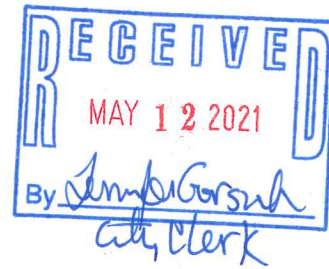


The Honorable Joe Turner, Hearings Examiner
Hearing Date: March 24, 2021
Decision Date: April 28, 2021



BEFORE THE HEARINGS EXAMINER OF THE CITY OF CAMAS

In the Matter of the Application of Discover
Recovery for:

CONDITIONAL USE PERMIT

File No: CUP21-01

**PETITIONERS' DOROTHY FOX
SAFETY ALLIANCE PETITION
FOR RECONSIDERATION**

I. INTRODUCTION / RELIEF REQUESTED

Petitioners' Dorothy Fox Safety Alliance ("DFSA") submits this Petition for Reconsideration of the Hearings Examiner's April 28, 2021, Notice of Decision to approve Discover Recovery's conditional use permit application (City File # CUP21-01). Discovery Recovery's conditional use application should be reconsidered and denied for the following reasons¹:

First, the proposed use will be materially detrimental to public welfare, or injurious to the property or improvements in the vicinity of the proposed use. Camas Municipal Code (CMC) 18.45.030.A.

Second, the Final Order relies on speculative and unsubstantiated assertions and conclusions which are not grounded in facts presented in the record.

Third, the Final Order uses improper or invalid tests (i.e., the "significant criminal activity" test) to exclude or otherwise discount evidence presented by DFSA and others.

For these reasons, among others, DSFA request that the Hearing Examiner reconsider

¹ DFSA reserves its rights to appeal these and any other issues presented by the Final Order, or otherwise argued or presented in the administrative record, or as allowable by law.

1 its decision and CUP21-01 should be denied.

2 **II. ISSUES FOR RECONSIDERATION**

3 **A. The finding that “The proposed use will not be materially detrimental to the**
4 **public welfare, or injurious to the property or improvements in the vicinity of the**
5 **proposed use is incorrect and is, among other things, based upon erroneous**
6 **interpretation of facts and law.”²**

7 1. Finding that there is no evidence to support concerns that a detox center next to
8 a school, park or church presents a hazard to those who use them is wrong.³

9 Citing *Washington State Dept. of Corrections v. City of Kennewick*, 86 Wn.App. 521,
10 937 (P.2d 1119 (1997)), the Hearing Examiner states that the applicant is not required to
11 disprove any and all unsupported speculative concerns, and that “unsubstantiated fears may not
12 justify denial of a proposed development.”⁴ However, that case also stated that while
13 neighborhood fears that are not substantiated are not relevant, “what is relevant is the impact
14 the facility will have on neighborhood safety.” *Id.* at 533, 534.

15 In *Kennewick*, the Washington State Department of Corrections tried to place a work
16 release facility within urban boundaries. Residents and businesses opposed the facility citing
17 general concerns about increased risk of crime, lower property values and an elderly day-care,
18 mini-golf center and two school bus stops all within one-quarter mile of the proposed work
19 release facility. The Court held that the fears were irrelevant because they were “generalized”
20 and “community displeasure cannot be the basis of a permit denial.” *Id.* at 534, citing
21 *Maranatha Mining Inc. v. Pierce County*, 59 Wn.App. 795 at 804. The case did not hold, as
22 the Final Order incorrectly states, that a prison work release program with a seven percent
23 failure to return rate was not materially detrimental to the public welfare or injurious to
24 property or improvements in the vicinity.⁵ That purported fact had nothing to do with the

25 ² Hearing Examiner Final Order, pg. 16.

³ *Id.*, at pg. 18, Paragraph f.

⁴ *Id.*

⁵ *Id.* at pg. 18, Paragraph f(ii).

1 findings of that case. That assertion is an erroneous interpretation of law and should be
2 stricken from the Final Order. Instead, the Court found that the fear was too generalized and
3 not relevant, that mini-golf center and the proposed facility were located 300 to 350 yards from
4 each other and separated by Columbia Way, a busy arterial, and that the bus stops were located
5 in areas that already exposed children to the dangers of railroad and truck traffic. Therefore,
6 the Planning Director was justified in approving the conditional use permit in that case.

7 *Kennewick* is wholly distinguishable from the case presented here. First, the detox
8 center is adjacent to a school, park, church and residences – not one-quarter of a mile away.
9 Columbia Way is not separating the detox center from nearby homes, a residential two-way
10 street is. Columbia Way does not separate the detox center from the school, park or church.
11 The school bus stop is not next to a railroad or a major truck arterial a quarter-mile away from
12 the detox facility – the school bus stop is on the sidewalk in front of the detox center. Any one
13 of these unique facts could have changed the outcome of *Kennewick*, because “[w]hat is
14 relevant is the impact the facility will have on neighborhood safety.” *Id.* at 533, 534.

15 Second, DFSA’s concerns about citing the detox center next to a school, park, church
16 and homes are neither unsubstantiated, nor generalized. DFSA presented the Hearings
17 Examiner with numerous and specifically documented cases where intoxicated, suicidal and
18 mentally ill patients fled Discover Recovery’s other detox center without notice, with or
19 without their belongings, for whatever reason at any time of day or night. Those are not
20 generalized or unsubstantiated fears. Those events happened. And the Applicants have
21 admitted that all patients at the proposed detox center will be there voluntarily and, as such, can
22 flee the detox center without notice, with or without their belongings, for whatever reason at
23 any time of day or night like they do in Long Beach. So, DFSA’s concerns are grounded in
24 truth and based upon specific events that actually happened. They are not based on common
25 displeasure for detox centers or some whimsically implausible story of impending doom.

1 These things happened and there is no condition that can be placed on this conditional use
2 permit from preventing it from happening in the future, if approved.

3 Nonetheless, the Final Order seems to painstakingly try to work around the substantial,
4 supported and specific evidence presented by DFSA and others to arrive at the bold finding
5 that there is no evidence in the record to support its claim that the detox center will be
6 materially detrimental to the public welfare. For example, the Final Order states that
7 speculative or unsubstantiated concerns offered by DFSA or others are not relevant and will
8 not be considered in the ruling. However, the Final Order itself is rife with speculative and
9 unsubstantiated assumptions or conclusions to support the notion that DFSA presented no
10 evidence in the record to support its claims, and that the conditional use permit application
11 should be approved. To us, this is a frustrating and unfortunate paradox, one that is an
12 erroneous and an unjust application of the law, due process, and treatment of the facts and
13 evidence presented in this case.

14 Specific examples of potential errors regarding DSFA's and others' evidence in the
15 Final Order:

- 16 a. Paragraph f(i): The fence will limit interactions between residents and
17 patients because patients cannot leave the facility except on staff
supervised outings.

18 **Not true.** As we all know, and Applicants admit, patients can go ATA time, for any
19 reason, with or without notice. A gate or a fence will not stop them from leaving or interacting
20 with residents once fleeing on foot.

- 21 b. Paragraph f(i): Although swearing and tobacco smoke may be unusual
22 and uncomfortable impacts, they are not materially detrimental to public
23 welfare. Existing residents of the neighborhood may generate identical
impacts.

24 As the record shows, there is evidence of a patient having a "psychotic break" outside
25 the facility in Long Beach. That is a bit more than swearing and smoking. Those types of

1 events happening next to a school and park are materially detrimental to public welfare – fence
2 or not. And stating that “Existing residents of the neighborhood may generate identical
3 impacts” to discount DFSA and others’ evidence is based on speculation and should not be
4 used as justification in the Final Order. And, when evaluating “identical impacts,” we doubt
5 that existing residents will have a psychotic break on their lawns anytime soon – but that is
6 speculation.

- 7 c. Paragraph f(ii): No evidence that the detox center is materially
8 detrimental to public welfare because the crimes against residents
committed by patients who flee are not “bad” enough.

9 In support of the finding that the detox center is not materially detrimental to public
10 welfare, the Final Order states that there is “no evidence the [fleeing patients] were responsible
11 for any significant criminal activity...”⁶ Just trespassing and damage to a resident’s property.
12 We were unaware that hearing examiner had authority to consider which crimes were ok to
13 commit against the public and still not be materially detrimental to public welfare. If so,
14 DFSA asks for a list of crimes, in the hearing examiner’s opinion, that can be committed by
15 escaping patients from a detox center against the public without triggering the materially
16 detrimental to public welfare threshold. We believe the residents in the vicinity of the proposed
17 detox center have a right to know what those are.

18 That said, “significant” criminal activity is an erroneous distinction to make when
19 determining whether the detox center is materially detrimental to public welfare. Which crime
20 is significant enough to tip the scales in the residents’ favor? Burglary? Assault? Indecent
21 Exposure? How many crimes before the number becomes “significant”? Not two, obviously,
22 as stated in the Final Order. How many then? 5? 10? 40? Does one assault trigger the
23 materiality threshold, but 20 trespasses do not? The opaque “significant” criminal activity test
24 used in Paragraph f(ii) is arbitrary and capricious and should be withdrawn.

25 ⁶ *Id.* at 18, Paragraph F(ii).

- 1 d. Paragraph f(ii): Improper use of Long Beach Chief Wright's comments
2 as justification to conclude that a detox center at the Fairgate Estate
3 property is not materially detrimental to public safety.

4 The Final Order states, "The Long Beach police chief...did not have any significant
5 concerns about the number of calls or other operation of the facility" in Long Beach to further
6 support the notion that DFSA presented no evidence to support its claims.⁷ However, the Long
7 Beach Police Chief, Chief Wright, just recently became aware that Applicants have used his
8 words from a local newspaper article to support their conditional use application. To put it
9 mildly, Chief Wright is not happy that he and his words were unknowingly brought into this
10 dispute by the Applicants. In fact, Applicants tried to get a letter in support from Chief Wright
11 after the public hearing and he refused to do so.

12 Chief Wright communicated with DFSA recently and stated that the proposed location
13 in Camas in terms of public safety is "apples to oranges" to the location in Long Beach. The
14 lack of significant concerns noted in the article are due to the unique location of Discover
15 Recovery in Long Beach. As he stated to DFSA, the Long Beach facility is not a significant
16 concern because:

- 17 1 – The fire department is right across the street from the facility
18 in Long Beach.
19 2 – The police department is only 10 city blocks from the
20 facility.
21 3 – We patrol right past the facility in our patrol vehicles
22 regularly. It is not located in a secluded area at all but on one of
23 the major streets in Long Beach.
24 4 – Our response time to calls there is usually 2-5 minutes
25 depending on what else is going on.
 5 – It is not right next to schools.⁸

⁷ *Id.*

⁸ *See* Exhibit 1.

1 Finally, and most importantly, DFSA asked Chief Wright, “Would you endorse an
2 isolated densely residential location sandwiched between the sensitive uses of an elementary
3 school/preschool/child’s park” for a detox center. Chief Wright’s answer: “No. I would not.”⁹

4 In light of this new evidence, any use of Chief Wright’s comments to justify the finding
5 that DSFA and others presented no evidence to support its claims or use to justify a finding that
6 the detox center in is not materially detrimental to the public welfare in the Final Order should
7 be stricken. Instead, the Final Order should reflect that Chief Wright would not endorse this
8 location for a detox center in Camas, would not write a letter in support of Discover Recovery
9 in Camas, and instead be used as evidence to support DFSA’s substantiated and specific claim
10 that a detox center at this location does materially detrimental impact public safety because: (1)
11 a fire department is not located near or across the street from Fairgate Estates (in fact the
12 Camas Fire Department is already severely understaffed as stated in the record previously); (2)
13 the Camas Police Department is not 10 blocks from Fairgate Estates, it is over 3 miles away
14 (roughly 10 minutes drive); (3) there is no regular Camas police patrol of NW 23rd Avenue and
15 NW 23rd Avenue is not a major street in the City of Camas; (4) response times for emergency
16 calls or ATA events cannot be 2 to 5 minutes given the remoteness of the property to the
17 Camas Police Department; and (5) the proposed detox center is right next to Dorothy Fox
18 Elementary School.

19 e. Paragraph f(iii): Finding that “patients walking through the
20 neighborhood will not pose a hazard or material detriment to persons or
property” is based on speculation and unsubstantiated conclusions.

21 The Final Order states that patients leaving the proposed detox facility will not pose a
22 material detriment to persons or property based upon pure speculation and unsubstantiated
23 outcomes. The Final Order says that patients who leave the facility ATA are unlikely to
24 remain in the area, as there is nowhere for them to go. It also states that patients who do not
25

⁹ *Id.*

1 choose to return to the facility are likely to quickly travel out of the area to other locations
2 where commercial services are available. Neither of those statements are grounded in facts
3 presented in the record. Those are pure speculation and that speculation is used in favor of the
4 Applicants. What about speculating the other way? We know that patients have left Long
5 Beach without their belongings, money or identification. That would make it particularly hard
6 to “quickly travel out of the area,” right? At least one might speculate that is true. If the Final
7 Order is going to speculate about potential outcomes, why not err on the side of the opponents
8 to this application rather than the Applicants? Solely using speculative assertions or
9 conclusions to find that patients walking through the neighborhood will not pose a hazard or
10 material detriment to persons or property, which is all Paragraph F(iii) does, is arbitrary and
11 capricious on its face.

- 12 f. Paragraph f(vii): Discounting evidence that the detox facility will lead
13 to an increase in needles, pills and other drug paraphernalia in the
adjacent park based on speculation.

14 While DFSA and others presented specific and substantiated evidence that the increase
15 of needles, pills, other drug paraphernalia and homeless are directly associated with presence
16 of detox facilities, the Final Order disregards such evidence, specifically, (Exs. 3 & 44) on a
17 technicality (multiple facilities versus one here) and such evidence, generally, by offering
18 speculative and unsubstantiated reasoning. The Final Order states, “The proposed facility is
19 unlikely to attract additional drug dealers to the area due to the limited number of potential
20 buyers,” and the detox facility will be “a very small customer base for potential drug dealers.”
21 Finally, it noted, “patients leaving the facility are unlikely to remain in the area as there are no
22 retail/commercial uses, lodging, or other support services available.” What in the record
23 supports the basis for these statements and conclusions? Nothing. These are purely
24 speculative and should be stricken from the Final Order.
25

1 **B. IN THE EVENT THE APPLICATION IS STILL APPROVED AFTER**
2 **RECONSIDERATION, DFSA REQUESTS THE FOLLOWING**
3 **SUPPLEMENTAL CONDITIONS TO BE ADDED TO THE APPLICATION**

4 In the event the Applicant's conditional use permit application is still approved after
5 reconsideration, which DFSA does not, we respectfully ask that the Hearing Examiner consider
6 additional conditions to CUP21-21. Such conditions are required to satisfy CMC 18.43.050D
7 whereby the Applicant must "take appropriate measures....to minimize the possible adverse
8 impacts that the proposed use may have on the area in which it is located."

9 Supplemental Condition 1: Set up, maintain and use a text-based emergency
10 notification system with residents in the vicinity of the detox facility. This text-based
11 notification system must be used to notify users and Dorothy Fox Elementary immediately
12 when an ATA/AMA occurs or a patient leaves the location unsupervised.

13 Supplemental Condition 2: Amend Condition 12(b) to meet on a quarterly basis with
14 representatives from the City, Camas School District, Harvest Church and neighborhood
15 representatives.

16 Supplemental Condition 3: Provide the number of times police can be called to deal
17 with credible threats to persons or property outside the detox center before the permit is
18 revoked.

19 Supplemental Condition 4: Provide the number of ATAs/AMAs before the detox
20 center before the permit is revoked.

21 Supplemental Condition 5: Better define the specifics of the security system Applicants
22 seek to use to minimize potential impacts of the detox facility and obtain approval from the
23 Hearing Examiner prior to facility operation.

24 Supplemental Condition 5: Discover Recovery must pay for and provide a properly
25 trained security guard to be stationed on the sidewalk in front the detox facility location during
times of the day when school children are walking to and from Dorothy Fox Elementary.

1 Supplemental Condition 6: Install a motion alarm or other like detection device along
2 fence lines to notify the facility and residents that a patient has breached the fenceline.

3 Supplemental Condition 7: Request better specificity of Condition 3 regarding the
4 exclusion of patients convicted of sex or violent crimes. Clarification that sex crimes include,
5 but are not limited to, sexual misconduct, indecent exposure, resisting arrest, solicitation,
6 prostitution, and sex and/or human trafficking. Clarification that “violent crimes” includes, but
7 is not limited to, rape, attempted rape, domestic violence, interpersonal violence, intimate
8 partner violence, domestic battery, sexual assault or battery, child abuse, menacing, robbery,
9 kidnapping, attempted kidnapping, manslaughter, assault and murder, as well as any potential
10 patient with an existing protective or restraining order against them.

11 Supplemental Condition 8: For the first three years of operation, designate an
12 independent, third-party medical administrator to periodically review medical charts, contents
13 of patients’ background checks, Washington State Department of Health records, and other
14 required forms of information to report to the residents on the compliance status of the
15 proposed detox facility with applicable federal, state and local laws and the conditions set forth
16 in CUP21-01.

17 Supplemental Condition 9: Applicants must notify residents of the times and locations
18 of all off-site field trips. Departing and returning from field trips should not occur shortly
19 before or after school when children are walking to and from Dorothy Fox Elementary.

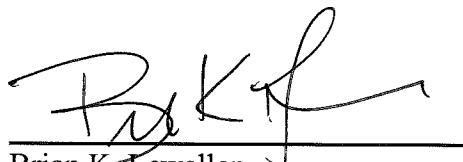
20 Supplemental Condition 10: Given that patients can, and do, go ATA at any time,
21 Applicant’s must provide for a properly trained security guard to be onsite 24 hours a day, 7
22 days a week.

23 Supplemental Condition 11: Reimburse nearby residents for costs associated with
24 purchasing and installing privacy film on their windows. Fairgate Estate rooms look directly
25 into some home’s bedrooms and common living areas.

1
2 **III. CONCLUSION**

3 For the reasons set forth above, Applicant's conditional use permit application should
4 be denied or, if approved, amended to add DFSA's supplemental conditions.

5
6 DATED this 12th day of May, 2021.

7 

8 Brian K. Lewallen
9 Counsel, *pro bono*, for Petitioner
10 Dorothy Fox Safety Alliance
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Exhibit 1

Ex. 1

From Long Beach Chief Wright.

From: Heather Gulling (heathergullingdesign@outlook.com)

To: brian@ispeedonthe405.com; lewallen55@yahoo.com; vogt55@gmail.com; emailjandh@gmail.com; kristenpmaxwell@gmail.com; stuartmaxwell82@gmail.com; peterlu@gmail.com; margaret_aileen@yahoo.com

Date: Friday, May 7, 2021, 05:43 PM PDT

Below from Chief Wright. He's upset that Discover Recovery used him as an endorsement. He said he is fine with all of the bottom verbiage being used in any legal proceedings.

BL - this is direct evidence that can be used in the Appeal on Wednesday, correct?

Heather Gulling Design
941-586-1235

From: Flint Wright <fwright@longbeachwa.gov>
Sent: Friday, May 7, 2021 7:58 PM
To: Heather Gulling <heathergullingdesign@outlook.com>
Subject: RE: Follow-up email about Camas WA

No, I would not. Heather, your situation is entirely different then what we face in Long Beach. God knows I hate to be in the middle of this but I have been brought into it. The two locations are like comparing apples to oranges it seems from the information you provided. This is my opinion.

Chief Wright

From: Heather Gulling [mailto:heathergullingdesign@outlook.com]
Sent: Friday, May 07, 2021 4:52 PM
To: Flint Wright <fwright@longbeachwa.gov>
Subject: Re: Follow-up email about Camas WA

[External Email]

Thank you Chief Wright.

I don't want to push my luck - but knowing all that you do -

1. would you endorse an isolated densely residential location sandwiched between the sensitive uses of an elementary school/preschool/childs park?

Heather Gulling Design
941-586-1235

From: Flint Wright <fwright@longbeachwa.gov>
Sent: Friday, May 7, 2021 7:47 PM
To: Heather Gulling <heathergullingdesign@outlook.com>
Subject: RE: Follow-up email about Camas WA

Miss. Gulling,

I was glad to be able to speak to you on the phone. I was asked about the facility in Long Beach by the news reporter. I answered to the best of my memory and tried to give my answers in an honest and fair way. Please note that my answers were about the facility in Long Beach alone. I have no opinion about the location being proposed for your community.

To answer your questions:

1 – I don't remember if the location specifics were given to me by the reporter, although I don't think she did. She may have, but I was commenting on my departments interactions with the facility in Long Beach.

2 – I was not aware of the health departments reports.

3 – The reports to the Sheriff's department were made to the dispatch center. The dispatch center would have then called my officers to respond. I would have read the log reports of the events at the time of the calls or the next shift I worked, but would not have remembered them specifically when talking to the reporter.

4 – Yes. The facility in Long Beach has not been a source of significant issues for MY department. I can't speak to the neighbors opinions and didn't. All I can say is that the facility has not been a burden to my agency.

5 – N/A

In the end the only facility I can comment on was the one in Long Beach and what I told the reporter was accurate. That facility has not been a major impact on my department with calls. I am sorry that my comments to a reporter were used in the hearings process. I was asked by the facility to write a letter of endorsement for them and refused. I did not feel I had a right to weigh in on your situation in a hearing. If I had thought my comments would become part of a hearings process I would not have made a comment to the reporter. From what you have stated the location being given is completely different then what we face in Long Beach for the following reasons:

1 – The fire department is right across the street from the facility in Long Beach. You mentioned the lack of fire services.

2 – The police department is only 10 city blocks from the facility.

3 – We patrol right past the facility in our patrol vehicles regularly. It is not located in a secluded area at all but on one of the major streets in Long Beach.

4 – Our response time to calls there is usually 2-5 minutes depending on what else is going on.

5 – It is not right next to schools.

All those 5 points make the facility in Long Beach what it is. So while what I said to the reporter is true, from my perspective as the chief, it has nothing to do with your situation in your community because of the situation as you describe.

Chief Flint R. Wright
Long Beach police Department

From: Heather Gulling [mailto:heathergullingdesign@outlook.com]
Sent: Friday, May 07, 2021 1:26 PM
To: rsouvenir@co.pacific.wa.us; Flint Wright <fwright@longbeachwa.gov>
Subject: Follow-up email about Camas WA

[External Email]