

NOTICE OF DECISION ON RECONSIDERATION
DISCOVER RECOVERY (FILE NO. CUP21-01)

DECISION ISSUED: April 28, 2021
RECONSIDERATION ISSUE: May 24, 2021
CITY CONTACT: Sarah Fox, Senior Planner
(360) 817-7269
communitydevelopment@cityofcamas.us
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 on the request for reconsideration has been rendered for the conditional use permit application for Discover Recovery (City file #CUP21-01). The decision is attached to this notice. In summary, the Hearings Examiner hereby:

- a. Grants, in part, Petitioner's reconsideration request to modify finding C.5.f.iii on p. 18 of the Final Order as set out in this Final Order on Reconsideration; and
- b. Denies Petitioner's reconsideration request.

RECONSIDERATION (Refer to CMC§18.55.235)
(in relevant part)

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 HEARING EXAMINER
FOR THE CITY OF CAMAS, WASHINGTON**

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

A. SUMMARY

1. On April 28, 2021, City of Camas Hearing Examiner Joe Turner (the "examiner") issued a Final Order approving this application subject to conditions (the "Final Order"). CMC 18.55.235 provides that any party may request reconsideration of the examiner's decision if they believe that the examiner's decision is "[b]ased on erroneous procedures, errors of law or fact, or the discovery of new evidence which could not be reasonably available at the public hearing..."

2. On May 12, 2021, attorney Brian K. Lewallen filed a request for reconsideration of the examiner's Final Order on behalf of the "Dorothy Fox Safety Alliance" ("Petitioner").

3. Based on the findings provided or incorporated herein, the examiner:

- a. Grants, in part, Petitioner's reconsideration request to modify finding C.5.f.iii on p. 18 of the Final Order; and
- b. Denies Petitioner's reconsideration request.

B. DISCUSSION

1. CMC 18.55.235 provides:

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 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 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.

2. The examiner finds that Petitioner is a party of record. Representatives of Petitioner participated in review of the original application, submitting oral and written testimony into the record.

3. Petitioner filed the request for reconsideration on May 12, 2021, within the 14 day deadline established by CMC 18.55.235.A. The request for reconsideration includes Petitioner's name, is signed by Petitioner's attorney, and specifies which aspects of the decision are being appealed. Therefore the examiner finds that the request complies with the procedural requirements of CMC 18.55.235.

4. Petitioner objects to the examiner's reliance on the Court of Appeals' decision in *Washington State Dept. of Corrections v. City of Kennewick*, 86 Wn.App. 521, 532, 937 P.2d 1119 (1997), arguing that the facts of that case are substantially different than the application before the examiner.

a. The examiner primarily relied on the holding in *Kennewick* that, although the applicant must bear the burden of proof that the application complies with the applicable approval criteria, the applicant is not required to disprove any and all unsupported speculative concerns; unsubstantiated fears may not justify denial of a proposed development and applicants are not required to disprove all speculative concerns. (p. 17-18 of the Final Order). The Court in *Kennewick*, citing *Sunderland Family Treatment Servs. v. City of Pasco*, 127 Wash.2d 782, 903 P.2d 986 (1995), expressly distinguished between "well founded fears and those based on inaccurate stereotypes and popular prejudices," noting that "The latter category does not justify zoning restrictions." *Id* at 532 (internal citations omitted). Although the facts in *Kennewick* were different, the concerns raised by the opponents in both cases were very similar. The examiner finds that, as in *Kennewick*, opponents of the facility at issue in this case failed to provide sufficient support for their concerns that the site's proximity to a school, park, and church and its location in a residential neighborhood will *per se* be "[m]aterially 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 18.43.050.A.

b. However, the examiner finds that the facts in *Kennewick* provide an example of what the Court considered to be materially detrimental impacts.

i. The facility at issue in *Kennewick* was a prison work release facility. Occupants of the facility were convicted criminals who were legally prohibited from leaving. Yet the court found that, the fact that seven percent of the inmates failed to return to the facility and "Less than one percent of the total inmates committed new

felonies while assigned to the facility” (86 Wn.App. at 526) was not sufficient to deny the application.

ii. In this case, patients are attending the facility voluntarily, seeking medical treatment. Patients are not required to attend nor are they confined to the facility; they are free to leave at any time. Some patients may change their minds and choose to discharge themselves from medical care for various reasons. They are not “fleeing” and “escaping” the facility as Petitioner asserts. Patients are choosing to discharge themselves from medical care. Although some patients may not be in the best state of mind to make that decision, due to withdrawal symptoms and other issues, that does not mean they pose a threat to area residents. This facility is in closer proximity to services that attract children (the school, park, and church) and residential uses, than the facility at issue in *Kennewick*. However, patients seeking treatment at the proposed facility do not pose the same potential threats as inmates fleeing prison.

5. Petitioner objects to the examiner’s finding that a fence proposed by the applicant will “[l]imit...interactions between residents and persons on adjacent properties or passing by the facility [as] [patients] may not leave the facility except on staff supervised outings.” (p. 18 of the of the Final Order). The examiner acknowledges that the fence will do nothing to prevent patients from leaving the facility Against Treatment Advice (“ATA”) or Against Medical Advice (“AMA”). However, as noted above, there is no evidence that patients leaving the facility pose a significant threat of harm to persons or property in the area.

6. Finding C.5.f.iii on p. 18 of the Final Order that, “Patients walking through the neighborhood will not pose a hazard or material detriment to persons or property” should be rephrased to, “Patients walking through the neighborhood are unlikely to pose a hazard or material detriment to persons or property.” Anyone living, working, or traveling through the area could potentially pose a threat to persons or property. This facility will attract additional people to the area. Any increase in population will cause a proportionate increase in potential criminal activity. However, patients of the proposed facility do not pose a significantly greater threat than anyone else. Opponents provided evidence of multiple patients leaving the Long Beach facility, yet the police reports included only two incidents of trespass (entering adjacent properties) and one incident of property damage related to residents of the facility (Exhibits 150, 257, and 279). The examiner cannot find that this facility will result in a disproportionate increase in crime in the surrounding area.

7. Petitioner submitted new evidence with its reconsideration request. However, Petitioner failed to “explain why such evidence should be considered” (CMC 18.55.235.B(3)) or why the new evidence was not “[r]easonably available at the public hearing...” or during the open record period (CMC 18.55.235). Therefore, the examiner is prohibited from considering the new evidence.

8. Petitioner asserts that the proposed facility will result in an increase in homeless persons, drugs, and drug paraphernalia in the area, citing to Exhibits 3 and 44. However, those exhibits expressly cite to areas with a large concentration of drug and alcohol treatment facilities or publicly funded facilities. Exhibit 3 refers to the author’s experience in “[C]osta Mesa, California (the 2nd largest repository of Rehabs/Sober Living Homes).” Exhibit 44 refers to public health clinics and hospitals. In this case, the applicant is proposing a single, relatively small (15 bed) private treatment facility in an area with no other existing treatment facilities. Unlike a public health clinic or hospital, the facility will not treat the indigent or homeless. The examiner finds that the cited exhibits do not

support a finding that this facility will result in the types of problems observed at the locations cited in those exhibits.

9. The examiner finds that the “Supplemental Conditions” proposed by Petitioner are not warranted.

D. CONCLUSION

1. Based on the above findings and discussion, the examiner concludes that:

a. Finding C.5.f.iii on p. 18 of the Final Order should be modified as set out in this Final Order on Reconsideration; and

b. Petitioner’s reconsideration request does not otherwise comply with the requirements of CMC 18.55.235. Specifically, Petitioner failed to allege any sustainable erroneous procedures, or errors of law or fact, and Petitioner failed to demonstrate why the new evidence offered with the request for reconsideration was not reasonably available at the public hearing or during the open record period. Therefore the examiner should deny the remainder of Petitioner’s motion for reconsideration.


E. DECISION

1. Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the examiner hereby:

a. Grants, in part, Petitioner’s reconsideration request to modify finding C.5.f.iii on p. 18 of the Final Order as set out in this Final Order on Reconsideration; and

b. Denies Petitioner’s reconsideration request.
denies Petitioner’s motion for reconsideration.

DATED this 24 day of May 2021

A handwritten signature in black ink, appearing to read "Joe Turner", is written over a horizontal line.

Joe Turner, AICP
City of Camas Land Use Hearing Examiner