

Questions from the July 29, 2019 Special City Council Meeting

Notes for Research:

Swinomish Tribal Clinic in Anacortes cited as a success for a small community.

Changes to Washington State Law through HB 1427 allow for secondary treatment to be treated as other prescription drugs as opposed to promoting abstinence programs.

Process:

1. How can we elevate the permit review process to a conditional use permit?

We can only process a proposal as it is put before us in an application. However, the City has an obligation to ensure that a project is properly defined. If there are additional phases, the project could be reviewed under the State Environmental Policy Act (SEPA) in its entirety. See Washington Administrative Code (WAC) 197-11-060(3).

As discussed at the July 29th meeting, City staff will be asking the Jamestown S'Klallam Tribe about the full scope of their plans to ensure compliance with WAC 197-11-060(3).

2. How would phase 2 and possible adjacent housing affect the SEPA process for the phase 1 MAT clinic?

It depends on the scope of the project and what is in the application. At a minimum, it would broaden the scope of SEPA review.

3. Will there be a study on the effects on the surrounding community? Can we include other meth clinics on reservations in the study?

As part of the SEPA review process a proposal's compatibility with the surrounding area is evaluated, as are its potential impacts. The City is limited to reviewing "likely" direct and indirect impacts, not speculative. See WAC 197-11-060(4). If a project is subject to conditional use permit requirements, the impacts upon and compatibility with the surrounding neighborhood are also evaluated.

4. Can the City put a one-year moratorium on building in the EOAs with a C1 level permit review with SEPA?

Technically yes, the City could enact a moratorium. However, it is unlikely the moratorium would survive a legal challenge. Cities and counties have a legal obligation to treat similar land uses in similar ways, and a moratorium on only MAT clinics is unlikely to prevail in court.

Moratoriums are to be used sparingly for true emergency situations and must be narrow in scope and short in duration. It is unclear given the circumstances whether a moratorium could be defended given the facts of this particular case. The authority for enactment of moratoriums by a code city is at [RCW 35A.63.220](#) and [RCW 36.70A.390](#). Although these statutes do not specify the need for declaring an "emergency," the reasons for imposing a moratorium typically involve an "emergency" justifying its adoption without notice or prior hearing.

Cities and counties across the country have enacted moratoriums or other prohibitions for the specific purpose of preventing drug treatment centers from opening within specific communities or areas within the community. Those ordinances were typically found to be invalid and discriminatory under the Americans with Disabilities Act. Courts have held that methadone or other drug treatment clinics are similar to traditional medical clinics and other professional offices. *See, e.g., New Directions Treatment Services v. City of Reading*, 490 F.3d 293 (3d Cir. 2007) (statute singled out methadone clinics – and thereby patients – for different treatment); *Comprehensive Addiction Treatment Services, Inc., v. City and County of Denver*, 795 P.2d 271 (1989) (addiction treatment center was an “office” under zoning ordinance like other medical offices and permit could not be denied on theory that the “primary purpose” was dispensing methadone). A moratorium adopted by the City of Sequim would need to apply to all such offices and medical buildings, not just the MAT clinic.

Enacting such a moratorium would also be problematic. As discussed above, moratoriums are to be used sparingly for true emergency situations and must be narrow in scope and short in duration. Moratoriums are intended to give a local jurisdiction time to address an onslaught of new development or inadequate or nonexistent ordinances. That is not the case in Sequim. The City has been permitting professional offices and medical buildings for many years, most recently the OMC Cancer Center expansion. Similarly, there is no justification for enacting a moratorium that only affects EOA permits with a C1 Level of permit review.

Finally, if the City were to impose a moratorium or change development rules on only MAT or similar facilities, it would likely be challenged in court by the Jamestown S’Klallam Tribe, and the Tribe would likely prevail in this scenario. Local jurisdictions that unlawfully enact moratoriums or otherwise disrupt the permit process often face significant damage awards and attorneys’ fees. Individuals – including council members - may also be personally liable for such behavior.

As a recent example, the City of SeaTac settled for over \$13 million dollars for its conduct in trying to prevent a landowner from developing a park-and-fly garage. In its effort to prevent the project, SeaTac enacted a moratorium and changed land development rules. The landowner filed suits against individual SeaTac officials and employees for their role, which caused SeaTac’s risk pools to file separate claims against the city seeking to avoid paying out for the city’s unlawful activity. SeaTac ultimately paid \$4.3 million out of its general fund to settle the case, with the risk pools covering the rest.

<https://www.westsideseattle.com/highline-times/2017/10/13/gerry-and-kathy-kingen-finally-win-city-seatac-authorizes-payment-more-13>

<http://www.seatacwa.gov/Home/ShowDocument?id=17687>

While the SeaTac case may be an extreme example, it serves as a reminder that when a local jurisdiction seeks to disrupt the development and permit process without appropriate cause, it does so with significant risk.

5. Request to strike the resolution from the record that removed the subarea plan requirement for the EOA. Why don't you restore the subarea plan?

Resolutions may be repealed by the City Council. The subarea planning requirement could be reinstated if the City so decided. Reinstating the subarea planning requirements would require an amendment to the City's Comprehensive Plan and Zoning Code. Amending the Comprehensive Plan and Zoning Code would likely take between 6-12 months.

6. Has there been an application made for the MAT?

No application has been submitted as of August 8, 2019.

7. Who do the City Manager and City Attorney work for? Are they the right people to be handling this?

The duties of the City Manager are as assigned by the City Council and as defined in RCW 35A.13.080 and other statutes. The City Manager works for the City Council.

It is the duty of the City Attorney to act as legal counsel for the City of Sequim and to advise City authorities and officers in all legal matters pertaining to the business of the City. The City Attorney will perform such other legal services as may be required on behalf of the City when ordered by the City Manager, City Council or as required by statute. The City Attorney works for the City Manager and is confirmed by the City Council.

The City Manager and City Attorney do not have any direct responsibility for reviewing and/or approving or denying this or any other submitted land use proposal.

8. Is a 15,000 square foot facility a clinic or is it a regional medical center? What is the definition of a clinic?

The size of the facility is irrelevant as a criterion for either approval or denial. A "Clinic" is defined as a building designed and used for the diagnosis and treatment of human outpatients excluding overnight care facilities. Please also refer to the discussion under question 4 above.

9. Was the zoning for the property made for this clinic?

The decision to remove the subarea planning requirement from the City's two Equal Opportunity Areas (EOAs) came from the recommendation contained in the Bell Creek EOA Planning Report, 2018 (commonly known as the Hovee report).

This report stated: *"The study concluded, "[a]t the outset, this Bell Creek EOA planning process was intended to meet the subarea plan requirement; however, as the process unfolded, it became clear that the requirement for a subarea plan places an unnecessary burden on property owners and could limit the flexibility needed for future development to respond to market conditions. In addition to the Bell Creek*

EOA, an EOA is designated in the western portion of the City, north of Highway 101, south of Washington Street, east of River Road, and west of North 7th Avenue. Unlike the Bell Creek EOA, which is currently under single ownership, the western EOA includes multiple property owners and the subarea plan requirement would be even more difficult to satisfy. The purpose of the EOA zone can be fulfilled without a full subarea plan. This can occur with use and development standards that assure non-employment uses will support and complement primary employment activity on the site and with design guidelines that protect ecological features and ensure a high-quality product design. Section 3.0 discusses recommended use and development standards and design guidelines. (Emphasis added) (Bell Creek EOA Planning Report, BergerABAM, May 1, 2018, pg. 3).

Therefore, this report was the catalyst to remove the subarea planning requirement from future EOA development. To do this, the City first needed to amend the comprehensive plan, which it did on October 22, 2018 (see Resolution R2018-24). The process to amend the comprehensive plan included the City Council putting the proposed amendments on the docket, issuing a notice of application, a threshold determination under SEPA and issuing public hearing notices in the *Peninsula Daily News* and on the City's website for public hearings scheduled before the Planning Commission on 10/2/18 and the City Council on 10/22/18.

The next step the City needed to take included developing zoning regulations to ensure development in the EOAs would be done in accordance with a variety of standards addressing, among other things, parking, landscaping, building mass and design.

On November 13, 2018 the Sequim City Council adopted Interim Ordinance No. 2018-12 adopting regulations to provide zoning for the City's two EOAs and consolidating said regulations with the High Technology and Light Industrial (HTLI) Zoning regulations, creating a new Business and Employment Zoning District. The City Council held a public hearing on the interim regulations on December 10, 2018.

The City's Planning Commission held a public hearing on the Interim Regulations on January 15, 2019 and the City Council adopted the interim regulations as permanent zoning regulations on February 11, 2019 via Ordinance 2019-01.

The first meeting staff had with representatives of the Tribe and OMC was on March 28, 2019. This meeting was fairly brief and focused on whether the River Road EOA zoning allowed medical clinics and hospitals.

Discussions to amend the City's plan and zoning code started in earnest in October 2018 and was based on recommendations contained in the Bell Creek CERB report issued in May, 2018, eleven (11) months before staff's contact with the Tribe or OMC regarding the possible development of this property.

Facility:

10. How will we know that the clinic won't lead to higher crime and have a huge impact on public service agencies?

There are many reasons why crime rates increase and some do relate to businesses. For example, with the opening of Walmart in Sequim our Police Department has seen a significant increase in calls related to theft. While we cannot know with any certainty whether a new land use will lead to increased crime, we look to other jurisdictions that have sited similar businesses for information about the impacts. No studies as to impacts on public service agencies will be conducted until such time as an application has been received.

11. What will be done to increase these services?

It is possible that a need for increased public services could constitute an adverse impact, which would need to be mitigated by the project proponent under the State Environmental Policy Act (SEPA).

12. What will happen when people are released on the street and their crime begins to escalate?

The City's response would be the same as it would be to any increase in crime, regardless of reason.

13. What will be done to keep the drug cartels out of Sequim?

The City of Sequim, in addition to having its own Police Department and enforcement/investigative services, participates in the regional drug task force known as the Olympic Peninsula Narcotics Enforcement Team (OPNET). Drug use and sales are a known factor in our community now. Continued devotion to drug investigative resources and ongoing evaluation of changing trends are part of local law enforcement's operational framework.

14. Where are the people with experience telling us that this type of facility will work?

The City is a regulator, not a medical provider and is not the applicant for or proponent of this project. It is a Jamestown S'Klallam Tribe (JST) venture and this question should be directed to them.

15. Has there been contact with state and local recovery leaders?

Please refer to question 14 above and direct this question to the JST.

16. Is there a need for this type of clinic? Are the current facilities in Clallam County at capacity?

Please refer to question 14 above; this question should be directed to the JST.

17. How can the tribe justify building a "healing" clinic when their casino supports gambling, smoking, and alcohol addiction and they are building a pot store?

Please refer to question 14 above; this question should be directed to the JST.

18. Who or what entity secured the \$7 million in grant funding?

Please refer to question 14 above; this question should be directed to the JST.

19. How will the risk to the adjacent farm be mitigated to ensure the property is secure, patients won't loiter and trash the property? Where will our animals go if we are no longer able to farm on our property?

All identified impacts will be mitigated to the fullest extent as allowed by law. All questions relating to management of the operation should be directed to the JST.

20. Are the tribe's statistics accurate on the level of opioid use or is it because we have an aging population that takes more pain medication?

Please refer to question 14 above; this question should be directed to the JST.

21. Is the clinic three times the size of clinics in Seattle?

There has been no application submitted as of the date of this posting. City staff will not know the size until a complete application is received.

22. What guarantees do we have that the people who will be treated are from here?

Please refer to question 14 above; this question should be directed to the JST.

23. Have you considered the unintended consequences of this facility? How will you keep our town, library and parks safe?

The City cannot make any determinations about any consequences without a complete application submitted that describes the project in detail. The public will have an opportunity to express concerns during the permit review process.

24. Where will the 50% of people who drop out of the program go?

Please refer to question 14 above; this question should be directed to the JST.

25. Whose pockets have been padded for this bad deal for Sequim?

No one's pockets are being "padded". City councilors, officials, and employees are prohibited under the law from using their position for personal gain. For additional information, please refer to the City of SeaTac case referenced in question 4 above.

26. What happens if patients miss the bus home? Where are they going to go?

Please refer to question 14 above; this question should be directed to the JST.

27. Is this right for Sequim? Is there a need? What is the social impact?

The City does not make determinations about the “need” for specific projects. If a project complies with zoning and other development regulations, the City has a legal obligation to issue a permit. The City does not know what the social impacts would be, if any. Once an application is received, the City will determine what additional information, if any, is necessary to address external impacts from the project.

28. How far behind Costco is the plot of land that has been bought?

It is immediately to the southeast of Costco.

29. Can we get funding to encourage the Jamestown tribe to use the grant money for research on what will actually help the addicts?

The City’s involvement with this proposal is strictly related to land use and building permit approval. Please refer to question 14 above; further questions should be directed to the JST.

30. What effect will the clinic have on our youth?

Please refer to question 14 above; this question should be directed to the JST.

31. Why can’t the tribe put the clinic on their property behind the casino?

Please refer to question 14 above; this question should be directed to the JST.

32. What is the difference between a MAT clinic and a Medical clinic?

From a land use perspective and according to federal law, there is no difference. Please also refer to question 4 above.

33. How would additional in-patients affect the process?

According to the Sequim Municipal Code (SMC) Chapter 18.08 “Hospitals and sanitariums” means any facility specializing in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and injured persons, and licensed by state law to provide facilities and services in surgery, obstetrics, and general medical practice including overnight and extended stays.

Hospitals are listed as conditional uses in SMC Chapter 18.33 and are, therefore, subject to a higher level of review than uses that are permitted outright such as medical clinics. The Planning Commission is the review authority for conditional uses.

34. Through the process, will there be a study on the impacts to the surrounding neighborhood?

Probably, if the project is subject to environmental review and/or conditional use permit. However, the City cannot make any decision regarding whether this project's impacts justify the City requiring special studies until a complete application has been submitted.

35. Who secured the grant funds for this project?

Please refer to question 14 above; this question should be directed to the JST.

36. Has anything been submitted to the City?

No, the City has not received a formal permit application.

37. Is this project truly a "clinic" being that it's a regional service as opposed to local?

The City's definition of "clinic" does not consider whether patients will be "local" or "regional", which is consistent with the City's position with other medical clinics.

38. Are county officials involved in this process or will they be involved in the permit review process?

No, the County has no authority over City land use decisions, but would have an opportunity to comment under SEPA and/or the land use process.

39. Why aren't they (county) reviewing for impacts?

The County has no jurisdiction over projects within the City of Sequim.

40. Have you received an application?

No (see question #36).

41. What are the notice requirements?

See SMC 20.01.140 Application review – Notice of application – Referrals.

Questions surmised from comments:

42. Regional vs. Neighborhood services relative to permitted uses in the EOA zone?

The EOA zoning district accommodates many possible land uses regardless of whether they serve a local or regional population. Local and/or regional service of land use is not a relevant criterion for judging a proposed project.

43. Comment: "You should kill this proposal now!" My question: How do you propose we kill this project now?

The City's role is to process an application when submitted and review it in accordance with the rules and regulations in effect at that time. A project is either approved, approved with conditions, or denied depending on whether it meets applicable City, State and/or Federal regulations.

The City cannot provide legal advice. Please contact an attorney for an answer to your question.

44. Did the city zone/rezone the property for this project?

No. The City did not zone the property for this project. The subject property is located in one of two Economic Opportunity Areas (EOAs) identified in the City's Comprehensive Land Use Plan and Zoning Code and the most recently adopted zoning regulations provide for approximately 64 different land uses, of which medical clinics and hospitals are two. Please also refer to question #9.

45. Why doesn't the city review this project for social impacts?

The City cannot make any decisions regarding whether this project's impacts justify the City requiring special studies until a complete application has been submitted.

46. Where is the property?

The property is located immediately southeast of Costco.

47. Why don't you adopt a moratorium?

Please refer to question 4 above for discussion of this issue.

48. Why aren't you building a college instead of a meth clinic?

Please refer to question 14 above; this question should be directed to the JST.

49. From what cities will the patients be bussed?

Please refer to question 14 above; this question should be directed to the JST.

50. Wouldn't it be better if it was located closer to the PA hospital?

Please refer to question 14 above; this question should be directed to the JST.

51. What is the relapse percentage?

Please refer to question 14 above; this question should be directed to the JST.

52. If the tribe already offers this service, why is there need for another facility?

Please refer to question 14 above; this question should be directed to the JST.

53. If real concern is for the addict, why not operate it as a non-profit?

Please refer to question 14 above; this question should be directed to the JST.