

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 WESTERN REGION
3 STATE OF WASHINGTON
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5 TODD MCGUIRE, an individual; MARY
6 MCCURDY, an individual; JOHN CAPPS, an
7 individual; JOHN WATTS, an individual; and
8 AFFORDABLE HOMETOWN PORT
9 TOWNSEND, a non-profit organization,

10 Petitioners,

11 v.

12 CITY OF PORT TOWNSEND,
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14 Respondent.
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CASE No. 26-2-0017

PREHEARING ORDER

17 This matter came before the Growth Management Hearings Board (Board) in a
18 Prehearing Conference held on March 12, 2026. Petitioners Todd McGuire, Mary McCurdy,
19 John Capps, John Watts, and Affordable Hometown Port Townsend (collectively, Petitioners)
20 appeared through its attorneys Bryan Telegin and Abigail McCeney. Respondent City of Port
21 Townsend (Respondent or City) appeared through City Attorney Austin M. Watkins with City
22 Manager John Mauro and City Planner Lonnie Mickle in attendance. Board Chair Rick
23 Eichstaedt and Member Alex Sidles attended. Board Member James J. McNamara convened
24 the conference as the Presiding Officer.
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26 The following matters were discussed at the Prehearing Conference:

27 Service of documents: The Parties agreed to electronic service of all documents. The
28 parties are instructed to **make sure the office has your current email and phone contact**
29 information on file. **ALL briefs, exhibits, and motion documents should be filed**
30 **electronically though our Case Management System.** Instructions on using the Case
31 Management System are available at www.eluho.wa.gov/case-management/case-
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1 [management-system](#). Please also provide a copy of all briefs in Word format to
2 eluh@eluh.wa.gov.

- 3 • The parties acknowledge that settlement discussions have not occurred and, due
4 to the nature of the legal issues presented, are likely to occur.
- 5 • The parties do not anticipate motions for intervention.
- 6 • The presiding officer noted the burden of proof on the Petitioner.
- 7 • The parties expect motions to supplement the record at present.
- 8 • The presiding officer reviewed the board's preferences for index numbering to be
9 used in exhibits to the briefs.
- 10 • In the review of legal issues, the Respondent found them acceptable.
- 11 • Respondent City of Port Townsend reported the potential for a dispositive motion.
- 12 • The case calendar and the length of briefs was agreed to, as set out herein.
- 13 • Index of the Record: The City's Index of the Record is due **March 23, 2026**.
14 Procedures for supplementing the record, identifying exhibits and attaching them
15 to briefing materials, and requesting official notice of government actions were
16 discussed.
- 17 • Case Schedule: The case schedule was agreed upon as ordered below.
- 18 • Hearing on the Merits: To be held via Zoom videoconference

19 Based on discussions at the Prehearing Conference, the following order is entered:
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22 I. ISSUES

23 The challenged action is City's approval of Ordinance No. 3361 on December 15, 2025,
24 and published legal notice on December 24, 2025. Legal Issues in this case are as follows:
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- 26 1. Did the adoption of Ordinance No. 3361, the City of Port Townsend
27 Comprehensive Plan Housing Element, fail to demonstrate sufficient capacity
28 of land for housing including housing for moderate, low, and extremely low-
29 income households, while also balancing the need to preserve existing housing
30 stock, in violation of RCW 36.70A.070(2)(c), RCW 36.70A.115, RCW
31 36.70A.020(1), (4), (5), (10), (12), RCW 36.70A.120, RCW 36.70A.130(1) and
32 (5)(b), RCW 36.70A.210, RCW 36.70A.100, and Jefferson County Countywide
Planning Policies (CPPs) #6 and #9?

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2. Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to make adequate provisions for existing and projected needs of all economic segments of the community, fail to incorporate consideration for low, very low, extremely low, and moderate-income households, and fail to document programs and actions needed to achieve housing availability and affordable housing needs, including gaps in local funding in violation of RCW 36.70A.070(2)(d), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPPs #6 and #9?
3. Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to identify local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing in violation of RCW 36.70A.070(2)(e), RCW 36.70A.020(4), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?
4. Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to identify and implement policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions, in violation of RCW 36.70A.070(2)(f), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?
5. Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to identify areas that may be at higher risk of displacement from market forces associated with changes to zoning development regulations, in violation of RCW 36.70A.070(2)(g), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?
6. Did the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Housing Element, fail to establish anti-displacement policies with consideration given to the preservation of historical and cultural communities as well as to the investments in low, very low, extremely low, and moderate-income housing, equitable development initiatives, inclusionary zoning, community planning requirements, land disposition policies, and consideration of land that may be used for affordable housing, in violation of RCW 36.70A.070(2)(h), RCW 36.70A.020(4), (5), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #6?

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- 7. Does the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Capital Facilities Element, fail to demonstrate financial feasibility and funding sources for infrastructure needed to serve forecasted growth, in violation of RCW 36.70A.070(3), RCW 36.70A.020(1), (12), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #9?
- 8. Does the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Transportation Element, fail to ensure that level of service standard amendments were made concurrent with strategies to accommodate the impacts of development, in violation of RCW 36.70A.070(6)(b) and RCW 36.70A.120?
- 9. Does the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Capital Facilities and Transportation Elements, authorize development without ensuring that public facilities, services, and utilities will be adequate to support development at the time development is available for occupancy and use without decreasing levels of service below the minimum standards, in violation of and RCW 36.70A.020(1), (4), (10), (12), RCW 36.70A.070(4)(a), RCW 36.70A.120, RCW 36.70A.210, RCW 36.70A.100, and Jefferson County CPP #9?
- 10. Does the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Transportation Element, fail to identify transportation facility and service needs in accordance with RCW 36.70A.070(6)(a)(i) through (iii), RCW 36.70A.070(12), and RCW 36.70A.120, including specific actions and requirements for bringing into compliance transportation facilities or services that are below the City's established level of service standards?
- 11. Does the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan Transportation Element, fail to include a financing plan based on the needs identified in the comprehensive plan, fail to discuss how land use assumptions will be reassessed to ensure that level of service standards will be met, and fail to include demand management strategies, in violation of RCW 36.70A.070(6)(a)(iv)–(vii), RCW 36.70A.120, and RCW 36.70A.020(1), (12)?
- 12. Does the adoption of Ordinance No. 3361, the City of Port Townsend Comprehensive Plan violate the Growth Management Act's concurrency requirements under RCW 36.70A.070(6)(b), RCW 36.70A.108, RCW 36.70A.630(4), RCW 36.70A.120?

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2 13. Did the City of Port Townsend fail to provide early, continuous, and meaningful
3 public participation in its adoption of Ordinance No. 3361, City of Port Townsend
4 Comprehensive Plan and development regulations, in violation of RCW
5 36.70A.140 and RCW 36.70A.020(11)?

6 **Petitioner has the obligation to review these issue statements to ensure that they**
7 **properly set forth the issues raised. If Petitioner objects to the completeness or**
8 **accuracy of these issue statements, it must file a written motion for change together**
9 **with the proposed changed issue or issues in their entirety no later than seven (7) days**
10 **from the date of this order.**

11 II. SCHEDULE

12 The following schedule shall remain in effect unless modified in writing by subsequent
13 order:
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15 February 20, 2026	Petition Filed
16 March 2, 2026	Notice of Hearing and Preliminary Schedule
17 March 6, 2026	Last Day to Amend Petition for Review
18 March 12, 2026	Prehearing Conference
19 March 13, 2026	Prehearing Order
20 March 23, 2026	Index Due (Respondents to file)
21 April 10, 2026	Additions to Index (parties to confer)
22 April 13, 2026	Objections to the Additions of the Index Due
23 April 13, 2026	Deadline for Motions to Supplement the Record (proposed supplements to be attached)
24 April 20, 2026	Deadline for Dispositive Motions
25 April 21, 2026	Deadline for Response to Motions to Supplement the Record
26 April 28, 2026	Deadline for Response to Dispositive Motions
27 May 5, 2026	Deadline for Reply to Motions
28 May 15, 2026	Anticipated date of Order on Motions
29 May 29, 2026	Deadline for Petitioners' Prehearing Brief (with exhibits)
30 June 12, 2026	Deadline for Respondent's Prehearing Brief (with exhibits)

June 22, 2026	Deadline for Petitioners' Reply Brief (optional)
July 7, 2026 9:00 a.m.	Hearing on Merits of Petition¹ via Zoom (link provided at a later date)
August 19, 2026	Final Decision and Order

III. THE RECORD

Index –The Respondent will file its Index of all documents considered in taking the challenged actions by the date indicated in the schedule. Documents listed in the Index shall be made available to the Petitioner’s for review and copying, at Petitioner’s expense. A party wishing to submit the record of Council meetings or other meetings in the Index is responsible to arrange the transcription of relevant portions at the requester’s expense.

Petitioner’s shall promptly review the Index prepared by Respondent and notify the Respondent of additions to the index if they believe any omissions have occurred.² If the Respondent agrees, it shall file an Amended Index. If there is a disagreement over whether the item should be included in the record, the proponent may file a motion to supplement the record, attaching the disputed documents. Supplementation may be permitted “if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.”³ Motions to supplement should also include proposed Index numbers for the evidence sought to be included in the Index.

Supplements to the record may come from outside the Respondent’s records but must be shown to be “necessary or of substantial assistance to the board in reaching its decision.” Any supplements to the record proposed must meet the standard set forth in RCW 36.70A.290(4).

¹ Per the December 2, 2024, Directive of the Governor No. 24-19, an immediate freeze for travel is currently in effect for executive agencies statewide. For the duration of this Directive, hearings will be held via Zoom videoconference.

² WAC 242-03-510(3). Within seven days after the filing of the index, any other party may file a list of proposed additions to the index. To the extent such documents were submitted to the jurisdiction or a part of the jurisdiction's proceedings prior to the challenged action, they are presumed admissible subject to relevance. If the respondent objects to any proposed addition, the petitioner may bring a motion to supplement the record as provided in WAC 242-03-565.

³ RCW 36.70A.290(4).

1 **IV. EVIDENCE**

2 The Index to the Record lists the documents that may be introduced as exhibits, but
3 those documents do not become evidence until they are referenced in a brief and submitted
4 to the Board as exhibits to that brief. The briefs must cite the exhibits and explain how the
5 exhibits support the arguments in the briefs. The **exhibits should be numbered with the**
6 **Index number(s) from which they are drawn.** If the Index document is long, an exhibit may
7 be limited to a copy of the relevant portion of the Indexed document. When only portions of a
8 document or portions of a proceeding are to be relied upon, the offering party shall adequately
9 identify and prepare the pertinent excerpts and shall supply copies of such excerpts for
10 attachment as exhibits to a brief.⁴

11 The parties **shall tab each exhibit with its Index number⁵ and provide a Table of**
12 **Exhibits.** Exhibits shall be filed at the same time as hearing briefs and served on all parties
13 electronically, unless a party lacks technical capability. It is not necessary to re-submit an
14 exhibit that has been previously (or simultaneously, as with intervenors) submitted by you or
15 another party, as long as it is referred to by the correct Index number. In filing with the Board,
16 the brief shall be filed electronically, including all exhibits.⁶

17 **V. BRIEFS**

18 Briefs shall be filed with the Board and served on the other party on the dates specified
19 on the schedule. If no time is specified, they must be served by 5:00 p.m. **Briefs must be e-**
20 **filed through CMS.** Exhibits must be filed electronically at the same time that the briefs are
21 filed and may be provided as part of the brief itself.

22 Length of Briefs – **Briefs shall be limited to 35 pages for the Petitioner’s**
23 **prehearing brief, 50 pages for the Respondent’s response brief, and 15 pages for**
24 **Petitioner’s reply brief.** A brief of 15 pages or longer shall have a table of exhibits and a
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32 ⁴ WAC 242-03-620(4)(b).

⁵ Do not label your exhibits Tab 1, 2, 3 or A, B, C. **Use the Index numbers assigned to the items in the record** and place the items in numerical order.

⁶ WAC 242-03-240. (Check this reference.)

1 table of authorities. A presiding officer may limit the length of a brief and impose format
2 restrictions. Documents other than exhibits shall be typewritten or printed, properly captioned,
3 signed by the appropriate person submitting the same, shall include his/her mailing address,
4 email and telephone number. Line spacing in all briefing shall be set at 1.5 and the typeface
5 must be no smaller than Times New Roman 12 pt. These briefing limits apply to any motions
6 and reply to such motions made in this proceedings.
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8 9 **VI. RULES OF PROCEDURE**

10 The Board's Rules of Practice and Procedure shall apply to the proceedings in this
11 case. The Board's Rules of Practice and Procedure may be found in the Washington
12 Administrative Code (WAC), at Chapter 242-03 WAC.⁷
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14 **VII. DISABILITY ACCOMMODATION**

15 Any person who requires an accommodation to participate in or attend the hearings in
16 this case is asked to contact the Board's accessibility coordinator⁸ at least one week in
17 advance of the scheduled hearing to arrange an appropriate accommodation.
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19 **VIII. FAILURE TO ATTEND OR PARTICIPATE**

20 A party who fails to attend or participate in any hearing or other stage of the
21 adjudicative proceedings before the Board in this case may be held in default and an order of
22 default or dismissal may be entered pursuant to WAC 242-03-710.
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24 **IX. COMMUNICATION WITH THE BOARD**

25 Pursuant to RCW 34.05.455, the parties may not communicate *ex parte* with the
26 Presiding Officer or other Board members. The parties are directed to contact the
27 Administrative Assistant to the Board at (360) 664-9170, or email to eluho@eluho.wa.gov,
28 who will act as Board liaison and handle all procedural issues.
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32 ⁷ The Board's handbook, available on the website, may also be useful to the parties.

⁸ [Jamie Merly](#) or 360-485-1282, relay service for hearing impaired, call 711.

1 DATED this 13th day of March, 2026.



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5 James J. McNamara, Presiding Officer
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WAC 242-03-545(2). Any objection to this prehearing order shall be made in writing within seven days after the date the order is dated.

REQUIREMENTS FOR FILING EXHIBITS IN CMS

ELUHO boards accept exhibits and attachments in electronic format in accordance with the following requirements:

- Exhibits must be combined with and attached to the document they support as a single, searchable text PDF document. (e.g., if you file a declaration with exhibits, the declaration and exhibits should be filed as a single PDF)
- Exhibits that are unable to be converted to PDF (e.g., video, large Excel spreadsheets, etc.) must be identified with a “place holder” page where the exhibit would sequentially appear. The “place holder” page should identify the exhibit number and provide a description of the exhibit.
- Each exhibit must be electronically bookmarked within the single PDF at the beginning of each exhibit.

For **Pollution Control Hearings Board/Shorelines Hearings Board (PCHB/SHB)** cases

- All PCHB/SHB exhibits, including hearing exhibits, must include footers with page numbers **or** include a sheet (slipcover) between exhibits identifying the exhibit number and number of pages.

Examples for footers:

- Ex. A, page 1 of 12 (exhibits to declarations);
- Ex. A-1, page 1 of 12 (appellant or petitioner hearing exhibits);
- Ex. R-1, page 1 of 12 (respondent hearing exhibits).

Example for slipcovers:

- Ex. A, 12 pages (exhibits to declarations);
- Ex. A-1, 12 pages (appellant or petitioner hearing exhibits);
- Ex. R-1, 12 pages (respondent hearing exhibits).

For **Growth Management Hearing Board (GMHB)** cases:

- All GMHB exhibits to motions or petitions for review must include footers or include a sheet (slipcover) between exhibits identifying the exhibit number and page range. Examples:
 - Ex. A, page 1 of 12 (footer);
 - Ex. A, 12 pages (slipcover).
- All GMHB exhibits to briefs should include footers or include a sheet (slipcover) identifying the exhibit number in correlation to the index of record and page range. Examples:
 - Ex. 1, page 1 of 12 (footer);
 - Ex. 1, 12 pages (slipcover).

Parties that are unable to submit exhibits in PDF format via the Case Management System (CMS) will need to inform the board of their intent to file in another format as soon as possible or by the date identified for filing exhibits in the case order or letter.

If you need assistance or would like to see an example of the file or exhibit structure described above, please contact our office at (360) 664-9160.