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

SAVE OUR SEQUIM, a Washington
501(c)(4) corporation

Petitioner,

vs.

CLALLAM COUNTY, a municipal
corporation,

Respondent

File No. CDR20-01

PETITIONER SAVE OUR SEQUIM'S
REPLY TO CITY OF SEQUIM'S
RESPONSE

The City's response to SOS's Motion for Partial Summary Judgment dives deeply into the law of statutory construction, stating things like "Appellant SOS is asking the Hearing Examiner to impute words and regulations into the Sequim Municipal Code that do not exist", and that "Courts do not add or modify the plain language of a statute if the statute is unambiguous" (City's response at 15), and other similar quotes throughout the Response.

However, the City then completely ignores and fails to address (as it has throughout this dispute) the "plain and unambiguous" language in its own land use code, specifically

1 SMC 20.01.040(B), which mandates that the higher-letter procedure is to be used if there is
2 any question as to which procedure is appropriate:

3 **20.01.040 Determination of proper type of procedure.**

4 B. Determination of Director. The director shall determine the proper procedure for all
5 development applications. If there is a question as to the appropriate type of procedure,
6 the director shall resolve it in favor of the higher procedure type letter as defined in
7 SMC 20.01.030. (Ord. 2000-006 § 3)

8 The City then completely and intentionally “disregards” the “plain and unambiguous”
9 language in their own zoning code, specifically SMC 18.56.030(j), which declares that
10 “alcoholism or drug treatment centers and detoxification centers” are to be processed as EPF’s.
11 The City claims the right to disregard this language “under legal direction” because of
12 undisclosed “important amendments to the ADA and the RA” and “a host of important federal
13 court decisions”, without a word of explanation as to why this may be justified.

14 The City further fails to acknowledge the “plain and unambiguous” language in the
15 expansive definition of EPF’s in WAC 365-196-550(1)(a) and (2)(c)(ii), cited in SOS’s

16 Motion:

17 **WAC 365-196-550**
18 **Essential public facilities.**

19 (1) Determining what facilities are essential public facilities.

20 (a) The term "essential public facilities" refers to public facilities that are
21 typically difficult to site. Consistent with county-wide planning policies, counties
22 and cities should create their own lists of "essential public facilities," to include
23 at a minimum those set forth in RCW 36.70A.200.

24 . . .

(2) Criteria to determine if the facility is difficult to site. Any one or more of the following
25 conditions is sufficient to make a facility difficult to site.

...

1 (c) The public facility has, or is generally perceived by the public to have,
2 significant adverse impacts that make it difficult to site.

3 ...

4 (i) Identification of essential public facilities. When identifying essential
5 public facilities, **counties and cities should take a broad view of what**
6 **constitutes a public facility**, involving the full range of services to the
7 public provided by the government, substantially funded by the
8 government, contracted for by the government, or provided by private
9 entities subject to public service obligations. (emphasis added).

10 Stated more simply, “plain and unambiguous language” in the City Code says that; 1)
11 in the event of a question, the higher-letter procedure is mandated; 2) “alcoholism or drug
12 treatment centers and detoxification centers” are to be processed as EPF’s; 3) EPF’s include, at
13 a minimum, those listed in RCW 36.70A.200; and 4) counties and cities should take a broad
14 view of what constitutes a public facility”. The City has completely failed to explain credibly
15 why this language should be ignored, disregarded or acknowledged. Stated more simply, the
16 City is cherry-picking only those sections of the Code that it likes.

17 The City also claims unfair surprise in response to SOS raising the applicability of the
18 A-2 process under SMC 20.01.030, Table 2 for the first time in its Motion, completely
19 ignoring the fact that SOS filed an appeal with the City Council under this section on June 4,
20 2020, more than three months ago, which the City rejected in a letter to SOS dated June 10,
21 2020. (SOS Motion, Exhibit H) This claim could not be farther from the truth and should be
22 rejected as well.

23 The City’s final argument is that SOS cannot demonstrate being prejudiced by the
24 incomplete privilege log accompanying their Public Records Act response. This argument
25 completely misses the point that it is impossible to identify prejudice when information

1 responsive to this appeal is withheld. Stated more simply, SOS does not know what it does not
2 know at this point, which constitutes prejudice all by itself.

3 To summarize, the City is selectively and intentionally ignoring, disregarding or failing
4 to acknowledge “plain and unambiguous language” in its own zoning and land use codes and
5 in the Washington Administrative Code defining this facility as an EPF and mandating that it
6 be reviewed through the City’s C-2 permitting process. It is further claiming unfair surprise
7 over something it knew about more than three months ago, and finally is attempting to hide
8 behind artificial lack of prejudice claims to justify an incomplete and illegal Public Records
9 Act response.
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11 For these and other reasons, the SOS’s requested relief should be granted.
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14 DATED this 16th day of September, 2020.

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17 HELSELL FETTERMAN LLP

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Attorney for Petitioner

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

SAVE OUR SEQUIM, a Washington
501(c)(4) corporation

Petitioner,

vs.

CLALLAM COUNTY, a municipal
corporation,

Respondent

File No. CDR20-01

PETITIONER SAVE OUR SEQUIM'S
REPLY TO JAMESTOWN S'KLALLAM
TRIBE'S RESPONSE

The Tribe's response to SOS's Motion for Partial Summary Judgment claims again that the Tribe has "abandoned" the Phase 2 inpatient facility. Regardless of whether this is true, or whether it's a temporary or permanent abandonment, or whether they're just waiting for additional funds, the fact remains that the proposed drug rehabilitation/detoxification facility still requires City Council approval under Sequim's EPF Ordinance, SMC 18.56.030(j), which provides as follows:

18.56.030 Permitted uses.

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

1
2 J. Group homes, alcoholism or drug treatment centers, detoxification centers, work
3 release facilities for convicts or ex-convicts, or other housing serving as an alternative to
4 incarceration with 12 or more residents. (emphasis added)
5 dives deeply into the law of statutory construction, stating things like “Appellant SOS

6 It’s important to remember that the list in SMC 18.56.030 is the City’s “EPF list”,
7 reflecting what the drafters considered to be EPF’s in 1997, the year this ordinance was
8 drafted.

9 As mentioned ad nauseum in this proceeding, the Legislature defined EPF’s in the
10 1991 special session as:

11 “Essential public facilities include those facilities that are typically difficult to site,
12 such as airports, state education facilities and state or regional transportation facilities
13 as defined in RCW 47.06.140, regional transit authority facilities as defined in
14 RCW 81.112.020, state and local correctional facilities, solid waste handling facilities,
15 and inpatient facilities including substance abuse facilities, mental health facilities,
16 group homes, and secure community transition facilities as defined in
17 RCW 71.09.020.” (RCW 36.70A.200(1)(a)) (emphasis added)

18 Six years later, the City drafted its EPF Ordinance, which is codified as SMC
19 18.56.030, and which lists the following uses as EPF’s:

- 20 A. Airport and airfields.
21 B. Government buildings.
22 C. Educational institutions.
23 D. Hospitals and sanitariums (except animal clinics and hospitals).
24 E. Nursing homes and boarding homes for the aged.
25 F. Correctional institutions.
G. Towers and antennas over 100 feet in height, subject to the requirements of
Chapter 18.61 SMC.
H. Essential public facilities and utilities.
I. Parks, playgrounds, recreation or community centers.
J. Group homes, alcoholism or drug treatment centers, detoxification centers, work
release facilities for convicts or ex-convicts, or other housing serving as an alternative
to incarceration with 12 or more residents.

- 1 K. Energy facilities.
- 2 L. Hazardous waste treatment and storage facilities.
- 3 M. Shelters for the transient or for the homeless.
- 4 N. Master planned resorts.
- 5 O. Solid waste facilities
- 6 P. Sewage treatment facilities.
- 7 Q. Bus stations and transit facilities.

8 Notably, all but one of the uses listed in RCW 36.70A.200(1)(a) (underlined above) is
9 listed in SMC 18.56.030, some with slightly different phraseology, but all in the same use
10 category, nonetheless. That one use is “mental health facilities”. The fact that all but one of
11 the State-defined EPF’s is listed in SMC 18.56.030, the City’s EPF Ordinance, leads to the
12 conclusion that the City considered these uses to be EPF’s in 1997, the year this section of the
13 Code was adopted.

14 What is also apparent is that the drafters of Sequim’s EPF ordinance read RCW
15 36.70A.200(1)(a) expansively enough to include uses beyond those specifically mentioned in
16 that statute. In other words, the drafters of this ordinance understood that the phrase “such as”
17 in that statute gave them local control to add additional uses to their list of EPF’s. In this case,
18 the drafters added “alcoholism or drug treatment centers” and “detoxification centers” to that
19 list.

20 Since this proposed facility is much more of an ‘alcoholism or drug treatment center’ or
21 a “detoxification center” than it is a simple “medical clinic”¹, it must be processed as an EPF.
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¹ The applicant itself describes this project as a “medically assisted treatment program which offers FDA approved dosing”

1 As an EPF, it must receive an “Essential Public Facilities and Special Property Use Permit from
2 the Sequim City Council under SMC 18.56.040, which provides as follows:

3 **18.56.040 Permit required.**

4 Essential public facilities and special property uses shall be allowed within certain use
5 zones after obtaining an essential public facilities and special property use permit granted
6 by the city council. (Ord. 97-019 § 4, Exh. B) (emphasis added)

7 For the opposite to be true, the Examiner would have to invalidate every use listed in
8 SMC 18.56.030 that is beyond those uses expressly listed in RCW 36.70A.200(1)(a), the uses
9 not underlined above. This is an absurd result, yet that is what the Tribe is urging the examiner
10 to do.

11 Accordingly, whether this facility provides inpatient treatment or not, it is still an
12 “alcoholism or drug treatment center” or a “detoxification center”, or both, which requires an
13 “Essential Public Facilities and Special Property Use Permit”, under SMC 18.56.040, which
14 must be approved by the Sequim City Council using the C-2 permitting process under SMC
15 20.01.030(A), Table 2.

16 The Tribe also cites to the definition of EPF’s contained in SMC 18.08.020 in support
17 of their position that this facility is not an EPF, however that argument must fail for three
18 reasons; 1) the definition contains the word ‘includes’, meaning that it is an expansive list; 2) it
19 does not mirror the lists of EPF’s in either RCW 36.70A.200(1)(a) or SMC 18.56.030; and 3)
20 it adds the item “wastewater reuse facilities”, which is on neither of the above lists, and which
21 constitutes proof that Sequim actually believes that these lists are inclusive and expansive.
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23 The definition reads in full as follows:
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1 “Essential public facilities,” mandated by the GMA, include airports, public
2 educational facilities, state and regional transportation facilities, state and local
3 correctional facilities, and other facilities of a state or regional scope. For the purpose
4 of this title, wastewater reuse facilities will be considered to be essential public
5 facilities.”

6 The Tribe’s next argument is that the ADA trumps all of this, however none of the
7 cases cited by the Tribe stand for the proposition that the ADA requires that these facilities be
8 approved administratively rather than quasi-judicially. Stated another way, the ADA does not
9 authorize local governments to short-cut their land use approval processes.

10 The Tribe then argues that the “child watch” and “operatory” features are accessory
11 uses to the main use as a medical clinic in support of their proposition that the proposed
12 facility is consistent with applicable zoning. But this argument misunderstands SOS’s
13 position, which is that the presence of these features makes this project ‘difficult to site’,
14 because these are uses not allowed outright in the RREOA District. The simple fact that the
15 proposed project contains features that are not permitted outright by necessity makes the
16 project more “difficult to site”, versus one that fully conforms to the applicable zoning.

17 The Tribe’s final argument is that A-2 projects are not appealed to the City Council
18 because that rule only applies to Determinations of Non-Significance. In support of that
19 argument, the City cites SMC 20.01.090(F), but in the process, admits that “the table could be
20 improved to be a more comprehensive summary” (Tribe’s response at 16). The Tribe then
21 engages in the same statutory construction exercise that the City engaged in, however what it
22 forgets to discuss is the “fail safe” mechanism in SMC 20.01.040(B), which provides that if
23 there are any questions, they are resolved in favor of the higher-letter procedure. In this case,
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1 there is therefore a ‘question’ about who has appellate authority, and the equivalent of a
2 ‘higher letter process’ would be to have the City Council serve as the appellate body. But this
3 question is trumped by the larger question of whether this project is an EPF, in which case,
4 SMC 20.01.040(B) mandates that it be resolved in favor of the C-2 process, which represents
5 the higher letter procedure involved in that question.
6

7 To summarize, regardless of whether this facility features an inpatient facility or not, it
8 is undisputable that it is an “alcoholism or drug treatment centers” and/or a “detoxification
9 centers”, both of which are considered EPF’s subject to the quasi-judicial C-2 process under
10 the “plain and unambiguous” language in the Sequim Municipal Code.
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12 For these and other reasons, the SOS’s requested relief should be granted.

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14 DATED this 16th day of September, 2020.

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17 HELSELL FETTERMAN LLP

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22 _____
23 Michael A. Spence
24 WSBA No. 15885
25 Attorney for Petitioner