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THE HEARING EXAMINER OF THE CITY OF SEQUIM

RE: CDR20-001

Consolidated Administrative Appeals of
January 24, 2020 Notice of Determination of
Procedure Type: May 15, 2020 Director’s
Report and Staff Decision; and May 11,
2020 MDNS for Jamestown S’Klallam Tribe
Outpatient Clinic

REVISED PRE-HEARING ORDER

The schedule and procedural rules outlined below apply to the above-captioned appeal.
This revised version arises from the dismissal of the Packwood and SOS appeals.

A. Document Distribution and Parties. All documents required by this
Order shall be emailed, mailed or delivered to the parties at the addresses below.
References to “parties” in this email are limited to the persons identified below. All
documents must be received by the due dates set by this order. All email
correspondence involving this appeal and the hearing examiner shall include all email
addresses identified below. For mailed documents, documents shall be deemed
received three business days after mailing.

City of Sequim/Examiner

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2 Jamestown S'Klallam

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8 B. Hearing Date. The appeal hearing is set for November 16, 2020, starting
9 at 9:00 am each day. The hearing will be held virtually, made accessible to all parties
10 and will be hosted by the City of Sequim.

11 C. Exhibit and Witness Lists. The parties are required to exchange witness
12 and exhibit lists per the schedule below. Witness lists should include a summary of the
13 testimony to be provided by each witness along with a general estimate on the length of
14 the testimony. The time estimates are just for scheduling purposes. Witnesses will not
15 be bound to the estimates. The exhibit lists shall list any documents, recordings, videos
16 or photographs that the parties intend on presenting at the appeal hearing. No exhibits
17 or witness testimony beyond those identified in the witness and exhibit lists will be
18 admitted unless necessary for reasonably unanticipated rebuttal or for other good cause.
19 **Exhibits must be exchanged contemporaneously with the initial and rebuttal
exhibit lists and may be distributed by email.** Documents posted on the City's
20 website under "Current Projects" at <https://www.sequimwa.gov/471/Current-Projects>
21 need not be exchanged if they are referenced as posted at the website in the exhibit lists.

22 D. Hearing Format. Order of presentation is as follows:

- 23 a. Murphy
24 b. Nelson-Gross
25 c. Public Comment
26 i. General (nonexpert) comments
27 ii. Expert testimony
28 d. Nelson-Gross Rebuttal
29 e. Murphy Rebuttal

30 E. Cross-Examination. All expert witnesses and City and Tribe witnesses
who present live testimony will be subject to cross-examination at the completion of
each witnesses testimony. Declarations and other documents that would qualify as
testimony are admissible without a right of cross-examination unless a right to cross-
examine is asserted by email to the parties within three calendar days of when the

1 document is disclosed in the witness and exhibit lists. Documents qualify as testimony
2 if the substantive content was prepared specifically for the appeal.

3 The attorneys representing Packwood and SOS are authorized to conduct cross-
4 examination of City and Tribe experts if they accept this role by email to the parties by
5 October 23, 2020. Other persons may also directly participate in cross-examination if a
6 written request is submitted to the parties by 5:00 pm, November 2, 2020 and the
7 persons represented would qualify for intervention as determined by the examiner under
8 CR 24. The general public may also send cross-examination questions of expert
9 witnesses during the hearing via Zoom chat and the examiner will ask the experts those
10 questions that are pertinent to the grounds of appeal.

11 F. Public Participation. Public comments shall be limited to three minutes
12 during the appeal hearing. The Examiner may increase this time limit to five minutes if
13 it appears that there will be less than 36 speakers from the public. Expert testimony
14 presented by the public that is relevant to the Tribe's appeal and stipulated settlement
15 agreement may exceed this time limit if the name of the expert(s), qualifications,
16 estimated length of testimony and content of the testimony are presented a week in
17 advance of the hearing. Expert testimony may be excluded by the examiner if it is
18 irrelevant, duplicative or its probative value is outweighed by the time necessary for
19 presentation. In assessing whether proposed expert testimony is duplicative, priority
20 will be given to the earliest proposed expert testimony.

21 A witness qualified as an expert by knowledge, skill, experience, training, or
22 education as outlined in ER 702.

23 Written comments may also be submitted by members of the public if received
24 by the City a week in advance of the hearing.

25 Details on how public written comments and expert testimony are to be
26 submitted will be provided by the examiner as part of the public notice for the hearing.

27 G. Schedule. The following schedule applies with all documents due at 11:59
28 pm of the specified due dates:

- | | | |
|----|----------|--|
| 29 | 10/23/20 | SOS and Packwood election for direct cross of Tribe/City experts |
| 30 | 11/2/20 | City and Tribe Witness and Exhibit Lists (along with exhibits).
Requests for direct cross-examination (see par. F). |
| | 11/4/20 | City/Tribe objections to requests for direct cross-examination. |
| | 11/9/20 | Public written comments and expert witness info due by 5pm. |
| | 11/10/20 | City and Tribe objections to public written comments and experts due. |

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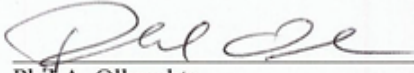
- 11/11/20 Public reply to objections due.
- 11/12/20 City/Tribe Rebuttal Witness/Exhibit Lists due
- 11/16-17/20 Appeal hearing, 9:00 am each day

G. Admissibility. The hearing generally will not be conducted according to technical rules relating to evidence and procedure. Any evidence that is relevant, material, and reliable may be admitted if in the Hearing Examiner’s judgment, it possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Only the issues identified in the Tribe’s written appeal and the associated stipulated settlement agreement will be considered at the appeal hearing.

H. Procedures. The Washington State Superior Court Civil Rules of Procedure shall be used as guidelines in resolving procedural issues to the extent they do not conflict with the Sequim Municipal Code and this pre-hearing order and are within the authority of the Examiner to require; Provided, that application of such rules shall also conform to the dictates of the Regulatory Reform Act, Chapter 36.70B RCW, which require administrative appeals to be resolved in an expeditious manner and that only one hearing can be held on the appeal.

I. Questions. Questions regarding hearing procedures may be submitted to the examiner by emailing them to the parties. The examiner’s answers will be posted at <https://www.sequimwa.gov/964/MAT-Clinic-Appeals>. The stipulated settlement agreement referenced in this order will also be posted at this weblink.

ORDERED this 20th day of October 2020.


Phil A. Olbrechts

Sequim Hearing Examiner