

October 10, 2019

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VIA HAND DELIVERY, ELECTRONIC AND REGULAR MAIL

Sequim City Council
152 West Cedar Street
Sequim, WA 98382

Re: Proposed Jamestown S'Klallam Drug Treatment/Detoxification Center

Dear Mayor Smith and Members of the Council:

This firm represents Save Our Sequim (SOS), a large and growing group of citizens who are concerned with the location of the drug treatment/detoxification center being proposed by the Jamestown S'Klallam Tribe. As you know, the proponents of this project are proposing to locate this facility on 18.6 acres of property recently purchased by the Tribe at 526 S. 9th Ave, located in the RREOA District.

As you also know, the proponents have also been promoting an inpatient evaluation and treatment psych hospital in a "second phase" of this project. Collectively, the proposed facility will use a "comprehensive treatment strategy" to "serve the health care needs of the North Olympic Peninsula Community" by providing "physical, mental and dental services" and "chemical dependency counseling, behavioral health, primary care and childcare assistance".¹

Although no formal application has yet been filed, the proponents of this project have provided a significant amount of detail to you and the public about what they are proposing. Project proponent W. Ron Allen described the proposed project as follows in a July 22, 2019 op-ed appearing in the Peninsula Daily News.

- "a clinic that addresses this (opioid) problem and serves the health care needs of the North Olympic Peninsula community ..."
- "the clinic will serve Clallam and Jefferson counties and will use a comprehensive treatment strategy that will include physical, mental and dental services"

¹ SOS questions the validity and legality of "phasing" this project. See *Murden Cove Pres. Ass'n v. Kitsap Cty.*, 41 Wn. App. 515, 526, 704 P.2d 1242 (1985), holding that "...piecemeal review is impermissible where a 'series of interrelated steps [constitutes] an integrated plan' and the current project is dependent upon subsequent phases".

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- “includes a Phase I MAT Clinic to be operated by the Jamestown Tribe and Phase II (yet to be funded) a 16-bed inpatient evaluation and treatment psych hospital that will be managed by OMC”
- “the goal of the Phase I MAT Clinic is to decrease opioid overdoses and the illegal diversion of prescription drugs into the community”
- “the property ... is zoned for medical use”
- “The MAT clinic is not an inpatient facility. Strict Drug Enforcement Administration guidelines do not permit loitering at a MAT program facility”
- “The Healing Campus will offer the best opportunity for sustaining recovery by providing chemical dependency counseling, behavioral health, primary care and childcare assistance”
- “The MAT program will provide transportation to the facility for those who need it in Clallam and Jefferson counties. This service is not provided within the Olympic Peninsula counties.”
- “We intend to establish strict rules to prevent loitering after their appointment”

To summarize these points, Mr. Allen believes that the proposed project is a “clinic” that: (1) addresses Clallam County’s opioid problem; (2) uses a comprehensive treatment strategy including physical, mental and dental services; (3) includes a MAT clinic and a 16-bed inpatient psych hospital; and (4) provides chemical dependency counseling, behavioral health, primary care and childcare assistance. Based on this description, we understand that the proponents and the City believe that the proposed project is a permitted use in the RREOA District, and that it qualifies for the Type A-1 permitting process, which allows the proposed project to be administratively approved without a City Council hearing.

SOS strongly disagrees with this position and is fully prepared to take legal action if necessary to require the City to follow the proper entitlement process. A facility designed to address the “opioid problem” using “comprehensive treatment strategies” and that provides “chemical dependency counseling”, including a “MAT Clinic” and an “inpatient psych hospital” is much more of a “alcoholism or drug treatment center or a detoxification center” than it is a “clinic”, a “medical facility” or anything else that would be considered a permitted or conditional use in the RREOA District.

Specific language in Sequim Municipal Code (SMC) Section 18.56.030(J) states that group homes, alcoholism or drug treatment centers or detoxification centers can only be permitted by the City Council. SMC 18.56.030 reads in full as follows:

18.56.030 Permitted uses.

The council may permit the following uses in districts from which they are now prohibited by this title:

- a. Airport and airfields.
- b. Government buildings.

- c. Educational institutions.
- d. Hospitals and sanitariums (except animal clinics and hospitals).
- e. Nursing homes and boarding homes for the aged.
- f. Correctional institutions.
- g. Towers and antennas over 100 feet in height, subject to the requirements of Chapter 18.61 SMC.
- h. Essential public facilities and utilities.
- i. Parks, playgrounds, recreation or community centers.
- j. Group homes, alcoholism or drug treatment centers, detoxification centers, work release facilities for convicts or ex-convicts, or other housing serving as an alternative to incarceration with 12 or more residents.
- k. Energy facilities.
- l. Hazardous waste treatment and storage facilities.
- m. Shelters for the transient or for the homeless.
- n. Master planned resorts.
- o. Solid waste facilities
- p. Sewage treatment facilities.
- q. Bus stations and transit facilities. (emphasis added)

It is well established that specific land use regulations control over more general ones, and in this case, the terms “alcoholism or drug treatment centers” or “detoxification centers” are much more specific than the general terms “clinic” or “medical facility”.²

Although it is not clear from the record at this point, SOS believes that the City and the applicants may believe that the proposed project qualifies as either a “Medical Facility” or an “Essential Public Facility”, and as such is either a permitted or a conditional use in the RREOA District. If this is in fact the City and the Applicant’s position, it is also incorrect.

Medical Facilities: The term “medical facility” appears only once in the description of the Economic Opportunity Area (EOA) districts contained in SMC 18.33.010, and that is only in the general description for these Districts rather than in the specific description for the RREOA District. The general description appears in SMC Section 18.33.010, which provides as follows:

18.33.010 Establishment of zoning districts.

The city’s comprehensive plan establishes three land use designations that support the business and employment goals and policies of the city of Sequim. The three land use designations will also serve as titles of zoning districts on the city’s zoning map, and are identified as:

² “When a general and a specific ordinance cover the same subject matter, the specific controls over the general to the extent that the two conflict.” *State ex rel. Lige & Wm. B. Dickson Co. v. Cty. of Pierce*, 65 Wn. App. 614, 620 n.6, 829 P.2d 217 (1992)

- A. Bell Creek economic opportunity area (BCEOA).
- B. River Road economic opportunity area (RREOA).
- C. High tech light industrial (HTLI).

The three business and employment districts are intended to enhance Sequim's economic base by providing suitable areas to support the employment needs of the community. The business and employment districts provide for the location of manufacturing, product processing, research and development facilities, assembly, warehousing, distribution, professional services, corporate headquarters, medical facilities and complementary educational and recreational uses among others. Limited retail, business and support services that generally serve the needs of the districts' tenants and patrons as well as limited multifamily mixed residential/commercial uses are also allowed. All three districts are intended to expand and diversify the city's economic base and increase the number and range of living-wage jobs. (emphasis added)

The specific description of the purpose of the RREOA District is contained in SMC 18.33.020(B). Notably, this description does not contain the phrase "medical facilities", or anything else reasonably resembling the proposed project. SMC 18.33.020(B), provides as follows:

18.33.020 Purposes.

B. The River Road economic opportunity area (RREOA) district is intended to enhance the city's economic base by providing for an integrated grouping of businesses and buildings of a larger size and scale than the BCEOA and HTLI districts may support. The RREOA district supports a variety of uses, such as light manufacturing, professional office buildings, retail, commercial, multifamily residential and warehousing and distribution.

Essential Public Facility: If on the other hand the City and the applicants believe that the proposed facility qualifies as a "essential public facility", a hearing in front of the City Council is mandated.

Essential Public facilities are defined in the Growth Management Act as:

"... those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.RCW." RCW 36.70A.200(1). (Emphasis added)

Clearly the legislature did not intend for this list to be exhaustive, given the phrase “such as”, thus the distinction between an inpatient and an outpatient facility is not relevant. In addition, the applicants have made it crystal clear that this project includes an inpatient treatment facility in Phase II.

SMC Chapter 18.56 governs the siting of essential public facilities within the City. SCC Section 18.56.040 requires an “essential public facilities and special property use permit” which is granted by the City Council before one can be sited in the City:

18.56.040 Permit required.

Essential public facilities and special property uses shall be allowed within certain use zones after obtaining an essential public facilities and special property use permit granted by the city council. (Emphasis added)

The criteria for Council approval of an essential public facilities and special property use permit are contained in SMC 18.56.060, which reads in full as follows:

18.56.060 Permit – Criteria.

An essential public facilities and/or special property use permit granted by the council shall be subject to the following criteria:

A. There shall be a demonstrated need for the essential public facilities and/or special use within the community at large which shall not be contrary to the public interest.

B. The essential public facility and/or special use shall be consistent with the goals and policies of the comprehensive plan, and applicable ordinances of the city.

C. The council shall find that the essential public facility and/or special use shall be located, planned and developed in such a manner that the essential public facility and/or special use is not inconsistent with the health, safety, convenience or general welfare of persons residing or working in the city. The council’s findings shall address, but not be limited to the following:

1. The generation of noise, noxious or offensive emissions, or other nuisances which may be injurious or detrimental to a significant portion of the city.

2. The availability of public services which may be necessary or desirable for the support of the special use. These may include, but shall not be limited to, availability of utilities, transportation

systems, including vehicular, pedestrian, and public transit systems, and education, police and fire facilities, and social and health services.

3. The adequacy of landscaping, screening, yard setbacks, open spaces or other development characteristics necessary to mitigate the impact of the special use upon neighboring properties.

4. Proposed uses which exceed the bulk, dimensional, height, density and/or use standards of the zoning district within which they propose to locate, must demonstrate that the proposed variance is essential to the establishment of the public facility and/or special use; i.e., a variance in height may be granted for a water tower, but not to provide an architectural element. (Ord. 97-019 § 4, Exh. B) (emphasis added)

Clearly, the siting of an essential public facility in the City of Sequim requires you, the City Council, to conduct the rigorous and robust public process mandated by SMC 18.56.060 while considering this project as Mr. Allen has described it. And since phasing is inappropriate, and since the proposed Phase II also qualifies as an ‘essential public facility’, the entire project must meet these criteria. At an absolute minimum, you must therefore find; 1) that there is a demonstrated need for this facility within the community at large; 2) that it is not contrary to the public interest; 3) that it is consistent with the comprehensive plan and city code; 4) that it is not inconsistent with the health safety convenience or welfare of the residents of Sequim; 5) that it does not create a nuisance injurious or detrimental to the residents of Sequim; 6) that necessary public services are available; and that 7) the impacts on neighboring properties are properly mitigated. It is farcical to think that the Type A-1 process can satisfy these thorough and exhaustive requirements.

To summarize, neither phase of this project as described constitutes a “clinic” or a “medical facility”, the facility is more accurately described as a comprehensive “alcoholism or drug treatment center” or “detoxification center”. As such, it falls foursquare within the Growth Management Act’s definition of an “essential public facility”. And essential public facilities can only be cited in Sequim after the applicant has received an Essential Public Facilities and Special Property Use Permit, which can only be granted by the Sequim City Council under SMC 18.56.040, and only after the robust and rigorous public process described in SMC 18.56.060 has been conducted and appropriate, justifiable and defensible findings of fact have been made.

SOS is fully cognizant of the need for addiction treatment facilities in Clallam County, however SOS also firmly believes that the subject property is not the appropriate site for such a facility, especially when there is unused treatment capacity nearby. SOS therefore strongly


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suggests that you advise the Applicants to site this facility at a more appropriate location than is currently proposed.

Thank you for the opportunity to comment on this critically important issue. I may be reached at mspence@helsell.com or at (206) 689-2167 with any questions or comments.

Very truly yours,

HELSELL FETTERMAN LLP


Michael A. Spence

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cc: SOS