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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
CONSOLIDATED RESPONSE

RESPONSE

In this consolidated Response, Parkwood responds to the following motions filed by other parties of record in this action on September 2, 2020: 1) the City of Sequim's ("City") Motion to Dismiss Parkwood's Appeal; 2) the Jamestown S'Klallam Tribe's ("Tribe") Motion for Summary Judgment; and 3) Appellant Save our Sequim's ("SOS") Motion to Stay Proceedings;. Parkwood respectfully requests the Hearing Examiner to issue an Order denying the City and Tribe's motions in their entirety and granting Parkwood's motion to reclassify the

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1 project as an Essential Public Facility (“EPF”) subject to the City’s C-2 permitting process or,
2 alternatively, to issue an Order staying proceedings until the City has complied with the
3 requirements of the Public Records Act (“PRA”) and afforded Parkwood the opportunity to
4 review a full, PRA-compliant set of records.

5 **1. The Examiner should deny the City’s and Tribe’s Motions in their entirety.**

6 Many of the arguments set forth by the City and Tribe in opposition to Parkwood’s
7 Motion overlap or are substantially similar. For that reason, and for clarity, Parkwood offers the
8 following consolidated Response addressing the arguments made by either the City or Tribe, or
9 both, as set forth below. Responses to any separate arguments made by the City or Tribe are also
10 identified and addressed.

12 A. Parkwood has standing to appeal the City’s decision as a “Party of Record” and as an
13 “Aggrieved Party.”

14 Parkwood was troubled, although unsurprised, to see both the City and Tribe argue in
15 their respective motions that Parkwood does not have standing to appeal the City’s decision in
16 this action. Parkwood submits that the language of the SMC and the past actions and
17 representations of both the City and the Tribe are inconsistent with the present argument that
18 Parkwood lacks the requisite standing to bring this appeal.

19 SMC 20.01.240(A) states:

20 Appeal of Administrative Interpretations and Decisions.
21 Administrative interpretations and administrative Type A-1 and
22 Type A-2 decisions may be appealed, by applicants or **parties of**
23 **record**, to the hearing examiner. **Determinations of**
nonsignificance may be appealed to the city council. [Emphasis
24 added].

25 SMC 20.01.020(P) defines a Party of Record as:

26 “Parties of record” means the land use permit applicant, persons
who have testified at an open record hearing, **and any persons**

1 who have submitted written comments concerning the
2 application that form part of the public record that is
3 considered at the open record hearing (excluding persons who
only signed petitions or mechanically produced form letters).
[Emphasis added].

4 Finally, SMC 20.01.020(B) defines an Aggrieved Party:

5 “Aggrieved party” is a party of record who can demonstrate the following:

- 6 1. The land use decision will prejudice the person;
- 7 2. The asserted interests are among those the city is required by city code to consider in
making a land use decision; and
- 8 3. A decision on appeal in favor of the person would substantially eliminate or redress the
prejudice alleged to be caused by the land use decision.

9 There is no dispute that Parkwood is an “Appellant,” having completely and timely filed a
10 written appeal of a city decision in accordance with the procedures set forth under SMC
11 20.01.240(G). *See* SMC 20.01.020(C). The City and Tribe both argue that Parkwood lacks
12 standing, in part, because its original appeal was not exhaustive as to briefing on each decision
13 that Parkwood believed was erroneous. However, that is not the standard for the Notice of
14 Appeal. All that is required is a “concise statement” from the appellant that provides “specific
15 reasons” why the appellant believes the decision was incorrect. While the burden is on appellant
16 to show that a decision is erroneous, the code does not mandate that the appellant do so in the
17 original Notice of Appeal. *See* SMC 20.01.240(G).

18
19 Both the Tribe and City argue that Parkwood is not an “aggrieved party” and therefore
20 cannot appeal the threshold determination or Mitigated Determination of Non-significance
21 (“MDNS”) in this matter. That is incorrect. Parkwood is located at 261520 Highway 101,
22 Sequim, WA 98382, less than three (3) miles away from the proposed site for this project.
23 Parkwood is a 55+ community providing quality affordable housing to its close community of
24 residents, approximately 360 residents in 209 homes, many of whom frequent the commercial
25 areas near the project’s location. As a senior population, this community has greater need than a
26

1 typical community for public services. Parkwood, concerned for the health, safety, and welfare
2 of its community residents, has participated extensively in the public process for this project
3 since learning about the proposal after its announcement. It has appealed both the classification
4 decision and MDNS issued by the City in this matter and sued separately in Clallam County
5 Superior Court to challenge the constitutionality of the portions of the Sequim Municipal Code
6 applied in this present action.

7
8 Parkwood, as a landlord, has a longstanding and affirmative duty to preserve its
9 community and to protect the health, safety, and welfare of its 55+ community residents. The
10 City's decision to treat this project as subject to the A-2 process means that the City relies
11 entirely on a checklist submitted by the Tribe to determine the project's environmental impact.
12 Had the City properly classified this project under the C-2 process, the City could engage in the
13 required fact finding and analysis to confirm that the project will not have significant adverse
14 environmental impact to the area. Specifically, how will the project and the accompanying
15 traffic impact the readiness of ambulance services in the area that a Parkwood resident may need
16 in a life-threatening emergency? Considerations of this nature should be addressed for this
17 project because it is what the SMC requires.

18
19 In addition to being prejudiced by this decision, Parkwood as a party of record also
20 satisfies the second prong of the "Aggrieved Party" test. Its written appeals are among those the
21 City is required to consider when making a final land use decision in this matter. A decision to
22 properly classify the project as an EPF would substantially eliminate the harm Parkwood suffers
23 as a result of the erroneous classification, because the real impact to the public can be evaluated
24 and Parkwood's residents protected from a shortage of public services. For these reasons alone,
25
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1 Parkwood satisfies all three requirements to be considered an aggrieved party and has standing to
2 bring this appeal.

3 Further, both the City and Tribe are estopped from arguing that Parkwood is not a “Party
4 of Record” or an aggrieved party based upon their prior representations to the Clallam County
5 Superior Court. Parkwood, as part of its facial constitutional challenge to SMC Title 20, argued
6 that the City may attempt to deny Parkwood standing to appeal the classification decision by
7 arguing it was not a party of record. By characterizing this project as an A-1 or A-2 decision, the
8 first open public hearing set to occur on these decisions will be the hearing presently scheduled
9 for September 28-30, 2020. As the code provides for only one consolidated hearing after the
10 substantive permit is approved (*See* SMC 20.01.240(B)), Parkwood was properly concerned that
11 it would not be considered a party of record, having not provided testimony or written
12 documentation at the time it challenged the classification determination in the context of an open
13 public hearing, because the code provides Parkwood no opportunity to do so.
14

15 This issue arose multiple times in argument before the Superior Court. At every
16 occasion, both the City and Tribe expressed confusion as to how Parkwood could be denied
17 status as a party to this appeal and represented to the Court that they did not believe Parkwood
18 lacked standing to file the appeal. The Court referenced these arguments in its Memorandum
19 Opinion, issued June 24, 2020. It wrote “The court will note that Plaintiffs raised a question
20 regarding whether they are parties of record. **Neither the City nor Tribe has raised that**
21 **question.**” [Emphasis added]. It further found:
22

23 All parties agree that the City has hired a hearing examiner to
24 review the Plaintiffs challenges. In that administrative review
25 process, **the Plaintiffs will be able to present evidence and**
26 **argue why they believe the decision is incorrect.** During that
process, the City and Tribe’s actions are on hold until a final

1 decision is made. Once a decision is made, either party may file a
2 LUPA petition and seek court review. [Emphasis added].

3 Neither the City nor the Tribe contested the Court's ruling by asking for reconsideration or
4 appealing the decision, and the time period for doing either has expired. Now, only a few
5 months after that case was dismissed, both the City and the Tribe assert in their respective
6 motions that Parkwood does not have standing to challenge this land use decision. Such
7 argument disregards their earlier representations to the Superior Court. The City and Tribe are
8 estopped from arguing that Parkwood lacks standing after failing to make such an argument
9 and/or representing the exact opposite position to the Superior Court in the prior lawsuit.

10 B. The Americans with Disabilities Act is inapplicable to the City's classification
11 determination.

12 The City argues in its briefing that it must site the facility as an outpatient clinic because
13 it fears claims of discrimination and that it will be sued for violating the Americans with
14 Disabilities Act ("ADA") if it does not do so. *See Generally* City's Motion, pp. 26-29. Its
15 argument appears to stem from two factors. First, that the facility is an "ambulatory" or
16 "outpatient clinic" and is therefore an outright permitted use in the River Road Economic
17 Opportunity Area ("RREOA"). The Tribe argues similarly and, in the alternative, proposes that
18 if the project is an EPF, it is a "state or regional" EPF and therefore permitted outright in the
19 RREOA. The second argument flows from that incorrect use classification. The City argues
20 that, if these uses are permitted outright, it is discriminatory to treat the project as an EPF and
21 subjecting it to the City's conditional use procedures.
22

23 The correct classification, based upon the written materials submitted by the tribe, the
24 extensive public commentary by the Tribe in advance of the application, and under the
25 definitions provided by the Growth Management Act and the SMC classify this project as an
26

1 “Essential Public Facilities, local,” which is a conditional use under 18.33.031. Parkwood has
2 extensively briefed in its own Motion and Notice of Appeal how the proposed use of the site
3 better fits that of a drug rehabilitation or detoxification facility. Materials submitted during the
4 SEPA review by the Tribe indicate future plans to develop a Phase II facility, even if state
5 funding has not yet been allocated for that portion of the project. The groundwork has been laid.
6 The project is more appropriately described as a local EPF, rather than a regional or state EPF,
7 because the entirety of the project is centrally located on one parcel owned by the Tribe. The
8 only part of the project that would have made it “regional” in nature, Phase 3, which would have
9 established “crisis stabilization programs in Port Townsend and Forks,” has been abandoned by
10 the Tribe and was not included in any of their public remarks known to Parkwood or included
11 with any of the materials they submitted with their application. *Tribe’s Motion* at pp. 5-6. The
12 project is an EPF, it is local, and therefore requires a special/conditional use permit that can only
13 be issued by the City Council. *See Generally* SMC 18.56 and SMC 20.01.030(A) Tables 1-2.

14
15 None of the case law cited by the City in its Motion or in the classification decision
16 issued by the Community Development Director on January 24, 2020, support the notion that the
17 City cannot process the project as an EPF without facing discrimination litigation. Rather, they
18 prohibit actions in land use decisions that would discriminate based upon the nature of the
19 treatment received or the categorical refusal to site an opioid treatment facility whatsoever or
20 with unreasonable restriction.

21
22 In *Pacific Shores Properties*, the City enacted an ordinance that prohibited new group
23 homes from opening in most residential zones. These homes did not provide the types of
24 services contemplated by the Tribe’s application for this project, rather they were homes for
25 people recovering from addiction to live communally and support one another in their recovery.
26

1 *Pacific Shores Properties v. City of Newport*, 730 F.3d 1142, 1147 (2013). Similarly, in *Bay*
2 *Area*, the City of Antioch enacted an urgency ordinance prohibiting the siting of any methadone
3 clinic to within 500 feet of residential areas after learning of a clinic's intent to relocate to the
4 area. *Bay Area Addiction Research and Treatment, Inc., v. City of Antioch*, 179 F.3d 725, 727-28
5 (1999). The City also cites multiple federal cases that prohibit discrimination against medical
6 facilities "based upon the ailments that they treat." See City's Motion p. 27. Each holding
7 essentially states that statutes or ordinances that single out drug treatment facilities are unlawful.
8

9 None of these holdings offer any guidance to the present situation because Parkwood is
10 not asking the City to discriminate against drug treatment centers or for the City to enact any
11 new code provisions that would make them more difficult to site. Instead, Parkwood asks that
12 the City follow its own code procedures for processing applications for siting a local EPF. In his
13 January 24, 2020, Determination of Procedure Type, the Community Development Director
14 writes:

15 Finally, even if one could conclude that the proposed MAT clinic
16 was actually an essential public facility subject to the City's
17 conditional use process, at best the City could only condition the
18 approval of the project because state law prohibits local
19 government from precluding the siting of essential public facilities
and/or imposing unreasonable conditions that make the project
impracticable."

20 That is all that Parkwood has asked the City to do on this project. By following its own code
21 procedures and properly classifying the project as a C-2, the City could have both abided by its
22 own code provisions and granted the Tribe a special/conditional use permit to site the project at
23 its presently proposed location. Had the City chosen to do so, Parkwood would not have
24 appealed any decisions in this matter, because the City would have performed the necessary
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1 investigative work to assure Parkwood and other impacted citizens that any environmental
2 impact could be identified and properly mitigated.

3 The foundation for this argument on the part of the City, it appears, is to paint Parkwood
4 and others who oppose the City's decisions on this application as people of a singular mind
5 whose sole desire is to deny substance abuse treatment to those struggling with opioid use
6 disorder.¹ Referring to Parkwood and others this way allows the City to deflect from
7 Parkwood's substantive arguments, obfuscate its lack of transparency and deviation from the
8 written ordinances to process this application the way it has done so for other medical clinics.
9 *City's Motion*, p. 29.

11 Bewilderingly, the City concedes that it follows an "off the books" approach to approving
12 medical facilities, admitting its own code is outdated and cannot be properly applied at this time.
13 The City's motion on p. 28 reads:

14 The City's Essential Public Facility process (SMC 18.56) is
15 **admittedly outdated and — on its face — appears to require**
16 **"alcoholism or drug treatment centers, detoxification centers"**
17 **to be processed as an Essential Public Facility.** SMC
18 18.56.030(J). This provision of the City's code was enacted in
19 1997 and pre-dates important amendments to the ADA and the
20 RA, as well as a host of important federal court decisions
21 addressing discrimination under the ADA and RA and in zoning
22 and land use permitting. **Accordingly, City staff, under legal**
23 **direction, have properly disregarded this and other similar**
24 **provisions in the City's municipal code** as they are contrary to
25 ADA/RA law and, if followed, subject the City to significant
26 municipal liability. *See, e.g., Pacific Shores Properties, supra* (city
enforcement of ordinance that had the practical effect of
prohibiting group homes for recovering drug users and alcoholics
as discriminatory); *Bay Area Addiction Research and Treatment,*
supra (ordinance preventing methadone clinic from operating
within 500 feet of residential areas as discriminatory and in
violation of the ADA/RA). [Emphasis Added].

¹ Publicly, Parkwood and other appellants have also previously been publicly accused of having racial motivation to challenge the project on the basis that the Tribe seeks to develop the site. Parkwood is extremely disappointed to be characterized in this light and strongly denies these allegations.

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1 By the City's own admission, the current process for evaluating EPF's fails to comply with
2 modern legal requirements. Rather than issue a moratorium on land use decisions until the code
3 can be corrected, as it has recently concerning other areas of the SMC, the City has adopted a
4 process that lacks transparency. If the City has deviated from treating an EPF as an EPF, how do
5 they treat it? Are the same unwritten variances applied to every land use decision where the
6 classification should properly be that of an EPF under the existing language? If the City cites
7 concerns that its code will subject it to legal liability for discrimination here, does it apply the
8 same deference to decisions that would not trigger liability for discrimination? According to the
9 City's briefing, the current process for classifying a medical facility is that the City staff, under
10 legal direction, deviate from the SMC and issue a decision based upon their previous decisions
11 that also failed to comply with the SMC.
12

13
14 The ADA, or any other federal law barring discrimination would not prohibit the City
15 from conditioning the use of the site while granting the permit. It can condition the site on
16 factors such as the size, scope, and daily traffic of the proposed development, not the nature of
17 the treatment provided, to properly consider environmental and other impacts to nearby
18 landowners and the greater community.

19 C. Properly classifying the project as an EPF cannot be facially discriminatory because
20 similar facilities nearby have been approved as special/conditional uses.

21 As explained above, the proposed project best meets the definition of a local EPF under
22 the SMC and should be processed accordingly. EPFs include those facilities that are typically
23 difficult to site. RCW 36.70A.200(1)(a). Essential Public Facilities can include both new and
24 existing facilities. WAC 365-196-550. Substance abuse facilities are amongst those provided
25 under RCW 36.70A.200 and WAC 365-196-550 that are listed as difficult to site. As the City
26

1 readily acknowledges, SMC 18.56.030 authorizes the council to grant a special/conditional use
2 permit for “group homes, alcoholism or drug treatment centers, [and] detoxification centers.”
3 See SMC 18.56.030(J). Classifying the proposed use as a local EPF does not mean the City must
4 impose discriminatory hurdles and overregulation on the project. It merely means that a
5 special/conditional use permit must be issued by the Sequim City Council for the project to
6 proceed.

7
8 Both the City and the Tribe argue that, if the Examiner determines that the Phase II
9 inpatient facility, whose plans are included with the SEPA materials the Tribe submitted for
10 Phase I, is not constructed, then the proposed use is that of an outpatient medical clinic and
11 permitted outright. The City contends that if it properly classify the project as a C-2 and
12 subsequently issued the Tribe a special/conditional use permit, that somehow the City has
13 discriminated by procedurally violating its own land use laws. That is simply not true. The site
14 can and should be treated as an EPF under the SMC, even if an inpatient hospital never
15 materializes at the site.

16
17 The Tribe alleges that the Swinomish Tribe has “observed tremendous success by
18 providing wrap-around services and MAT and OUD to patients at the state-of-the-art Didgwalic
19 Wellness Center in Anacortes.” According to the Didgwalic Wellness Center’s (hereinafter
20 “Anacortes clinic”) website, the Center provides the following services to its patients:

- 21 • Substance Use Disorder (SUD)
- 22 • Mental Health Counseling
- 23 • Psychiatric Mediation Management
- 24 • Primary Medical Care and Telemedicine
- 25 • Video conferencing for counseling sessions
- 26 • Gambling Counseling
- Medication Assisted Therapies (Suboxone, Vivitrol, Methadone)
- DUI/Deferred Prosecution
- Client Support Services
- Free Transportation

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- Onsite Child Watch
- Case Management & Referrals
- Onsite Security
- Transitional Housing
- Medicaid, Private Insurance, and Cash/Credit Card Accepted²

The substantial majority of the services provided in the Anacortes clinic are those that are contemplated by the developer in this matter. Importantly, there is no mention of an inpatient treatment facility at the Anacortes clinic, just as the Tribe contends here that it has abandoned all plans for such a facility in this case. According to the City's argument, the City of Anacortes must have processed this facility the same way it would any other medical clinic or else face claims of discrimination. Absent an inpatient facility, the City would lack lawful authority to condition the use of the premises, because doing so would treat the facility differently based upon its use and would be inherently discriminatory.

Yet the City of Anacortes did exactly that and did not face legal claims of discrimination and violations of the ADA or other federal law. Applications for EPFs in the City of Anacortes are subject to the same types of considerations as those that would exist should the Sequim City Council grant a special/conditional use permit for this project. *See* Anacortes Municipal Code ("AMC") 17.75.050 (Applications for EPF projects). The Decision Criteria for local EPFs is provided under AMC 17.75.060(E). All Medical developments in Anacortes are considered "commercial uses," including usage as a "Medical Clinic." AMC 19.55.030(5).

Rather than determining whether a use is permitted or conditional based upon the type of treatment or medicine provided, the City of Anacortes created a sensible model for determining the type of classification needed to develop or expand a medical building. They based the decision on the size of the proposed project, regardless of the treatment provided. The table in

² <https://www.didgwalic.com/services.htm>

1 AMC 19.41.050 demonstrating use provides that Medical buildings are permitted or conditional
2 based upon their “gross floor area.” If a proposed new development or expansion is under
3 10,000 square feet, it will be permitted in the allowable zones. If the zoning is between 10,000-
4 20,000 square feet, or is a hospital, it will be considered a conditional use and subject to the
5 City’s process for approving a special/conditional use permit. *Id.*

6 Were the City of Sequim to make “reasonable accommodations” that allowed for logical
7 deviations in project classification such as those in Anacortes, it could both avoid discriminatory
8 treatment of land use decisions and substantially abide by the existing code regulations of the
9 SMC. The City’s refusal to consider alternatives, instead deviating from the code and following
10 unwritten procedures for the approval of medical clinics, opens the City up to claims of
11 subjectivity and lack of transparency regarding classification decisions. Indeed, the Anacortes
12 clinic applied for and was granted a conditional use permit to run a facility very similar to the
13 one proposed by the Tribe in this action.³ The approved conditional use permit allowed for the
14 facility to expand its same services on a larger scale, allowing up to 500 patients and increasing
15 staff from 46 to 85.⁴

16
17 The Tribe’s proposed development size for Phase I of this project is approximately
18 16,700 square feet. *SEPA Checklist*, submitted January 10, 2020. The facility will serve up to
19 250 patients a day to begin with. *See Jamestown S’Klallam Tribe Community Response Plan*.
20 Evaluating the project based upon its size, the amount of patients seen, or the environmental
21 impact is objective and compliant with the SMC. It is also more objective than years of
22 deviation from the written code using a process that lacks transparency.
23
24
25

26 ³ Briana Alzola, *Opioid center gets city OK for expansion*, goskagit.com, June 12, 2019.

⁴ Briana Alzola, *Tribe looks to expand drug treatment center*, goskagit.com, December 19, 2018.

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1 The Anacortes clinic is not the only clinic that defies the City's position on classifying
2 this project and erodes any credible claims of litigation based upon discriminatory zoning.
3 Pierce County is currently processing an application for development of the "Hope Recovery
4 Center," a proposed substance use disorder facility on the Key Peninsula in northwest Pierce
5 County. In that matter, the Hearing Examiner properly concluded that Pierce County had erred
6 in classifying the facility as a "cultural center."⁵ On examination, the senior planner for the
7 Pierce County Department of Planning and Public Works conceded that the building should have
8 been categorized as an essential public facility or as a group home. *Id.*
9

10 For the foregoing reasons, it is illogical to conclude that if the City of Sequim follows its
11 procedures properly and conditions the use of this project that it will be discriminating using the
12 land use code. Indeed, the City seems to acknowledge that it has an obligation to condition the
13 project when it imposed several conditions on the tribe that are unrelated to the application
14 materials provided by the Tribe as part of its application. Rather than potentially violating its
15 responsibilities under SEPA to the developer, the City should categorize the project properly and
16 allow the Council to impose lawful conditions for the issuance of the permit. This project is an
17 EPF and should be processed accordingly.
18

19 D. The proposed development is difficult to site unless it is erroneously categorized as an
20 outpatient medical clinic.

21 The City claims Parkwood's contention that the facility is difficult to site and therefore
22 should be considered an EPF is erroneous. *City's Motion*, pp. 23-24. In support of its assertion,
23 the City focuses only on Parkwood's reference that a strong outpouring of community opposition
24 may be a factor in concluding the project is difficult to site at its proposed location. WAC 365-
25

26

⁵ Lisa Bryan, *Back to the Drawing Board for Hope Recovery Center*, Key Peninsula News, July 1, 2019.

1 196-550(1)(a) defines EPFs as “public facilities that are difficult to site.” It includes at a
2 minimum those set forth in RCW 36.70A.200, which includes substance abuse facilities. *See*
3 RCW 36.70A.200(1)(a). However, WAC 365-196-550(2) also provides objective criteria to
4 determine if a facility is difficult to site. “Any **one or more** of the following conditions is
5 sufficient to make a facility difficult to site.” *Id.* [Emphasis added]. WAC 365-196-550(2)
6 provides the following five criteria to consider:

- 7 (a) The public facility needs a specific type of site of such as size,
8 location, available public services, which there are few choices.
- 9 (b) The public facility needs to be located near another public
10 facility or is an expansion of an essential public facility at an
11 existing location.
- 12 (c) The public facility has, or is generally perceived by the public
13 to have, significant adverse impacts that make it difficult to site.
- 14 (d) Use of the normal development review process would
15 effectively preclude the siting of an essential public facility.
- 16 (e) Development regulations require the proposed facility to use an
17 essential public facility siting process.

18 Looking at the above criteria, the City has argued that only criteria (c) applies to this
19 project and that the community displeasure alone cannot lead to a determination that the project
20 would be difficult to site. However, while many of these factors may apply, the criteria set forth
21 under subsection (e) most certainly does. The existing regulations of the SMC require that the
22 proposed facility use the EPF siting process. *See* SMC 18.56.030(J). The City even
23 acknowledges that the code, on its face, requires that this project be processed as an EPF. *City’s*
24 *Motion*, p. 28. As explained previously, the ADA and other concerns do not authorize the City
25 to deviate from its own code and invent a subjective process for handling this type of facility. As
26 at least two of the criteria for designating a facility as difficult to site are substantiated here, and
not based solely on public opposition, the proposed project meets the criteria for establishing that
the project is difficult to site.

1 The only way that the City can arrive at the conclusion that the project is not difficult to
2 site is if it erroneously classifies the project as an outpatient clinic with outright permitted usage
3 in the RREOA. For all the reasons set forth above in this Response and in Parkwood's earlier
4 briefing, that classification fails and the project is both an EPF and difficult to site.

5 E. The Tribe's argument that Parkwood's appeal is moot because it did not appeal the
6 building permit specifically fails because Parkwood appealed the underlying
7 decisions that resulted in the issuance of that building permit.

8 The building permit in this matter was issued by the City after Parkwood had properly
9 and timely appealed two of the decisions that resulted in the issuance of that permit. If the City
10 erred when classifying the project, and when considering the project's environmental impact to
11 the community, the building permit is the end result of that continuing error.

12 The same argument applies to any claims that Parkwood's appeal of the MDNS is now
13 moot because the true environmental impact of the project is unknown. Relying on an
14 application checklist from a developer without an independent environmental impact study
15 provides the City with the developer's representations concerning that impact. Upon correction
16 of the project's classification, the City will have the opportunity to comprehensively identify any
17 negative impacts to the area and mitigate them accordingly as part of its issuance of the
18 special/conditional use permit to the Tribe.
19

20 **2. Parkwood joins Appellant Save our Sequim in requesting that the Examiner stay**
21 **these proceedings until the City completes its responsibilities under the PRA.**

22 On September 20, 2019, Appellant SOS submitted five separate requests for Public
23 Records to the City. *Petitioner Save our Sequim's Motion to Stay Proceedings Pending Public*
24 *Records Act Compliance* (hereinafter "SOS's Motion"), Exhibits A1-A5. These letters were
25 appropriately addressed to the departments at the City of Sequim that had involvement in pre-
26 application communications with the Tribe, including the City Council, the Department of

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1 Community Development, the City Attorney, the City Manager, and to the City's Public
2 Disclosure Officer. *Id.* The Public Records Act (RCW 42.56 et seq.) requires that responses to
3 requests for public records be made promptly, imposing an obligation upon the responding
4 agency to respond within five business days after receiving the request. RCW 42.56.520(1).
5 The agency may seek additional time for responding where 1) the intent of the request requires
6 clarification, 2) to locate and assemble the requested information, 3) to notify third-parties or
7 other agencies about the request, and 4) if the request is exempted and all or part of the request
8 should be denied. Fifty-one weeks later after SOS submitted its request for public records, the
9 City still has not delivered a complete and lawful account of the records to which SOS is entitled.
10

11 At the pre-hearing conference for this matter on August 10, 2020, SOS informed the
12 Hearing Examiner that the City had not completed its obligations under the PRA because records
13 remained outstanding. The Hearing Examiner scheduled the present hearing dates, September
14 28-30, 2020, with the understanding that the City would deliver its final batch of records no later
15 than that upcoming Friday, August 14, 2020. The City did produce those records on August 14,
16 2020; however, the records were heavily redacted and the accompanying privilege log failed to
17 comply with the requirements set forth under the PRA. *SOS's Motion, Exhibit B.* Parkwood
18 hereby fully incorporates by reference the legal arguments evidencing the City's failure to
19 comply with the PRA as set forth in SOS's Motion.
20

21 The City's failure to comply with the PRA similarly prejudices Parkwood's ability to
22 prepare for the hearing presently scheduled before the Examiner. Appellant Parkwood originally
23 became involved in this matter at the very end of December 2019, three months after SOS had
24 submitted its public records requests. After learning of the delays that SOS was experiencing in
25 obtaining the written records from the City, SOS and Parkwood agreed that SOS would provide
26

1 the results of its records requests to Parkwood. Doing so allowed Parkwood to independently
2 review the records and determine their relevance to this present action without further burdening
3 the City staff. It was more efficient, Parkwood believed, to simply accept the records received
4 by SOS rather than submitting an independent and duplicative request to the City for essentially
5 the same public records. Subsequently, Parkwood is equally harmed by the City's failure to
6 timely produce the responsive records in this matter.

7
8 The delay in receipt of these records, the extensive redaction and non-compliant privilege
9 log, and the fact that the hearing of these appeals on this file are set to begin in two weeks leaves
10 Parkwood with no opportunity to review a full and complete record prior to arguing its appeal.
11 Because it will be severely prejudiced by the inability to review and consider a complete written
12 record prior to the adjudication of its appeal, Parkwood requests a stay in these proceedings until
13 the City can perform its lawful obligations under the PRA.

14 CONCLUSION

15 For the foregoing reasons, Parkwood requests that the Examiner deny the City's Motion
16 to Dismiss and the Tribe's Motion for Summary Judgment. Parkwood does not contend that the
17 Tribe should not build a treatment facility for opioid use disorder to combat the problems facing
18 the local community, or even that it should not do so at the intended site for the development.
19 Rather, Parkwood believes that the City should properly follow its own code for the
20 classification and permitting of this project, which requires that the project be categorized as an
21 EPF that is subject to the City's C-2 permitting procedures. Parkwood's ownership, its residents,
22 and the citizens of Sequim deserve transparent government from their City officials and the
23 administration of clear and objective code provisions to all land use applications. Following a
24 non-compliant procedure that is only known to a few city officials is unlawful and inappropriate.
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