

## NOTICE OF DECISION

### DISCOVERY RECOVERY (FILE NO. CUP21-01)

**DECISION ISSUED:** April 28, 2021

**CITY CONTACT:** Sarah Fox, Senior Planner  
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**LOCATION:** 2213 NW 23rd Avenue; Tax assessor's parcel No. 124783-000

**APPLICANT:** Discover Recovery, LLC

**THIS IS TO SERVE AS NOTICE** that a decision of **APPROVAL** has been rendered for the conditional use permit application for Discovery Recovery (City file #CUP21-01) to convert the existing Fairgate Assisted Living facility to a 15 bed convalescent home. The decision includes conditions of approval, which are included at the end of the attached Final Order of the city's hearings examiner.

### RECONSIDERATION (Refer to CMC§18.55.235)

Any party of record believing that a decision of the hearings examiner is based on erroneous procedures, errors of law or fact, or the discovery of new evidence which could not be reasonably available at the public hearing, may make a written request to the examiner, filed with the city clerk, to be accompanied by an appeal fee, for reconsideration by the examiner.

A. Time Frame. The request for reconsideration shall be filed **within fourteen (14) calendar days** of the date the decision was rendered.

B. Content. The request for reconsideration shall contain the following:

1. The case number designated by the city and the name of the applicant;
2. The name and signature of each petitioner;
3. The specific aspect(s) of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal must explain why such evidence should be considered.

C. The hearings examiner may, after review of the materials submitted in conjunction with the reconsideration request, and review of the open record hearing transcript, take further action as he or she deems proper; including, but not limited to, denying the request, modifying the decision, or affirming the decision.

D. The hearings examiner shall issue a decision on a request for reconsideration within forty-five (45) days of the filing of the request for reconsideration. When a request for reconsideration has been timely filed, any appeal to Clark County Superior Court under the Land Use Petition Act shall be filed within twenty-one (21) days after a hearings examiner issues its decision on the request for reconsideration.

### JUDICIAL APPEALS (Refer to CMC§18.55.240)

The city's final decision on an application may be appealed by a party of record with standing to file a land use petition in Clark County superior court. Such petition must be filed within twenty-one days after issuance of the decision, as provided in Chapter 36.70C RCW.

**BEFORE THE LAND USE HEARINGS EXAMINER  
FOR THE CITY OF CAMAS, WASHINGTON**

Regarding an application by Discovery Recovery, LLC for ) **FINAL ORDER**  
approval of a conditional use permit to convert the existing )  
Fairgate Assisted Living facility to a 15 bed convalescent home ) **CUP21-01**  
at 2213 NW 23<sup>rd</sup> Avenue, in the City of Camas, Washington ) **(Discovery Recovery)**

**A. SUMMARY**

1. The applicant, Discovery Recovery, LLC, request Conditional Use Permit (“CUP”) approval to convert the the existing Fairgate Assisted Living facility to a 15 bed convalescent home that will provide residential drug and alcohol treatment for adult patients residing at the facility. The applicant proposed to operate the facility on a 2.39-acre parcel at 2213 NW 23<sup>rd</sup> Avenue; also known as tax assessor’s parcel No. 124783-000 (the “site”). The site is currently developed with a 14,626 square foot main structure, a gazebo, and a detached garage with an apartment above. The applicant proposes to enclose the site with a six-foot privacy fence with gated access. No other exterior changes are proposed on the site.

a. The site and surrounding properties to the north, west and south are zoned R-12 (Single-Family Medium, 12,000 square foot minimum lot size). Properties to the east are zoned R-7.5 (Single-Family Medium, 7,500 square foot minimum lot size).

b. Abutting properties are developed with a church on the property abutting the west boundary and the east portion of the north boundary of the site, a single-family residence abutting the west portion of the north boundary, the Dorothy Fox Elementary School abutting the north portion of the east boundary, Dorothy Fox Park abutting the south portion of the east boundary, and single-family homes to the south of the site, across NW 23<sup>rd</sup> Avenue. Additional basic facts about the site and surrounding land and the applicable approval standards are provided in the Staff Report to the Hearing Examiner dated Mach 16, 2021 (the "Staff Report").

2. City staff provided a Staff Report setting out the applicable approval criteria and proposed findings and conditions of approval. The applicant accepted those findings and conditions without exceptions. Two persons testified orally in support of the application. 25 persons testified orally in opposition to or with questions and concerns about the application. Other persons testified in writing, both in opposition and in support. Contested issues in the case include the following:

a. Whether the City provided adequate public notice of the application and public hearing;

b. Whether the applicant is requesting a zone change;

c. Whether the proposed use is allowed as a conditional use in the R-12 zone as a “Nursing, rest or convalescent home;”

- d. Whether the applicant will provide “acute care” services on the site;
- e. Whether the proposed facility will be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity, including;
  - i. Whether the site’s proximity to a school, church, and park are relevant to this criterion;
  - ii. Whether residents of the facility will pose a hazard to persons residing in the area or utilizing the school, park, and church abutting the site;
  - iii. Whether, and to what extent, the proposed facility will increase the level of crime or the presence of drugs, drug paraphernalia, drug dealers, and homeless people in the area;
  - iv. Whether the use will impact the value of surrounding properties and whether such impacts are relevant to the approval criteria;
- f. Whether the proposed use will meet or exceed the development standards that are required in the R-12 zoning district, CMC 18.43.050.B;
- g. Whether the facility is “[c]ompatible with the surrounding land uses in terms of traffic and pedestrian circulation, density, building and site design,” CMC 18.43.050.C;
- h. Whether appropriate measures have been taken to minimize the possible adverse impacts that the facility may have on the area in which it is located. CMC 18.43.050.D;
- i. Whether the facility is consistent with the goals and policies expressed in the comprehensive plan. CMC 18.43.050.E, including whether the use constitutes “housing” as that term is used in the Code and comprehensive plan;
- j. Whether any special conditions and criteria established for the proposed use have been satisfied and whether additional conditions are necessary to carry out the intent of the Camas Municipal Code and comprehensive plan, CMC 18.43.050.F;
- k. Whether the applicant is required to consider alternative locations for the facility;
- l. Whether the City can deny the application to, “protect the neighborhood and existing residents;”
- m. Whether approval of this application will establish a precedent for similar facilities in the area;
- n. Whether the proposed use will exceed the capacity of existing fire, police, and other emergency services;

- o. Whether purpose statements included in the Code and or the City's websites constitute applicable approval criteria;
- p. Whether the park regulations of CMC Chapter 12.32 constitute applicable approval criteria for this use;
- q. Whether the applicant is required to demonstrate that the proposed use will result in a "local benefit;"
- r. Whether the applicant's treatment success rate is relevant to the approval criteria; and
- s. Whether this application can be denied because it does not provide treatment for all residents of the community.

3. Based on the findings provided or incorporated herein, the examiner approves the application subject to the conditions at the conclusion of this final order.

### **B. HEARING AND RECORD HIGHLIGHTS**

1. The examiner received testimony at an online public hearing about this application on March 24, 2021. All exhibits and records of testimony are filed at the City of Camas. At the beginning of the hearing, the examiner described how the hearing would be conducted and how interested persons could participate. The examiner disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the public hearing.

2. City senior planner Sarah Fox summarized the Staff Report. She noted that the City approved permits for the existing Fairgate Assisted Living facility in 2013. With this application the applicant proposes to convert the existing facility into a 15 bed convalescent home that will provide alcohol and drug treatment to patients residing on the site. The proposed use is listed as a conditional use in the R-12 zone, subject to the approval criteria in CMC 18.43.050.A-F.

a. The 2.39-acre site is currently developed with a 14,626 square foot primary structure, a gazebo, and a detached garage with an apartment above. No changes are proposed to the exterior of the existing building. However, the conditions of approval require that the applicant install a six-foot high wooden fence along the east boundary of the site to screen the facility from the abutting park and school. Abutting properties are developed with a church to the west and north, a five-acre park to the east, Dorothy Fox Elementary School to the northeast, and residential subdivisions to the south.

b. Based on conversations with the City parks manager, the restroom in Dorothy Fox Park locks automatically at night, based on a timer.

c. Nursing, rest, and convalescent homes are permitted outright in multi-family, mixed use, and several commercial zones in the City. This use is a conditional use in most other zones. This use is only prohibited in the business park and industrial zones.

3. Thomas Feldman, co-owner of Discovery Recovery, LLC, and attorney Kristine Wilson appeared on behalf of the applicant, Discovery Recovery, LLC.

a. Mr. Feldman summarized the proposed use and responded to neighbor's testimony.

i. He testified that he and his partner have more than 25 years of combined experience in behavioral health. They established Discovery Recovery, LLC in September 2018 to provide addiction treatment. They currently operate a 40-bed licensed drug and alcohol treatment facility in Long Beach, Washington. That facility is accredited and regulated by the Washington Department of Health, CARF International, and other organizations. The facility proposed in this application will be subject to the same accreditation and regulations. The Long Beach facility is three times larger than the facility proposed here and treats teens and young adults. The facility proposed in this application is limited to 15 patients and will only treat adults.

ii. The proposed facility will be staffed by doctors and other clinical professionals and provide 24-hour nursing care. The facility is intended to serve adult professionals suffering from addiction. The facility is needed in this area in order to provide patients with treatment close to home where they can rely on support from their families. The facility only serves patients who are seeking treatment on a voluntary basis; they do not accept patients subject to court ordered treatment.

iii. Patients staying at the facility will be under 24-hour surveillance and routine bed checks. Patients are not allowed to come and go from the facility without supervision. Patients are only allowed outside within designated areas on the grounds of the site. Although facility staff cannot prevent patients from leaving, staff work with patients to encourage them to stay and complete their treatment. If patients insist on leaving, staff try to coordinate with the patient and their family to transfer the patient to a different facility. If patients choose to leave ATA ("Against Treatment Advice") the facility will transport them back to their home or to another facility.

iv. All facility staff receive two to three weeks of training prior to beginning work at the site.

v. The Code does not require that the applicant fence the site. However, they will consider fencing the entire perimeter of the site and installing gates on the driveways prior to beginning operations at the site. The applicant will work with the City regarding security issues.

vi. The applicant's existing facility in Long Beach is three times larger than the facility proposed in this application. The Long Beach facility is located in a residential area, across the street from a park and within eight blocks of a school. The applicant has worked with the school and there have been no reports of any incidents

occurring at the park or school. There have been no reports of any violent incidents related to the Long Beach facility. The Long Beach police noted that they receive calls related to the facility but they did not have any significant concerns about the number of calls or other operation of the facility. The prior senior living/retirement home facility that operated on the Long Beach site generated more emergency calls than the current rehab facility, due to residents experiencing issues with dementia and other mental health concerns.

vii. The applicant did consider expanding the Long Beach facility by purchasing adjacent property from the City in order to provide a larger recreation space for patients of the facility. However, the City withdrew from those negotiations after receiving complaints from area residents.

viii. Addiction treatment facilities frequently locate in residential areas, including in high value neighborhoods. The 15 bed facility proposed on this site will be the smallest facility in the state.

b. Ms. Wilson accepted the findings in the Staff Report without exceptions.

i. She noted that this application is subject to the definitions in the Camas Code. The internet definitions noted by Mr. Esch are irrelevant. The proposed use is consistent with the City's definition of convalescent home, as it will provide full-time care for chronically ill persons: persons recovering from drug and alcohol dependencies. The facility will not provide surgical, obstetrical or acute illness services. The Code does not define the term "convalescent." Therefore, the examiner must rely on the dictionary definition of the term. Webster's Dictionary defines "convalescent" as, recovery from sickness or disability. State law includes mental illness and alcohol dependency within the term disability.

ii. Interpreting the code to find that the use is not allowed as a convalescent home would have the effect of prohibiting this use anywhere in the City, which is a violation of federal law.

iii. The use is consistent with the comprehensive plan goals that encourage health services. The use is not inconsistent with any comprehensive plan goal or policy.

iv. Neighbors' unsupported and unsubstantiated concerns do not constitute materially detrimental impacts to the public welfare or injuries to property or improvements. Approval or denial of the application must be based on evidence, not perception, supposition, and fear.

4. Susan Lewallen testified in support of the application. She argued that the facility will provide a "vital life saving service" for this area. The facility will not bring strangers into the community, it will serve people who already live here and are suffering from addiction. Patients seeking treatment for addiction are less dangerous than untreated addicts living in the community, driving under the influence and posing other risks.

5. Attorney Brian Lewallen (no relation to Ms. Lewallen) appeared on behalf of himself and the “Dorothy Fox Safety Alliance.” He argued that addiction treatment facilities are needed and important. But not in this location, abutting an elementary school and a park, where detoxing patients may be seen and heard by young children. The site and surrounding area is zoned residential. The existing facility on the site was initially approved as a Bed and Breakfast. Then it was converted to an assisted living facility. The proposed treatment center “goes to far,” as it is incompatible with the sensitive uses surrounding the site. Absent the existing building, this facility would never be proposed on this site; in the middle of a residential neighborhood, adjacent to a school and a park. Approval of this application may establish a precedent for similar facilities in the future.

a. The facility is subject to Type III review, which allows the greatest discretion.

b. The facility poses significant public safety concerns. Patients reside at the facility on a voluntary basis. They may leave at any time. The applicant has no ability to force them to stay or to accept transportation elsewhere. Police reports from the Pacific County Sheriff demonstrate that patients can and do leave the applicant’s existing treatment facility in Long Beach at any time, for any reason, with or without their belongings. The applicant has no duty to notify the police or neighboring residents or determine where the patients have gone. Patients leaving this facility will be on foot in a large residential area, with no nearby commercial services. Sheriff reports include:

i. A patient in “meth psychosis” left the facility on February 23, 2021;

ii. A patient with “known mental health history of harming herself” left the facility on December 17, 2020;

iii. A patient having a “psychotic break,” “getting to be violent,” and “talking to himself” was outside the facility on January 21, 2020;

iv. A patient with a history of drug addiction and suicidal ideations and attempts, left the facility ATA without any money or identification on July 3, 2019.

Mr. Lewallen argued that any of these reports creates a public welfare concern. The location of this facility, on a street where children frequently walk to school, and next to a school and park where children play, exacerbates the risk to the public welfare. The safety of children should be the primary concern.

6. Robert Ball testified about his own experience with addiction and residential treatment. Some patients seek treatment “for the wrong reasons” and are not ready for sobriety. They will fail their treatment and return to addiction. He testified that patients did leave the facility he was in, hopping over the fence and meeting drug dealers in a nearby park and talking to children on the playground. This facility, across the street from his residence, poses a hazard for the safety and security of his home and family. The facility will change the nature of the neighborhood and reduce the value of surrounding

properties. Developers will no longer build homes in the area, which will reduce the tax income for the City. The restroom in the park is never locked; it is open 24/7.

7. Patrick Whalen argued that the proposed facility does not constitute a "Nursing, rest or convalescent home" as defined by CMC 18.03.030. Reasonable people would not interpret this definition to include a drug and alcohol treatment facility.

a. CMC 18.43.050.D requires that the applicant take "Appropriate measures... to minimize the possible adverse impacts that the proposed use may have on the area in which it is located" The Staff Report notes the applicant's "rules of operation." However, those rules were not included in the application materials and the conditions of approval do not require compliance with those rules. There is no need for a "rule" prohibiting people from leaving the facility unless they are likely to do so. Addicts will leave the facility in order to find a "fix." The applicant must either provide security to prevent patients from leaving or accept that some patients will leave ATA. Patients leaving the facility will walk past the school, park, church, and through neighborhoods where children live and play. Staff's finding that the application complies with CMC 18.43.050.D "is unreasonable on its face."

b. CMC 18.43.050.A requires a finding that the use will not be materially detrimental to the public welfare. All of the comments about this application are in opposition to the proposed use. Area residents perceive the facility as a hazard. As a result, they are less likely to allow their children to play outside or walk to the park or school. This will change the character of the area in a way that is materially detrimental to the public welfare.

8. Brian Wiklem argued that the proposed use is not consistent with the goals and policies of the comprehensive plan, as required by CMC 18.43.050.E. The existing assisted living facility on the site provides affordable housing and social and health services for seniors, consistent with policy H.3 of the comprehensive plan. The proposed facility will replace that existing use, eliminating an existing senior housing opportunity. The proposed facility will not provide a permanent or affordable residential use. The applicant will convert the site into a transient occupancy use; patients will only reside at the facility for days or weeks at a time while they are obtaining treatment. Staff's interpretation of these policies would apply to any hotel/motel occupant.

9. Mark Smith agreed with the testimony of prior witnesses. He argued that the applicant should be required to provide 24-hour video surveillance of the site and keep copies of the videos for at least four months. The applicant should meet with a committee of surrounding residents and allow them to review the videos to look for violations. If any violations occur the applicant should be subject fines and the fine amount should increase with each subsequent violation. He argued that the restroom in the adjacent park "provides an ideal shooting gallery" for patients seeking a fix. The applicant should be required to inspect the restroom daily and pay fines if any syringes or other drug paraphernalia are found.

10. Andrew Hubner argued that the police reports for the applicant's existing facility in Long Beach demonstrate that the proposed facility cannot comply with CMC



18.43.050.A. The proposed facility is a drug rehab facility, not a convalescent home. Patients leaving the facility in a mental health crisis will have immediate access to a school, park, church, and residential neighborhood. The proximity of the site to these uses creates “a clear and present danger.” The applicant does not propose any on-site security staff and makes no mention of security training for the staff who will be present on the site.

a. The facility cannot comply with CMC 18.43.050.B, which requires a finding that the use meet or exceed the development standards of the R-12 zone. Changing the use of the site from residential care to a temporary care/detox facility will require changes to the existing development on the site, including the fence required by the proposed conditions of approval. The applicant will need to fence the entire site, including locked gates to prevent patients from leaving.

b. The fence required by the proposed conditions is an acknowledgment that the facility is not compatible with the surrounding land uses. CMC 18.43.050.C.

c. CMC 18.43.050.D requires appropriate measures to minimize possible adverse impacts of the use. Such measures should include security staffing and training. The type of staffing proposed by the applicant is inadequate.

d. The proposed use is not consistent with the goals and policies of the comprehensive plan, CMC 18.43.050.E.

e. If the application is approved, it should include provisions for enforcement, including revocation of the conditional use permit if three or more violations occur within a six month period.

11. Queena Qi argued that the proposed use is unsuitable and unacceptable in this location.

12. Ian Fagan testified that he is a firefighter in Clark County. A similar treatment facility within his station’s service area generates the highest call volume of any address in the area. The majority of calls are for psychiatric issues and overdoses. Patients sneak out of the facility, get drugs, and return. Approval of this facility will generate similar issues, increasing the need for emergency responses to the area. He has never seen any police or fire vehicles in the Prune Hill neighborhood since he moved in. The applicant may be required to accept court ordered rehab patients. Patients who do not want to be at the facility will leave. Patients leaving the facility will have immediate access to the adjacent school, park, and residential neighborhoods, which will result in increased crime in the area. Children should not have to see this type of facility.

13. Carrie Wiklem testified that they received no communication from the applicant and the applicant made no efforts to reach out to neighborhood residents.

14. Shugan Ge argued that the facility will be a detriment to the community. The applicant has no ability to prevent patients from leaving the site ATA. He argued that

OSHA imposes a minimum standard of compliance. The applicant should be held to a higher standard.

15. Michell Galotteanu testified that she sees many detox patients at the intensive care unit (ICU) where she works. She questioned why the applicant performs such frequent bed checks at this “subacute facility.” ICU staff only perform 30 minute bed checks on patients who may be suicidal. It is not feasible for two overnight staff members to perform 30 minute bed checks on 15 patients. Detoxing patients can become violent and require physical or drug restraints. Untrained staff members may be incapable of understanding and dealing with such patients. The park and school immediately about the site. The school’s track is located within a few feet of the site. The proposed fence will not prevent patients from leaving the site and entering the park or school grounds.

16. Bryce Davidson argued that the application does not comply with the applicable approval criteria and it is inconsistent with the values of the community. The facility poses too much of a risk of harm to the community.

17. James Rogers argued that the application does not meet the intent of the Code. Although this type of treatment facility is needed, this is the worst possible location. Safety concerns alone are sufficient to justify denial of this application. Camas is one of the safest cities in the US with a crime rate of 0.67 incidents per 1,000 residents, compared to the national average of 4.69/1,000. Approval of this facility will result in increased crime and will damage the reputation of the neighborhood and the City as well as creating a hazard for children. Children living, walking, or playing in the area will be exposed to foul language and smoking, which frequently occurs at this type of facility. The City will be held responsible for any injuries resulting from this facility. Approval of this use will impact the reputation of the adjacent school. Families will move out of the neighborhood, reducing enrollment at the school and the associated federal funding. Real estate values will fall as residents move out of the area. He argued that the proposed facility does not constitute a convalescent home as defined by the Code. The applicant is trying to circumvent the Code and redefine the term by relying on dictionary definitions.

18. Hannah Rogers argued that it is impossible to screen views in and out of the site, due to the topography of the surrounding area. The fact that patients can leave the facility creates a hazard for surrounding residents.

19. Mike Vogt argued that the police calls related to the applicant’s Long Beach facility demonstrates how this facility will impact the safety of the surrounding neighborhood and the applicant’s inability to prevent such impacts. Based on conversations with neighbors of the Long Beach facility, the applicant has not properly maintained the premises. It took two years for the applicant to install a fence requested by neighbors. Neighbors noted issues with nuisance patients, smoking, increased noise and profanity occurring at the facility. The applicant’s description of how they will manage the facility keeps changing over time. It is unclear whether the facility will serve patients who are registered sex offenders.

a. The comprehensive plan goals require that the use and design of new development be compatible with the surrounding built environment. He questioned how a

rehab facility with 30 to 90 day occupancy is the same as a care home that provides long-term care. The proposed facility will serve a transient population and establish a precedent for other transient uses.

20. Marisol and Jeffrey Hairston argued that the Fire District is currently understaffed. This facility will result in additional emergency calls, exacerbating the existing staffing shortages.

21. Alicia Fine objected to the approval of a for profit business in the R-12 residential zone.

22. Rono Mathieson noted that there is no existing or proposed fence between the site and the church property abutting the north and west boundaries of the site. There is no fence, only a row of arborvitae trees on the north and west boundaries that will not prevent patients from entering and exiting the site. Church youth groups frequently play sports and engage in other outdoor activities on the site. The proposed facility will be materially detrimental to the public welfare.

23. Heather Gulling argued that this type of facility is needed to serve all residents of Camas, not just the wealthy and well insured. She spoke with residents living near the applicant's existing facility in Long Beach, which has been operating for three years. They noted issues with loud noise, trespass, burglary, and unease with patients standing outside smoking and talking. The applicant agreed to fence the site, but it took two years to do so. The applicant agreed to install privacy film on the windows but has yet to do so. The applicant has not maintained the building and landscaping. The prior care home on the site generated more emergency calls, but the detox facility generates more mental health calls rather than medical emergencies. Patients leaving the facility proposed on this site have nowhere to go, as the entire area is residential and there is no public transportation available.

24. John Karp-Evans testified that he went through several similar residential treatment programs before he achieved long term sobriety. Patients at these facilities were able to leave and return, abuse drugs, burglarize homes, etc. This type of facility cannot guarantee success for its patients.

25. Kristen Maxwell agreed with prior witnesses testimony that this facility will be materially detrimental to the public welfare. She questioned whether the applicant can refuse to treat sex offenders at this facility and whether HIPA regulations will prevent the applicant from informing area residents if a sex offender is living on the site.

26. Kirsti Delahunty questioned whether the elementary school will be forced to "lockdown" if a patient leaves the facility in a crisis state or psychotic break. How many times must such lockdowns occur before it constitutes a material detriment to the public welfare?

27. Elliott Esch noted that lawinsider.com provides multiple definitions for the term "convalescent home." Of the 23 definitions listed, 22 expressly exclude rehab

facilities from that term. None of the listed definitions expressly include rehab facilities within the definition of “convalescent home.”

28. Jennifer Corriell, administrator of Fairgate Estate Assisted Living, testified in support of the application. The proposed facility is in line with her family’s goals of servicing the community.

29. Ivan Guirad argued that the proposed use is materially detrimental. The facility will reduce property values in the area by up to 20-percent as well as increasing insurance premiums for area residents. Approval of this application will establish a precedent for similar facilities elsewhere in the City. There is an overlap between perceived and actual impacts.

30. Bradford Newsome testified that he opposes the application for the reasons noted by prior witnesses.

31. At the end of the hearing the examiner held the record open subject to the following schedule:

a. For one week, until 5:00 p.m. March 31, 2021, for anyone to submit new written testimony and evidence;

b. For a second week, until 5:00 p.m. April 7, 2021, for anyone to respond to the testimony and evidence submitted during the first week; and

c. For a third week, until 5:00 p.m. April 14, 2021, for the applicant to submit a final written argument, without any new evidence.

### **C. DISCUSSION**

1. City staff recommended approval of the application, based on the affirmative findings and subject to conditions of approval in the Staff Report. The applicant accepted those findings and conditions without exceptions.

2. The examiner finds that the City provided adequate public notice of the application and hearing and the public was provided with an adequate opportunity to review and comment on the application either orally at the hearing or in writing before and after the hearing.

a. The City mailed notice of the public hearing to the owners of properties within 300 feet of the site and published notice of the hearing in the newspaper as required by CMC 18.55.190.A. The applicant posted a sign on the site prior to submitting the application, as required by CMC 18.55.110.H. The City also posted information about the application on its social media accounts and its website. Unfortunately the on-site sign blew down during a storm in February. Citizens notified the City that the sign was down on February 11, 2021 and the sign was not restored until March 1, 2021. (Exhibit 61).

b. The examiner finds that the procedural error resulting from the lack of a sign on the site for three weeks did not affect the parties' substantive rights to review and testify about this application. The neighborhood was well represented at the hearing and in the written record. Residents of the neighborhood testified clearly and succinctly, both orally and in writing, regarding issues of concern to them. At the end of the hearing the examiner held the record open for an additional two weeks in order to provide the public with further opportunities to review and comment on the application.

c. The Code does not require that the applicant conduct a public meeting or otherwise present the proposed development to surrounding residents prior to submitting an application.

3. The applicant is not requesting approval of a zone change. The site and surrounding properties are, and will remain, zoned R-12.

4. The examiner finds that the proposed use is a "Nursing, rest or convalescent home," which is allowed as a conditional use in all single-family residential zones, including the R-12 zone.<sup>1</sup> CMC 18.03.030 provides, "'Nursing, rest or convalescent home' means an establishment which provides full-time care for three or more chronically ill or infirm persons. Such care shall not include surgical, obstetrical or acute illness services."

a. The Code does not define all of the terms in this section. Therefore, the examiner must refer to the dictionary definitions of these terms. CMC 18.03.010 provides, "Terms not defined shall hold their common and generally accepted meaning, unless specifically defined otherwise in this code." The plain meaning of words is derived from the dictionary definition. *Sleasman v. City of Lacey*, 159 Wn.2d 639, 151 P.3d 990, 992 (2007).

i. Merriam-Webster online dictionary provides the following relevant definitions:

(A) "Nursing home" is defined as, "a public or private residential facility providing a high level of long-term personal or nursing care for persons (such as the aged or the chronically ill) who are unable to care for themselves properly."

"Nursing home." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/nursing%20home>. Accessed 20 Apr. 2021

(B) "Rest home" is defined as, "an establishment that provides housing and general care for the aged or the convalescent."

"Rest home." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/rest%20home>. Accessed 20 Apr. 2021

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<sup>1</sup> Nursing, rest or convalescent homes are a permitted use in the multi-family residential and the majority of commercial zones. Nursing, rest or convalescent homes are a conditional use in the NC (Neighborhood Commercial) zone. Nursing, rest or convalescent homes are only prohibited in the business park and industrial zones.

(C) “Convalescent home” is defined as, “an institution for the care of convalescing patients.”

“Convalescent home.” *Merriam-Webster.com Medical Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/medical/convalescent%20home>. Accessed 20 Apr. 2021.

(D) “Convalescent” is defined as:

- 1 : recovering from sickness or debility : partially restored to health or strength *convalescent patients*

“Convalescent.” *Merriam-Webster.com Medical Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/medical/convalescent>. Accessed 20 Apr. 2021.

(E) “Convalesce” is defined as “to recover health and strength gradually after sickness or weakness // He is *convalescing* from influenza.”

“Convalesce.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/convalesce>. Accessed 20 Apr. 2021.

(F) “Acute” is defined as:

- 1 a (1): characterized by sharpness or severity of sudden onset // *acute pain*  
(2): having a sudden onset, sharp rise, and short course // *acute illness*  
(3): being, providing, or requiring short-term medical care (as for serious illness or traumatic injury) *acute hospitals* // *an acute patient*

“Acute.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/acute>. Accessed 21 Apr. 2021.

(G) “Chronic” is defined as:

- 1 a: continuing or occurring again and again for a long time *chronic indigestion chronic experiments*  
b: suffering from a chronic disease the special needs of *chronic patients*

“Chronic.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/chronic>. Accessed 21 Apr. 2021.

ii. The definitions provided by “Lawinsider.com,” cited by opponents, are expressly identified as “tools to draft better contracts.” These definitions

are not intended to provide the plain meaning of the terms. To the contrary, it appears the definitions are intended to provide alternatives to the plain meaning in order to ensure that contract language clearly expresses the intent of the contracting parties where the parties intend words to have other than the plain and ordinary meaning. Therefore, these definitions are not relevant to determining whether the proposed facility qualifies as a “Nursing, rest or convalescent home.”

b. The proposed facility provides “Withdrawal Management, Residential Substance Use Disorder, and Mental Health Inpatient Services.” Therefore, it is subject to WAC 246-341-1100 through 246-341-1158, which rely on the American Society of Addiction Medicine (the “ASAM”) criteria. The ASAM defines “addiction” as “[a] treatable, chronic medical disease...” (p. 5 of Exhibit 283). State law also defines both alcoholism and drug addiction as diseases. (See e.g., RCW 71.05.020(2) and (21), RCW 71.24.025(2) and (21), and 71.83C.010(1) and 71.83C.010(8)).

c. Based on the above definitions, the examiner finds that the proposed facility will provide full-time care for up to fifteen chronically ill or infirm persons: persons recovering from drug and/or alcohol addiction. Therefore, the facility falls within the scope of “Nursing, rest or convalescent home” as defined by the Code. The fact that the applicant does not refer to the facility by these terms is irrelevant. The proposed use is consistent with the types of uses allowed in the zone, regardless of how the facility is “named.” The Code uses the broad terms “Nursing, rest or convalescent home” to include a variety of health recovery services. The proposed use falls within the scope of these uses.

d. There is a dispute about whether the applicant will provide “acute illness services.” The Code does not define the term “acute”.

i. The applicant cites to the ASAM, which provides that ASAM Level 3.7 facilities are, “[t]he appropriate setting for patients with subacute biomedical and emotional, behavioral, or cognitive problems that are so severe that they require inpatient treatment.” (p. 4 of Exhibit 283, underline added). The ASAM provides that Level 4, Medically Managed Intensive Inpatient Services, “[m]ay be offered in any appropriately licensed acute care setting that offers addiction treatment services in concert with intensive biomedical and/or psychiatric services.” (p. 3 of Exhibit 283, underline added).

ii. Opponents cite to various definitions set out in Exhibits 170, 198, 239, 258, and 262, among others.

(A) Exhibit 170 cites to a Washington State Department of Social and Health Services publication, which provides, “ASAM 3.7-WM – Acute Detox: Medically Monitored Inpatient Programs are considered acute detox.” However, this 2016 publication cites to WAC 388-877B-0100 through WAC 388-877B-0130, which no longer exist. This publication also cites to RCW 71.24.520, which currently defines the regulatory scope of the Washington State Health Care Authority and makes no mention of the ASAM or acute/subacute care. Therefore, the examiner finds that the 2016 publication cited in Exhibit 170 is out of date and no longer relevant.



(B) Exhibits 116, 119, 198, 239, 258, 262, and others refer to the way in which detoxification symptoms occur, “acute detox,” not the type of treatment provided to patients undergoing detox. As used in the cited publications, acute detox refers to the sudden onset of symptoms when a patient stops drinking/taking drugs. The cited statements do not refer to the severity of symptoms the patient is experiencing or the type/level of treatment provided or required during the detoxification process. As one of the articles cited in Exhibit 119 provides, “The acute medical management of life-threatening intoxication and related medical problems generally is not included within the term *detoxification* and is not covered in detail in this TIP.” <https://www.ncbi.nlm.nih.gov/books/NBK64119/>. Therefore, the examiner finds that these publications are not relevant to determining whether the applicant is providing “acute illness services.”

(C) Exhibit 196 includes links to articles indicating that all detox programs in Massachusetts are considered acute care facilities and other states have different definitions of what constitutes acute care. However, this facility is subject to the laws of Washington State.

iii. The examiner finds that the ASAM, which is the standard referenced in state law, provides the best definition of the type of care the applicant will provide. As discussed in the various publications cited in the record, detoxification can include a range of experiences and levels of care, including acute care requiring hospitalization, defined as ASAM Level 4. The applicant proposes to provide Level 3.7 treatment services or lower, which the ASAM defines as subacute treatment. Patients requiring a higher level of care will be referred to a hospital. The applicant will not provide ASAM Level 4 services. (p. 4 of Exhibit 283). Therefore, the examiner finds that the applicant will not provide “acute illness services” and the proposed use qualifies as a “Nursing, rest or convalescent home” as defined by the Code. A condition of approval is warranted limiting the use to providing ASAM Level 3.7 treatment services or lower.

5. The examiner finds that “The proposed use will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity of the proposed use, or in the district in which the subject property is situated,” CMC 18.45.030.A.

a. The Code does not require that the applicant demonstrate that the proposed use will not cause any impacts on surrounding properties. The Code only prohibits impacts that are “[m]aterially detrimental to the public welfare or injurious to the property or improvements in the vicinity...” CMC 18.43.050.A (emphasis added) and that possible adverse impacts be “minimized,” CMC 18.43.050.D.

b. The Code does not define the phrase, “materially detrimental.” Therefore, the examiner must rely on the dictionary definition of these terms. Webster’s Dictionary provides the following relevant definitions:

i. “Material” as “2: having real importance or great consequences.”



“Material.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/material>. Accessed 21 Apr. 2021.

ii. “Detrimental” as:

: obviously harmful : DAMAGING (Entry 1 of 2)

: an undesirable or harmful person or thing (Entry 2 of 2)

“Detrimental.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/detrimental>. Accessed 21 Apr. 2021.

c. Therefore the examiner finds that CMC 18.43.050.A requires a finding that the proposed facility will not cause important or consequential and obviously harmful or damaging impacts to the public welfare and that it will not be injurious to the property or improvements in the vicinity of the proposed use or in the district in which the subject property is situated.

i. At least one person relied on the second definition of “detrimental” to argue that, because the vast majority of persons who testified about this application find it undesirable, the use is detrimental and therefore cannot comply with CMC 18.43.050.A. (Exhibit 185). However, the Code does not prohibit any detrimental impacts. It only prohibits those that are “[m]aterially detrimental...”

d. The site is zoned for urban residential development. Nursing, rest, convalescent homes, which includes the proposed treatment center, are allowed as a conditional use in this zone. These types of facilities are an outright permitted use in multi-family zones. Prior to adopting the Code, the City Council considered the potential impacts of such facilities and concluded that they can be compatible with residential uses. Therefore, the examiner cannot find that the mere existence of a treatment center in a residential zone is *per se* materially detrimental to the public welfare or injurious to property or improvements.

e. The examiner cannot deny the application based on the fact that the site abuts a church, school, and park. The City Council could have prohibited treatment facilities within a specified distance from these or similar facilities, as it did in former CMC 18.43.115.C(1), which prohibited licensed liquor establishments “[w]ithin two hundred fifty feet of a church, public school, private school, or licensed day care facility.” Clark County imposes similar restrictions for certain types of residential care facilities and homes in Section 40.260.180.A.3, as cited in Exhibit 93. However, the City Council did not impose such restrictions and the examiner cannot impose such a requirement where the City Council has chosen not to. *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wash.2d 674, 80 P.3d 598, 601-602 (2003) (a court must not add words where the legislature has chosen not to include them).

i. The proposed development does not violate the “drug free zone” regulations of RCW 69.50.435, cited in Exhibit 135. The applicant is not “selling” drugs.

To the extent drugs are used on the site, they will be administered as a form of treatment to patients under medical care.

f. Opponents argued that the facility will present a hazard for area residents as well as children and other persons utilizing the abutting school, park, or church. However, there is no evidence in the record to support these concerns. The applicant must bear the burden of proof that the application complies with the applicable approval criteria. But the applicant is not required to disprove any and all unsupported speculative concerns. Unsubstantiated fears may not justify denial of a proposed development. *Washington State Dept. of Corrections v. City of Kennewick*, 86 Wn.App. 521, 532, 937 P.2d 1119 (1997).

i. The applicant proposed to enclose the entire site with a six-foot sight obscuring fence, including gates at the driveway entrances, which will limit views into and out of the site as well as interactions between residents and persons on adjacent properties or passing by the facility. Patient may not leave the facility except on staff supervised outings. Children and adults may see and hear patients at the facility and may smell tobacco smoke. Some patients may use offensive language. Although such impacts may be unusual and uncomfortable, they are not materially detrimental to the public welfare or injurious to the property or improvements in the vicinity. Existing residents of the neighborhood may generate identical impacts.

ii. The call logs from the Long Beach Police and Pacific County Sheriff Departments related to the applicant's existing Long Beach facility show that residents of the facility can and do leave ATA. (Exhibits 152, 257, and others). But there is no evidence the residents were responsible for any significant criminal activity or other hazards, or that they presented any threat of harm to anyone other than themselves. Only two crimes were noted in the reports: one patient was cited for trespassing and another damaged a shed. (Exhibits 257 and 279). The Long Beach police chief noted that his agency receives calls related to the facility but he did not have any significant concerns about the number of calls or other operation of the facility. The facility generated more emergency calls when it was operated as a senior living/retirement home than it has as a rehab facility. (Exhibit 268). This is consistent with Mr. Fagan's testimony that, although a similar treatment facility within his fire station's service area in Clark County generates the highest call volume of any address in the area, the majority of calls are for psychiatric issues and overdoses. This is consistent with the Court's holding in *Washington State Dept. of Corrections v. City of Kennewick*, 86 Wn.App. 521, 526, 937 P.2d 1119, 1122 (1997), where the Court found that a prison work release program with a seven percent failure to return rate was not materially detrimental to the public welfare or injurious to property or improvements in the vicinity.

iii. Patients walking through the neighborhood will not pose a hazard or material detriment to persons or property. Patients who leave the facility ATA are unlikely to remain in the area, as there is nowhere for them to go. There are no commercial services or housing available in the immediate area. Patients who do not choose to return to the facility are likely to quickly travel out of the area to other locations where commercial services are available.

iv. The applicant agreed to subject all potential patients to a criminal background check prior to admission. The applicant will not accept registered sex offenders or persons who have been convicted of violent crimes (p. 8 of Exhibit 285) or patients in court ordered rehab (Feldman testimony). Conditions of approval are warranted to that effect.

v. Exhibits 109, 203 and 282, cite to a study of crime near publicly funded drug treatment centers. However, the applicant has not proposed a publicly funded drug treatment center in this application. The proposed facility is a private residential treatment center serving patients with private insurance. In addition, the study cited in Exhibit 116, and the study cited by the applicant in Exhibit 268, did not distinguish between outpatient facilities, where patients come and go on a daily basis, and residential facilities similar to this proposal where patients reside at the facility while receiving treatment and are not allowed to come and go at will.

vi. Numerous medical professionals testified about their experience with patients becoming violent during detox and needing to be restrained. However, there is no evidence such incidents will occur on this site or that they will pose a hazard to adults or children in the surrounding area. As discussed above, the facility will not accept patients in Level 4 detox. Such patients will be referred to hospital care. In addition, patients undergoing lower levels of detoxification will be inside the building. Although some such patients may pose a hazard to facility staff, there is no evidence that they will pose a threat to persons outside the facility, based on the police and sheriff reports related to the applicant's Long Beach facility.

vii. Opponents argued that approval of this facility will lead to an increase in needles, pills, and other drug paraphernalia and homeless people in the adjacent park. However, there is no evidence to support this assertion. Several persons testified about their experience with such facilities in other locations where these types of impacts were observed. (Exhibits 3 and 44). However, the cited facilities were located in areas with multiple treatment facilities and similar uses concentrated together. In this case the applicant is proposing a single small (15 bed) facility in a high end neighborhood that is unlikely to attract or support similar problems. The proposed facility is unlikely to attract additional drug dealers to the area due to the limited number of potential buyers; the facility will house a maximum 15 patients at any one time, a very small "customer base for potential drug dealers. As noted above, patients leaving the facility are unlikely to remain in the area as there are no retail/commercial uses, lodging, or other support services available. The examiner finds that these alleged impacts will not significantly increase the risk of these activities.

g. Assertions that the proposed use will reduce the value of surrounding properties and associated City tax revenue are not relevant, as the plain language of the Code does not require consideration of property value impacts apart from other materially detrimental impacts. CMC 18.43.050.A does not include any text identifying property value impacts as an applicable approval criterion. There is no dispute that materially detrimental impacts to the public welfare, property, or improvements are likely to affect the value of surrounding properties. However, the Code does not require consideration of property values separate from such impacts. Unsubstantiated concerns about potential

impacts of the facility may also impact property values. But such concerns are not actual impacts and may not be considered. As the Court noted in *Sunderland Family Treatment Services v. City of Pasco*, 127 Wn.2d 782, 795, 903 P.2d 986 (1995), fears based on inaccurate stereotypes and popular prejudices cannot justify zoning restrictions.

i. In addition, there is conflicting evidence in the record regarding the effect of treatment centers on property values. Exhibits 109, 130, 191, and 259 cite studies that found an eight to 17-percent reduction in value for properties located near treatment centers. However, Exhibit 259 cites to a study that found that treatment centers have no impact on property values when other factors that affect property values and factors directing the location of such facilities are considered in the analysis. The applicant submitted evidence that the value of properties surrounding its Long Beach facility have increased since the facility opened. (Exhibit 268). Given the conflicting evidence in the record, the examiner cannot find that the facility proposed in this application will have a significant negative impact on the value of surrounding properties.

6. The proposed use will meet or exceed the development standards that are required in the zoning district in which the subject property is situated. CMC 18.43.050.B.

a. The applicant proposed to locate the facility in an existing building on the site and no significant changes are proposed to the exterior of the building. As shown in the table below, the existing building currently meets or exceeds all applicable development standards.

	<b>CMC 18.09.040 requirements</b>	<b>Existing Site</b>
Minimum lot area:	9,600 square feet	104,108 square feet (2.39-acres)
Minimum lot width:	90 feet	225 feet
Minimum lot depth:	100 feet	470 feet (average depth)
Maximum building lot coverage:	30-percent	Approximately 10.5-percent (based on the site plan)
Maximum building height:	35 feet	< 35 feet
Minimum front yard:	30 feet	90 feet
Minimum side yard:	15 feet	50 feet
Minimum rear yard:	35 feet	100 feet

b. As noted in the Staff Report, the new use will alter the parking requirements on the site. CMC 18.11.130 requires one off-street parking space per two beds and one per day shift employee. The facility will provide 15 beds and nine regular staff, which will require 17 parking spaces. The applicant's site plan, Exhibit B of the application, shows 18 parking spaces: 11 spaces north of the building and seven spaces south of the building. According to the final order approving the prior assisted living facility on the site, there are 75 existing parking spaces on the site. CUP13-04 (Fairgate Estates Assisted Living Facility).

c. The applicant proposed to construct a six-foot high solid wood fence around the entire site with gates at the driveways serving the site. (Exhibit 258). This is allowed by CMC 18.17.050, provided any fencing in the front yard is located outside of the required front yard setback. A condition of approval is warranted to reflect this proposal.

7. The examiner finds that the proposed use is “[c]ompatible with the surrounding land uses in terms of traffic and pedestrian circulation, density, building and site design.” CMC 18.43.050.C. This section does not require the applicant to demonstrate that the use is compatible with the surrounding area overall. The applicant is only required to demonstrate compatibility with the facilities listed in this section: “traffic and pedestrian circulation, density, building and site design.” The Code does not define the term “compatible.” Therefore, the examiner relies on the dictionary definition. The Merriam-Webster online Dictionary defines “compatible” as “capable of existing together in harmony.” “Compatible.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/compatible>. Accessed 21 Apr. 2021.

a. The examiner finds that the proposed use will be compatible in terms of traffic. Based on the applicant’s traffic analysis (Exhibit F of the application), the proposed use will not increase, and may reduce, the amount of vehicle traffic generated on the site compared to the current assisted living facility use. Opponents argued that the proposed use will generate excessive traffic. However, they failed to provide any support for that assertion. Neighbors’ observations of existing traffic is substantial evidence. But their opinions that the proposed facility will substantially increase the volume of traffic or make the streets unsafe is not supported by substantial evidence, because neighbors are not experts in such matters. The examiner finds that the expert testimony by the applicant’s traffic engineer about the future traffic volumes generated by the proposed facility is more persuasive than neighbors’ unsupported lay testimony. The applicant will not allow patients to use or store vehicles at the site or receive visitors during their stay. Therefore, traffic will be limited to facility staff traveling to and from the site, patients arriving for treatment and departing after, and staff supervised patient outings. Therefore, the examiner finds that the proposed use is compatible with surrounding land uses in terms of traffic.

b. The facility is compatible in terms of pedestrian circulation. The use will not generate significant pedestrian traffic, as residents of the facility are only allowed to leave the site when accompanied by staff on supervised outings. There are no sidewalks along the site’s frontage, on the north side of NW 23<sup>rd</sup> Avenue. However, there is a wide paved shoulder and sidewalks are available on the opposite side of the street. In addition, the applicant agreed to dedicate additional right-of-way along the site’s NW 23<sup>rd</sup> Avenue frontage to allow the City to construct a pathway along the site’s frontage. The City cannot require that the applicant construct the pathway as a condition of this approval, as the cost of such improvements would exceed the roughly proportional impact of the proposed development on the need for such improvements. The current lack of sidewalks is an existing condition and does not make the facility incompatible with pedestrian circulation. Therefore, the examiner finds that the proposed use is compatible with surrounding land uses in terms of pedestrian circulation.

c. The examiner finds that the proposed use is compatible in terms of density, building and site design. The use will not alter the existing development density or building and site design. As discussed above, the applicant proposed to locate the facility in an existing building on the 2.39-acre site. No changes are proposed to the existing building footprint or the exterior of the building, the existing parking, or landscaping. Exterior design changes are limited to the proposed fence. As noted above, the proposed fence must comply with all applicable regulations in CMC 18.17.050 regarding the height, location, and other requirements. Similar fences are allowed on any residential parcel in the area. Therefore, the examiner finds that the proposed use is compatible with surrounding land uses in terms of density, building and site design.

8. Appropriate measures have been taken to minimize the possible adverse impacts that the facility may have on the area in which it is located. CMC 18.43.050.D.

a. The applicant proposed a variety of measures to mitigate potential impacts of the use, including:

i. Limiting the facility to a maximum of fifteen patients, including a maximum six patients requiring subacute detoxification services;

ii. Performing criminal background checks on all patients prior to admission and refusing admission to registered sex offenders and persons who have been convicted of violent crimes;

iii. Enclosing the facility with a continuous six-foot high solid fence with driveway gates and installing security cameras;

iv. Reporting any incidents of patients leaving the facility against treatment advice to the Camas Police Department;

v. For the first three years of operation, producing an annual report to the City that includes a brief, general description of discharges against treatment advice at the facility, police and emergency incidents, and safety measures used at the facility in the prior year; and

vi. For the first three years of operation, attending an annual meeting with representatives from the City, Camas School District, Harvest Community Church, and three designated neighborhood representatives for the purpose of discussing the annual report and security concerns. (Exhibit 285).

b. In addition, the operation of the facility is limited to the specific use described in the application materials and testimony including;

i. Limiting patient use of outdoor spaces to designated portions of the site and requiring staff monitoring of such outdoor use;

ii. Only allowing residents to leave the facility under direct staff supervision;

- iii. Prohibiting visitors to the site;
  - iv. Continuously maintaining all required licensing for the facility;
- and
- v. Not accepting patients in court ordered drug or alcohol treatment.

c. The examiner finds that compliance with these conditions will minimize the possible adverse impacts that the facility may have on the surrounding area.

i. The proposed fence will screen most views into the site and limit the potential for interactions between residents and persons on adjacent properties or passing by the facility. Designating limited outdoor patient use areas and requiring staff supervision of outdoor activities will reduce the potential for noise and odors (smoke) impacts on abutting properties and the adjacent street. As discussed above, the proposed use will not generate additional traffic in the area and all vehicle parking will be confined to the site.

ii. The applicant must implement the proposed physical mitigation measures before they may begin operation. The conditions of approval “run with the land. Therefore, any future owner of the site will be subject to the same conditions. Any changes to the proposed use will require additional City review and approval.

iii. The City can ensure compliance with the conditions of approval through its code enforcement process in CMC 18.55.400 through 18.55.460, which provides for the imposition of civil penalties (fines) and revocation of the CUP approval. The enforcement process is largely complaint driven. People who live near the site can report violations to the City, and the City can take actions to require compliance and remedy violations.

iv. In addition, the applicant, residents, and staff on the site are subject to the Public Peace, Morals And Welfare regulations of CMC Title 9, including the noise limits of CMC 9.32.050 and the Neighborhood Preservation requirements of CMC 8.06.

d. The examiner cannot require that the applicant allow public review of security videos from the site as it would likely violate the privacy rights of patients seeking treatment at the facility.

9. The examiner finds that the proposed use is consistent with the goals and policies expressed in the comprehensive plan. CMC 18.43.050.E.

a. The examiner finds that the proposed use does not constitute “housing” as that term is used in the Code and the comprehensive plan. Therefore, housing goals H-3 and H-3.1, cited by the applicant, are inapplicable.

i. The Code does not define the term “housing.” Webster’s Dictionary defines “housing” as:



**1 a: SHELTER, LODGING**

**b: dwellings provided for people**

“Housing.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/housing>. Accessed 22 Apr. 2021.

ii. CMC 18.03.040 provides the following relevant definitions:

“Dwelling unit” means an independent living unit within a dwelling structure designed and intended for occupancy by not more than one family and having its own housekeeping and kitchen facilities. Hotel, motel, and bed and breakfast that are primarily for transient tenancy are not considered dwelling units.”

"Family" means an individual, or two or more persons related by blood or marriage, or two persons with functional disabilities as defined in this chapter, or a group of not more than five unrelated persons (excluding servants), living together in the same dwelling unit.

iii. The proposed facility will provide temporary occupancy for up to 15 unrelated persons and will not provide individual kitchen facilities. Therefore, the examiner finds that the proposed use does not include “dwelling units” and will not provide “housing” as that term is used in the Code and the comprehensive plan.

b. The proposed facility is consistent with Housing Policy H-3.2, as it will “Encourage and support social and health service organizations that offer programs and facilities to help persons with special needs remain in the community,” to the extent the facility serves residents of Camas. The applicant is providing a health service, recovery, that will help persons with special needs, addiction, remain in the community.

c. The proposed use is not inconsistent with Housing Goal H-3 or Housing Policy H-3.1 relating to senior housing. The proposed use will replace an existing assisted living facility on the site. However, the site is private property. The City has no authority to require that the applicant or property owner retain the existing use on the site.

d. The proposed use is consistent with neighborhood policy LU-3.4, cited in Exhibit 260, which “Discourage[s] exclusive neighborhoods, privacy walls, and gated communities.” This policy, by its express terms, applies to neighborhoods and communities, not individual properties. The applicant proposed to fence the site as any other residential property owner is allowed to do.

e. The use is not inconsistent with Citywide Land Use Policy 1.4.1, cited in Exhibit 260, which provides:



In 2035, residents of Camas continue to appreciate their safe, diverse, and welcoming community. Those who were raised in Camas will return for family-wage jobs and to ultimately retire here. Camas maintains its small town character while accommodating future residents. Camas is well known for its excellent schools, thriving businesses, and ready access to metropolitan amenities and natural features. A vibrant downtown and community events bring neighbors together and are enjoyed by all.

As discussed in the findings for CMC 18.43.050.A, the proposed use will not impact the safety of the community.

f. The use is not inconsistent with Citywide Land Use Policy 1.3, which provides, “Maintain compatible use and design with the surrounding built and natural environments when considering new development or redevelopment.” The applicant is proposing to redevelop the site with a new use. However, with the exception of the proposed fence, no changes are proposed to the exterior of the site. Similar fencing is allowed on any other residential property in the area. Therefore, the design of the site will not substantially change and it will remain compatible with the surrounding built and natural environments.

g. The purpose of the comprehensive plan, cited in Exhibit 129, is implemented through the listed goals and policies of the plan. The purpose statement itself is not a goal or policy. Therefore, it is not relevant for purposes of CMC 18.43.050.E.

g. There is no evidence in the record that the facility conflicts with any of the other goals and policies expressed in the comprehensive plan.

10. The proposed use complies with CMC 18.43.050.F, which provides “Any special conditions and criteria established for the proposed use have been satisfied. In granting a conditional use permit the hearings examiner may stipulate additional requirements to carry out the intent of the Camas Municipal Code and comprehensive plan.”

a. New nursing, rest or convalescent homes are subject to Design Review pursuant to Footnote 1 of CMC 18.07.040 - Table 2. However, this application is exempt from Design Review pursuant to CMC 18.19.020, because no new development, redevelopment, or major rehabilitation is proposed. The applicant will locate the facility within an existing building and no exterior changes are proposed. The Code does not include any special conditions for this type of use.

b. The examiner adopts the conditions of approval at the end of this Final Order, which will ensure compliance with the applicable approval criteria and limit the adverse impacts of the facility. The City will ensure compliance with those conditions of approval through the permitting and enforcement processes.

11. The applicant is not required to consider alternative locations for the proposed facility. Several witnesses argued that the applicant should locate the facility elsewhere in order to reduce its impacts on the surrounding residential area. However, the examiner has no authority to require such relocation. The proposed residential treatment center is an allowed use in the R zones. Whether alternative sites for this facility would be subjectively “better” is irrelevant, because such concerns do not relate to the applicable approval criteria. If the application complies with the applicable approval criteria it must be approved.

12. The examiner acknowledges that the residents of the neighborhood oppose the proposed use and assert that the City should deny the application to protect surrounding residents. However popular support or opposition, per se, is not relevant to any applicable approval criterion. Basing a decision on popular opinion denies due process of law and is arbitrary. The best way to protect all of the public is to enforce the laws consistently and fairly. To give special consideration to a limited class of people violates the due process rights of all. The applicant and the property owners are entitled to equal protection of the law. The examiner is obligated to apply the plain meaning of the law.

13. Approval of this application will not create a precedent for future applicants. There may be other residential properties that could be utilized as residential treatment facilities. Other treatment service providers are entitled to request approval of additional facilities on those properties. Such future applications would be subject to the applicable zoning and approval criteria in effect when an application is submitted. Such applications must be approved if the applicants demonstrate that the proposed facilities also meet the applicable approval criteria. However, approval of this application does not make it any more or less likely that such applications will be submitted or approved. Each property and provider is unique and must be reviewed on its own merits. In any case, the potential precedential effect of this development is not relevant to the applicable approval criteria.

14. The proposed use will not exceed the capacity of existing fire, police and other emergency services. The Fire Marshall attended the pre-application conference and neither the fire or the police services raised any concerns with the application. As the Long Beach police chief noted, the applicant’s existing facility in that city has generated fewer serious calls than the prior senior living facility use. (Exhibit 268).

15. The purpose of the Building Division, cited in Exhibit 260, is not an applicable approval criteria for this development. As noted on the cited website, “The Building Division ensures that all new construction conforms to the International Building Code and to the Uniform Plumbing Code as adopted by the State of Washington.” Any new construction on the site will be reviewed by the Building Division through the relevant permit review process.

16. CMC 8.06.020, cited in Exhibits 42, 48, 116, 119, and 263, is a purpose statement, not an approval criterion. The general goals of the purpose statement are implemented through compliance with the specific requirements of the approval criteria. See *Lakeside Indus. v. Thurston County*, 119 Wn. App. 886, 98, 83 P.3d 433, review denied, 281 Wn.2d 1015 (2004) (Specific zoning laws control over general purpose statements). In addition, Chapter 8.06 is an enforcement provision, which prohibits certain

actions/activities. It is not a land use approval criterion with which the applicant is required to demonstrate compliance.

17. CMC Chapter 12.32, cited in Exhibits 116 and 119, is not an applicable approval criterion for this application. This ordinance regulates activities in public parks. Although the site is adjacent to a park, no activities are proposed in the park as part of this application.

18. The applicant is not required to demonstrate that the proposed use will result in a “local benefit.” This requirement is not included in any of the applicable approval criteria.

19. Several persons noted that substance abuse treatment often fails and some percentage of patients relapse and return to their addiction. While that is unfortunate, it is not relevant to this application.

20. Several persons argued that this type of treatment facility is needed to serve all residents of the community, not just those with private insurance. While that may be true, it is not relevant to the approval criteria for this application. The applicant proposed to operate a private facility with services funded by private insurance. Publicly funded facilities are also necessary, but this applicant is not required to fill that need.

21. Concerns about staffing levels at the facility are not relevant to this land use approval. Staffing requirements are determined by the state agency licensing the facility. The examiner has no authority to require additional staffing.

#### **D. CONCLUSION**

Based on the above findings and discussion provided or incorporated herein, the examiner concludes that CUP21-01 (Discovery Recovery) should be approved, because it does or can comply with the applicable standards of the Camas Municipal Code and the Revised Code of the State of Washington.

#### **E. DECISION**

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the examiner hereby approves CUP21-01 (Discovery Recovery), subject to the following conditions of approval:

The following conditions are in addition to any conditions required from other permits or approvals issued to this project. Unless otherwise waived or modified in this decision, the applicant must comply with the minimum requirements of the Camas Municipal Code.

1. Prior to issuance of a Certificate of Occupancy for the proposed use the applicant shall:

- a. Dedicate approximately ten to twelve-feet of right-of-way, as measured from the existing right-of-way to the existing retaining wall with wrought-iron fence, to allow for construction of a future pedestrian walkway;
  - b. Construct a continuous six-foot high solid fence along the rear and side perimeter of the site and parallel to the front perimeter but outside of the front yard setback. The fence may be setback behind the front façade of the building. The fence shall include six-foot high solid gates where the fence intersects the driveways on the site. Such fencing and gate shall be consistent with applicable City development standards;
  - c. Install staff-monitored security cameras as proposed in the application; and
  - d. Designate outdoor areas for patient use within the fenced portion of the site.
2. The applicant shall provide full-time in-patient residential care for a minimum of three and a maximum 15 chronically ill or infirm persons. Such care shall not include surgical, obstetrical or acute illness services. Only six of the fifteen beds at the facility shall be used for subacute detoxification services. The applicant shall not provide Level 4 detoxification services on the site. Patients requiring this level of care shall be referred to a hospital or other Level 4 provider. The applicant shall not provide out-patient care or provide on-site services to patients who are not currently residing on the site.
3. All patients shall be subject to a criminal background check prior to admission. Registered sex offenders and persons who have been convicted of violent crimes shall not be admitted. The applicant shall not provide court-mandated treatment.
4. Facility staff shall maintain 24-hour surveillance of all residents/patients of the facility.
5. Facility staff shall perform routine bed checks at 30 minute intervals.
6. Patients shall be restricted to the inside of the buildings on the site or designated outdoor areas enclosed by the proposed fence. Staff shall monitor and supervise such outdoor use.
7. Patients shall not leave the facility without direct staff supervision.
8. The applicant shall immediately report to the Camas Police Department all incidents of patients leaving the facility against treatment advice.
9. The applicant shall not allow patients' friends, relatives, or other non-staff persons to visit the site.
10. The applicant shall continuously maintain all required licensing for the facility.

11. The applicant shall provide a minimum two staff persons on site at all times, including a nurse.
12. For the first three years of operation, the applicant shall:
  - a. Produce an annual report to the City that includes a brief, general description of discharges against treatment advice at the facility, police and emergency incidents, and safety measures used at the facility in the prior year; and
  - b. Meet on an annual basis with representatives from the City, Camas School District, Harvest Community Church, and three designated neighborhood representatives for the purpose of discussing the annual report required by Condition 12.a and addressing security concerns.
13. This permit shall expire in one year of the date of the final decision, if no building plans are submitted for improvements as described in the application.

DATED this 28 day of April 2021.

  
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Joe Turner, AICP  
City of Camas Land Use Hearings Examiner