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BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

JOHN PERANZI, VALLIE JO FRY AND
TONY AND ISOBEL CAIRONE,

Petitioners,

v.

CITY OF OLYMPIA,

Respondent,

and,

PANZA, a Not for Profit Corporation,

Intervenor.

Case No. 11-2-0011

ORDER ON MOTION FOR
CLARIFICATION

This matter comes before the Board pursuant to a motion filed by Respondent, the City of Olympia ("City"), on June 8, 2012.¹ Petitioners responded that same day with a Request for Guidance and Supplementation of the Record.² The City's motion requests the Board clarify whether or not RCW 36.70A.130(2) precludes the City from amending its Comprehensive Plan so as to attain compliance with the Board's Final Decision and Order (FDO) or, in the alternative, for an extension of time within which to comply.

Petitioners originally challenged the City's adoption of Ordinance No. 6771 (amending City development regulations) which authorized a permanent "County Homeless Encampment" as a conditional use on property within the City's Light Industrial Zoning District. The Board's FDO concluded that Petitioners carried their burden of proof in demonstrating the

¹ Respondent's Motion for Extension of Time and Motion for Clarification

² The Board, by letter of June 11, 2012, informed the parties it would consider both submissions as motions and granted each ten days to respond. Responses were subsequently filed on June 18, 2012.

1 City's action violated RCW 36.70A.130(1)(d) as the Ordinance's development regulations
 2 were inconsistent with and failed to implement two Comprehensive Plan Policies: LU 15.4
 3 and LU 15.5. In its Motion, the City states its chosen avenue of compliance is to amend
 4 those two policies.
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6 The City's motion resulted from assertions set forth in correspondence from Petitioners'
 7 counsel arguing the City's proposed course of action to achieve compliance by amending
 8 its Comprehensive Plan was precluded by RCW 36.70A.130(2).³ That statute provides that
 9 proposed comprehensive plan amendments may be considered by a jurisdiction no more
 10 frequently than once each year⁴, and all comprehensive plan proposals must be considered
 11 concurrently so as to ascertain the cumulative effect⁵. Those requirements are subject to
 12 the following exception: "However, . . . [a] City may adopt amendments or revisions to its
 13 comprehensive plan . . . to resolve an appeal of a comprehensive plan filed with the growth
 14 management hearings board. . . ."6
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17 Petitioners assert they challenged the City's development regulations; their challenge did
 18 not involve the Comprehensive Plan. Consequently, they argue the City may not take
 19 action to amend its Comprehensive Plan as the previously cited exception does not apply.
 20 That is, the City is not faced with resolving an appeal of a comprehensive plan.
 21

22 The City's concern is that if the Petitioners' argument is correct and the City amends the two
 23 Comprehensive Plan policies, then it may be prohibited from adopting other planned
 24 comprehensive plan amendments during 2012.
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29 ³ Included in the Petitioners' Request for Guidance and Supplementation of the Record was a request that the
 30 Board consider the legal memorandum referred to in the City's motion. That memorandum was a letter from
 31 Heather L. Burgess addressed to the City dated June 1, 2012. The Board agrees the letter should be
 32 considered excluding Section B, pgs. 3-4, which addresses a public participation concern. That issue is not
 before the Board at this time.

⁴ RCW 36.70A.130(2)(a)

⁵ RCW 36.70A.130(2)(b)

⁶ Id.

1 The Board does not agree with Petitioners' argument. The Board's finding of noncompliance
 2 with the Growth Management Act was issued pursuant to RCW 36.70A.300(3) which, in
 3 part, provides:

4 In the final order, the board shall either:

5
 6 (b) Find that the state agency, county, or city is not in compliance with the
 7 requirements of this chapter . . . In which case the board shall remand the
 8 matter to the affected state agency, county, or city. The board shall specify
 9 a reasonable time not in excess of one hundred eighty days, or such longer
 10 period as determined by the board in cases of unusual scope or complexity,
 11 within which the state agency, county, or city shall comply with the
 12 requirements of this chapter . . .

13 In this matter, the Board found the City noncompliant and required it to achieve compliance
 14 by August 28, 2012, a decision fully in accord with RCW 36.70A.300(3).⁷ The Petitioners
 15 argue the plain language of RCW 36.70A.130(2)(b)⁸ presents no room for interpretation.⁹
 16 They state the exception set forth in that statute ". . . applies only to resolve an appeal 'of a
 17 comprehensive plan.'"¹⁰ The Board agrees the language is plain and unambiguous.
 18 However, the Board concludes the language of RCW 36.70A.130(2) must be read together
 19 with RCW 36.70A.300(3) and, when done so, the meaning is indeed plain and unambiguous
 20 and not subject to statutory construction.

21
 22 The Board interprets the exception on which Petitioners rely, RCW 36.70A.130(2)(b), as
 23 applicable to orders of compliance issued involving challenges to comprehensive plan
 24 provisions. The exception was provided by the Legislature to avoid the conundrum the City
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26
 27 ⁷ During the compliance process, the Board retains jurisdiction under the statutes to monitor the compliance
 28 efforts that need to occur within the specified time period.

29 ⁸ Burgess letter of June 1, 2012 at 2

30 ⁹ In support of that argument, Petitioners provided the following quotes: "The primary goal of statutory
 31 construction is to carry out the legislative intent." 116 Wn 2d 342, 347; "If a statute is plain and unambiguous,
 32 then its meaning must be primarily derived from the language itself." 97 Wn 2d 454, 458; "Principles of
 statutory construction are used to interpret a statute only if the statute is ambiguous." 146 Wn 2d 947, 955

¹⁰ RCW 36.70A.130(2)(b): Except as otherwise provided in (a) of this subsection, all proposals shall be
 considered by the governing body concurrently so the cumulative effect of the various proposals can be
 ascertained. However, after appropriate public participation a county or city may adopt amendments or
 revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve
 an appeal of a comprehensive plan filed with the growth management hearings board or with the court.

1 would face if the Board's order found comprehensive plan violations. If the Board had done
2 so, the exception would allow the City to achieve compliance within the time allotted by the
3 Board pursuant to RCW 36.70A.300(3). In this instance, the violation did not involve
4 challenges to comprehensive plan provisions but rather to development regulations.
5 Therefore, the Legislature needed to provide no exception. The City may take the action it
6 deems appropriate to achieve compliance. The Board need not consider the City's
7 alternative request for an extension of the compliance period.
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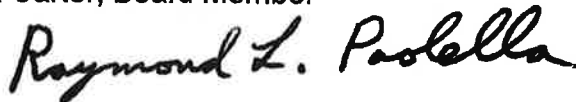
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10 SO ORDERED this 21st day of June, 2012.

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12 William Roehl, Board Member

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14 Nina Carter, Board Member

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16 Raymond Paoella, Board Member
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1 **BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD**
 2 **WESTERN WASHINGTON REGION**

3 Case No. 11-2-0011

4 John Peranzi, Vallie Jo Fry and Tony and Isobel Cairone v. City of Olympia

5 **DECLARATION OF SERVICE**

6 I, VANESSA SMITH, under penalty of perjury under the laws of the State of
 7 Washington, declare as follows:

8 I am the Administrative Assistant for the Growth Management Hearings Board. On
 9 the date indicated below a copy of the ORDER ON MOTION FOR CLARIFICATION in the
 10 above-entitled case was sent to the following through the United States postal mail service:

11 Heather L. Burgess
 12 Matthew Kernutt
 13 Phillips Wesch Burgess, PLLC
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14 Barnett N. Kalikow
 15 Kalikow Law Office
 16 1405 Harrison Avenue NW, Suite 207
 17 Olympia, WA 98502

18 DATED this 21st day of June, 2012.

19 
 20 _____
 21 Vanessa Smith, Administrative Assistant

