ordinance No. 3195, PMC Section 20.72.030(2).


<sup>32</sup> City of Puyallup's Prehearing Response Brief at 29, 30.

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- Case No. 18-3-0011 is closed.

SO ORDERED this 20<sup>th</sup> day of December 2019.

  
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Deb Eddy, Board Member

  
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Cheryl Pflug, Board Member

  
\_\_\_\_\_  
William Roehl, Board Member

**Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.<sup>33</sup>**

<sup>33</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

