



Snohomish County Council

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MEMORANDUM

TO: Snohomish County Council
FROM: Ryan Countryman, Senior Legislative Analyst
DATE: May 10, 2023
SUBJECT: Appeal of Hearing Examiner Decision: Residential Treatment Facility North (PFN 22-102230 CUP)

Purpose

This memorandum provides an overview of the closed record appeal hearing scheduled for May 10, 2023, under the provisions of [Chapter 30.72](#) of the Snohomish County Code (SCC).

[SCC 30.72.110](#) limits the record for the council's consideration of this appeal to that which was before the Hearing Examiner and written argument timely filed with the council. Issues on appeal are limited to those raised by the appellant that are within the jurisdiction of the council. At the hearing, the council will take oral argument pertaining to the appeal issues. Code does not allow for new testimony, evidence or exhibits unless specifically requested by the council and related to the issues raised in the appeal.

A closed record appeal is a quasi-judicial hearing and councilmembers must abide by the appearance of fairness doctrine, codified in [Chapter 42.36](#) of the Revised Code of Washington (RCW).

The Development Application

Applicant Tulalip Tribes of Washington, a federally recognized Indian tribe and native sovereign nation, applied to Snohomish County Planning and Development Services department (PDS) for a conditional use permit to construct and operate a secure civil behavioral health services facility (level II health and social services facility).

The site is north of the City of Stanwood on unincorporated rural land owned by the Tulalip Tribes that is not in Tribal Trust land status. Zoning is Residential 5-acre (R-5). The Snohomish County Growth Management Act Comprehensive Plan (GMACP) future land use designation is Local Commercial Farmland (LCF).

Timeline

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|-------------------------|--|
| January 31, 2022 | The Tulalip Tribes apply for a Conditional Use Permit (CUP). |
| June 27, 2022 | The Tulalip Tribes submit additional information for the CUP application. |
| August 22, 2022 | The Tulalip Tribes submit additional information for the CUP application. |
| September 18, 2022 | PDS issues a State Environmental Policy Act (SEPA) threshold Determination of Non-Significance (DNS) (H.E. Exhibit E.1). |
| January 2023 | PDS issues its staff recommendation to the Hearing Examiner (H.E. Exhibit K.1) ¹ |
| January 24 and 26, 2023 | The Hearing Examiner conducts an open record hearing on the CUP application |
| March 7, 2023 | The Hearing Examiner issues a decision approving the CUP application with conditions (Council Exhibit V.2) |
| March 21, 2023 | Attorney Tom Ehrlichman files an appeal of the March 7 decision on behalf of named appellants. (Council Exhibit V.1). |
| May 10, 2023 | The Snohomish County Council is scheduled to conduct a quasi-judicial closed record appeal hearing. |

Planning & Development Services Staff Recommendation

In January 2023, PDS issued a staff recommendation for the hearing scheduled for January 24, 2023. PDS found that the applicant had demonstrated consistency with the approval criteria for a CUP. Accordingly, PDS recommended that the Hearing Examiner approve the CUP, subject to conditions.

The Hearing Examiner Decision

The Hearing Examiner held an open record hearing on the CUP on January 24 and 26, 2023. The Hearing Examiner left the record open until February 3, 2023 for the limited purpose of allowing PDS and Tulalip Tribes to respond to public comments and provide additional information on issues raised during the hearing. On March 7, 2023, the Hearing Examiner issued a decision approving the CUP with conditions.

¹ The PDS staff recommendation does not show a date issued, but it does show that it was for the hearing to begin on January 24, 2023. Although undated, PDS typically finalizes and transmits recommendation to the Hearing Examiner at least one week prior to the hearing.

Appeal of the Hearing Examiner Decision

On March 21, 2023, the County Council received an appeal of the Hearing Examiner's March 7, 2023, decision. (Council Exhibit V.1).

Requirements for filing a Type 2 appeal

Requirements for filing a Type 2 appeal are in SCC 30.72.080:

An appeal must be in writing and contain:

- A detailed statement of the grounds for appeal and the facts upon which the appeal is based, including references to specific hearing examiner findings or conclusions, and to exhibits or oral testimony in the record
- Argument in support of the appeal
- Contact information

The grounds for an appeal are limited to the following:

- The decision exceeded the hearing examiner's jurisdiction;
- The hearing examiner failed to follow the applicable procedure in reaching the decision;
- The hearing examiner committed an error of law; or
- The hearing examiner's findings, conclusions, and/or conditions are not supported by substantial evidence in the record.

Summary of grounds for this appeal

The appeal letter requests that the County Council reverse the Hearing Examiner decision and deny the CUP application. This request is partly on the grounds that the GMACP and its implementing regulations expressly prevent an institutional residential use at the subject location and that this should have prevented the Hearing Examiner from approving the CUP. The appeal letter also cites alleged procedural and jurisdictional errors and asserts that certain findings and conclusions are not supported by substantial evidence.

Appeal, Responses, Rebuttals, and Motions

The County Council has received the following written arguments from the Appellant, Applicant and Parties of Record.

- Appellants' appeal letter (Council Exhibit V.1)
- Applicant's written arguments, received April 11, 2023 (Council Exhibit V.4)
- Appellants' rebuttal argument, received April 18, 2023 (Council Exhibit V.5)

Council Jurisdiction for this Appeal

Appeal to Council is appropriate under [SCC 30.72.070](#) and Council has jurisdiction over this closed record appeal.

Decision Options

At the conclusion of closed record public hearing, the council must issue a decision in writing. The decision shall set forth findings and conclusions that support the council decision and may adopt any or all of the findings and conclusions of the Hearing Examiner.

The council's options, pursuant [to SCC 30.72.120\(2\)](#):

- Affirm the Hearing Examiner's decision;
- Reverse the Hearing Examiner's decision either in whole or in part; or
- Remand the matter to the Hearing Examiner for further proceedings in accordance with the council's findings and conclusions.

The council must issue a written decision within 60 days of the last day of the appeal period and within 15 days of the council's hearing unless the applicant agrees to an extension. In this case the council's written decision should be issued no later than May 22, 2023.

Copy: Alethea Hart, Deputy Prosecuting Attorney