

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

Appellant,

vs.

CITY OF SEQUIM,
a Washington Municipal Corporation,

Respondent.

File No. CDR20-001

APPELLANT SAVE OUR SEQUIM'S
REPLY

The City and Tribe both fail to understand that SOS was not facially challenging the “emergency ordinance”. SOS is well aware that the Examiner does not have jurisdiction over this ordinance. What SOS is challenging is the applicability of the ordinance to this particular project. As pointed out in SOS’s Memorandum, the Ordinance was passed in the middle of a filed, perfected and scheduled land use appeal, in which a prehearing conference was held, and with dispositive motions pending. This was not the case in the *Graham Neighborhood Ass’n v. F.G. Associates* case, which was relied upon by the City in their attempt to justify the ordinance. That case involved a 13-year old expired plat that was improperly ‘reactivated’.

HELSELL
FETTERMAN

1 There was no pending appeal at the time, nor was there an ordinance converting a quasi-
2 judicial proceeding into an administrative one that was passed in the middle of any appeal.
3 The holding in *Graham* that procedural changes are outside of the vested rights doctrine is
4 therefore dicta as far as this issue is concerned.

5
6 The Examiner correctly ruled that express code language requires that this appeal be
7 heard by the City Council, and rather than respecting that ruling, the City hastily and
8 inappropriately amended their code to reject it.

9
10 Unfortunately, the Examiner does not have jurisdiction to uphold or reject this
11 ordinance. This being the case, the only defensible way out of this situation is for the Examiner
12 to grant SOS's Motion for Summary Judgment and rule that the express code language in the
13 Code (SMC 20.01.040(B)) compels the City to follow the "higher procedure type letter",
14 which in this case is the C-2 process, due to the fact that this project constitutes an Essential
15 Public Facility under RCW 36.70A.200(1). No other alternative suggested by either the City or
16 Tribe follows this direct and clear path.

17
18 SOS therefore respectfully requests that the Examiner; 1) declare that this project is an
19 EPF; 2) declare that the "higher letter procedure" (the C-2 process) applies; and 3) remanding
20 this project back to the City with instructions to start over under the C-2 process. Anything
21 short of this directly conflicts with existing, clear and unequivocal code language and well-
22 established case law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DATED this 1st day of October 2020.

HELSELL FETTERMAN, LLP



By _____
Michael A. Spence, WSBA #15885
Attorneys for Save Our Sequim

1 **CERTIFICATE OF SERVICE**

2
3 The undersigned hereby certifies that on October 1st, 2020, the foregoing
4 document was sent for service on the following party in the manner indicated below.

5 Kristina Nelson-Gross Via first class U. S. Mail
6 Sequim City Attorney Via Legal Messenger
7 152 W. Cedar Street Via Facsimile
8 Sequim, WA 98382 Via Email
9 Knelson-gross@sequimwa.gov
10 tsandaine@dequimwa.gov
11 olbrechtslaw@gmail.com

9 Andy Murphy Via first class U. S. Mail
10 Miller Nash Graham & Dunn Via Legal Messenger
11 Pier 70, 2801 Alaska Way, Suite 300 Via Facsimile
12 Seattle, WA 98121 Via Email
13 Andy.murphy@millernash.com
14 Leeann.bremer@millernash.com

13 Robert Bilow Via first class U. S. Mail
14 195 Sunset Place Via Legal Messenger
15 Sequim, WA 98382 Via Facsimile
16 Millrow26@gmail.com Via Email

16 Michael D. McLaughlin Via first class U. S. Mail
17 Michael D. McLaughlin, LLC Via Legal Messenger
18 4114 N. 10th Street Via Facsimile
19 Tacoma, WA 98406 Via Email
20 michael@mdmwalaw.com

20 DATED this 1st day of October, 2020

21
22 
23 Lisa Blakeney, Legal Assistant