

1
2
3
4
5
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14
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**BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON**

TODD MCGUIRE, an individual; MARY
MCCURDY, an individual; JOHN CAPPS,
an individual; JOHN WATTS an individual;
and AFFORDABLE HOMETOWN PORT
TOWNSEND, a non-profit organization.

Petitioners,

v.

CITY OF PORT TOWNSEND

Respondent.

No. 26-2-0017

**RESPONDENT CITY OF PORT
TOWNSEND'S PREHEARING
BRIEF**

1 **Table of Contents**

2 **I. INTRODUCTION.....1**

3 **II. LEGAL STANDARDS4**

4 **III. ARGUMENT.....5**

5 **A. ISSUE 13 – PUBLIC PARTICIPATION.5**

6 1. Periodic Update Public Participation Program Overview.6

7 2. The Sixplex Concept Was Introduced to Planning Commission on

8 July 23, 2025.9

9 3. The Planning Commission Held a Public Hearing on Table

10 17.16.030’s R-II Density Limitations.10

11 4. The City Council Voted to Consider Changes to the Planning

12 Commission’s Recommendation on Table 17.16.030’s Density

13 Limitations during their November 24, 2025 Public Hearing.11

14 5. The City Council Received and Considered Extensive Public

15 Comment Regarding the Sixplex Exception.13

16 6. PTMC 20.04.080(B)(4) Does Not Require a Public Hearing and the

17 City’s November 24, December 8, and December 15, 2025 Meetings

18 Provided Adequate Notice, Opportunity for Review, and

19 Opportunity for Comment.....14

20 7. The Public Was on Notice Where the R-II Exception Applied.16

21 **B. ISSUE 1 – LAND CAPACITY ANALYSIS.16**

22 1. The City’s Land Capacity Analysis.17

23 a. The City’s Funding Gap for 0-80% AMI Units.....19

24 2. The City’s HNA, LCA, and Housing Element Follow

25 Commerce’s Guidance.....20

26 a. The Board Gives Commerce’s Guidance Substantial Weight. 21

3. The Board Decisions in *Mercer Island* and *Kitsap County* are

Distinguishable from the City’s Actions.....22

C. ISSUE 2 – ADEQUATE PROVISIONS.23

1. City’s Adequate Provisions Checklist.24

2. The City Took Assertive Actions to Reduce Barriers to Development.24

3. City Subsidies, Programs, Financial Tools, and Partnerships

Used to Close the Funding Gap.26

4. City’s Inclusionary Zoning or Fee In Lieu of Program Analysis.28

1	5.	Conclusion for Issues 1 and 2.....	29
2	D.	ISSUES 3, 4, 5, AND 6 – RACIALLY DISPARATE IMPACTS AND	
3		DISPLACEMENT.	30
4	1.	The City’s Racially Disparate Impact Analysis.....	30
5	2.	The RDI and Housing Element Analyzed Areas at Higher Risk of	
6		Displacement.....	31
7	3.	The City has Comprehensive Plan Policies to Mitigate Potential	
8		Displacement Risk.	32
9	4.	The City Has Mitigation Measures in Place for Potential	
10		Displacement Risk.	33
11	E.	ISSUES 8, 10, 11 & 12 – TRANSPORTATION.....	34
12	1.	The Comprehensive Plan and Active Transportation Plan	
13		Establishes Transportation LOS Consistent with GMA.	35
14	2.	The City Enforces Transportation Concurrency Through	
15		Chapter 12.06 PTMC.	39
16	F.	ISSUES 7 & 9 – CAPITAL FACILITY PLANNING.....	40
17	1.	Petitioners Incorrectly Assert that the Capital Facilities Plan	
18		Must be Based on Zoning Entitlements – Instead, the Standard is	
19		OFM Population Projections.....	41
20	2.	The City’s Capital Facilities Element and Plan Used the Assigned OFM	
21		Medium Population Projections – Consistent with the Land Use	
22		Element.	44
23	3.	The Capital Facilities Element ant Plan Establishes LOS Standards and	
24		Has Concurrency Standards for Water, Wastewater, and Stormwater.	45
25	4.	Requirement to Reassess the Land Use Element if Development	
26		Exceeds OFM Population Estimates or if Funding is Inadequate.	46
	5.	Capital Facilities Funding.	46
	6.	Petitioners Did Not Challenge Ordinance 3344 or 3359 – Budget	
		Issues Related to the Capital Facilities Plan and Capital	
		Improvement Plan are Not Properly Before the Board.....	48
	G.	INVALIDITY IS NOT PROPERLY BEFORE THE BOARD.	49
	IV.	CONCLUSION AND RELIEF REQUESTED	50

Table of Authorities

Case Law

City of Airway Heights v. EWGMHB, 193 Wn.App. 282, 376 P.3d 1112 (2016) 5

City of Redmond v. CPSGMHB, 116 Wn.App. 48, 65 P.3d 337 (2003)..... 4

Dep’t of Ecology v. PUD 1, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)..... 5

Futurewise v. Spokane Cnty., 23 Wn. App. 2d 690, 703, 517 P.3d 519, 526 (2022) 47, 48

Postema v. Pollution Control Hearings Bd., 142 Wn.2d 68, 77, 11 P.3d 726 (2000)..... 22

Thurston Cnty., v. WWGMHB, 164 Wash.2d 329, 340, 190 P.3d 38 (2008)..... 5

Growth Management Hearings Board Decisions

Black Diamond Trees, Roads, Envmt., Engagement Team v. Black Diamond, CPSGMHB Case No. 19-3-0013, FDO (Jan. 6, 2020) 5

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Futurewise, et. al. v. City of Mercer Island, CPSGMHB Case No. 25-3-0003, FDO (Aug. 1, 2025) passim

Kipp Dunlap, Petitioner v. City of Nooksack, WWGMHB Case No. 06-2-0001, FDO (Jul. 7, 2006) 16

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Wold, et. al. v. City of Poulsbo, Case No. 10-3-0005c, FDO (Aug. 9, 2010)..... 35

Revised Code of Washington

RCW 36.70A.035(2)(a) 12, 13, 14, 15

RCW 36.70A.070..... 25

RCW 36.70A.070(2)(d) 25, 31

RCW 36.70A.070(2)(e) 30, 31

RCW 36.70A.070(2)(h) 32

1	RCW 36.70A.070(3)(d)	47
2	RCW 36.70A.070(6)(a)(iii)(C)	48
3	RCW 36.70A.070(6)(b)	35
4	RCW 36.70A.100.....	44, 48
5	RCW 36.70A.115(1).....	16, 43
6	RCW 36.70A.130(2)(a)(iv).....	48
7	RCW 36.70A.140.....	7, 9
8	RCW 36.70A.290(1).....	49
9	RCW 36.70A.320(1).....	4
10	RCW 36.70A.320(3).....	5, 21
11	RCW 36.70A.540(1)(a)	29
12	RCW 82.02.050	28
13	Washington Administrative Code	
14	WAC 242-03-210(2)(e)	49
15	WAC 242-03-220(1).....	49
16	WAC 365-196-400(2)(a)	44
17	WAC 365-196-610(2).....	7
18	Session Laws	
19	Laws of 2019, ch. 348.....	4
20	Laws of 2021, ch. 254.....	3
21	Laws of 2023, ch. 332.....	3
22	Laws of 2023, ch. 333.....	4
23	Laws of 2023, ch. 334.....	3
24	Laws of 2023, ch. 338.....	4
25	Laws of 2025, ch. 203.....	4
26	Laws of 2025, ch. 301	4
27	Laws of 2026, ch. 232.....	4
28	Port Townsend Municipal Code	
29	PTMC 3.15.010.....	27
30	PTMC 3.15.030.....	27

1 PTMC 9.60.030..... 34

2 PTMC 12.06.070(A) 39

3 PTMC 12.06.070(J) 40

4 PTMC 13.12.040..... 48

5 PTMC 17.30.040..... 33

6 PTMC 17.30.320..... 33

7 PTMC 17.30.340..... 34

8 PTMC 20.04.030(A)(7) 48

9 PTMC 20.04.080(B)(4)..... 13, 15

10 PTMC 20.04.090(C) 10

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11 Washington Department of Commerce, Capital Facilities Planning Guidebook, Comprehensive
Planning under the Growth Management Act, October 2014..... 43, 44

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Reviewing, Updating and Implementing Your Transportation Element, September 2009 37

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Your Houring Element to Address New Requirements, August 2023 passim

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Your Houring Element to Address New Requirements, January 2026 passim

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Updating Your Houring Element to Address New Requirements, April 2023 30, 31

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Table of Exhibits

Exhibit Number	Title or Date	Event	Type of Record
3	Tactical Infill Resolution		City Council Resolution
7	Tactical Infill Ordinance		Ordinance
8	2023 Port Townsend Affordable Housing and Infill Strategies White Paper		White Paper
12	General Sewer Plan, including 2019 Stormwater Management Plan		Plan
15	2025-2030 Capital Facilities Plan		Plan
17	Comprehensive Streets Program		Report
19	2019 Water System Plan Update		Engineered Plan
20	Construction Valuation Data		
21	2025 Housing Forum Presentation		
27	4/9/2024	Growth Management Steering Committee (GMSC) Meeting	Materials
37	8/13/2024	GMSC Meeting	Minutes
38	County Resolution 67-1118-24R Adopting the Countywide Planning Policies		Resolution
39	County Resolution 68-1118-24R Adopting the Population Projections and HAPT		Resolution
41	Affordable Housing and Homelessness Plan		Presentation
42			Plan
55	Adequate Provisions Checklist		Checklist
56	Ordinance 3361 Adopting the Comprehensive Plan, Active Transportation Plan, Appendices, and Development Regulations		Ordinance
86	10/24/2024	Planning Commission Meeting	Materials
127	7/10/2025	Planning Commission Meeting	Materials
129	7/23/2025	Planning Commission Meeting	Materials
139	9/11/2025	Planning Commission Meeting	Materials
150	10/23/2025	Planning Commission Meeting	Agenda
151	10/23/2025	Planning Commission Meeting	Materials

Exhibit Number	Title or Date	Event	Type of Record
152	10/23/2025	Planning Commission Meeting	Minutes
244	4/15/2024	City Council Meeting	Materials
265	7/7/2025	City Council Meeting	Materials
272	11/17/2025	City Council Meeting	Materials
273	11/24/2025	City Council Meeting	Materials
274	12/8/2025	City Council Meeting	Materials
275	12/15/2025	City Council Meeting	Materials
280	12/2/2025	Emails with Commerce	Emails
283	Commerce Housing Guidance	Book 2 Guidance for Updating Your Housing Element - 2024 Version	Commerce Guidance
284	Commerce Housing Guidance	Book 3 Racially Disparate Impacts Guidance	Commerce Guidance
286	Commerce Housing Guidance	November 2025 Initial Commerce Guidance on GMHB Cases	Commerce Guidance
287	Commerce Housing Guidance	Book 2 Guidance for Updating Your Housing Element - 2026 Version	Commerce Guidance
292	1/20/2026	Email with Washington Department of Transportation	Emails
324	5/14/2025	Middle Housing Focus Groups	Materials
325	5/14/2025	Middle Housing Focus Groups	Materials
332	City Analysis	City LCA Calculation - 32 units	Calculations
333	City Analysis	City LCA Calculation - 48 units	Calculations
334	Resolution No.17-014	2017 Resolution Affirming City is a Welcoming City	Resolution
337	2026 City Budget Book		Budget
339	Resolution 25-005		Resolution
364	12/2/2024	Capital Improvement Plan	Council Meeting

1 **I. INTRODUCTION**

2 Port Townsend is a historic, compact, walkable, bikeable, and transit supported city –
3 approximately 9-square miles in area – with a population of 10,649. Ex. 56 at 38; 194. The
4 City’s actual annual growth rates have consistently underperformed compared to official
5 population projections. From 1996 through 2015, the City had an annual growth rate of 0.6%
6 compared to the projected annual growth rate of 2.5% – this trend continued in 2015 through
7 2023, with an annual growth rate of 0.9% compared to the projected annual growth rate of 1.1%.
8 *Id.* at 744.

10 Housing construction in the City has, likewise, underperformed compared to projections
11 and needs. Based on historical construction rates, the community will not build enough housing
12 to meet its projected 2045 needs. *See* Ex. 56 at 740; 768. Further, the community simply isn’t
13 building enough of the right type of housing – multifamily – 75% of existing housing stock in
14 the City is detached single-family with only 15% being multifamily. The number of rental units
15 in the City continues to decrease while ownership units increase, leaving rental units at their
16 lowest point based on available data. *Id.* at 749.

18 Inevitably, Port Townsend is experiencing a housing crisis – there is a supply and
19 demand imbalance resulting in price distortion. Between 2016 and 2022, median home price in
20 the City has more than doubled – resulting in the highest median home price and average asking
21 rent by any city on the Olympic Peninsula. *Id.* 757; 774. In 2024, the City’s median home price
22 was \$669,000 compared to \$450,000 in nearby Port Angeles. *Id.* at 757.

24 Against this backdrop, in 2022, the City’s median household income was \$59,193
25 (\$43,046 for renters), well below the state median household income of \$90,325 and below
26 Jefferson County’s median household income. *Id.* 750. Further, only 36.9% of personal income

1 came from earned income, compared to the state average of 63.5%. *Id.* at 751. Transfer payments
2 accounted for 29.4% of personal income compared to the state average of 15.5%. *Id.* Meanwhile,
3 property income accounted for 33.7% of personal income compared to the state average of
4 21.0%. *Id.* This imbalance in earned income, property income, and transfer payments contributes
5 to the City’s housing market distortions. Because of these imbalances, 48% of renter occupied
6 households were cost burdened in 2020. *Id.* at 753.

8 The Washington State Legislature has responded to the statewide housing crisis, in part,
9 through amendments to the Growth Management Act, Chapter 36.70A RCW (“GMA”), by
10 implementing aggressive reforms to exclusionary single-family zoning while stimulating the
11 construction of diverse housing stock – this is focused on providing housing opportunities for all
12 economic segments of a community, while balancing competing growth demands.

13 Petitioners assert that this appeal is about strict compliance with the GMA – but the
14 record and their Prehearing Brief tell a different story – they disagree with policy actions taken
15 by the City in response to the state’s changes to the GMA and the City’s housing crisis. They
16 simply do not *want* the diversity of housing stock demanded by the GMA in their City – an
17 Urban Growth Area (“UGA”). Until September 2025, Port Townsend was Jefferson County’s
18 only UGA with adequate urban services in the county. The GMA demands that growth is
19 concentrated in UGAs, like Port Townsend, and the City’s development regulations must support
20 this policy goal.
21

22 The Petitioners frame Ordinance 3361, the challenged action, as an unprecedented
23 upzoning that threatens affordability, neighborhood character, and the City’s urban services. A
24
25
26

1 public comment, in part below (non-petitioner), summarizes the theme of the Petitioners’
2 arguments in their Prehearing Brief:

3
4 Having spent 30 years volunteering to preserve our old neighborhood, we found PT
5 [Port Townsend], where we could retreat and live out our lives. We now view that
6 quality of life in jeopardy, and without good reason other than "the I want" syndrome
7 by people who can't afford to live here, but really want to live here. My sister could
8 afford Sequim, so that is where she moved, and she got to live in a well built house a
9 couple of miles from virtually anything she would need, for half the cost of a modest
10 house in PT. That city, barely half an hour away, offered that; she got a job at a casino
11 that actually paid well.

12 Contrary to a suggestion, I don't want an organization [City] that believes we need to
13 build a wide range of economic levels.

14 Ex. 273 at 857.

15 The City strongly believes that urgent action is needed to tackle its housing crisis – while
16 balancing future growth, urban services, strengthening multi-modal transportation, and honoring
17 Port Townsend’s unique history and form. These are the exact actions demanded by the GMA.

18 To this goal, the City enacted Ordinance 3361, a state-mandated 10-year Periodic Review
19 and Update of the City’s Comprehensive Plan and its development regulations (“Periodic
20 Update”). Under a Periodic Update, “[e]ach comprehensive land use plan and development
21 regulations shall be subject to continuing review and evaluation ... [a] city shall take legislative
22 action to review and, if needed, revise its comprehensive land use plan and development
23 regulations to ensure the plan and regulations comply with the requirements of [GMA].” RCW
24 36.70A.130(1)(a).

25 Since the City’s last Periodic Update in 2016, there have been substantial revisions to the
26 GMA focused on housing, including:

- ESSHB 1220 – This law fundamentally changed GMA from encouraging affordable housing to requiring cities to plan for and accommodate housing at all income levels.¹

¹ See Laws of 2021, ch. 254.

- 1 • ESHB 1337 – This law requires cities to allow at least two ADUs per single-family lot.²
- 2 • ESSHB 1110 – This law generally requires cities to allow 2 to 6 units per residential lot.³
- 3 • ESSHB 1096 – This law authorizes administrative lot splitting and limits parking.⁴
- 4 • ESSHB 1923 – Encourages cities to increase residential building capacity.⁵
- 5 • ESHB 1293 – This law requires that cities apply objective design standards to housing.⁶
- 6 • 2SSB 5290 – This imposes strict timelines on cities for processing housing permits.⁷
- 7 • ESHB 2266 – Authorizes emergency shelter, transitional housing, emergency housing, and permanent supportive housing where residential and hotel uses are authorized.⁸
- 8 • HB 1757 – This law requires cities to authorize the conversion of certain existing buildings to residential uses.⁹

9 In sum, the massive changes to the GMA, along with local housing conditions in the City,
 10 require the City to take assertive steps towards increasing housing supply ensuring that housing
 11 is available for all economic segments within the community. While the Petitioners disagree with
 12 the City’s policy choices in Ordinance 3361, such as upzoning and removing barriers to housing
 13 supply – this disagreement is not sufficient to meet their high burden of proof – clearly
 14 erroneous, which is required to find Ordinance 3361 noncompliant under the GMA.

15 **II. LEGAL STANDARDS**

16 Comprehensive Plans and development regulations, including amendments, are presumed
 17 valid upon adoption. RCW 36.70A.320(1). The burden of proof lies squarely with the
 18 Petitioners. *City of Redmond v. CPSGMHB*, 116 Wn.App. 48, 55-58, 65 P.3d 337 (2003). For the
 19 Board to find Ordinance 3361 noncompliant with the GMA, the Petitioners must present
 20 evidence meeting the “clearly erroneous” standard of review – the Board “shall find compliance

21 _____
 22 ² See Laws of 2023, ch. 334.

23 ³ See Laws of 2023, ch. 332. Ex. 265 at 28. HB 1110 does not apply to the City due to its
 24 population size. However, the City voluntarily implemented HB 1110 under a Commerce grant.

25 ⁴ See Laws of 2025, ch. 301.

26 ⁵ See Laws of 2019, ch. 348; Ex. 7 at 1-4.

⁶ See Laws of 2023, ch. 333.

⁷ See Laws of 2023, ch. 338.

⁸ See Laws of 2026, ch. 232.

⁹ See Laws of 2025, ch. 203.

1 unless it determines that the action taken by the City is clearly erroneous in view of the entire
2 record before the Board and in light of the goals and requirements of the GMA.” RCW
3 36.70A.320(3); *Thurston Cnty., v. WWGMHB*, 164 Wash.2d 329, 340, 190 P.3d 38 (2008). An
4 action is clearly erroneous if the Board is “left with a definite and firm conviction that a mistake
5 has been committed.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

7 It is insufficient for the Petitioners to merely disagree with the City’s actions or to
8 identify technical problems in the process leading up to the adoption of Ordinance 3361. *Black*
9 *Diamond Trees, Roads, Envmt., Engagement Team v. Black Diamond*, CPSGMHB Case No. 19-
10 3-0013, Final Decision and Order (FDO) (Jan. 6, 2020), at 3; *Friends of the San Juans v. San*
11 *Juan Cnty.*, WWGMHB Case No. 13-2-0012c, FDO (Sep. 6, 2013) at 19. Courts have
12 interpreted this high standard as:

13
14 This “clear error” standard reflects the legislature's intent that the board “grant
15 deference to counties and cities in how they plan for growth, consistent with the
16 requirements and goals of this chapter.” RCW 36.70A.3201. In effecting this balance,
17 the legislature intended for “local planning to take place within a framework of state
goals and requirements, [but] the ultimate burden and responsibility for planning,
harmonizing the planning goals of this chapter, and implementing a county's or city's
future rests with that community.

18 *City of Airway Heights v. EWGMHB*, 193 Wn.App. 282, 376 P.3d 1112 (2016).

19 **III. ARGUMENT**

20 **A. Issue 13 – Public Participation.**

21 The City had robust public participation program for Ordinance 3361 – spanning 20
22 months – from April 2024 until December 2025. Ex. 56 at 1-7; Att. B¹⁰. The record speaks for
23

24 ¹⁰ Att. B is the June 2025 Stakeholder Engagement Summary. Under WAC 242-03-565(2) and in
25 response to Petitioners’ Prehearing Brief footnote 14, the City requests that the Board
26 supplement the record with Att. B. This record was inadvertently omitted from the index and
given the extensive and voluminous record in the matter, the City believes this is good cause to
permit supplementation.

1 itself – the City engaged in “early and continuous public participation” for the whole of
2 Ordinance 3361, including the challenged R-II sixplex exception.

3 Petitioners mischaracterize Ordinance 3361 and its R-II sixplex exception as “last-
4 minute” and allege that the City “circumvent[ed] the [Planning] Commission in the Council’s
5 last-minute adoption of the six- and twelve-plex density exception.” Petitioners’ Prehearing Brief
6 at 24. Contrary to these assertions, the City gave adequate notice, received extensive public
7 comment, considered the comment, and ultimately voted to adopt Ordinance 3361, including its
8 R-II sixplex exception.
9

10 The GMA and the Port Townsend Municipal Code (“PTMC”) do not demand that the
11 City Council send amendments to the Planning Commission’s recommendation back to Planning
12 Commission – for another public hearing – when the City Council wishes to adopt an
13 amendment to the Planning Commission’s recommended language or proposal. Such an outcome
14 is not only inconsistent with the GMA, but it would eliminate the City Council’s primary role of
15 policy making, resulting in an endless loop of the Council referring amendments back to the
16 Planning Commission, an unelected advisory board.
17

18 **1. Periodic Update Public Participation Program Overview.**

19 As a preliminary step in the process, the City enacted Resolution No. 25-005 establishing
20 the Final Docket for the Periodic Update. Ex. 339. The Final Docket included an extensive list of
21 potential amendments to the Comprehensive Plan, including “revisions responsive to mandated
22 and suggested amendments based on the Department of Commerce Periodic Review Checklist” –
23 this included “Development Regulation[s] Update.” *Id.* at 8. The Washington Department of
24 Commerce’s (“Commerce”) Checklist included amendments to the Comprehensive Plan and
25 development regulations to address the new requirements of ESSHB 1220. *Id.*
26

1 With a Periodic Update, the GMA requires that cities “establish and broadly disseminate
2 to the public a public participation program identifying procedures providing for early and
3 continuous public participation in the development and amendment of comprehensive land use
4 plans and development regulations implementing such plans.” RCW 36.70A.140.

5 On April 14, 2025, the City Council approved the City’s Public Participation Plan. Ex.
6 244 at 12-22. The Public Participation Plan meets the requirements of RCW 36.70A.140 and
7 WAC 365-196-610(2) through:

- 8 • Early and continuous public participation (e.g., public engagements throughout the entire
9 Periodic Update);
- 10 • Broad and ongoing dissemination of information (e.g., multiple communication channels,
11 project website, social media, and news/media/radio updates)¹¹;
- 12 • Ongoing opportunities for public input and comment (e.g., community workshops, public
13 outreach at community events, open public meetings with public comment opportunities,
14 and public hearings);
- 15 • Inclusion of a broad range of stakeholders (e.g., general public, government agencies, tribal
16 consultation, service providers, non-governmental organizations, and regional entities);
- 17 • Removal of barriers and promotion of inclusive participation (e.g., live streaming meetings
18 with remote input, ADA-accessible events, and partnerships with community-based
19 organizations); and,
- 20 • Demonstrated integration of public input into decision-making (e.g., acceptance of written
21 and oral public comments at public meetings and public hearings along with staff and
22 Council or advisory board member response).

23 See Ex. 244 at 12-22; Ex. 56 at 1-7; Att. B.

24 The Petitioners allege that the City “promised draft language to the Planning Commission
25 in February/March 2025,” but failed to provide it until October 2025, which “significantly
26 compresses the timeline for the public to review and react to zoning changes and created a
rushed process to meet the December 31, 2025, deadline.” Petitioner’s Prehearing Brief at 12.

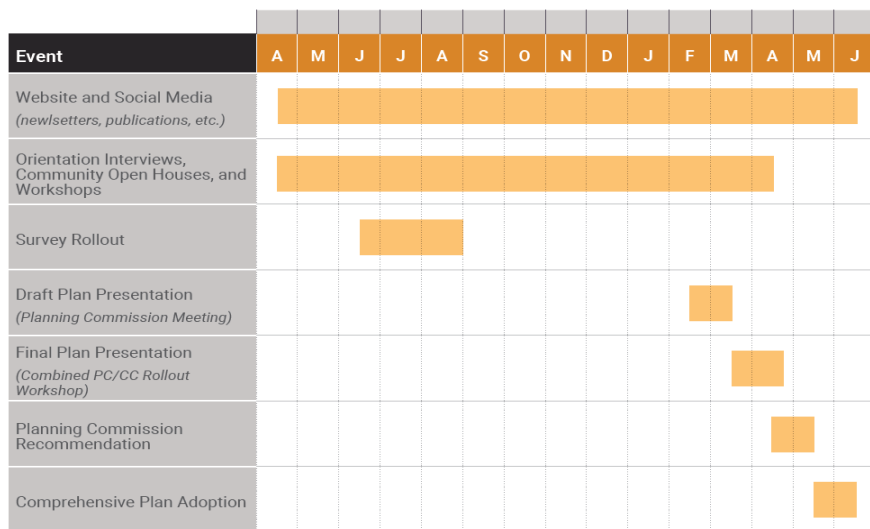
¹¹ See Ex. 56 at 33-34.

Petitioners’ argument fails as: (1) they *withheld* from the Board that the Public Participation Plan schedule assumed a June 2025 adoption date, not December 2025 – the timeline was not “compress[ed]”; and (2) that the City generally increased the time periods.

The schedule assumed 3 months between the final plan presentation to Planning Commission in March 2025 and Council adoption in June 2026.¹² Ex. 244 at 8-9. While the tentative dates shifted – the City substantially complied by presenting the final Comprehensive Plan and development regulations, in full, to the Planning Commission on October 23, 2025, with Council adoption of Ordinance 3361 on December 15, 2025. Ex. 150, 151, 152; Ex. 56 at 9.

Figure 1: Public Participation Plan Schedule¹³

Public Participation Schedule



From March 13, 2025, until October 9, 2025, the City held, by our count, at least 26 public meetings – all which included a public comment period – on the draft Comprehensive

¹² The timeline assumed draft language to the Planning Commission in February/March 2025 with an ultimate adoption in June 2025 – not draft language to the Planning Commission in February/March 2025 with a December 31, 2025 adoption date as alleged by Petitioner.

¹³ Ex. 244 at 22.

1 Plan and development regulations. See Ex. 56 at 3-5; Ex. 127. This is significantly longer than
2 the 3-month period proposed in the Public Participation Plan.

3 The GMA acknowledges that public participation plan schedules, are just that – “Errors
4 in exact compliance with the established program and procedures shall not render the
5 comprehensive land use plan or development regulations invalid if the spirit of the program and
6 procedures is observed.” RCW 36.70A.140.

8 **2. The Sixplex Concept Was Introduced to Planning Commission on
9 July 23, 2025.**

10 Petitioners mischaracterize the sixplex exception as “last-minute,” but this concept was
11 specifically introduced as a policy option during Planning Commission’s July 23, 2025 and
12 September 11, 2025 meetings:

13 Figure 2 – Excerpt from Planning Commission Materials¹⁴

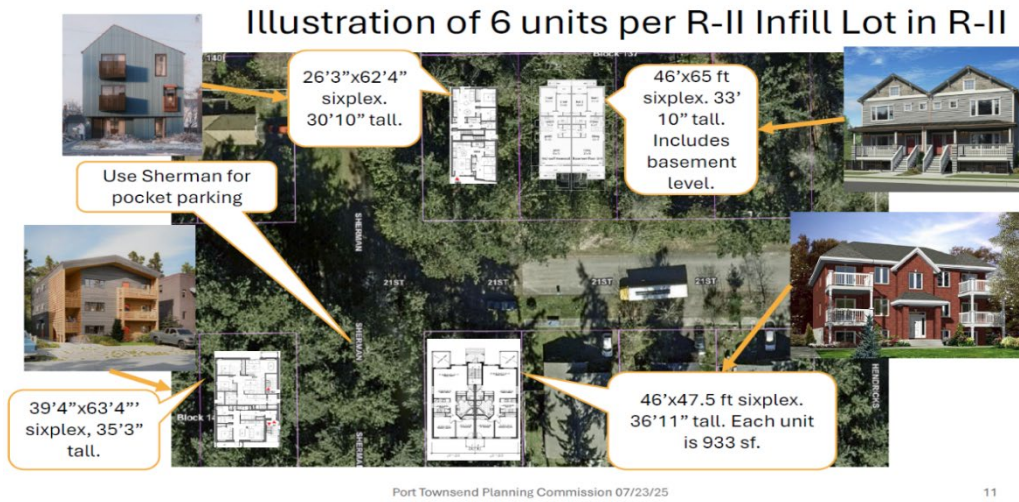
14 **Residential Density Discussion: R-II**

Zoning	Minimum Density	Maximum Density
R-II	None. For discussion: 8 units per 40,000 sf. This would require an exemption for critical areas on site because the CAO allows reductions in density for mitigation.	Currently 8 units per 40,000 sf. For discussion: increasing maximum allowed density to: 32 units per 40,000 sf (staff’s initial suggestion, allows fourplex per lot) or 48 units per 40,000 sf (Council’s suggestion, equivalent to current maximum R-IV, allows sixplex per lot)

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21 As shown above, the sixplex concept was clearly introduced and discussed at the July 23,
22 2025 Planning Commission meeting. This refutes Petitioners’ claim that this concept was first
23 introduced on September 11, 2025 and further disproves their claims the sixplex exception was
24 “last-minute.” Petitioners’ Prehearing Brief at 3.

25
26 ¹⁴ Ex. 129 at 8; See also Ex. 129 at 8; 12; 28; 30; Ex. 139 at 34; 42; 44; 45.

Figure 3 – Excerpt from Planning Commission Materials¹⁵



3. The Planning Commission Held a Public Hearing on Table 17.16.030's R-II Density Limitations.

The Petitioners argue that PTMC 20.04.090(C) requires that the Planning Commission hold a public hearing on the R-II sixplex exception since it was not included in the draft text of the development regulations presented at the Planning Commission's October 23, 2025 public hearing. Petitioners' Prehearing Brief at 13. This argument misconstrues PTMC 20.04.090(C). The Planning Commission held a public hearing on text amendments for the Periodic Update, including the R-II density limitations – there is no requirement that the *exact* language at issue be part of the public hearing proposal. The Planning Commission and Council can amend the introductory language.

PTMC 20.04.090(C) requires that "[t]he planning commission shall hold a public hearing on any text amendment to the land use code and make a recommendation to city council." The Planning Commission followed PTMC 20.04.090(C). On October 23, 2025, they held a public

¹⁵ *Id.* at 13.

1 hearing on the Periodic Update, including recommended amendments to Table 17.16.030's
2 density limitations in R-II zone. Ex. 151 at 615.

3 The Planning Commission's review of Table 17.16.030, between July and October 2025,
4 unequivocally included two density options in the R-II zone: (1) 32 units per 40,000 SF; or (2)
5 48 units per 40,000 SF. Ex. 139 at 34. 48 units per 40,000 SF is equivalent to a sixplex on a
6 5,000 SF lot or a twelveplex on a 10,000 SF lot. During their October 23, 2025 public hearing
7 the Planning Commission discussed duplexes and multiplexes. Ex. 152 at 3. Ultimately, the
8 Planning Commission recommended the 32 units per 40,000 SF (fourplexes) density option for
9 the R-II zone under Table 17.16.030. Ex. 151 at 615; Ex. 152 at 3-4.
10

11 **4. The City Council Voted to Consider Changes to the Planning**
12 **Commission's Recommendation on Table 17.16.030's Density**
13 **Limitations during their November 24, 2025 Public Hearing.**

14 On November 17 and 24, 2025, the City Council held a public hearing on the Planning
15 Commission's recommended amendments for the Periodic Update – this included the density
16 limitations in the R-II zone under Table 17.16.030 PTMC. Ex. 272 at 2; 626; Ex. 273 at 1; 406.

17 During the City Council's November 24, 2025 public hearing, Council discussed
18 “maximum densities [in the R-II zone], a proposal to have no affordable pieces attached to it,
19 options include #1- 32 max/ #2- 48 max/ or #3- bonus density that would enable you to do a six
20 plex for 5,000 sq ft but only on lots that are 10,000sqft or less.” Ex. 273 at 873-74. After this
21 discussion – and during the public hearing – the City Council voted by 6-1 on option #3 as the
22 potential density limitation in the R-II zone (sixplexes on 5,000 SF but only lots that are 10,000
23 SF or less in size). *Id.* The public hearing was then closed. *Id.*
24

25 Following the November 24, 2025 hearing Council direction on the R-II sixplex
26 exception, City staff drafted an amendment to Table 17.16.030 PTMC adding “except 6 units per

1 5,000 square feet for infill projects with 10,000 square feet or less of lot area” to the draft
2 Ordinance 3361. Ex. 274 at 130; 1163.

3 Figure 4 – December 8, 2025 Staff Presentation to City Council¹⁶

4 Updates: R-II Densities

District	R-II
Minimum Density per 40,000 sf	8 units
Maximum Density per 40,000 sf	9-32 units, except 6 units per 5,000 square feet for infill projects with 10,000 square feet or less of lot area. (5,000 sf of lot area per unit per detached single-family unit; 2,500 for any multifamily structure; and 1,150 sf of lot area per attached single-family unit). A bonus density of 20%, or 1 unit, whichever is greater, is allowed for affordable housing development on property owned by a religious organization.

Per Council 11/24/25, continuing proposal to allow additional density on R-II properties with 2 or fewer lots.
Minimum density requires at least one unit per each 5,000 square feet of buildable area
Maximum density allows up to four units on a lot, or up to 6 units per lot for properties with only one to two lots instead of a larger project

Port Townsend City Council 12/08/25

14

10 The exception text, above, from the November 24, 2025 public hearing was
11 conspicuously in Staff’s December 8, 2025 presentation to City Council. *Id.* Further, the
12 exception text was included the “Errata Sheet” along with the December 8, 2025 Periodic Update
13 material, which is a consolidated spreadsheet showing all outstanding edits to the Periodic
14 Update – the exception text is line #5 under “PTMC.” *Id.* at 1163.

16 Finally, the R-II sixplex exception text was *again* conspicuously presented to Council on
17 December 15, 2025, in staff’s presentation and in the Errata Sheet. Ex. 275 at 40; 1074.

18 The Errata Sheet provides notice of all proposed changes from the Planning
19 Commission’s recommendation, in one location – this is especially helpful given the broad range
20 of amendments demanded during a Periodic Update. Under a Periodic Update the entire
21 comprehensive plan and its development regulations are reviewed. It would be impossible for
22 cities to notice every amendment in the text of meeting agendas for periodic updates – this is
23 why the GMA requires the development and implementation of a public participation program
24

25
26 ¹⁶ Ex. 274 at 130.

1 during periodic updates to ensure that the public is involved throughout the process and is given
2 an opportunity to review and comment on changes under RCW 36.70A.035(2)(a).

3
4 **5. The City Council Received and Considered Extensive Public
Comment Regarding the Sixplex Exception.**

5 PTMC 20.04.080(B)(4) states – “if the city council chooses to consider a change to an
6 amendment to a Comprehensive Plan or development regulation, and the change is proposed
7 after the opportunity for review and comment has passed under the city’s procedures, an
8 opportunity for review and comment on the proposed change shall be provided before the
9 council votes on the proposed change.”¹⁷

10 After the sixplex exception was introduced by Council at their November 24, 2025 public
11 hearing, the City included this exception text in the December 8 and 15, 2025 Council packages,
12 staff presentation, and Errata Sheets. Ex. 274 at 130; 1163; Ex. 275 at 40; 1074.

13 The City Council accepts, considers, and responds to public comment during *all* City
14 Council meetings – this includes items on the agenda and items not on the agenda.¹⁸

15 During the 5-hour December 8, 2025 City Council meeting, the Council received 134
16 written comments on Ordinance 3361, 96 relating to housing density and 31 relating directly the
17 sixplex exception. Ex. 274 at 1165-1210. They also received 25 oral comments on Ordinance
18 3361, many of which related directly to the sixplex exception. *Id.* at 1216-1220. Council
19 considered the comments and debated many of the points raised in the written and oral
20 comments in open session during their December 8, 2025 meeting. *Id.*

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¹⁷ RCW 36.70A.035(2)(a) (mirrors the language in PTMC 20.04.080(B)(4)).

¹⁸ See Ex. 274 at 1-4; 1212-20; Ex. 275 at 1-4; 1112-17.

1 Discussion continued during the 4-hour December 15, 2025 City Council meeting in
2 which Council received 102 written comments on Ordinance 3361, 75 of which related to
3 housing density and 4 that directly related to the sixplex exception. Ex. 275 at 1076-1109. They
4 also received 17 oral comments on Ordinance 3361 during that meeting, many of which related
5 to the sixplex exception. *Id.* at 1113-15. Finally, Council considered the comments and debated
6 many of the points raised in the written and oral comments during the December 15, 2025
7 meeting, prior to adoption of Ordinance 3361. *Id.* at 1115-17.

9 For example and prior to the adoption of Ordinance 3361, a contestant in the City’s 31st
10 Annual Uptown Gingerbread Contest even entered a gingerbread house, later brought it to City
11 Council and presented it during public comment; it consisted of a mockup of a sixplex
12 surrounded by lower density development – depicting the alleged impacts of the proposals in
13 Ordinance 3361 – this is an illustrative example of the extensive public input on this matter. *See*
14 *Id.* at 1099.

16 Based on the public comments received during the December 8 and 15, 2025 meetings –
17 approximately 274 in total – the Council introduced a motion to strike the sixplex exception: that
18 motion failed with a 2-5 vote. *Id.* at 1116-17. Ultimately, the Council approved Ordinance 3361,
19 including the sixplex exception by a 6-1 vote on December 15, 2025. Ex. 275 at 1117.

21 **6. PTMC 20.04.080(B)(4) Does Not Require a Public Hearing and the**
22 **City’s November 24, December 8, and December 15, 2025 Meetings**
23 **Provided Adequate Notice, Opportunity for Review, and**
24 **Opportunity for Comment.**

25 PTMC 20.04.080(B)(4), which mirrors RCW 36.70A.035(2)(a), does not require a public
26 hearing as the “forum” or “venue” for providing an additional “opportunity for review and
comment” when the Council deviates from the Planning Commission’s recommendation.

1 In *Weyerhaeuser Real Estate Company v. City of Dupont*, the Central Puget Sound
2 Region of the Board agreed with the City of Dupont’s position that when there are changes to a
3 proposed amendment after the close of the planning agency’s public hearing, the city must
4 provide an opportunity for public review and comment on the change, but that RCW
5 36.70A.035(2)(a) does not require another public hearing before city council adoption.
6
7 *Weyerhaeuser Real Estate Company v. City of Dupont*, CPSGMHB Case No. 98-3-0035, FDO
8 (May 19, 1999), at 10.

9 The City’s acceptance of public comments for Ordinance 3361, including the R-II sixplex
10 exception, must be compared with the Board’s holdings in other public participation cases –
11 especially ones interpreting RCW 36.70A.035(2)(a). In those cases, the Board found that the
12 challenged action did not meet the requirements of RCW 36.70.035(2)(a) as the community did
13 not give: adequate notice of the proposed change or an opportunity to review and comment on
14 the proposed change.¹⁹

15
16 In stark contrast to these cases, the City:

- 17 • On November 24, 2025, the City Council announced, during an open public hearing, their
- 18 direction on the proposed R-II sixplex exception;
- 19 • Included the R-II sixplex exception in the staff presentation and in the Errata Sheet at the
- 20 December 8 and 15, 2025 City Council meetings;
- 21 • Held two public meetings – December 8 and 15, 2025 – making the final draft of
- Ordinance 3361 available for review prior to those meetings, including the R-II sixplex
- exception; and,

22 ¹⁹ See *Kipp Dunlap, Petitioner v. City of Nooksack*, WWGMHB Case No. 06-2-0001, FDO (Jul.
23 7, 2006) at 7 (holding that the city violated RCW 36.70a.035(2)(a) by not extending the
24 comment period and not providing the draft ordinance and full staff comments or
25 recommendation for public review prior to adoption); *Responsible Growth * Ne Washington and*
26 *Spokane Riverkeeper v. Pend Oreille County*, EWGMHB Case No. 23-1-0005, FDO (Oct. 16,
2023) at 7-10 (holding that the county introduced a significant change to the Rural Land Use
policies and while the final draft was available for public review prior to the county’s adoption --
- there was no public comment opportunity in violation of RCW 36.70A.035(2)(a)).

- Accepted and considered approximately 274 public comments at the December 8 and 15 public meetings on Ordinance 3361. This was prior to the adoption of Ordinance 336. Many of which related directly to the R-II sixplex exception.

7. The Public Was on Notice Where the R-II Exception Applied.

Petitioners further allege that the public lacked meaningful notice because the City never “disclose[d] exactly where the new exception might apply.” Petitioners Prehearing Brief at 15. Contrary to their assertion, the R-II sixplex exception language plainly puts the public on notice exactly where the density exception will apply (“except 6 units per 5,000 square feet for infill projects with 10,000 square feet or less of lot area.”) – it is this simple:

- Is the property zoned R-II?
- If yes, is the lot 10,000 SF or less?
- If yes to these two questions, the property likely qualifies for the R-II sixplex exception (at least in the context of Table 17.16.030’s density exception).

B. Issue 1 – Land Capacity Analysis.

The City agrees with the Petitioners that the GMA requires that cities must ensure that “comprehensive plans and/or development regulations provide sufficient capacity of land suitable within their jurisdiction to accommodate their allocated housing and employment growth” and that the City’s housing element must include an “inventory and analysis of existing and projected housing needs ... [for] moderate, low, very low, and extremely low-income households.” RCW 36.70A.115(1); RCW 36.70A.070(2)(a).

However, the Petitioners fail to present the entire record to the Board, while misconstruing recent Board holdings. The record demonstrates that the City correctly relied on Commerce guidance in any income banding, that the City disaggregated any income banding –

1 in response to *Futurewise, et. al. v. Mercer Island*, and that they took assertive measures to
2 ensure “adequate provisions” for the units within the low-income band (0-80% AMI).²⁰

3 First, the City prepared a Housing Needs Analysis (“HNA”) providing an inventory and
4 analysis of existing and projected housing needs by income level, per Commerce’s Book 2. Key
5 findings from the HNA state that the “[C]ity’s existing housing is not fully meeting the needs of
6 its residents, which include low-income households” and that the City “will need to demonstrate
7 capacity for meeting future housing need ... while also considering other actions to meet the
8 community’s housing needs – encompassing process-oriented improvements, improvements to
9 residential-serving infrastructure, and direct involvement in the housing market through master-
10 planned developments and other actions.” Ex. 56 at 779.

11
12 Next, the City prepared a Land Capacity Analysis (LCA) – notably the LCA was
13 prepared prior to the *Mercer Island* decision. *Id.* at 731-42. The LCA demonstrated that the City
14 “has sufficient land capacity to meet its current housing targets at all income bands under current
15 zoning.” *Id.* at 742. However, the LCA notes that “land capacity alone does not guarantee that
16 the needed housing will be built.” *Id.* This consideration is particularly important as the City’s
17 historic plats make the City more reliant on infill development, instead of greenfield
18 development, increasing the necessity for zoning allowances that allow multifamily development
19 throughout existing developed areas.
20
21

22 **1. The City’s Land Capacity Analysis.**

23 The LCA adopts Commerce’s “moderate-cost communities” guidance that relates zone
24 categories to housing types and income levels. *Id.* at 737; Ex. 283 at 33-38. Based on

25
26

²⁰ *Futurewise, et. al. v. City of Mercer Island*, CPSGMHB Case No. 25-3-0003, FDO (Aug. 1, 2025) at 23-30.

Commerce’s moderate-cost guidance, low-rise and mid-rise multifamily, along with accessory dwelling units (“ADU”), were assumed to be market rate at the 50-80% AMI band. The Petitioners allege that this chart was produced without evaluating local market conditions or engaging with affordable housing developers – this is false – from January 2023 through the December 2025 adoption of Ordinance 3361, the City engaged affordable and for-profit housing developers through focus groups and informal comment, in which they repeatedly shared market conditions contributing to development costs such as insufficient inventory, consumptive development patterns, infrastructure extension costs, construction labor costs, provider technical incapacity, bonding, property management costs, and unpredictability and risk. Ex. 3 at 10-15; Ex 325 at 3-5; 8-10; 15-18; Ex. 19; Ex. 20; Ex. 21.

Based on this allocation method, combined with land availability, zoning, market factors, pending units, and programs the LCA concluded that²¹:

Figure 5 – Housing Needs and Land Capacity by Income Band²²

Income Band	Housing Needs	Aggregated Housing Needs	Pending Units	Remaining Needs	Total Capacity	Surplus/ Deficit
0-30 PSH	124					
0-30 Non PSH	807	1,403	277	1,126	1,824	698
30-50	286					
50-80	186					
80-100	75	169	90	79	2,651	2,572
100-120	94					
120+	76	76	451	-375	2,735	3,110
Total	1,648	1,648	818	830	7,210	6,380

Source: City of Port Townsend, Washington Department of Commerce, Jefferson County, Leland Consulting Group

The LCA projected the housing needs for the extremely low (0-30% AMI), very low (30-50% AMI), low (50-80% AMI), moderate (80-100% AMI), moderate (100-120% AMI), and

²¹ See Ex. 86 at 11-27.

²² Ex. 56 at 740.

high (120%+ AMI) bands. Following Book 2’s guidance, the LCA then aggregated the housing capacity (supply) for the low-income 0-80% AMI, moderate-income 80-120% AMI, and higher-income 120%+ AMI. See Ex. 283 at 38-39; Ex. 287 at 39-40.

Book 2’s moderate-cost communities classification “bands” together low income (0-80%); moderate income (80-120%); and higher income (120%+).²³ Commerce has reaffirmed this approach in response to *Mercer Island*.

Prior to the adoption of Ordinance 3361 and in response to *Mercer Island*, the City completed an in-house “LCA Disaggregation Analysis” to confirm the findings of the LCA and provide more granular data²⁴:

Figure 6 – LCA City Disaggregation Analysis Summary²⁵

Income Band	Number of needed housing units taken from the HAPT figures adopted by the GMSC, as shown in Figure 03.02 of the Housing Element		Income level for each unit calculated using Commerce's exhibit 23 in comparison with pending units by type			
	Housing Needs	Aggregated Housing Needs	Pending Units	Remaining Needs	Total Capacity	Surplus/Deficit
0-30 PSH	124		45	79	99	20
0-30 Non PSH	807		64	743	429	-314
30-50	286		62	224	648	424
50-80	186	1403	70	116	648	532
80-100	75		60	15	1326	1310.5
100-120	94	169	66	28	1326	1297.5
120+	76	76	451	-375	2735	3110
			818		7210	

a. The City’s Funding Gap for 0-80% AMI Units.

While the City’s LCA Disaggregation Analysis, above, shows that the City lacks capacity (supply) for 0-30% AMI band by 314 units, this is not fatal, as the City expressly acknowledges the need subsidies for all units within the 0-80% AMI band. Ex. 56 at 94. “Using the

²³ Ex. 38-42; Ex. 287 at 33-36 (Book 2 – reaffirming guidance after *Mercer Island*).

²⁴ Ex. 332; Ex. 333.

²⁵ Ex. 332.

1 methodology in Commerce’s Guidance for Updating Your Housing Element, Port Townsend
2 needs an additional 1,403 housing units to serve 0-80% AMI ... The subsidy gap based on these
3 numbers is \$5.7 million per year²⁶, which is \$170 million over the 20-year planning period.” *Id.*

4
5 **2. The City’s HNA, LCA, and Housing Element Follow Commerce’s
6 Guidance.**

7 The City followed Commerce’s Book 2 and their interim guidance in developing its LCA
8 – prior to and after the Board’s decisions in *Mercer Island* and *Kitsap Alliance of Property*
9 *Owners, et. al. v. Kitsap Cnty.*²⁷ During Commerce’s December 2025 review of the City’s
10 Periodic Update, Commerce provided the City with draft comments, including:

11 Thank you for including information on barriers to affordable housing and proposed
12 actions to address those barriers (pages 18-28) and in Appendix B. In consideration
13 of recent Growth Management Hearings Board case findings, we recommend
14 identifying the number of units that are likely to require subsidies and/or incentives
15 to be affordable at the designated income levels and the amount of subsidy
16 required. Guidance on completing this requirement can be found in Chapter 4 of
17 Guidance for Updating Your Housing Element (pages 60-62). Also see Appendix B:
18 Adequate provisions checklists. For further advice pertaining to adequate provisions,
19 local governments should consult with their legal counsel.

20 Att. A. to Petitioner’s Prehearing Brief at 2.²⁸

21 In response to Commerce’s December comments, the City updated its Housing Element to
22 reflect the subsidy gap. Ex. 280 at 1-3. Commerce’s December comments follow their recent
23 guidance addressing the *Mercer Island* and *Kitsap County* decisions – as well as their Interim
24

25 ²⁶ The \$5.7M annual funding gap is likely highly understated as it is based on pro forma costs
26 from the City’s Evans Vista development. That development includes substantial federal, state,
and local investment (e.g., property acquisition, infrastructure contributions, etc.).

²⁷ *Kitsap Alliance of Property Owners, et. al. v. Kistap County*, CPSGMHB Case No. 25-3-
0005c, FDO (Aug. 8, 2025).

²⁸ Note: The City agrees to supplementing the record to include Att. A to Petitioner’s Prehearing
Brief. This draft comment letter was an attachment to an email which was inadvertently left out
of the record.

1 Guidance Regarding 2025 Growth Management Hearings Board (GMHB) Houses Cases, which
2 directed communities to:

- 3 • Commerce is determining what updates are needed to current guidance
- 4 • In the meantime, Commerce recommends jurisdictions:
- 5 • In the housing element:
 - 6 ○ Identify sufficient land capacity for all housing needs
 - 7 ○ Identify barriers to affordable housing and list local actions needed to address
8 barriers [adequate provisions]
 - 9 ○ Provide an analysis of the number of housing units that need subsidies and/or
10 incentives and the amount of funds that are needed for these units
 - 11 ○ Identify potential funding sources for housing needs
- 12 • In the development regulations (adopted with the periodic update):
 - 13 ○ Make zoning changes to ensure capacity for all housing needs
 - 14 ○ Make regulatory changes to address listed housing barriers

15 Ex. 286.

16 In January 2026, Commerce updated its Book 2 guidance to conform with *Mercer Island*
17 and *Kitsap County*. Ex. 287 at 43. This 2026 update followed Commerce’s Interim Guidance:

18 Since land capacity alone is insufficient to serve extremely low, very low and some
19 low-income households, jurisdictions should also identify the amount of housing
20 capacity that would likely require subsidies or incentives to serve the households at
21 planned income levels. ...

22 In Step 3, each jurisdiction identified in which zoning categories it is feasible for
23 affordable housing developers to produce new income-qualified affordable housing
24 projects, assuming typical sources of funding and financing are available. For example,
25 if a jurisdiction’s housing market aligned with moderate-cost communities (Exhibit
26 12), housing in the low-rise and mid-rise multifamily zoning categories could serve
households in the 0-30% and 30-50% AMI income levels with subsidies as shown in
Figure 18. These subsidies or incentives would allow for the combination of zoning
and incentives to result in new development serving households at these incomes.

Id.

a. The Board Gives Commerce’s Guidance Substantial Weight.

The Board has a statutory duty to consider Commerce criteria adopted per RCW
36.70A.190(4). RCW 36.70A.320(3). The Board gives Commerce’s guidance – even informal
guidance, not adopted by rulemaking – “substantial weight.” *Mercer Island* at 39-40; *Postema v.*

1 *Pollution Control Hearings Bd.*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000). The City’s continued
2 reliance on Commerce’s guidance and review should be afforded substantial weight in
3 determining Ordinance 3361’s compliance with the GMA.
4

5 **3. The Board Decisions in *Mercer Island* and *Kitsap County* are**
6 **Distinguishable from the City’s Actions.**

7 In *Mercer Island*, the CPSGMHB held that:

8 The Board finds that aggregating the income levels prevented the City from compiling
9 an accurate inventory of its existing and projected permanent housing needs.
10 Aggregation concealed the reality that most of the land capacity the City identified as
11 available to all low and moderate income segments will only be available for the
12 moderate-income segment at best.²⁹

13 ...

14 [T]he City capacity analysis erroneously aggregated all the low income [0-120% AMI]
15 economic segments into a single segment, and then baselessly assumed that any
16 subsidies or incentives necessary for their housing would be available.³⁰

17 ...

18 Vague aspirations to generate unspecified quantities of affordable housing are
19 insufficient in a post-ESSHB 1220 world.³¹

20 ...

21 The Board is left with a definite and firm conviction that the City erred in assuming
22 that all or nearly all of the units for which capacity exists will be low-income units,
23 because there is no incentive or subsidy program in place that would guarantee such an
24 outcome.³²

25 Mercer Island aggregated their income “bands” up to 120% AMI – extremely low, very
26 low, low, and moderate income. *Mercer Island* at 21-22. Aggregation at the 120% threshold truly
concealed the lack of affordable housing below the 120% AMI threshold in Mercer Island.

29 *Mercer Island* at 23-24.

30 *Id.* at 41.

31 *Id.* at 43.

32 *Mercer Island* at 27; *See also Kitsap County* at 13 (“local jurisdictions must account for their allocated population either within their Comprehensive Plan or demonstrate how the local jurisdiction’s development regulations will make adequate provisions for the existing and projected needs of all economic segments of the community. A deficit is no longer permitted to languish unresolved”).

1 Mercer Island, unlike the City, is an I-5 community, with 2.5x the population – including a light
2 rail connection to the greater Seattle area. Also, unlike Port Townsend, Mercer Island
3 concentrated their affordable housing initiatives in a small portion of the city (Town Center
4 zones) while leaving the vast majority of the city zoned exclusively for single-family homes,
5 with minimal provisions for affordable housing – they did not even do the bare minimum to
6 *attempt* to achieve compliance with ESSHB 1220.

7
8 For these reasons, the Petitioner fails to carry their burden of proof – clearly erroneous—as
9 the City:

- 10 • Followed Commerce’s guidance when developing its LCA – and remains in compliance
- 11 with Commerce’s guidance post their interpretation of *Mercer Island* and *Kitsap County*;
- 12 • The City expressly acknowledged that 1,403 units would be needed within the 0-80% AMI
- 13 band and that these units would cost approximately \$170 million over a 20-year planning
- 14 period – the City did not hide this funding gap;
- 15 • The Comprehensive Plan identifies funding sources for the gap, such as the multifamily tax
- 16 exemption program, grant funding, and partnerships with housing providers; and,
- 17 • The City completed a disaggregation analysis to confirm the findings of the LCA and
- 18 ensure compliance with *Mercer Island*.

19
20 **C. Issue 2 – Adequate Provisions.**

21 RCW 36.70A.070(2)(d) mandates a housing element that:

- 22 • Makes “adequate provisions” for existing and projected housing needs for all economic
- 23 segments;
- 24 • Documents programs and actions and needed to achieve housing availability;
- 25 • Identifies gaps in local funding;
- 26 • Identifies barriers such as development regulations and other limitations; and,
- Implements remedies to these barriers through development regulations.

RCW 36.70A.070; RCW 36.70A.070(2)(d).

Petitioners interpret this as requiring the City to document the specific programs, specific
funding mechanisms, and regulatory changes needed to close the funding gap that RCW
36.70A.070(2)(d) requires – and that the City “cannot count such units towards its capacity

1 [supply] unless it can demonstrate that those subsidizes or incentives *are available for each of*
2 *those units.*” Petitioners Prehearing Brief at 20; 22.

3 While a laudable goal, such an outcome would require the City – a small and physically
4 isolated community – to divert *at least* \$5.7 million annually from its general fund budget to
5 close this “funding gap.” Ex. 56 at 94. This would be more than one-third of the City’s 2026
6 General Fund. Ex. 337 at 28 That is simply an untenable position that is not supported by the
7 plain language of ESSHB 1220. Instead, the City’s position and approach, which is supported by
8 Book 2 is:

10 Jurisdictions are not required to construct housing or ensure housing is produced.
11 However, they are required to identify barriers to housing production and make
12 adequate provisions to accommodate all housing needs. *This means they must use the*
13 *tools at their disposal to create conditions that make it feasible for developers to build*
14 *the kinds of housing needed at all income levels.*

15 Ex. 287 at 55.

16 **1. City’s Adequate Provisions Checklist.**

17 During the Periodic Update, the City completed Commerce’s Adequate Provisions
18 Checklist – using this checklist, the City took assertive actions to meet the demands of ESSHB
19 1220, including the identification and removal of barriers and funding sources. Ex. 55. Contrary
20 to the Petitioners’ assertions, the City’s Checklist is compliant with Book 2. *Compare* Ex. 55
(City’s Adequate Provisions Checklist) with Ex. 287 (Book 2) at 133-39.

21 **2. The City Took Assertive Actions to Reduce Barriers to** 22 **Development.**

23 Through Ordinance 3361, the City took assertive actions to remove barriers identified in
24 the City’s Adequate Provisions Checklist. Highlights of Ordinance 3361 include:

- 25 • Parking minimums were removed;
- 26 • The overly restrictive “daylight plane” requirement was replaced;

- 1 • R-III and R-IV zones support lodging houses and other forms of co-living through density exemptions;
- 2 • ADUs were included in density calculations in the R-II zone and granted specific
- 3 exemptions when calculating density for projects converting existing structures to
- 4 additional dwelling units;
- 5 • Bonus densities were granted for affordable housing developments on property owned by
- 6 religious organizations;
- 7 • R-I zones:
 - 8 ○ Minimum average density of four units per 40,000 SF was established;
 - 9 ○ Density exceptions were adopted for the conversion of existing homes into duplexes,
 - 10 triplexes, and fourplexes;
 - 11 ○ Minimum lot size was reduced for duplexes; and,
 - 12 ○ Maximum lot coverage was increased from 25% to 40% for multi-unit development.
- 13 • R-II zones:
 - 14 ○ Minimum average density of eight units per 40,000 SF was established;
 - 15 ○ Density exception authorizing up to 6 units per 5,000 SF for projects with lot areas
 - 16 10,000 SF or less (infill development);
 - 17 ○ Maximum housing density of 32 dwelling units per 40,000 square feet, or three units
 - 18 per 5,000 square feet;
 - 19 ○ Reduction in minimum lot size for single-family detached (2,500 SF), single-family
 - 20 attached (1,150 SF), and multi-family (2,500 SF);
 - 21 ○ Maximum building heights increased from 30 to 35 feet for attached units and
 - 22 multifamily structures;
 - 23 ○ Maximum lot coverage increased from 30% to 60% for multi-unit development;
 - 24 ○ Significant reductions in setbacks (e.g., 10 feet to 5 feet for front and rear yards);
 - 25 ○ Minimum lot width reduced from 50 to 14 feet; and,
 - 26 ○ Eliminated limit on number of units in a structure.
- R-III zones:
 - Minimum average density was increased from 10 to 12 units per 40,000 SF;
 - Maximum density was increased from 16 to 48 units per 40,00 SF;
 - Minimum lot width for single-family detached development reduced from 30 feet to 25
 - feet;
 - Minimum lot width for attached single-family development removed, was previously
 - 30 feet;
 - Minimum lot width for multifamily for removed, was previously 100 feet;
 - Significant reductions in setbacks (e.g., 20 feet to 5 feet for front yards; 10 to 5 feet for
 - rear yards, no rear setback for ADUs that are adjacent to ROW, and clarified that
 - development cannot block the sight triangle on corner lots);
 - Maximum building height was increased from 35 to 55 feet for multifamily
 - development; and,
 - Maximum lot coverage increased from 45% to 65%.
- R-IV zones:
 - Minimum average density was increased from 15 to 16 units per 40,000 SF;
 - Maximum density was increased from 48 to 60 units per 40,000 SF;

- 1 ○ Maximum building height was increased from 35 feet to 55 feet for multifamily
- 2 development;
- 3 ○ Significant reductions in setbacks (e.g., 20 feet to 5 feet for front yards, no rear setback
- 4 for ADUs that are adjacent to right-of-way, clarified that development cannot block the
- 5 sight triangle on corner lots); and,
- 6 ○ Maximum lot coverage was increased from 60% to 75%.

7 See Ex. 56 at 865-71.

8 **3. City Subsidies, Programs, Financial Tools, and Partnerships Used to**
9 **Close the Funding Gap.**

10 Port Townsend, Jefferson County, and the state of Washington provide funds

11 subsidizing the construction of affordable housing. However, there is a shortfall

12 between the funding available and the funding needed to meet projected housing

13 needs by income band. **Using the methodology in Commerce’s Guidance for**

14 **Updating Your Housing Element, Port Townsend needs an additional 1,403**

15 **housing units to serve 0-80% AMI; This is 70 units per year that must be**

16 **built over the 20-year planning period. The average affordable housing**

17 **production in the City has been 13 affordable units per year built. This is a net**

18 **increase of 57 units per year that will additionally need to be built.**

19 Using the statewide cost per unit of \$307,407 per unit, this means that subsidy of

20 \$17.5 million per year will be needed to construct these affordable units. Over the

21 planning period, an inflation rate per year of four percent results in a total funding

22 need of \$521 million. By comparison, the City’s Evans Vista Neighborhood pro

23 forma estimates a gap of \$177,000 per multifamily unit for a mixed income

24 neighborhood. **The subsidy gap based on these numbers is \$5.7 million per year,**

25 **which is \$170 million over the 20-year planning period.**³³

26 Ex. 56 at 94.

 The Comprehensive Plan and the Adequate Provisions Checklist discusses various ways

to close the *at least* \$170 million – \$5.7 million per year funding gap through programs such as

the multifamily tax exemption (“MFTE”) program, donation or use of City owned property

under RCW 39.33.015, housing and related service sales tax under RCW 82.14.530, real estate

excise tax under RCW 82.46.035, affordable housing project fee waivers or deferrals, and

general funds. Ex. 55 at 14-15; Ex. 56 at 108-09; 121-22; 132-33; 140-44.

³³ The \$5.7M annual funding gap is likely highly understated as it is based on pro forma costs from the City’s Evans Vista development. That development includes substantial federal, state, and local investment (e.g., property acquisition, infrastructure contributions, etc.).

1 In addition to using these tools, the City is a direct market participant in affordable
2 housing development. Ex. 56 at 113-14. Evans Vista is a 14-acre City owned property
3 envisioned as a mixed-income neighborhood accommodating approximately 321 residential units
4 with at least 25% of units restricted to households earning 80% of AMI or less. Ex. 56 at 113-14.
5 The City has expended significant financial resources in developing the Evans Vista project,
6 such as land acquisition, infrastructure development (e.g., lift station), development services
7 (environmental, engineering, planning, and permitting services), public outreach, and personnel
8 time. *Id.*

10 The City's offers a MFTE program, a 12-year tax exemption, for properties with at least
11 20% of multifamily housing as affordable to low-and moderate-income households. PTMC
12 3.15.010. In 2018, the City passed Ordinance 3200 targeting areas located in the urban center
13 where adequate public facilities existed or would be installed by the developer as a condition of
14 development. PTMC 3.15.030. Since 2018, multiple changes have been made to state law
15 allowing for longer exemption periods and more flexible unit arrangement. Ordinance 3361
16 directs the City to further expand the MFTE program to ensure that community housing and
17 groups other than nonprofits can participate and directs the City to expand the residential target
18 area to ensure that more land is eligible for the program. Ex. 56 at 405.

21 The 2026 City Budget invests heavily in housing, estimated at \$1.1 million out of \$16.7
22 million in general fund expenditures – this budget ranges from system development charge
23 deferrals and permit fee waivers to contributions to joint City/County Housing Fund Board
24 grants. Ex 337 at 26. Expenditures also include a Housing Grant Coordinator position to support
25 the City's Evans Vista development and grant applications for affordable housing projects. *Id.*

1 With a scant 113.1 Full Time Equivalent employees at the City, the investment in this one
2 position demonstrates the City’s priorities to develop partnerships and funding connections to
3 support affordable housing. *Id.* at 74. The City invests nearly as much in housing as it does for its
4 entire permitting and planning personnel. *Id.* at 33.

5
6 **4. City’s Inclusionary Zoning or Fee In Lieu of Program Analysis.**

7 Petitioners take issue with the City’s policy decision to forego an inclusionary zoning or
8 fee in lieu program with Ordinance 3361’s development regulation changes – their position is
9 that the development resulting from Ordinance 3361 will be “new market-rate development.” *See*
10 Petitioners’ Prehearing Brief at 22. While only time will tell if their assertions are true, the City’s
11 data paints a different picture – an inclusionary zoning or fee in lieu program focused towards
12 the multifamily development entitlements in Ordinance 3361, especially one targeted at the
13 sixplex exception, would further disincentivize multifamily development.

14
15 The City has insufficient multifamily units for its population. Ex. 56 at 101. 75% of
16 existing housing stock in the City is detached single-family; 7% is middle housing – 2 to 9 units;
17 5% are mobile homes; and 8% are apartments with 10 or more units. *Id.* at 767. Recent and
18 pipeline housing construction continues this trend with 67% (150 units) of housing built April
19 2020 – September 2024 as single-family – just 18% (40 units) was multifamily. *Id.* at 768.

20 In 2023, the City studied a fee in lieu of attainable housing program. Ex. 8 at 24-25. The
21 study found that the City permits approximately 50 housing units per year and for the program to
22 have any meaningful impact, *it would have to apply to all development in the City – not just the*
23 *sixplexes from Ordinance 3361.* *Id.* at 24. Further, the City cannot enact such a program under
24 RCW 82.02.050 – this would be an illegal housing impact fee. Housing impact fees are not
25 authorized under Washington law. Instead, Washington law authorizes optional and mandatory
26

1 inclusionary zoning and fee in lieu of programs only when then are tied to specific bonuses – not
2 across the board development. RCW 36.70A.540(1)(a).

3 Finally, even if the City were to implement such a program, targeting sixplexes, under
4 *Mercer Island* and Book 2, the City cannot count these units in its LCA capacity (supply). *See*
5 *Mercer Island* at 25-26; Book 2 at 35. In the R-II zone, the City allows a variety of development
6 ranging from detached single-family to sixplexes. If the City were to authorize such a program,
7 that for argument’s sake, required 2 units in a sixplex to be affordable, it would be a voluntary
8 program, as developers could still build in the R-II zone with other types of development (e.g.,
9 detached single-family, duplexes, or triplexes, etc.). Given the City’s historically low rate of
10 market rate production of multifamily, the City cannot reasonably determine how many units
11 such a program could be expected to generate and therefore, it cannot count those units in its
12 LCA as capacity.³⁴

13
14
15 If the City is required to develop an inclusionary zoning or fee in lieu of program, under
16 RCW 36.70A.540(1)(a), the City must thoroughly study the unique Port Townsend economic
17 and housing markets to develop a policy solution that is tailored to meet the needs of the City,
18 while delivering the needed units and complying with the law.

19 **5. Conclusion for Issues 1 and 2.**

20 The plain text of RCW 36.70A.070(2)(d) and the Commerce guidance does not require
21 that cities divert general funds – *at least* \$170 million over a 20-year planning period – to ensure
22

23
24 ³⁴ *See Mercer Island* at 25-27 (Mercer Island assumed that 1,073 units would be income
25 restricted based on their voluntary Town Center inclusionary zoning program; but, the historic
26 rates of their voluntary inclusionary zoning program demonstrated that only 102 rent restricted
units were created. The Board held that Mercer Island could only include the number of rent
restricted units that would be reasonably assumed under their program).

1 that sufficient housing units are supplied based on their LCA – instead the GMA requires
2 “adequate provisions.” The City has used all available tools – absent diverting \$170 million over
3 a 20-year planning period from the City’s very limited General Fund to provide “adequate
4 provisions.” For these reasons, the Petitioners failed to carry their burden of proof.

5
6 **D. Issues 3, 4, 5, and 6 – Racially Disparate Impacts and Displacement.**

7 Petitioners argue that the City failed to “identify local policies and regulations that result
8 in racially disparate impact, displacement, and exclusion in housing, including discriminatory
9 zoning, disinvestment, and infrastructure availability” and begin to undo those impacts.

10 Petitioners Prehearing Brief at 24.

11 A primary aim of Ordinance 3361 is to increase housing supply – especially multifamily.
12 75% of the City’s housing stock is single-family homes with only 15% being multifamily. Ex. 56
13 at 767. Between 2012 and 2022, Jefferson County lost 748 rental units. Ex. 42 at 12. “[T]he lack
14 of affordable housing is a primary structural driver of homelessness and displacement. This lack
15 of rental housing drives rent increases.” *Id.*

17 Petitioners’ argument is essentially that the upzoning in Ordinance 3361 will “lead to
18 greater displacement by encouraging existing homes to be torn down and replaced by more
19 intensive, and expensive, development” – and that it will destroy “neighborhood character.” *Id.*
20 at 26. Their argument is that Ordinance 3361 will cause *widespread* displacement – *because*
21 *more housing will be constructed*. This argument is without merit and goes against the GMA.

22
23 **1. The City’s Racially Disparate Impact Analysis.**

24 First, and consistent with RCW 36.70A.070(2)(e) and Book 3, the City completed a
25 Racially Disparate Impacts Analysis (RDI). Ex. 56 at 780-812. The City’s RDI found that as of
26 2023, there are 23 African American households and that 89% of the City is White with 11%

1 being BIPOC or multi-racial. *Id.* at 783. Further, the RDI found that all of the City’s Hispanic
2 and African American households are cost burdened. *Id.* at 780.

3 The City is “driven by a lack of rental units affordable to households at the lower and
4 upper ends of the income scale.” *Id.* The City’s upzoning actions in Ordinance 3361 were direct
5 actions to increase the supply of multifamily and ADU development in the City – the City
6 intends that these actions will increase the housing supply and be supportive of ESSHB 1220’s
7 requirement to “begin to undo racially disparate impacts, displacement, and exclusion in housing
8 caused by local policies, plans, and actions.” RCW 36.70A.070(2)(e).

9
10 The Petitioners’ aim, which is to invalidate Ordinance 3361, is a direct affront to RCW
11 36.70A.070(2)(e) and ESSHB 1220. The Petitioners want the status quo for the City – exclusive
12 single-family zoning and single-family housing that excludes all economic segments of the
13 community. “The City attempted to comply with these provisions *by removing portions of its*
14 *development code aimed at preserving neighborhood “character.”* Petitioners’ Prehearing Brief
15 at 32. Book 3 states that:

17 Today, zoning laws—such as exclusively single-family zones, minimum lot sizes and
18 separating multi-family development from single-family development—serve to
19 exclude minorities and lower-income households from accessing large parts of our
20 cities and protect and enhance the land value of white neighborhoods while
undermining the value of land owned by people of color.

21 Ex. 284 at 53.

22 **2. The RDI and Housing Element Analyzed Areas at Higher Risk of
23 Displacement.**

24 Petitioners assert that the City failed to analyze areas at higher risk of displacement due
25 to local land use decisions, inconsistent with Book 3. Petitioners Prehearing Brief at 25.

26 However, Petitioners fail to include the whole record – the City included Commerce’s
Displacement Risk Map for the City – showing the City as “low-risk” for displacement, as well

1 as underutilized parcel maps. Ex. 56 at 794; 733-34. These, along with the extensive public
2 outreach, RDI, HNA, and LCA demonstrate that the City analyzed the areas of higher risk of
3 displacement within the City.

4
5 **3. The City has Comprehensive Plan Policies to Mitigate Potential
6 Displacement Risk.**

7 RCW 36.70A.070(2)(h) requires communities to “establish antidisplacement *policies*.” It
8 does not require that communities *implement* “anti-displacement measures prior to or concurrent
9 with development capacity increases and public capital investments.” *Mercer Island* at 60-61. In
10 *Mercer Island*, the Board found that the city was out of compliance with King County
11 countywide planning policy H-21 that required anti-displacement measures to be enacted along
12 with development capacity increases. *Id.* The Board did not hold that RCW 36.70A.070(2)(h)
13 required anti-displacement measures to be enacted. *Id.*

14 The City has adopted anti-displacement policies in the Comprehensive Plan –
15 “[c]ollaborate with populations most disproportionately impacted by housing cost burden in
16 developing, implementing, and monitoring strategies that address racial exclusion and risk of
17 displacement. Prioritize the needs and solutions articulated by these disproportionately impacted
18 populations.” Ex. 56 at 321. *See also* Ex. 56 at 69; 83; 97-98; 69-70; 104-08; 780-812; Ex. 324
19 and 325. The City Council has also enacted Resolution No. 17-014, the “Welcoming City
20 Resolution,” to establish Citywide policy on civil and human rights, including housing related
21 issues. Ex. 334.
22
23
24
25
26

1 Unlike *Mercer Island*, Jefferson County countywide planning policy #6 does not require
2 that anti-displacement measures are adopted “concurrent with development capacity increases
3 and public capital investments.”³⁵
4

5 **4. The City Has Mitigation Measures in Place for Potential**
6 **Displacement Risk.**

7 Petitioners allege that the City has enacted a sweeping upzoning, without any need, and
8 without any measures to mitigate potential displacement risk. See Petitioners Prehearing Brief at
9 27. Not only do the Petitioners fail to carry their burden of proof on these issues, but the City
10 already has programs in place to reduce anti-displacement risk, *even though it is not required*.

11 The City has two national historic landmark districts – these districts are generally the
12 waterfront downtown area and Uptown neighborhoods. See PTMC 17.30.040. These national
13 historic districts represent a significant part of the City’s land area. Overall, Chapter 17.30
14 PTMC establishes a comprehensive historic preservation framework designed to prevent the loss
15 of contributing historic structures within the districts. Demolition of a contributing historic
16 residence is treated as a discretionary action rather than a ministerial permit, requiring a
17 certificate of approval, preapplication review, Historic Preservation Committee recommendation,
18 and formal evaluation under demolition criteria and preservation standards. PTMC 17.30.320.
19

20 This regulatory scheme functions not only as architectural oversight but also as a land use
21 control that limits speculative teardown activity and displacement pressure in historic
22 neighborhoods. By generally prohibiting demolition of historic homes absent a substantial
23

24 ³⁵ Compare *Mercer Island* at 60-61 with Ex. 38 at 19 (Jefferson County CPP #6, 10 states
25 “[d]isplacement of lower- income households, historically marginalized or vulnerable
26 populations may result from conversion of housing, public investments, private redevelopment,
and market pressures. Displacement risk of these household types should be considered, and a
range of strategies to mitigate identified impacts”).

1 evidentiary showing – such as structural instability, safety risk, or infeasibility of rehabilitation –
2 Chapter 17.30 PTMC prioritizes retention of existing housing stock, neighborhood continuity,
3 and affordability patterns. While allowing flexibility for truly unsafe or irreparable structures,
4 including through a balancing of hardship and public interest, Chapter 17.30 PTMC also
5 prohibits demolition by neglect and requires robust documentation before approval. PTMC
6 17.30.340. In effect, Chapter 17.30 PTMC raises the threshold for demolition and advances
7 preservation and anti-displacement objectives while permitting demolition only where
8 rehabilitation is not reasonably feasible within Port Townsend’s two national historic districts.
9

10 Finally, and in conjunction with Chapter 59.18 RCW’s (Residential Landlord-Tenant
11 Act) substantive protections, such as just cause eviction requirements, the City has adopted
12 requirements that landlords must provide at least 120 days’ notice of rent increase if the increase
13 exceeds 3% - any increase more than 10% requires 180 days’ notice. PTMC 9.60.030.
14

15 **E. Issues 8, 10, 11 & 12 – Transportation.**

16 Petitioners assert that the City’s adopted level-of-service (“LOS”) standard of “F” for
17 urban arterial streets *meeting standards (except state roads)* relies on “discretionary, ad hoc
18 determinations of adequacy untethered to adopted infrastructure planning or financially feasible
19 improvements.” Petitioners Prehearing Brief at 28.

20 The Board’s holdings are clear that:

21 **Under the GMA, cities are granted broad discretion in establishing levels of**
22 **service within their jurisdiction.**

23 ...

24 Level of service standards for locally owned arterials and transit routes to serve as a
25 gauge to judge performance of the system.

26 ...

The City also has the discretion to establish LOS F at certain intersections.

...

1 Establishing a level of service (LOS) methodology for arterial and transit routes, like
2 calibrating a thermometer, is simply an objective way to measure traffic. That is all the
3 Act requires establishing, it does not dictate what is too congested.

4 *Wold, et. al. v. City of Poulsbo*, Case No. 10-3-0005c, FDO (Aug. 9, 2010) at 82.

5 The GMA confirms that cities have broad discretion in establishing their LOS and
6 concurrency programs:

7 [J]urisdictions must adopt and enforce ordinances which prohibit development
8 approval if the development causes the level of service on a locally owned or locally
9 or regionally operated transportation facility to decline below the standards adopted in
10 the transportation element of the comprehensive plan, unless transportation
11 improvements or strategies to accommodate the impacts of development are made
12 concurrent with the development. These strategies may include active transportation
13 facility improvements, increased or enhanced public transportation service, ride-
14 sharing programs, demand management, and other transportation systems management
15 strategies.

16 ...
17 A development proposal may not be denied for causing the level of service on a locally
18 owned or locally or regionally operated transportation facility to decline below the
19 standards adopted in the transportation element of the comprehensive plan where such
20 impacts could be adequately mitigated through active transportation facility
21 improvements, increased or enhanced public transportation service, ride-sharing
22 programs, demand management, or other transportation systems management
23 strategies funded by the development.

24 RCW 36.70A.070(6)(b).

25 **1. The Comprehensive Plan and Active Transportation Plan**
26 **Establishes Transportation LOS Consistent with GMA.**

The Active Transportation Plan, adopted under Ordinance 3361, pivots from vehicular
based LOS standards to an efficient multimodal system that is based on city and regional
priorities, including enforceable LOS standards. Ex. 56 at 430-682. The City has purposefully
taken the policy position that it prefers a balanced multimodal system over “creating wider
streets and adding lanes and signals [which] is the traditional way to add traffic capacity[,] which
is not a priority.” *Id.* at 523.

1 Through the Comprehensive Plan and Active Transportation Plan, the City adopted the
2 following Transportation LOS standards:

3 Figure 7 – Transportation Level of Service Standards³⁶

4 **Figure 6-2: Table of Transportation Level of Service Standards**

Road Type	Standard
Urban Arterial	F for streets meeting standards (Except SR20)
Other Roads w/in Urban Growth Area (UGA), but outside the City Limits	As set forth by Jefferson County
State Route 20	As set forth by Washington State Department of Transp.
Transit	Bus access within ¼ mile of any development of 50 homes or more
Active Transportation	1.) Access to a Connected Route within 1/4 of mile (6 city blocks) 2.) Direct Access to an ADA priority route for 20% of all housing units

5
6
7
8
9
10
11
12
13 Petitioners take issue with the City’s LOS standard of “F” for urban arterial streets
14 *meeting standards*, but this approach is expressly endorsed by Commerce guidance:

15
16 *Assigning an Adopted Level of Service for Your Transportation System*
17 *Level-of-service standards are measures of the quality of life of the community. The*
18 *standards should be based on the community’s vision of its future and its values. ...*
19 In addition to any standards set for state or regional highways, your community will
20 need to establish its own standard for each portion of its transportation network. The
21 GMA requires your community to set an LOS standard and to then create and
22 implement a comprehensive plan that meets that standard. **It does not specify a**
23 **minimum standard.** Adjusting LOS in a community is one way local governments
24 find a locally appropriate balance of GMA goals. It is also a way to meet the
25 concurrency requirement when available infrastructure revenue is scarce. **An adopted**
26 **LOS-F is a local choice that complies with the GMA.** An adopted LOS-A is also a
choice that complies with the GMA, provided your community can plan and finance a
system that can actually meet that standard. Adjusting LOS standards can also prevent
your concurrency management system from distorting spending priorities. Rather than
being forced to spend all available funds to keep up with demand from new traffic, your

36 Ex. 56 at 201.

1 community can balance between new capacity for growth, addressing system
2 deficiencies, and maintenance and rehabilitation of the existing system.³⁷

3 The City explains this policy shift in the Comprehensive Plan as:

4 Since GMA requires concurrency, the City historically adopted a LOS standard of D
5 to promote automobile capacity within the arterial street network. This methodology
6 generally results in larger arterial streets, adding more lanes to manage increased traffic
7 volume. The 2025 Periodic Update changes the focus of level of service from traffic
8 mobility to active transportation.

9 Shifting away from traditional traffic volume-based LOS D is supported by the overall
10 lack of increase, or in many cases a reduction, in traffic volumes on City arterial streets.
11 **Previous functional plans and traffic studies, such as the 2009 Transportation
12 Functional Plan, have not identified failure points in the City from a traffic
13 volume standpoint except for intersections along Sims Way [state road – LOS D].**
14 The 2009 functional plan grossly over estimated traffic volumes increases projected
15 for 2026 as compared to 2006 volumes. **The City maintained a proactive traffic
16 count program over the years which shows average decreases in traffic volumes
17 on all arterial streets of approximately 1- 2% per year on average except on SR20
18 and Hastings ...**

19 **Given that projected traffic volumes have not increased on City arterial streets
20 during the weekdays according to the 2026 projections in the 2009 plan, it is
21 counterproductive to invest limited resources on street improvements that would
22 accommodate greater traffic volumes.**

23 Ex. 56 at 153.

24 The citation above is particularly important given that the City's population has
25 increased, while more of the workforce lives outside of the City. *See* Ex. 56 at 766. This is
26 demonstrated by increased volumes on the two roads leading in and out of the City. *Id.* at 153-
55. Despite population increases, job counts inside the City have decreased over the last 20 plus
years and school populations have decreased over the last 50 years while the median age has
increased to nearly 60 years old. *Id.* at 153-55; 208; 766.

³⁷ Washington Department of Commerce, *Your Community's Transportation System, A Guide to Reviewing, Updating and Implementing Your Transportation Element*, September 2009, at 156.

1 Contrary to the Petitioners' assertion, the Comprehensive Plan's Capital Facilities
2 Element builds upon referenced functional plans, particularly the Comprehensive Streets
3 Program³⁸, the 2025-2030 Capital Facilities Plan³⁹, and the Active Transportation Plan⁴⁰ to
4 establish enforceable LOS standards for transportation facilities. The City's updated
5 transportation LOS standards ensure that streets meet standards concurrent with development
6 and maintain the WSDOT LOS standards for state roads (LOS D), including active
7 transportation, and transit. Ex. 56 at 201; Ex. 292 at 2-3; *See also* Ex. 56 at 512-13 (Active
8 Transportation Plan establishing a Level of traffic Stress and Acceptable Bike Facilities).
9

10 Ordinance 3361 drills in on infill development and density to support housing and the
11 sustainability of infrastructure. The Transportation Element further refines this principle by
12 providing a Sustainable Streets Plan that minimizes street infrastructure while providing required
13 access to historically platted lots. Ex. 56 at 166. Additionally, safety is addressed through
14 identification of priority emergency access routes. *Id.* Finally, an emphasis on connectivity
15 through multimodal routes as detailed in the Active Transportation Plan brings all of the
16 transportation pieces together to support mode shift.
17

18 Ordinance 3361 does not add population, it continues to use the Washington Office of
19 Financial Management (OFM) populations projections, consistent with all other parts of the
20 Comprehensive Plan and its development regulations, to provide the opportunity to focus growth
21 toward a more dense urban environment providing for efficient transportation systems – a
22 fundamental tenet of the GMA.
23
24

25 ³⁸ Ex. 17

26 ³⁹ Ex. 15 at 7.

⁴⁰ Ex. 56 at 430-682.

1 3. The applicant reduces the impacts to achieve an acceptable level of service by scaling
2 the project down, by reducing the demand for new facilities or by providing ways to
utilize facilities that are not at capacity.

3 PTMC 12.06.070(J).

4 Therefore, the Comprehensive Plan’s Transportation Element, Capital Facilities Element,
5 Sustainable Streets Plan, and Active Transportation Plan establish enforceable Transportation
6 LOS standards – consistent with GMA’s broad discretion granted to communities in establishing
7 transportation LOS standards. Petitioners may disagree with the state, but the GMA is clear that
8 jurisdictions may establish LOS transportation standards and concurrency programs focused on
9 multi-modal transportation systems.
10

11 **F. Issues 7 & 9 – Capital Facility Planning.**

12 Petitioners argue that the City’s Capital Facilities Plan was adopted a year before the City
13 adopted Ordinance 3361, including the City’s updated Land Use Element and a “massive
14 upzoning.” Petitioners Prehearing Brief at 31. It is correct that the City adopted its Capital
15 Facilities Plan and Capital Improvement Plan on December 16, 2024 – a year before adopting
16 Ordinance 3361. Ex. 15 at 1; Ex. 364 at 1-5 (Ordinance 3344 adopting the six-year Capital
17 Improvement Plan through the Capital Facilities Plan). However, the City’s Capital Facilities
18 Plan⁴³ is consistent with Ordinance 3361, including the Land Use Element, and is adopted as part
19 of the Comprehensive Plan as a functional plan. *See* Ex. 15 at 7; Ex. 56 at 34; 76; 191; 316-17;
20 731.
21

22 Petitioners next argue that the City “dramatically increase[d] allowable density while
23 acknowledging that transportation, water, wastewater, stormwater, and parks remain under-
24

25 _____
26 ⁴³ The City incorporates its six-year Capital Improvement Plan into its Capital Facilities Plan and
budgeting process.

1 resourced and inadequate to support that level of growth.” Petitioners’ Prehearing Brief at 42.
2 Contrary to these assertions, the record demonstrates that “[m]ost existing infrastructure has
3 capacity to accommodate growth in the 20-year planning period as described in the functional
4 plans.” Ex. 275 at 117.

5 For example, the Petitioners fail to compare population projects from the 2016
6 Comprehensive Plan to historical trends. The City’s actual annual growth rates have consistently
7 underperformed compared to official population projections. From 1996 through 2015, the City
8 had an annual growth rate of 0.6% compared to the projected annual growth rate of 2.5% – this
9 trend continued in 2015 through 2023, with an annual growth rate of 0.9% compared to the
10 projected annual growth rate of 1.1%. Ex. 56 at 744.

11 Given that the population projects are lower, functional plans such as the recent General
12 Sewer Plan over estimate population impacts. For example, Table 3-3 of the General Sewer Plan
13 uses the 2016 projections to estimate a 2043 population of 13,300. Ex. 12 at 77. This estimate is
14 significantly more compared to the Periodic Update projection of 2045 population of 12,512
15 people. Ex. 56 at 45. In a small community that is not realizing projected growth, upzoning does
16 not create increased demand on systems, but rather simply allows for more efficient service
17 within existing infrastructure that is adequately sized.

18
19
20
21 **1. Petitioners Incorrectly Assert that the Capital Facilities Plan Must**
22 **be Based on Zoning Entitlements – Instead, the Standard is OFM**
23 **Population Projections.**

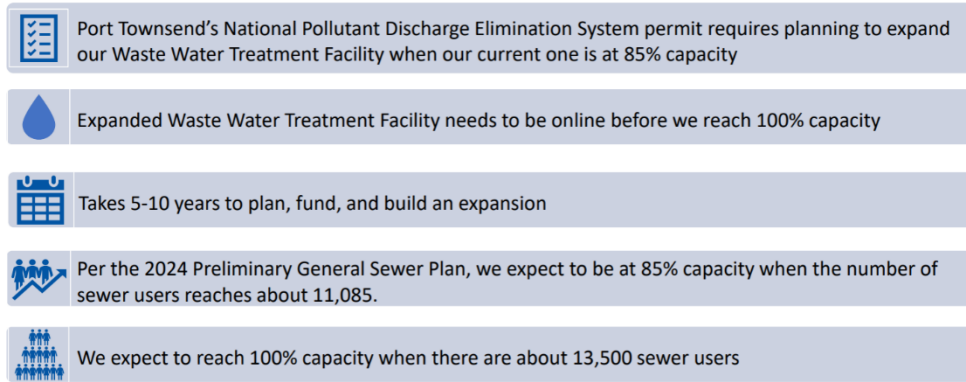
24 The Petitioners seem to believe that the City must plan for and build out its entire capital
25 facilities – based on the City’s absolute maximum zoning entitlements – such a proposition
26 would lead to massive overbuilding of capital facilities untethered to planned population

1 projections or actual system needs. Under the GMA, this is simply not the standard. Instead,
2 cities must use population projections from OFM as the baseline planning assumption.

3 On November 18, 2024, the Growth Management Steering Committee (GMSC)
4 recommended and the Jefferson County Commission adopted the Countywide Growth
5 Management Population Projections based on OFM population (medium) projections. Ex. 39 at
6 3. The 20-year planning period is from 2025-2045 and allocates a projected growth of 2,360 to
7 the City. *Id.* The Capital Facilities Element, Capital Facilities Plan, and entire Comprehensive
8 Plan use the same 2025-2045 OFM population projections – ensuring internal consistency. *See*
9 Ex. 56 at 45; 731; 744; Ex. 15 at 7. The 2016 and 2025 Comprehensive Plans both used the OFM
10 (medium) population projections, which to date, have not materialized the projected growth,
11 consistently undercutting OFM’s medium population projections. Ex. 39 at 3; Ex. 56 at 744.

12
13
14 Figure 8 – Capital Facilities Planning Overview – Water as Presented to Growth Management
Steering Committee⁴⁴

15 Why Population Projections matter:
16 Port Townsend Sewer System



⁴⁴ Ex. 27 at 20.

1 Under RCW 36.70A.115(1), OFM’s population projections and the jurisdiction’s selected
2 projection series (low, medium, or high) are foundational. OFM population projections are used
3 as the indicator of reliable growth – Commerce’s Capital Facilities Guidebook confirms this
4 approach – “the city or county must meet the needs of current residents but also plan for
5 accommodating the future need based on projected population and employment growth.”⁴⁵
6

7 Jefferson County’s Countywide Planning Policy #1 confirms that the OFM population
8 projections, and not the full build out of zoning entitlements, serve as the population basis for
9 capital facilities planning:

10 1. The County and City will jointly prepare a regional population forecast for growth
11 management planning purposes, **using the Washington State Office of Financial**
12 **Management (OFM) population projection. This forecast will delineate a twenty-**
13 **year population projection and be used in the preparation of land use, housing,**
14 **water, utility, and transportation for the capital improvement plans. To ensure**
15 **consistent and coordinated planning horizons, the population forecast will be**
16 **designated as the official source reference by the County and City and utilized**
17 **when determining consistency of special purpose district service plans.** The
18 forecast shall be reviewed and updated periodically, pursuant to RCW 36.70A.130. In
19 general, the distribution of the OFM population projection shall be allocated as 70% to
20 urban growth areas and 30% to rural and natural resource land use designations.

21 ...

22 **5. Land use plans, regulations and capital facility plans within each UGA will be**
23 **designed to accommodate the projected population.**

24 Ex. 38 at 10.

25 “The planning horizon for the comprehensive plan must be at least the 20-year period
26 following the adoption of the comprehensive plan. Counties and cities should use consistent

24 ⁴⁵ Washington Department of Commerce, Capital Facilities Planning Guidebook,
25 Comprehensive Planning under the Growth Management Act, October 2014, at 43; *See also*
26 *Evergreen Islands, et. al. v. Skagit County*, WWGMHB Case No. 00-2-0046c, FDO (Feb. 6,
2001) at 35 (“the County must take actions to ensure that all elements of its CP use the same
population projections and 20-year planning period”).

1 population projections and planning horizons. The planning horizon should start on the
2 relevant deadline specified in RCW 36.70A.130(5).” WAC 365-196-400(2)(a).

3 Contrary to these authorities – Petitioners assert that the City should plan for and build
4 capital facilities that accommodate the full build out of zoning entitlements under Ordinance
5 3361. This goes directly against the GMA – which directs jurisdictions to use OFM
6 population estimates as the baseline for planning purposes under the GMA. If the
7 circumstances change, the jurisdiction must reassess their Land Use Element.
8

9 **2. The City’s Capital Facilities Element and Plan Used the Assigned**
10 **OFM Medium Population Projections – Consistent with the Land**
11 **Use Element.**

12 Consistent with Jefferson County CPP #1, the City used the 2025-2045 OFM (Medium)
13 population projections when developing entire the Comprehensive Plan, such as the Capital
14 Facilities Plan, Land Use Element, and Housing Element. Ex. 15 at 7; Ex. 56 at 76; 161; 286-87;
15 683-87; 731. Again, this is consistent with the GMA and Commerce guidance, which requires
16 that jurisdictions use the OFM population projections as the baseline for capital facilities
17 planning – not a theoretical and speculative full buildout of zoning entitlements. Commerce
18 guidance also indicates that jurisdictions should be conservative in their assumptions for growth.
19 Commerce, Capital Facilities Planning Guidebook at 46.

20 Even though the City’s CFP pre-dated the Comprehensive Plan by one-year, the
21 Comprehensive Plan, the Land Use Element, and Capital Facilities Plan do not violate RCW
22 36.70A.100’s internal consistency requirement as they are internally coordinated to ensure
23 that all of the elements and functional plans are using the same planning projections and
24 planning horizons.
25
26

1 **3. The Capital Facilities Element and Plan Establishes LOS Standards**
 2 **and Concurrency Requirements for Water, Wastewater, and**
 3 **Stormwater.**

4 The Capital Facilities Element establishes the non-transportation LOS standards below:

5 Figure 9 – Capital Facilities LOS Standards – Non-Transportation⁴⁶

Facility	Standard
Raw Water Supply	Sufficient capacity to fully serve customer demands
Raw Water Storage	A Minimum of 60 days of storage for City customer demands
Water System	A flow volume that meets peak demand and fire flows.
Wastewater System	A level that allows collection and treatment of peak wastewater flows and meets Dept. of Ecology criteria

Stormwater and Surface Water	A level of conveyance, detention, and treatment that meets the Department of Ecology (DOE) Stormwater Manual adopted by the City or as defined in the City’s Stormwater Master Plan
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15 The Comprehensive Plan, Capital Facilities Plan, and PTMC require that transportation,
 16 water, wastewater, and stormwater are subjected to concurrency standards. Ex. 15 at 6. Under the
 17 GMA, only transportation concurrency is required – the City exceedance of GMA minimums
 18 continues to demonstrate its commitment to ensuring the capital facilities are available consistent
 19 with actual development. *See* RCW 36.70A.070(6)(a)(iii)(C).
 20

21 For example, the City carries out its water system concurrency requirement under PTMC
 22 13.12.040 – “A request for water reservation shall be denied if there is not sufficient water
 23 supply available or if there is no specific, funded capital improvement identified in a capital
 24

25
 26 ⁴⁶ Ex. 15 at 6-7.

1 facilities or capital improvement plan which would make sufficient water supply available
2 concurrently with the development proposed in the reservation request.” PTMC 13.12.040.

3
4 **4. Requirement to Reassess the Land Use Element if Development
Exceeds OFM Population Estimates or if Funding is Inadequate.**

5 Petitioners assert that the City’s “massive upzoning” cannot be accommodated by the
6 City’s capital facilities and that the City’s Comprehensive Plan is internally inconsistent. The
7 City disagrees with these assertions – and the Comprehensive Plan builds in another layer of
8 redundancy – the Comprehensive Plan requires reassessment of the Land Use Element if capital
9 facilities funding is inadequate or if actual population growth cannot be accommodated within
10 the Capital Facilities Plan and Capital Improvement Plan. Ex. 56 at 360 (Comprehensive Plan
11 Policy P371 – “[r]eassess the Comprehensive Plan as provided for in RCW 36.70A.130 to ensure
12 that capital facilities, utilities needs, financing, and levels of service are consistent and that the
13 Plan is internally consistent”). “Capital planning must be financially realistic. The Element
14 requires that identifiable revenue sources support projects and that new development pays a
15 proportionate share of the infrastructure it needs. . . .The City also commits to regular Plan
16 updates and fiscal reassessment to ensure consistency with funding availability and population
17 trends.” Ex. 56 at 200.

18
19
20 **5. Capital Facilities Planning Funding.**

21 Petitioners assert that the Capital Facilities Plan violates RCW 36.70A.070(3) by not
22 having a “tabulation of the accuracy, reliability, and specific source of funding for each [capital
23 facilities] purpose.” Petitioners Prehearing Brief at 33. Contrary to these assertions, the City
24 provides this exact level of detail in its Capital Facilities Plan. For example, Ex. 15 at 37-66 lists
25 capital facilities, such as water, wastewater, and stormwater projects from 2025-2030, as well as
26

1 a 2031+ column listing the estimated project cost and source of funds. Ex. 15 at 37-56. There is
 2 no requirement for cities to provide additional analysis on the specific amounts of money a
 3 source is to provide. *Futurewise v. Spokane Cnty.*, 23 Wn. App. 2d 690, 703, 517 P.3d 519, 526
 4 (2022). For illustrative purposes, below is a portion of the Capital Improvement Plan for the
 5 Olympic Gravity Water System:
 6

7 Figure 10 – Example of Capital Improvement Plan Funding⁴⁷

PROJECT NAME	Source of Funds	2025	2026	2027	2028	2029	2030	Total (2025-2030)	2031+
Funded									
Lords Lake Dam Rehab - 6403	Raw Water Rates	400,000	1,745,000					2,145,000	
Lords Lake - Pipeline Improvements	Raw Water Rates	200,000	2,550,000					2,750,000	
Eaglemount	Raw Water Rates	290,000	780,000					1,070,000	
Snow Creek Break	Raw Water Rates	233,500						233,500	
1928 OGWS Pipeline 6404.3	Raw Water Rates	149,000						149,000	
Pipeline Condition Assessment - 6404.2	Raw Water Rates	520,000						520,000	

14 The Capital Facilities Plan includes “funded” and “unfunded” projects. *Id.* at 4. Funded
 15 projects include those that have a revenue stream in place or have dedicated funding from a
 16 specified funding source. *Id.* at 8. The Capital Facilities Plan is based on financially constrained
 17 projects (projects that are funded or can be reasonably funded) and are needed for the system,
 18 consistent with RCW 36.70A.070(3)(d). *Id.* The City includes unfunded projects, which are not
 19 fiscally constrained projects, but are City priorities. *Id.* These unfunded projects are not required
 20 to be listed in the Capital Facilities Plan, nor are they a needed project in the six-year plan under
 21 RCW 36.70A.070(3)(d) – the City chooses to list unfunded projects for planning purposes only.
 22
 23 *Id.* at 4 (“[t]he Capital Facilities Plan adopted in 2022 accomplished the same purpose as
 24
 25

26 ⁴⁷ Ex. 15 at 40.

1 previous years but took a more expansive and longer-term look at infrastructure needs for the
2 city by including unfunded projects”).

3 Further, the City adopts amendments to its Capital Facilities Element and Capital
4 Facilities Plan through the City’s budgeting process. RCW 36.70A.130(2)(a)(iv); PTMC
5 20.04.030(A)(7); Ex. 37 at 45-46; 51-55; 87-142. By amending the Capital Facilities Element
6 and Capital Facilities Plan through the City’s annual budgeting process, the City ensures that the
7 Comprehensive Plan, its functional plans, and its development regulations are internally
8 consistent. *See Spokane Cnty.* at 704 (“so long as the County regularly updates its six-year
9 budget forecast, the six-year forecast will constantly move forward in time and there will be no
10 danger of a gap between an existing budget and a full update of its Comprehensive Plan”).
11

12
13 **6. Petitioners Did Not Challenge Ordinance 3344 or 3359 – Budget**
14 **Issues Related to the Capital Facilities Plan and Capital**
15 **Improvement Plan are Not Properly Before the Board.**

16 Petitioners assert a collateral attack on City Ordinances 3344 (Capital Facilities Plan and
17 Capital Improvement Plan) and 3359 (2026 Budget). *See* Petitioners Prehearing Brief at 30-31.
18 They do this by alleging that the Comprehensive Plan “fails to demonstrate financial feasibility
19 and funding sources needed to serve forecasted growth” and that the GMA requires a
20 “financially feasible capital facilities element and six-year plan.” *Id.* at 31; 33.

21 Petitioners did not challenge Ordinances 3344 (Capital Facilities Plan and Capital
22 Improvement Plan) and 3359 (2026 Budget – Annual Amendment to the Capital Improvement
23 Plan). Prehearing Order at 2. While the Petitioners may argue that the Comprehensive Plan and
24 Ordinance 3361 is internally inconsistent under RCW 36.70A.100, Petitioners failure to
25 challenge Ordinances 3344 and 3359 precludes the Board from reviewing Petitioners issues and
26

1 arguments related to the financial feasibility of the Capital Facilities Plan and the amendments to
2 them under the City’s budget process.⁴⁸

3 **G. Invalidity is Not Properly Before the Board.**

4 The Petitioners last minute invalidity request is improperly before the Board. Petitioners
5 raise their request for invalidity, for the first time, in their Prehearing Brief under “Request for
6 Relief.” Petitioners Prehearing Brief at 35; Petition for Review; Prehearing Order. The Board’s
7 Western Washington Region requires Petitioners to specifically request invalidity in their
8 petition for review – as a remedy, not as a separate legal issue. *Mercer Island* at 63; *See also*
9 WAC 242-03-210(2)(e) (petition for review must state “[t]he relief sought, including the specific
10 nature and extent”). “[A]lthough the Board will prospectively no longer require invalidity to be
11 set forth as an issue within a PFR, this Board does require that a petitioner expressly request
12 invalidity as a form of relief within the PFR and support that request within the brief.” *Friends of*
13 *the San Juans* at 34-35.

14
15 Not only did Petitioners fail to plead invalidity as a remedy in their PFR – their briefing
16 does not sufficiently allege that the City’s actions under Ordinance 3361 substantially interferes
17 with the goals of the GMA. Their request for relief statement is cursory and fails to allege what
18 GMA planning goals Ordinance 3361 substantially interferes with and why. Without more
19 specifics the City is unable to respond to Petitioners’ last minute and cursory request for
20 invalidity – a request that is improperly in front of this Board.
21
22
23

24 _____
25 ⁴⁸ RCW 36.70A.290(1) requires that petitions for review must include a detailed statement of the
26 issues presented for resolution by the board; RCW 36.70A.290(2) requires that petitions
challenging GMA compliance must be filed within 60 days after the publication of the
challenged action; *See also* WAC 242-03-220(1).

1 **IV. Conclusion and Relief Requested**

2 The Petitioners have failed to carry their high burden of proof – clearly erroneous. For the
3 foregoing reasons, all thirteen issues should be denied, and the Board should find that Ordinance
4 3361 is in compliance with the GMA.

5
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