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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 REPLY

**REPLY**

In this consolidated Reply, Parkwood Manufactured Housing Community, LLC, ("Parkwood") replies to the Responses filed herein on September 14, 2020, from the City of Sequim (the "City") and the Jamestown S'Klallam Tribe (the "Tribe") to Parkwood's Dispositive Motion previously filed on September 2, 2020.

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**Michael D. McLaughlin, PLLC**  
4114 N 10<sup>th</sup> Street  
Tacoma, Washington 98406  
PH: 253.686.9786  
FAX: 253.830.0994

1       **1. Most of the arguments presented in the Responses have already been addressed in**  
2       **prior briefing by Parkwood.**

3               Parkwood has carefully and thoroughly expressed its arguments regarding the Project's  
4       classification and the errors the City committed throughout its processing of this subject  
5       application in its Notices of Appeal, its Dispositive Motion, and its Consolidated Response to the  
6       City's Motion to Dismiss and the Tribe's Motion for Summary Judgment. In that briefing,  
7       Parkwood addressed the City's and Tribe's arguments regarding standing, mootness, the  
8       classification of the project as a medical outpatient facility, claims that the ADA or other federal  
9       laws prohibit the treatment of an EPF for drug treatment or detoxification as an EPF, and its  
10       erroneous failure to treat the project as an Essential Public Facility ("EPF"). Parkwood has met  
11       its burden to show that the Sequim Municipal Code ("SMC") requires this project be classified  
12       as an EPF, subject to the City's C-2 permitting process.

13               Rather than inundating the Examiner with extensive redrafting of the same arguments  
14       again, Parkwood hereby incorporates and reasserts the entirety of its arguments in all previously  
15       filed pleadings and supporting evidence as if they were restated herein in their entirety. To the  
16       extent that they supplement, enhance, or support Parkwood's arguments made on appeal,  
17       Parkwood further incorporates by reference any and all facts, legal arguments and analysis  
18       offered by Appellant Save our Sequim ("SOS") in this appeal and asserts them as if made by  
19       Parkwood directly. Parkwood further incorporates its written support for SOS's Motion to Stay  
20       Proceedings in this matter until the City can provide a full, accurate, and legally compliant  
21       record to Appellant SOS. Parkwood continues to rely upon the public records obtained under  
22       that request from the City as evidence supporting the legal arguments made in its prior written  
23       appeals, this Dispositive Motion, and in preparation for the upcoming hearing.

1       **2. Arguments that the City Council does not have appellate jurisdiction over the**  
2       **MDNS are procedurally and now also factually inaccurate and should fail.**

3       In their responses, both the City and Tribe allege that Appellant Parkwood’s appeal of the  
4 Mitigated Determination of Non-significance (“MDNS”) is properly before the Hearing  
5 Examiner and not the City Council as is required under SMC 20.01.240(A). The City argues that  
6 a MDNS is not a DNS and should therefore be appealed to the Examiner pursuant to SMC  
7 20.01.090(F). *See City’s Consolidated Response*, at p. 18. The Tribe argues similarly, and that  
8 SMC 16.04.170 of the SMC directs the City to present a MDNS appeal to the Examiner. *See*  
9 *Tribe’s Response to Dispositive Motions*, a p. 16-17. These arguments are both procedurally and  
10 now factually inaccurate.

11       SMC 16.04.170 references generally the WAC for SEPA appeals, in this case WAC 197-  
12 11-680. However, the WAC does not explicitly state that hearing examiners have exclusive  
13 jurisdiction over appeals that are anything other than a DNS. Neither does the SMC. Rather, the  
14 WAC states that the decision must be consolidated with the underlying government action before  
15 “one hearing officer or body.” WAC 197-11-680(3)(a)(v). [Emphasis added]. In other words,  
16 the municipality can designate whether such appeals will be heard by a hearing examiner or a  
17 separate body, such as the City Council. While this WAC generally stands for the proposition  
18 that such an appeal should be consolidated with the “underlying government action,” it also  
19 states circumstances “provided in (a)(vi) of this subsection” are exempt from this consolidation  
20 requirement. WAC 197-11-680(3)(a)(vi) reads as follows:  
21

22       (vi) The following appeals of SEPA procedural or substantive  
23 determinations **need not be consolidated with a hearing or**  
24 **appeal on the underlying governmental action:**

- 25               (A) An appeal of a determination of significance;  
26               (B) An appeal of a procedural determination made by an  
agency when the agency is a project proponent, or is funding a  
project, and chooses to conduct its review under SEPA, including

1 any appeals of its procedural determinations, prior to submitting an  
2 application for a project permit. Subsequent appeals of substantive  
3 determinations by an agency with jurisdiction over the proposed  
4 project shall be allowed under the SEPA appeal procedures of the  
5 agency with jurisdiction;

6 (C) An appeal of a procedural determination made by an  
7 agency on a nonproject action; and

8 (D) **An appeal to the local legislative authority under**  
9 **RCW 43.21C.060 or other applicable state statutes.** [Emphasis  
10 added].

11 RCW 43.21C.060 states that “any governmental action may be conditioned or denied” as long as  
12 any conditions or denials are based upon the “regulations, plans, or codes” that are enacted by  
13 the “agency (or appropriate legislative body, in the case of local government)” as the possible  
14 bases for exercising that body’s authority under this chapter.

15 Except for permits and variances issued pursuant to chapter 90.58  
16 RCW, when such a governmental action, not requiring a legislative  
17 decision, **is conditioned or denied by a nonelected official of a**  
18 **local governmental agency, the decision shall be appealable to**  
19 **the legislative authority of the acting local governmental**  
20 **agency unless that legislative authority formally eliminates**  
21 **such appeals.** Such appeals shall be in accordance with procedures  
22 established for such appeals by the legislative authority of the  
23 acting local governmental agency. *Id.* [Emphasis added].

24 In this present action, the legislative body with authority under the SMC is the Sequim City  
25 Council. A non-elected official, the Community Development Director, issued the decisions that  
26 are the subject matter of Parkwood’s appeals. The City Council has not “formally eliminated”  
such appeals. SMC 20.01.030(A), Table 2 provides, as is undisputed by all parties, that a SEPA  
Determination is a Type A-2 Application Type: SMC 20.01.030(A), Table 1 lists the City  
Council as the body with “Appeal Authority.” Opposite of formally eliminated appeal authority,  
it expressly grants the City Council appeal authority over this type of A-2 decision. The City’s  
and Tribe’s arguments therefore fail when attempting to deprive the City Council of jurisdiction

1 because the explicit provisions of the SMC designates the Council as the appellate authority on  
2 these types of decisions.

3 Factually, the contention by the City and Tribe that the MDNS remains a MDNS at this  
4 point is also factually unsupported. On September 14, 2020, the City and Tribe confirmed that  
5 they had reached settlement on the Tribe's appeal of the MDNS. Currently, the terms of that  
6 settlement have not been provided and, based upon the Tribe's extensive briefing in their motion  
7 and their Notice of Appeal to the MDNS decision, it is entirely possible and reasonable that the  
8 City eliminated all mitigating elements of the MDNS, in effect making it a DNS in substance, if  
9 not in form. If the City has imposed no mitigation on the project's impact, it is no longer a  
10 "Mitigated" DNS. Further, procedurally Parkwood is afforded no opportunity to review the  
11 M/DNS's new language. Given the City's and Tribe's history of procedural gamesmanship,  
12 such as when they represented to the Clallam County Superior Court that Parkwood would have  
13 the opportunity to argue its appeal to the Examiner, only to turn around and argue now that  
14 Parkwood lacks standing and its appeal is moot, it is not entirely unreasonable to believe that the  
15 MDNS was issued in a deliberate attempt by the City and Tribe to avoid the jurisdiction of the  
16 City Council. Once classified as a MDNS, the project could avoid the Council's oversight  
17 authority to evaluate the true impact of the project and impose real mitigation criteria on a purely  
18 semantic distinction. Later, the City could simply drop any required mitigation in the MDNS  
19 after the fact, as it has done in some form here. Given the pace of this appeal process and the  
20 timing of the settlement announcement between the City and Tribe (two days ago), Parkwood  
21 will have no meaningful opportunity to discover whether there was a willful and concerted effort  
22 to undermine the requirements of the SMC, or if that event occurred serendipitously for the  
23 Tribe, just like many of the City's other decisions on this application.  
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**Michael D. McLaughlin, PLLC**

4114 N 10<sup>th</sup> Street  
Tacoma, Washington 98406  
PH: 253.686.9786  
FAX: 253.830.0994

1 In any event, whether considered a MDNS or a DNS procedurally or substantively, the  
2 City Council has the appellate authority to review Parkwood's appeal for that matter according to  
3 the clear language of the SMC. Appeal authority on that issue should be remanded to the City  
4 Council for action.

5 **3. The proposed facility is an EPF similar in scope and size to that of the Didgwalic**  
6 **Wellness Center in Anacortes and should be similarly processed under the SMC.**

7 The permit processing and approval process for the Didgwalic Wellness Center in  
8 Anacortes, Washington ("Anacortes clinic"), serving as the Tribe's inspiration for their own  
9 medical facility in Sequim, is an EPF that was granted a conditional use permit before its  
10 development and subsequent expansion. *See Parkwood's Response*, pp. 11-14; *Tribe's Motion*  
11 *for Summary Judgment*, p. 5. The City attempts to dismiss the parallels between that project and  
12 this one, as if there are no similarities between their size, scope, intended use, or the provisions  
13 of the city codes, state laws, or the applicability of federal laws (such as the cited concerns of  
14 discrimination in land use zoning under the Americans With Disabilities Act ("ADA")). *City's*  
15 *Response*, p. 15. The Tribe contends similarly, adding that the City must process their  
16 application without EPF treatment because it is a "regional" EPF and therefore permitted  
17 outright under SMC 18.33.031.

19 Both the City and Tribe, confirming that the City of Anacortes properly processed that  
20 building permit application under its own code, admit that classifying drug treatment centers and  
21 detoxification centers is not categorically discriminatory under the ADA, as has been previously  
22 alleged with this project and which the Community Development Director claimed forced his  
23 hand to classify this project as an A-1/A-2 project in his January 24, 2020 decision. The Tribe's  
24 argument that the specific nature of the zone where the Anacortes clinic sits prohibited the  
25 development of a "medical clinic," therefore requiring the facility's treatment as an EPF, is  
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4114 N 10<sup>th</sup> Street  
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PH: 253.686.9786  
FAX: 253.830.0994

1 erroneous. It was classified as an EPF because it meets the definition of an EPF under the  
2 Anacortes Municipal Code and the same state laws applicable to this situation. Had it been  
3 developed elsewhere in Anacortes, it would still have been conditioned and approved as an EPF  
4 because they “are so essential that they may be built in any zone.” *Tribe’s Response*, p. 9.  
5 Parkwood’s appeal does not concern whether or not the facility may be built at all, and it has  
6 never attempted to discriminate against those seeking opioid use disorder treatment. Rather, the  
7 appeal concerns the application’s erroneous classification as a non-EPF. The subsequent  
8 analysis and approval that followed that erroneous classification is incomplete and fails to  
9 appropriately safeguard against any environmental impacts that the C-2 process would identify  
10 and resolve.

12 The Tribe now asserts that the project is regional in scope despite providing declarations  
13 under penalty of perjury that it has abandoned Phases II and III of the project. Phase III is the  
14 only Phase that had development elsewhere in the region, in Port Townsend and Forks.  
15 *Parkwood’s Response*, p. 7. If those plans have been abandoned, the project is a local EPF, built  
16 at one location and servicing no more than 250 patients a day in the nearby area.

18 If the project is a regional EPF because it includes Phase III, then it necessarily still also  
19 includes Phase II for the Tribe’s original plans which is a 16-bed inpatient treatment facility.  
20 The inclusion of such a building and use requires classifying the project as an EPF and following  
21 the City’s C-2 classification procedures. Either way this project is an EPF.

## 22 CONCLUSION

23 The City and Tribe are working in concert to railroad this EPF project through as an  
24 outpatient clinic. They intentionally mislead the superior court, agreeing that Parkwood had  
25 standing for its appeal, only to argue that Parkwood has no standing during the appeal. The  
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1 Tribe appealed the MDNS, but only two days ago the City and Tribe settled that appeal, and the  
2 terms of the settlement are unknown to Parkwood and may eliminate all mitigation efforts on the  
3 part of the City to accommodate the project's impact. It is entirely possible, given the past  
4 conduct of the parties, that the Tribe and City agreed to a MDNS in advance to avoid City  
5 Council jurisdiction on a DNS, knowing the City could simply drop its demands and prevail on a  
6 procedural technicality. Similar action was demonstrated after the Tribe changed its immediate  
7 plans for the facility once it discovered large public opposition to the project and the fact that the  
8 inclusion of an inpatient facility may well have forced the Community Development Director's  
9 hand to properly classify the project as an EPF. Now, more than ever, with the City's imposed  
10 mitigation efforts likely eliminated or substantially eroded resulting from the settlement between  
11 the City and Tribe, this project needs to be remanded and classified as an EPF subject to the C-2  
12 process. Doing so empowers the City Council to condition the use of the property after  
13 identifying and implementing mitigating criteria to offset any impact the project will have on the  
14 population of Sequim.  
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16  
17 DATED this 16th day of September 2020.

18 MICHAEL D. McLAUGHLIN, PLLC

19  
20 By   
21 Michael D. McLaughlin, WSBA #47341  
22 Attorney for Parkwood  
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