



4-10-25

Camas School District Response to the Viteks' April 2, 2025 Additional Comments

The Camas School District (District) submits the following response to the Viteks' April 2, 2025 submission of Additional Comments and Reasons for Denial (Additional Comments):

A. The Viteks' Constitutional Arguments on an Alleged Gift of Public Funds is Outside the Scope of the Conditional Use Permit Process.

The Examiner is not empowered to decide constitutional questions regarding alleged gifts of public funds. Per state and local law, the Examiner's jurisdiction is limited to those areas entrusted to the Examiner by the local legislative body. RCW 35.63.130(1) and RCW 35A.63.170(1) ("[T]he legislative body may vest in the hearing examiner the power to hear and decide those issues it believes should be decided by the hearing examiner including but not limited to . . . [a]pplications for conditional uses."). *Chaussee v. Snohomish Cnty. Council*, 38 Wn. App. 630, 636, 689 P.2d 1084, 1090 (1984) ("[a]dministrative agencies are creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication"); *Durland v. San Juan County*, 174 Wn. App. 1, 10 n.6, 298 P.3d 757 (2012). (a hearing examiner's authority is limited to whatever is "granted by the creating body.")

In *Chaussee*, the court upheld a hearing examiner's determination that he was without jurisdiction to consider the issue of equitable estoppel because "[h]is determination is limited an administrative proceeding to determine whether or not a particular piece of property is subject to a county land use ordinance." *Id.* at 630.

Here, the Examiner's authority is derived from Camas Municipal Code (CMC) 2.15.020, which provides that "[t]he examiner shall interpret, review and implement land use regulations and policies provided in this chapter and by other ordinances."

CMC 2.15.080 establishes the Examiner's powers as follows:

The examiner shall receive and examine available information, conduct public hearings and prepare a record thereof, and enter final decisions, subject to application, notice, public hearing and appeal procedures of Chapter 18.55 of this code on the following matters:

- A. Conditional use permits, light industrial/business park applications, preliminary subdivision plat applications, and site specific rezone requests;
- B. Appeals of SEPA threshold determinations on the land use applications subsection A of this section; and
- C. Appeals of a Type II decision.

All other Type III land use applications, including but not limited to comprehensive plan amendments; development agreements, with a companion master plan; mixed use developments; planned developments; and area-wide rezones shall follow the procedures as provided in Chapter 18.55 of this code.

The Examiner does not have authority to rule on constitutional questions because the power to interpret, construe, and enforce the constitution belongs to the judiciary. Wash. Const. Art. IV §1; *Seattle School Dist. No. 1 of King County v. State*, 90 Wn.2d 476, 496, 585 P.2d 71 (1978) (“The ultimate power to interpret, construe and enforce the constitution of this State belongs to the judiciary.”)

In *Exendine v. City of Sammamish*, 127 Wn. App. 574, 586–87, 113 P.3d 494 (2005), *as amended*, (May 31, 2005), the issue was whether the Hearing Examiner had authority to rule on the constitutionality of the district court’s issuance of search warrants in code enforcement actions. The Court of Appeals explained why the Examiner lacked authority to address constitutional questions:

The Sammamish Municipal Code establishes the office of a hearing examiner. SMC 20.10.020 provides: “The examiner shall act on behalf of the City Council in considering and applying adopted City policies and regulations as provided herein.” ***The City Council is a legislative body, and it does not have the power to enforce, interpret, or rule on constitutional challenges. The City Council cannot delegate power it does not have. The Hearing Examiner correctly decided he did not have the authority to determine the constitutional validity of the search warrants in this code enforcement proceeding.***

Id. (emphasis added), see also *Dotson v. Pierce Cnty.*, 6 Wash. App.2d 1034 (2018) (a hearing examiner reviewing a community development department order or decision may not rule on constitutional issues; only the judiciary may resolve constitutional questions); *Open Door Baptist Church v. Clark County*, 140 Wn.2d 143, 146, 995 P.2d 33 (2000). (hearing examiner correctly concluded that he did “not have jurisdiction to consider state or federal constitutional issues or federal statutory issues,” and could base his decision only on applicable land use laws); *Prisk v. Poulsbo*, 46 Wn. App. 793, 798, 732 P.2d 1013 (1987) (when the issue raised is the constitutionality of the law sought to be enforced, only the courts have the power to decide).

Thus, the Viteks’ arguments that the tennis center is an unconstitutional use of the District’s property, or a gift of public funds, are outside of the Examiner’s jurisdiction in this conditional use permit hearing.

B. The Viteks’ Gift of Public Funds Argument is Meritless.

The Viteks’ comments on the details of the District’s contracting process or agreement with the United States Tennis Association (USTA) are also outside of the Examiner’s jurisdiction. Additional Comments, pp. 3-9. However, should the Examiner elect to consider it, the Viteks’ gift of public funds argument should be

rejected. As the party claiming a violation, the Viteks' bear the burden of showing an unconstitutional gift of public funds. *King County v. Taxpayers of King County*, 133 Wn.2d 584, 597, 949 P.2d 1260 (1997).

Washington Const. Art. VIII, § 5 states:

The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.

Washington Const. Art. VIII, § 7 states:

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

“[P]ublic funds cannot be used to benefit private interests when the public interest is not primarily being served.” *CLEAN v. State*, 130 Wn.2d 782, 792, 928 P.2d 1054 (1996). Thus, public expenditures must be used for public purposes. *Id.* at 792-93. However, “the fact that a third party benefits is not sufficient to convert a lawful contract into a gift of public funds.” *Peterson v. State*, 195 Wn.2d 513, 523, 460 P.3d 1080 (2020). “Where it is debatable as to whether or not an expenditure is for a public purpose, we will defer to the judgment of the legislature.” *CLEAN*, 130 Wn.2d at 793.

In *Peterson*, the court explained the test for determining whether a challenged transaction is, in fact, a gift of public funds:

For the purposes of article VIII of our state constitution, “**a gift is a transfer of property without consideration and with donative intent. ‘Receipt of valuable consideration assures that a transaction is not a gift.’”** *Gen. Tel. Co. of Nw.*, 105 Wn.2d at 588, 716 P.2d 879 (footnote omitted) . **To determine whether a challenged transaction is in fact a gift of public funds, first, the court asks if the funds are being expended to carry out a fundamental purpose of the government? If the answer to that question is yes, then no gift of public funds has been made.** The second prong comes into play only when the expenditures are held to not serve fundamental purposes of government. The court then focuses on the consideration received by the public for the expenditure of public funds and the donative intent of the appropriating body in order to determine whether or not a gift has occurred.

Peterson, 195 Wn.2d at 513 (emphasis added).

Public education is considered so important in Washington that it is enshrined in the State’s constitution. Wash. Const. Art. IX, §1 provides that “[i]t is the paramount duty of the state to make ample provision for the education of all children residing within its borders” Here, the tennis center improvements carry out a fundamental purpose of government by improving the educational experience for District students. Additionally, the District will continue to own the tennis courts; have priority use of the courts; and will provide an all-weather facility that will benefit the high school’s gym classes and athletic programs. The covered facility provides two hundred student-athletes equitable tennis opportunities for the High School’s boys and girls teams, regardless of the time of year. Additionally, five hundred students take physical education each year, and with the project, they will have year-round access to tennis facilities, equipment, and tennis coaches.

The USTA is a non-profit corporation whose mission is “growing tennis to inspire healthier people and communities everywhere.”¹ It is investing in the tennis center by providing over \$2 million toward construction of the all-weather cover, resurfacing of the courts, and other upgrades. In addition to the large capital investment, USTA will be responsible for maintenance, staffing, and management of daily operations.

USTA has also committed to engaging elementary and middle school students in the game of tennis by providing school site coaching and equipment to all schools in the District. The all-weather cover will allow additional opportunities to play tennis that are currently limited by inclement weather or darkness. Thus, in addition to serving the District’s students, the tennis facility will increase the availability of tennis as a recreational opportunity for the general public-another fundamental purpose of government.

Because the District/USTA partnership benefits both students and the general public in providing additional educational, athletic, and recreational opportunities, which are a fundamental government function, the first prong of the *Peterson* test is met, and no gift of public funds has been made.

C. Community Opposition is Insufficient to Deny a Land Use Permit.

In their Additional Comments (p. 3, ln. 10-12), the Viteks disclose their economic motive for opposing the tennis center, stating that the agreement between the District and USTA “will significantly aid the USTA/PNW in gaining an unfair economic advantage of over its competitors in Camas” As the owners of the for-profit Evergreen Tennis in Camas, which charges \$299/month for a Family Advantage Membership and \$199/year for a Family Regular membership,² the Viteks are attempting to misuse the City’s conditional use process to advance their own economic interests.

A land use decision cannot be based on community displeasure. Instead, the law requires that the Examiner base his decision on reasons backed by adopted policies and standards. *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 804-5, 801 P.2d 985 (1990)(“It is improper to deny the permit to an applicant who, throughout the application process, has demonstrated a willingness to mitigate any and every legitimate problem.”).

Protection of the Viteks’ economic interests is not within the scope of CMC18.43.050’s CUP decision criteria. Their dissatisfaction over the presence of a competing tennis facility is also not consistent with the purpose of the City’s CUP process, which is to assess a proposed development’s “impact on the neighborhood and land uses in the vicinity.” CMC 18.43.010.

D. The Tennis Center Will Not Negatively Impact Student Safety and Security.

The District has robust student security policies, and the Viteks’ concerns are unfounded. During times of High School student use, student-athletes and physical education students will remain under the supervision of District coaches and staff. The tennis center will be a stand-alone building across a parking lot from the main High School building. Patrons of the tennis center will have the same access as any other visitor to the High School campus, except they will be required to park during school hours along the north property line behind the tennis facility.

The tennis center will be integrated into the High School’s security system and be subject to campus lockdown protocols. The tennis center will also have a single controlled point of entry, just as the District’s

¹ <https://www.usta.com/en/home/about-usta/who-we-are/national/35-by--35--the-usta-s-growth-strategy-for-35-million-tennis-play.html#>

² <https://www.evergreentennis.net/memberships.html>

other school facilities. Finally, all USTA staff must pass background checks that are the same or greater than other District employees.

E. The School District is Creating Expanded Access for Students the General Public.

Camas High School students will retain first priority use of the tennis courts for athletic purposes and curricular physical education (PE) classes during certain school day times. The maximum allowed operating hours for USTA while school is in session will be 9:00 am to 10:00 pm, with carve-outs for student use times. In addition, USTA must work around the High School's student release PM peak traffic time, which occurs between 2:30 pm to 3:30 pm. No tennis center traffic will be allowed during this hour to avoid impeding the flow of existing traffic. Student access and opportunity to participate in tennis will be increased because the tennis facility will be available after dark and during periods of inclement weather. Outside of school hours, the tennis center will also provide a more monitored and safer environment than the existing outdoor courts.

The general public use of the tennis courts will be expanded by having a year-round covered and lit facility. Currently, public use is not allowed during school hours of operation. With the project, USTA will be able to provide the community with expanded public use hours. USTA has agreed to use a Community Hub model of operations to ensure equitable access to the tennis courts, regardless of income. The Community Hub model embraces the non-profit status and mission of USTA to promote the sport of tennis for all.

F. Conclusion.

In conclusion, in their Additional Comments, the Viteks have not meaningfully addressed the conditional use criteria in CMC18.43.050, which are within the Examiner's jurisdiction and purview (CMC 2.15.080(A)), and instead have raised constitutional, contractual, and economic arguments that have no place in this CUP proceeding. For these reasons, the District respectfully requests that the Examiner reject the arguments raised in the Viteks' Additional Comments and approve the requested CUP.

Best Regards,

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