From:	Michael McLaughlin
To:	Phil Olbrechts
Cc:	Spence, Michael A.; Kristina Nelson-Gross; Robert Bilow; Andy Murphy; LeAnne Bremer; Tellina Sandaine
Subject:	RE: CDR20-001 MAT Appeal Hearing Cancelled.
Date:	Friday, October 2, 2020 1:43:59 PM
Attachments:	Parkwood To Hearing Examiner Letter.pdf

Mr. Olbrechts,

I appreciate the congratulations both from you and on behalf of the City regarding my son's birth.

Parkwood will not be submitting additional briefing concerning the City's interim/emergency ordinance. Instead, it supports and will rely on the legal analysis submitted by Save our Sequim on this issue. Attached is a letter prepared by my client in my absence confirming the same.

Thank you,

Michael D. McLaughlin
Attorney at Law

Michael D. McLaughlin, PLLC
4114 N 10th St
Tacoma WA 98406
PH: (253) 686-9786

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From: Phil Olbrechts <olbrechtslaw@gmail.com>
Sent: Wednesday, September 30, 2020 6:39 AM
To: Michael McLaughlin <michael@mdmwalaw.com>
Cc: Spence, Michael A. <mspence@helsell.com>; Kristina Nelson-Gross <knelson-gross@sequimwa.gov>; Robert Bilow <millrow26@gmail.com>; Andy Murphy <andy.murphy@millernash.com>; LeAnne Bremer <leanne.bremer@millernash.com>; Tellina Sandaine <tsandaine@sequimwa.gov>
Subject: Re: CDR20-001 MAT Appeal Hearing Cancelled.

Congratulations to Mr. McLaughlin. I think the Tribe and City will have to concede that Mr. McLaughlin's good fortune was not designed to delay these proceedings.

Nonetheless, it would not be reasonable to the Tribe to wait until after October 19, 2020 to resolve

the jurisdictional issues of this case. More than 120 days have already elapsed since the last set of appeals were filed. Further, SOS likely has the same interests as Packwood in promoting Council jurisdiction over the appeals, so SOS has likely already covered Packwood's arguments in its briefing over the emergency ordinance. In any event, if Packwood would still like to add to the briefing, it can do so by 5 pm this Friday,10/2/20. Responses due 5 pm 10/5/20 and replies 10/6/20. I will try to at the least have an abbreviated ruling on all dispositive issues out by10/7/20. If at that point the appeals haven't all been dismissed and I still otherwise have jurisdiction we'll discuss scheduling shortly thereafter.

I will likely approve any alternate schedule mutually agreed upon by all parties.

On Tue, Sep 29, 2020 at 4:00 PM Michael McLaughlin <michael@mdmwalaw.com> wrote:

> Hi Mr. Olbrechts,
>
> My wife went into labor over the weekend and delivered our child yesterday. We were just released from the hospital earlier today and, while I expect my son will be healthy, there were a few minor complications that have required scheduling additional follow-up visits and procedures more than are typically required. In fact, I am at one right now. For this reason, I have been unable to review the City's actions this weekend or prepare a response on Parkwood's behalf by today's deadline.
>
> As I stated in June to the City and during our scheduling call, I am unavailable at this time continuing until Monday, October 19, 2020.
>
> Thank you,
>
> Michael
>
> Sent from my iPhone
>
>> On Sep 27, 2020, at 9:58 AM, Spence, Michael A. <mspence@helsell.com> wrote:
>>
>> Thank you, and sorry to bother you on a Sunday.
>>
>> **Michael A. Spence | Helsell Fetterman LLP**
>> 1001 Fourth Avenue, Suite 4200
>> Seattle, WA 98154
>> direct | 206.689.2167
>> fax | 206.340.0902
>> mspence@helsell.com
>> www.helsell.com

Legal Assistant:
Lisa Blakeney
Direct | 206.689.2115
lblakeney@helsell.com

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From: olbrechtslaw@gmail.com <olbrechtslaw@gmail.com>
Sent: Sunday, September 27, 2020 9:56 AM
To: Spence, Michael A. <mspence@helsell.com>
Cc: Kristina Nelson-Gross <knelson-gross@sequimwa.gov>; Robert Bilow <millrow26@gmail.com>; Andy Murphy <andy.murphy@millernash.com>; LeAnne Bremer <leanne.bremer@millernash.com>; Michael McLaughlin <michael@mdmwalaw.com>; Tellina Sandaine <tsandaine@sequimwa.gov>
Subject: Re: CDR20-001 MAT Appeal Hearing Cancelled.

That would be fair given the change in circumstances, but I don't want to create any more delay. Any supplemental briefing will be due by 5 pm Tuesday, 9/29/20, responses 5 pm Wednesday 9/30/20 and replies 5 pm Thursday, 10/1/20. If any parties have conflicts with this schedule (which would be entirely understandable), please let me know. Once I get information on the publication date of the ordinance I'll have a better understanding of how much time we have to resolve prehearing issues before holding the hearing.

On Sun, Sep 27, 2020 at 9:13 AM Spence, Michael A. <mspence@helsell.com> wrote:

> Mr. Examiner:
>
> Will you accept a short supplemental brief in response to what the City did yesterday?
>
> **Michael A. Spence | Helsell Fetterman LLP**
> 1001 Fourth Avenue, Suite 4200
> Seattle, WA 98154
> direct | 206.689.2167
> fax | 206.340.0902
> mspence@helsell.com

www.helsell.com

Legal Assistant:
Lisa Blakeney
Direct | 206.689.2115
lblakeney@helsell.com

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From: olbrechtslaw@gmail.com <olbrechtslaw@gmail.com>
Sent: Saturday, September 26, 2020 8:26 PM
To: Kristina Nelson-Gross <knelson-gross@sequimwa.gov>
Cc: Robert Bilow <millrow26@gmail.com>; Andy Murphy <andy.murphy@millernash.com>; LeAnne Bremer <leanne.bremer@millernash.com>; Michael McLaughlin <michael@mdmwalaw.com>; Spence, Michael A. <mspence@helsell.com>; Tellina Sandaine <tsandaine@sequimwa.gov>
Subject: Re: CDR20-001 MAT Appeal Hearing Cancelled.

Attached is my order apparently rendered moot by the Council's amendments this evening. I was literally less than an hour from finishing the order when I received the notice. I'm sorry to see the Council had to work on a Saturday evening to address this issue, but as I mentioned earlier it's best this issue be fully addressed now as opposed to on judicial appeal after everyone has spent considerable time and money in what would likely have been found to be the wrong decision making forum. I've still issued the order to provide a full accounting for why I dismissed the September 28 hearing.

I have not yet seen the amendments. Assuming the amendments grant examiner jurisdiction over consolidated SEPA appeals, we will set a new appeal hearing date early next week. I should have my ruling on the remaining dispositive motion issues done by the end of next week. Note that the mootness issue raised by the Tribe is addressed in the attached moot order.

On Sat, Sep 26, 2020 at 7:25 PM Kristina Nelson-Gross <knelson-

gross@sequimwa.gov> wrote:

Good evening Mr. Olbrechts,

Please be advised that the City Council held a Special Meeting tonight and passed an interim controls ordinance transferring all A-1 and A-2 appeals to the Hearing Examiner. The ordinance will be effective five days after publication. I will send you a signed copy of the ICO for your records once it is available. Please let me know if you have any further questions.

Kind regards,

Kristina Nelson-Gross
City Attorney
<image001.png>

From: Phil Olbrechts <olbrechtslaw@gmail.com>
Sent: Sunday, September 20, 2020 10:13 PM
To: Robert Bilow <millrow26@gmail.com>
Cc: Andy Murphy <andy.murphy@millernash.com>; Kristina Nelson-Gross <knelson-gross@sequimwa.gov>; LeAnne Bremer <leanne.bremer@millernash.com>; Michael McLaughlin <michael@mdmwalaw.com>; Michael Spence <mspence@helsell.com>; Tellina Sandaine <tsandaine@sequimwa.gov>
Subject: Re: CDR20-001 MAT Appeal Hearing Cancelled.

The hearing scheduled for September 28-30, 2020 is cancelled. I do not have jurisdiction over consolidated permit hearings that include a SEPA appeal. I will be issuing an interlocutory order that outlines the legal basis of this conclusion within the next few days. I will subsequently issue a final decision that addresses the other jurisdictional arguments made by the parties, to avoid remands in case a reviewing court disagrees with my determination.

Given that one of my objectives as an examiner is to manage an efficient review process, I am disappointed I have to make this ruling. Unfortunately, there is little room for reasonable disagreement on the jurisdictional issue. If I were to retain jurisdiction, a reviewing court would very likely overturn my final decision and remand the appeal back to the City Council to do the entire process over again. Ultimately, correcting course at this time is the only way to prevent what would otherwise be an even more significant unnecessary loss of time and money for all parties. If my ruling is contrary to the wishes of the City Council, the Council may still have the option of amending its code to delegate decision making responsibility on SEPA appeals to the hearing examiner. Procedural rules, which likely includes appellate jurisdiction, is not subject to the vested rights doctrine. *See Graham Neighborhood Ass'n v. F.G. Associates*, 162 Wn. App. 98 (2011).

Despite one poorly written SMC section to the contrary, the City's permit processing framework overall is designed to limit Hearing Examiner review to ministerial permits and minor permitting decisions. The City Council has reserved all significant discretionary decision making to itself. When SEPA came out in the 1970s the courts early on expressly recognized that SEPA can be used to change ministerial permits into discretionary ones, by giving decision makers broad authority to mitigate environmental impacts. This is likely why not one but two SMC permit processing provisions expressly assign SEPA appellate review to the City Council.

As to arguments brought up by the City and Tribe, the Packwood and SOS appeals were properly consolidated with a final underlying government decision, i.e. the City's design review decision. SEPA has never been construed as requiring a threshold appeal to be consolidated with the last permit for a proposal. Threshold appeals are routinely processed and resolved prior to the application of building permits. Case law upholds this practice. Finally, as determined in the Puyallup case and as demonstrated in other SMC provisions, references to a "DNS" encompass an "MDNS." These and other arguments will be fully addressed in my interlocutory order.

PARKWOOD
A quality manufactured housing community for persons 55 years plus

October 1, 2020

Mr. Phil Olbrechts
Hearing Examiner
City of Sequim
152 W. City Cedar St.
Sequim, WA 98382

Re: City of Sequim Project File No. CDR20-001
Parkwood Manufactured Housing Community, LLC's Unavailability to Produce Supplemental Briefing in Response to the City of Sequim's "Emergency" Ordinance

Dear Mr. Olbrechts:

I write to you on Parkwood's behalf as a Governing Member in the absence of its attorney, Michael D. McLaughlin. Mr. McLaughlin has forwarded to my attention your email, dated September 30, 2020, in which you allowed Parkwood until Friday, October 2, 2020, to file briefing concerning the City's rushed weekend ordinance that seeks to transfer jurisdiction for Parkwood's consolidated appeals from the City Council back to you.

As Mr. McLaughlin expressed in June, again during the scheduling call, and most recently by email, he is unavailable to resume full-time work until October 19, 2020, a few weeks after the birth of his child. I cannot in good conscience ask him to abandon his responsibilities to his wife and three children, ages 5 and younger, to complete the legal analysis and drafting necessary to respond to the legal questions raised by the City's actions. While I fail to understand the urgency, I respect your decision regarding the timeline for submissions on this appeal and the responsibilities you have to all parties, including to resolve Parkwood's appeal in a timely fashion. Parkwood is prejudiced by having under a week to prepare a response on this matter without the aid of its legal counsel.

For that reason, and seeing no alternative after reading the submission by appellant Save our Sequim yesterday, I am writing to express that Parkwood agrees with the legal analysis presented by Save our Sequim and asks that it also apply to Parkwood's appeal. Please know that Parkwood fully adopts the position Save our Sequim takes with regard to the jurisdictional question of whether or not the City Council can transfer jurisdiction as if the arguments were fully set out by Parkwood individually, and in order to preserve Parkwood's right to appeal a decision on that question. Aside from that limited issue, Parkwood reserves its right to continue Mr. McLaughlin's representation on its behalf in these proceedings when he returns from paternity leave and reaffirms its position as a party to this action, separate and distinct from all other appellants including Save our Sequim.

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261520 Hwy 101, Sequim, WA 98382 (360) 683-8765 Fax (360) 683-2448
3300 Cameron Park Drive, Suite 2000, Cameron Park, CA 95682
(530) 672-9900 Fax (530) 672-8418

While I do not claim to fully understand all the nuances of this legal process, I ask a rhetorical question: How on earth can it possibly be legal, or under any definition "fair" for the City of Sequim to change the procedural rules in the middle of an ongoing appeal? On its face, this appears to be one of many repeated orchestrations between the developer and the City, acting in concert and by any means necessary, to deprive the citizens of Sequim the opportunity to have their voices heard through willful circumvention of a long-established process under the existing code. Should jurisdiction transfer, Parkwood and so many other citizens will lose a meaningful opportunity to engage their elected officials directly on appeal about a project that affects their health, safety, and welfare concerns. Thank you.

Respectfully,

Jon Gibson, Member
Parkwood Manufactured Housing Community, LLC