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OFFICE OF THE HEARING EXAMINER
IN AND FOR THE CITY OF SEQUIM

PARKWOOD MANUFACTURED
HOUSING COMMUNITY, LLC,
a Washington Limited Liability Company,

Appellant,

vs.

CITY OF SEQUIM,
a Washington Municipal Corporation,

Respondent.

File No. CDR20-001

APPELLANT PARKWOOD'S
DISPOSITIVE MOTION

I. INTRODUCTION

Parkwood Manufactured Housing Community, LLC (hereinafter "Parkwood" or "Appellant") seeks an Order from the Examiner classifying the Jamestown S'Klallam Tribe's (hereinafter the "Tribe") MAT Clinic project, which is the subject of this appeal, as an "Essential Public Facility." Currently, the City of Sequim (hereinafter the "City") has erroneously concluded that the proposed development falls under the City's administrative A-1 and A-2 processes.

II. STATEMENT OF FACTS

1
2 The subject of this appeal is a proposed drug treatment facility referred to as the
3 Jamestown S’Klallam MAT Clinic project. The Tribe’s application proposes to develop the
4 clinic on real property commonly known as 526 S. Ninth Avenue, Sequim, Clallam County,
5 Washington 98382, located inside Sequim’s River Road Economic Opportunity Area
6 (hereinafter “RREOA”). See *Declaration of Michael D. McLaughlin in Support of Petitioner*
7 *Parkwood’s Dispositive Motion* (hereinafter “McLaughlin Decl.”), Exhibit 1 at 1.

8
9 During the 2019 Washington Legislative session, the Tribe received funding for Phase 1
10 of what was then referred to as a “Behavioral Health Campus.” Lawmakers approved
11 \$7,200,000.00 in taxpayer funds for Phase 1. McLaughlin Decl., Exhibit 2 at 1. Shortly after,
12 the Tribe purchased the subject property, approximately 20 acres, to site the facility. *Id.* at 3.
13 Phase 2 of the project “will consist of a 16-bed inpatient psychiatric facility that will be built
14 beginning of 2021,” according to the property owner. *Id.* Funding is expected to be
15 appropriated for Phase 2 during the 2020 legislative session. *Id.* at 4.

16
17 Initial plans for Phase I development estimated a building of about 15,000 square feet,
18 with Phase II bringing the total building size for services to about 25,000 square feet.
19 McLaughlin Decl., Exhibit 3 at 2. The smaller facility will handle approximately 200 to 300
20 patients and the larger, which will cost at least \$8,000,000.00 more, about 400 patients. *Id.* at 3.
21 Announcement of the proposed project drew public concern and, in October 2019, an attorney
22 for another appellant in this matter sent the Sequim City Council a letter identifying the problems
23 with classifying this project as falling under the A-1 guidelines. McLaughlin Decl., Exhibit 4 at
24 1-2. Included in that argument is the very public knowledge that Phase II included the
25 construction of a 16-bed inpatient psych hospital. *Id.* at 2. Both the City and Tribe were given
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1 notice by this letter that inclusion of many of the anticipated services, including the inpatient
2 hospital, would require the Sequim City Council to issue a special use permit and classify the
3 project as a C-2 application type. *Id.* at 2-5. Parkwood, in coordination with its trade association
4 the Affordable Communities Coalition, submitted its own letter advising the City of the same
5 concerns on December 31, 2019. *See* McLaughlin Decl., Exhibit 5.

6 Aware of the public’s voiced concerns regarding the use and phasing of the project, what
7 was once a “Healing Campus” became a “Medical Outpatient Clinic” by the time the Tribe filed
8 its official application with the City on January 9, 2020. Despite affirming on multiple occasions
9 its intent to expand the development to include the Phase II inpatient facility, the Tribe changed
10 its messaging, referring more discretely towards plans for future expansion. On the SEPA
11 checklist submitted by applicant on January 10, 2020, under section “A. Background,” the
12 following question and answer are provided:

14 **Question:** 7. Do you have any plans for future additions, expansion, or further activity related to
15 or connected with this proposal? If yes, explain.

16 **Answer:** This project is a standalone development, although in the future facility expansion or
17 additional services may be added to the residual site, if the needs arise. Currently, there are no
18 plans to expand or seek future facilities.

19 Despite this claim that there are no current plans to expand, the Tribe continues its efforts to seek
20 funding for Phase II.

21 On January 24, 2020, the City’s Community Development Director issued a written
22 Notice of Determination of Procedure Type for File No. CDR20-001, regarding this proposed
23 development for the MAT Clinic Building Permit, SEPA, and Design Review (hereinafter the
24 “Notice”). In this Notice, the Director issued findings that the project falls under the City’s A-2
25 permit process, finding that the development was no different than other “ambulatory and
26 outpatient care services.” The Notice denies the characterization of the intended use as falling

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1 under the definition of an Essential Public Facility, in party, because the facility is not an
2 “inpatient substance abuse facility.” In spite of all the knowledge and supporting documentation
3 to the contrary, the Director found that no inpatient services would be provided “according to the
4 submitted application.”

5 On May 5, 2020, Parkwood and another party brought a facial challenge to the
6 constitutionality of SMC 20.01.030 and other relevant portions of the Sequim Municipal Code
7 (hereinafter “SMC). In that action, the Director filed a sworn declaration, which explained the
8 City’s motivation behind preparing the written Notice. On page 7 of that Declaration, the
9 Director stated:
10

11 **Project “typing” or classifying has never necessitated such a document in my**
12 **entire career**; however I prepared this written decision for a number of reasons,
13 **some** of which are described below. Project typing usually is nothing more than a
14 notation on the SEPA checklist or in the preapplication summary letter. However,
15 given the fact that an attorney representing S.O.S., Mr. Michael Spence, had
16 written the City a number of letters claiming that the clinic should be treated
17 differently than any other medical clinic would be, and should be processed under
18 the City and State’s essential public facilities regulations (which the City Attorney
19 and I disagreed with) I decided to explain my reasoning in detail. I also decided
20 to memorialize this normally informal decision because of the intense public
21 scrutiny the Tribe’s project was subjected to, the controversy surrounding the
22 project, and to “show my work” to the public in explaining the applicable code
23 sections and the reasoning behind my decision.

24 Despite the recognition that this project faced “intense public scrutiny,” the Director took not
25 only the unprecedented step of preparing the Notice, but also included in that Notice language
26 that essentially dismissed the element of “public interest” entirely from decisions made under the
SMC. *See Generally* Notice at p. 6.

On February 7, 2020, Parkwood timely appealed the City’s findings and conclusions as
provided in the Notice, including the application’s classification.

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III. ISSUES PRESENTED

1. Was the project property classified as a “medical clinic” and therefore subject to the City’s A-1 and A-2 permitting process? NO.
2. Does the City’s C-2 permitting create an unreasonable burden that renders the proposed development impracticable? NO.
3. Is the proper categorization of the intended use for the proposed development that of an Essential Public Facility therefore requiring the issuance of a special use permit to site the facility within the RREOA? YES.
4. Is the City Council the “Final Decision-making Body” responsible for engaging in a quasi-judicial review process prior to conditioning and approving a special-use permit for the project to be cited within the RREOA? YES.

IV. EVIDENCE RELIED UPON

1. All previous documents of record in this matter and all exhibits and attachments thereto, including all documents posted on the City’s website under “Current Projects” for File Nos. CDR20-001 and CBP20-001.
2. The Declaration of Michael D. McLaughlin in Support of Petitioner Parkwood’s Dispositive Motion, attached hereto and incorporated herein by reference.

V. LEGAL ARGUMENT

- A. The City improperly concluded that the A-2 permitting process is the appropriate standard to apply to this development application.

The Notice of Determination is wrong because it erroneously applies the A-2 classification where the Sequim Municipal Code requires that this proposed development proceed under the required C-2 classification.

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1 The misapplied classification in the City's Notice of Determination appears to result from
2 the mischaracterization of the intended use for the proposed development as a medical clinic.
3 "Clinic" is defined in SMC 18.08.020 as "a building designed and used for the diagnosis and
4 treatment of human outpatients excluding overnight care facilities." [Emphasis added.] The
5 Community Development Director writes on page 3 of the Notice of Determination "According
6 to the submitted application the proposed MAT clinic will not provide in-patient services, but
7 instead will provide outpatient treatment typical of other types of medical clinics and/or offices."
8 However, spokespersons for the applicant have stated on multiple occasions that Phase II of the
9 development will offer in-patient services in the future. While the proposed development is
10 initially expected to be approximately 15,000 square feet in size, it would grow to about 25,000
11 square feet in subsequent phases. Phase 2 of the development will include a 16-bed inpatient
12 evaluation and psychiatric treatment hospital. In addition, as part of the MDNS SEPA Review
13 Packet CDR20-001 (associated with CBP20-001) that includes the Mitigated Determination of
14 Nonsignificance, a Geotechnical Engineering Investigation submitted on behalf of the Tribe
15 contains blueprints or plans that site the inpatient facility for future development, referring to it
16 as "MAT Phase 2."
17

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19 Applicant does not rule out the possibility of expansion here. To the contrary, the Tribe's
20 many public statements viewed together indicate a clear intent to expand and provide in-patient
21 services sometime shortly after the development of Phase 1. The Notice of Determination
22 appears to take at face value the Tribe's one statement in the SEPA checklist that the
23 development will not provide in-patient services and is therefore indistinguishable from any
24 other medical clinic. The Washington State Legislature has allotted funds for the multiple
25 phases of this development. Considering 1) the public comments for the intended development
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1 of the property by the applicant, 2) the documentation evidencing the project's multiple phases,
2 and 3) the public funds allocated separately for each phase, the City has purposefully ignored and
3 omitted the actual intended usage of the property from all of its analysis when it classified this
4 project. Piecemeal review of a phased project involving a series of interrelated steps that
5 constitute an integrated plan is impermissible where the project is dependent upon subsequent
6 phases. *See Murden Cove Pres. Ass'n v. Kitsap Cty.*, 41 Wn. App. 515, 526, 704 P. 2d 1242
7 (1985).

8
9 This fact was brought to the City and Tribe's attention via a third-party letter to the
10 Sequim City Council on October 10, 2019, months before the application was filed. After being
11 made aware that the public would challenge the use classification based on public statements that
12 an inpatient treatment facility would be part of the development, the Tribe filed its application on
13 January 9, 2020, pivoting to rebrand the facility as an "outpatient clinic" only by dividing the
14 project into multiple phases to avoid the C-2 classification and quasi-judicial process required
15 under the SMC. While the City has adequate evidence to the contrary, it appears to have
16 accepted the Tribe's silence on the inpatient facility as sufficient to determine that it could
17 approve the project without considering the future development of an inpatient facility on the
18 property.
19

20 Based on this characterization, the Notice of Determination cites the table in SMC
21 18.33.031, which defines "ambulatory and outpatient care services" as a permitted use and
22 therefore subject to the A-2 classification. However, because it is abundantly clear that the Tribe
23 intends to develop the property over multiple phases, among which includes an inpatient
24 hospital, the project better fits the definition of an "Essential Public Facility" as defined under
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1 SMC 18.56 and applicable state laws and regulations. The Growth Management Act, RCW
2 36.70A.200(1), defines Essential Public Facilities to include:

3 [T]hose facilities that are typically difficult to site, such as airports,
4 state education facilities and state or regional transportation
5 facilities as defined in RCW 47.06.140, regional transit authority
6 facilities as defined in RCW 81.112.020, state and local
7 correctional facilities, solid waste handling facilities, and inpatient
8 facilities including substance abuse facilities, mental health
9 facilities, group homes, and secure community transition facilities
10 as defined in RCW 71.09.020. [Emphasis added.]

11 WAC 365-196-550 (“Essential Public Facilities”) subsection 1(a) also defines essential public
12 facilities as difficult to site. Subsection (d)(viii) specifically lists “In-patient facilities, including
13 substance abuse facilities” as a type of facility “identified in RCW 36.70A.200 as essential
14 public facilities.”

15 The Notice of Determination purports on page 3 that “it is difficult to conclude the siting
16 of a 16,700 square foot medi[c]al clinic is “difficult.”” In arriving at that conclusion, the
17 Community Development Director cites the city’s historical approval of previously proposed
18 medical clinics or developments for dissimilar uses, but which are larger in size, such as a Rite
19 Aid or Walgreens. A one-dimensional analysis, the size of the proposed development, is not the
20 correct standard for evaluating whether or not a proposed development is “difficult” to site. The
21 criteria for determining if the facility is difficult to site is provided under WAC 365-196-550(2).

22 It states:

23 Any **one or more** of the following conditions is sufficient to make
24 a facility difficult to site:

- 25 (a) The public facility needs a specific type of site of such as size,
26 location, available public services, which there are few choices.
- (b) The public facility needs to be located near another public
facility or is an expansion of an essential public facility at an
existing location.
- (c) The public facility has, or is generally perceived by the public
to have, significant adverse impact that make it difficult to site.

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- 1 (d) Use of the normal development review process would
effectively preclude the siting of an essential public facility.
2 (e) Development regulations require the proposed facility to use an
essential public facility citing process. [Emphasis added.]
3

4 Among the five reasons provided under this section, at least three, and perhaps all five are
5 applicable to this development application. In fact, applicant concedes this in the FAQ section of
6 their website.

7 *(a) The public facility needs a specific type of site of such as size, location, available public*
8 *services, which there are few choices.*

9 Applicant indicates that it desires to offer services at this site because “Clallam County residents
10 are traveling to other MAT clinics in Aberdeen, Everett, and Tacoma, but would rather receive
11 care closer to home.”¹

12 *(b) The public facility needs to be located near another public facility or is an expansion of*
13 *an essential public facility at an existing location.*

14 The development’s location in Sequim is key because applicant already operates a 35,000 square
15 foot primary care clinic nearby, so it is more efficient for patients receiving care at multiple
16 locations.² According to the Notice of Determination, footnote 14, applicant has advised that
17 they offer similar treatment already at the larger facility and this new development will allow
18 them to consolidate services.
19

20 *(c) The public facility has, or is generally perceived by the public to have, significant*
21 *adverse impact that make it difficult to site.*
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25 _____
26 ¹ See <https://jamestownhealingcampus.org/faqs/> “2. Aren’t these services already available?”

² Id. at “7. Why Sequim?”

1 It is undisputed, from the many months of protests, public testimony, and written comments that
2 this facility is, at the very least, perceived by the public to have a significant adverse impact.
3 Only one of these conditions is required to properly characterize the facility as “difficult” to site.

4 For the above reasons, it is clear that under the applicable laws, codes, and regulations,
5 this proposed development’s use is best defined as a local Essential Public Facility under SMC
6 18.33.031 requiring classification as a conditional use subject to a C-2 process of review.

7 B. The Notice of Determination erroneously concludes that subjecting the proposal to the City’s
8 conditional use process is an unreasonable condition that makes the project impracticable.

9 The City’s C-2 process is a quasi-judicial process that reserves final decision-making
10 authority to the Sequim City Council. SMC 20.01.020(W) defines C-1, C-2, and C-3 processes
11 as those involving “applications that require the exercise of substantial discretion and about
12 which there is broad public interest.” SMC 20.01.030(A) Table 2 lists “Special use permit”
13 under the C-2 application type. SMC 20.01.030(A) Table 1 states that the City Council is the
14 final decision-making body on C-2 application types.
15

16 The proposed project is located within the City’s RREOA district as established under
17 SMC 18.33.010. The RREOA district “supports a variety of uses, such as light manufacturing,
18 professional office buildings, retail, commercial, multifamily residential and warehousing and
19 distribution.” SMC 18.33.020. While “ambulatory and outpatient care services” is a permitted
20 use in the RREOA and would therefore be subject to an A-1 or A-2 permit classification, local
21 Essential Public Facilities are conditional and require the issuance of a special use permit to site
22 within the zone. *See* SMC 18.33.031 – Business and Employment District Uses. Conditional
23 uses are a C-2 discretionary use and reviewed through the quasi-judicial process set forth under
24 SMC 20.01.100. SMC 18.33.030(A)(2).
25
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1 On page 3, the Notice of Determination states: “at best the City could only condition the
2 approval of the project because state law prohibits local government from precluding the siting
3 of essential public facilities and/or imposing unreasonable conditions that make the project
4 impracticable.” Parkwood agrees that the City can and should do just that. Appellant is asking
5 the city to follow the procedures set forth in the SMC for an essential public facility and
6 condition the use after engaging in a C-2 analysis. SMC 18.56.030 states that the Sequim City
7 Council may permit both “H. Essential public facilities and utilities” and “J. Group homes,
8 alcoholism or drug treatment centers, detoxification centers, work release facilities for convicts
9 or ex-convicts, or other housing serving as an alternative to incarceration with 12 or more
10 residents.” [Emphasis added.] To permit such a use the city council need only grant a special
11 property use permit. *See* SMC 18.56.040.

13 The resolution of the disputed classification ultimately rests upon whether the more
14 specific terms “drug treatment centers” and “detoxification centers,” as will be the purposed use
15 of this development, control over the more generic term “medical clinic,” which is overbroad and
16 only describes the contemplated activities included in Phase I of the project. “When a general and
17 a specific ordinance cover the same subject matter, the specific controls over the general to the
18 extent that the two conflict.” State ex rel. Lige & Wm. B. Dickson Co. v. Cty. of Pierce, 65 Wn.
19 App. 614, 620 n.6, 829 P.2d 217 (1992). “In short, specific terms modify or restrict the application
20 of general terms where both are used in sequence. ... Provisions in a statute are to be read in the
21 context of the statute as a whole”. Malo v. Alaska Trawl Fisheries, Inc., 92 Wn. App 927, 930,
22 965 P. 2d 1124 (1998). The court must give effect to legislative intent determined “within the
23 context of the entire statute.” State v. Elgin, 118 Wn.2d 551, 556, 825 P.2d 314 (1992). Statutes
24 must be interpreted and construed so that all the language used is given effect, with no portion
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1 rendered meaningless or superfluous. Stone v. Chelan County Sheriffs Dep't, 110 Wn.2d 806, 810,
2 756 P.2d 736 (1988); Tommy P. v. Board of County Comm'rs, 97 Wn.2d 385, 391, 645 P.2d 697
3 (1982). The meaning of a particular word in a statute "is not gleaned from that word alone, because
4 our purpose is to ascertain legislative intent of the statute as a whole." State v. Krall., 125 Wn.2d
5 146, 148, 881 P.2d 1040 (1994). By way of illustration, we have noted that "[t]he ejusdem generis
6 rule is generally applied to general and specific words clearly associated in the same sentence in a
7 pattern such as [specific], [specific], or [general]' or '[general], including[specific] and [specific]."
8 Southwest Wash. Ch., Nat'l Elec. Contractors Ass'n v. Pierce County, 100 Wn.2d 109, 116, 667
9 P.2d 1092 (1983) (internal quotations omitted).

10
11 Appellant is not asking that the City deny applicant's development plans, only that it
12 properly classify the project and follow the SMC's written procedures for processing the
13 application. The criteria for evaluating whether or not a special property use permit will be
14 granted is set forth in SMC 18.56.060. The City's current plan is wrong, not because it may
15 approve of the proposed development, but because it is not engaging in the analysis necessary to
16 mitigate the impact of any adverse consequences that could arise from siting the facility at this
17 location. WAC 365-196-550(6) provides further guidance:

- 18
19 (a) The siting process may not be used to deny the approval of the
20 essential public facility. The purpose of the essential public facility
21 siting process is to allow a county or city to impose reasonable
22 conditions on an essential public facility necessary to mitigate the
23 impacts of the project while ensuring that its development
24 regulations do not preclude the siting of an essential public facility.
25 (b) The review process for siting essential public facilities should
26 include a requirement for notice and an opportunity to comment to
other interested counties and cities and the public.
(c) The permit process may include reasonable requirements such
as a conditional use permit, but the process used must ensure a
decision on the essential public facility is completed without
unreasonable delay.

1 Development Director on January 24, 2020, be stricken in its entirety. Appellant requests that
2 the Examiner further order the Tribe's application remanded to the City for processing under the
3 appropriate C-2 classification.

4 Parkwood greatly respects and supports the efforts of those in the medical community
5 battling the consequences of the opioid epidemic. However, the applicable provisions of the
6 SMC require a quasi-judicial open process with public comment. Under the C-2 process, the
7 City may adequately identify the impact of siting the MAT clinic at the proposed location and
8 take reasonable precautions to mitigate any adverse effects that the development may impose on
9 the health, safety, convenience and general welfare of the residents of Parkwood and the citizens
10 of Sequim.
11

12 DATED this 2nd day of September 2020.

13 MICHAEL D. McLAUGHLIN, PLLC

14
15 By 
16 Michael D. McLaughlin, WSBA #47341
17 Attorney for Parkwood
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