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BEFORE THE HEARING EXAMINER
FOR THE CITY OF DES MOINES

In the Matter of the Application of	)	No. LUA2014-0038
	)	
Valley Cities Counseling & Consultation	)	
	)	**FINDINGS, CONCLUSIONS,**
For Approval of a Conditional Use Permit	)	**AND DECISION**

SUMMARY OF DECISION

The request for a Conditional Use Permit to allow phased construction of a medical and mental health recovery campus, consisting of a 19,665 square foot mental health evaluation and treatment facility with 24 beds, a 25,340 square foot detoxification facility with 40 beds, a 34,160 square foot main office building, a 7,200 square foot dispensary clinic, and an 8,340 square foot common meeting facility at 26915 Pacific Highway South in Des Moines, Washington, is **APPROVED**. Conditions are necessary to address specific impacts of the proposed development.

SUMMARY OF RECORD

Hearing Date:
The Hearing Examiner held an open record hearing on the request on April 3, 2015.

Testimony:
The following individuals presented testimony under oath at the open record hearing:

Nikole Coleman, City Land Use Planner
Alan Keimig, Applicant Architect
Dan Brewer, City Public Works Director
Ken Taylor, Applicant Representative
Monica Whitman, City of Kent Senior Transportation Planner
Greg Heath, P.E., Traffic Engineer
Jamie Culver
Megan Culver
Terry Potvin
Chelene Bird
Bryan Whiting
Reynaldo Hagood
Arnold Culver
Kelly Togesen
Suzanne Pak
Nadya Curtis
Steve Williams

Exhibits:
The following exhibits were admitted into the record:

1. City of Des Moines Staff Report, dated March 27, 2015
2. Vicinity Map, dated March 24, 2015
3. Aerial Map, dated March 23, 2015
4. Project Narrative, dated December 2, 2014
5. Site Plans (11 Sheets):
   a. Proposed Site Plan and Vicinity Map (Sheet A-1), dated December 1, 2014
   b. Emergency and Treatment Floor Plan (Sheet A-2), dated October 21, 2014
   c. Treatment Facility Elevations (Sheet A-3), dated October 21, 2014
   d. Detox Facility Plans (Sheet A-4), dated December 1, 2014
   e. Detox Facility Elevations (Sheet A-5), dated December 1, 2014
   f. Outpatient Services First Floor Plan (Sheet A-6), dated December 1, 2014
   g. Outpatient Services Second Floor Plan (Sheet A-7), dated December 1, 2014
   h. Outpatient Building Elevations (Sheet A-8), dated December 1, 2014
   i. Outpatient Services Elevations (Sheet A-9), dated December 1, 2014
   j. Recovery Café Plans and Elevations (Sheet A-10), dated December 1, 2014
   k. Dispensary Clinic Plans and Elevations (Sheet A-11), dated December 1, 2014
6. Preliminary Landscape Plan (Sheet L-1), dated October 10, 2014
7. Notice of Complete Application, dated December 12, 2014
8. Letter from Alan Keimig to Nikole Coleman, dated December 23, 2014
9. Mitigated Determination of Nonsignificance, dated February 2, 2015, with attached SEPA Checklist, dated December 2, 2014
10. Notice of MDNS Adoption, dated December 2, 2014
11. Public Notice of Application documents:
    a. Affidavit of Adjacent Property Public Notice Information, dated January 30, 2015
    b. Affidavit of Public Posting, dated February 3, 2015
12. Affidavit of Publication, dated February 2, 2015
13. Public Comments:
    a. Email from Tracey Entler to Nikole Coleman, dated February 3, 2015, with email string
    b. Letter from Nadya Curtis to Council Members, dated February 14, 2015
    c. Email from Bryan Burnett to Nikole Coleman, dated February 17, 2015
    d. Email from Charlene Anderson to Nikole Coleman, dated February 13, 2015
    e. Email from Leila Willoughby-Oakes to Nikole Coleman, dated February 17, 2015
    f. Letter from Leila Willoughby-Oakes to Nikole Coleman, dated February 17, 2015
14. City's Response to Public Comments, dated March 3, 2015
15. Notice of MDNS Appeal Period Extension, undated
16. Traffic Impact Analysis, Heath & Associates, dated March 4, 2015
17. Land Use Map, dated March 23, 2015
18. Zoning Map, dated March 24, 2015
19. Des Moines Municipal Code, Chapter 18.140, undated

20. Des Moines Municipal Code, Chapter 18.127, undated
21. Notice of Public Hearing, undated
22. Affidavit of Adjacent Property Public Notice Information, dated March 17, 2015
23. Affidavit of Publication, dated March 17, 2015
24. Public Notice Notification Map, undated
25. Letter from Greg Heath, Heath & Associates, Inc., to Alan Keimig, dated March 27, 2015

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Ken Taylor, on behalf of Valley Cities Counseling and Consultation (Applicant), requests a conditional use permit (CUP) to allow phased construction of a medical and mental health recovery campus at 26915 Pacific Highway South in Des Moines, Washington.[1] The campus would consist of a 19,665 square foot evaluation and treatment facility for mental health patients with 24 beds, a 25,340 square foot detoxification facility with 40 beds, a 34,160 square foot main office building, a 7,200 square foot dispensary clinic, and an 8,340 square foot common meeting facility for AA meetings and other support services. Mr. Taylor, the Chief Executive Officer (CEO) of Valley Cities Counseling and Consultation (Valley Cities), testified that the first phase of construction would involve building the mental health treatment facility by the spring of 2016. The detox facility would be built as the second phase of construction. The Applicant's goal is to have all the buildings operational by 2018. *Exhibit 1, Staff Report, page 1; Testimony of Mr. Taylor.*

2. The City of Des Moines (City) received the CUP application on December 2, 2014, and determined it was complete on December 12, 2014. On February 2, 2015, the City published notice of the application in the *Seattle Times* and mailed notice to interested parties and agencies, and to owners of property within 600 feet of the subject property. The next day, the City posted notice of the application in two locations on the property. On March 17, 2015, the City published notice of the open record hearing associated with the application and mailed notice to interested parties and agencies, and to property owners within 600 feet of the property. *Exhibit 1, Staff Report, page 1*; *Exhibits 11 and 12; Exhibits 21 through 24.*

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[1] The property is identified by Tax Parcel Number 2822049045. A legal description of the property is included with construction plans submitted with the CUP application. A driveway through the southernmost portion of an adjacent residential property at 26852 16th Avenue South, identified by Tax Parcel Number 2822049102, would provide a secondary access point to the facility from 16th Avenue, although none of the facility's structures would be built on this residential property. *Exhibit 1, Staff Report, page 1; Exhibit 5.*

State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impacts of the project, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City reviewed the Applicant's SEPA checklist and other available information on file, and determined the proposal would not have a probable significant adverse impact on the environment. The City issued a Mitigated Determination of Nonsignificance on February 2, 2015.[2] The MDNS included eight conditions: (1) that Valley Cities enter into a separate agreement with the City to mitigate impacts on public services, including a clause concerning "return to city of origin" language related to patient discharge procedures; (2) a requirement to pay traffic impact fees; (3) disposal of soil should occur in compliance with an approved grading plan; (4) the Applicant must submit a construction staging and sequencing plan; (5) if landmarks or items of archeological or historic significance are uncovered, the State Department of Archeology and Historic Preservation should be contacted; (6) the lighting and parking plan should be reviewed with the City Police Department to obtain recommendations and suggestions for incorporating strategies from the Department's Crime Prevention Through Environmental Design (CPTED) program; (7) the Applicant must install a 100 percent site obscuring fence at least six feet tall along portions of the property abutting residential areas; and (8) the Applicant must establish and enforce a strict policy prohibiting loitering. *Exhibits 9 and 10.*

4. The City received several comments related to the notice materials and the MDNS. The public comments generally related to concerns over the proximity of the proposed facility to a residential zone, schools, and a public library. The City responded to the comments in a March 3, 2015, letter to concerned citizens. The Cities of Kent and Federal Way also expressed concerns over traffic impacts and pedestrian safety. The Applicant responded to these concerns by submitting a revised traffic impact analysis on March 4, 2015. The revised analysis determined that entering sight distance at both proposed access points would be adequate and that the facility would not impact levels of service at the three intersections in the area most likely to be affected by the proposal.[3] The City extended the appeal deadline for the MDNS from February 27, 2015, to March 16, 2015, to give

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[2] Prior to issuing its SEPA determination, the City asked the Applicant for additional analysis on potential impacts to public services, especially fire and police services. Analyzing similar facilities in the region, the Applicant determined that use of emergency services would be minimal and that, as an available place for law enforcement to drop off mentally ill or chemically dependent individuals, the facility would likely reduce administrative costs in light of the decreased burden on local jails to house and treat these patients. *Exhibit 8.* Neither the police department nor the fire marshal expressed concern over the proposal.

[3] The Applicant's traffic consultant, Heath & Associates, also responded to the City of Kent on March 27, 2015, after analyzing the potential impacts of siting an outpatient drug-treatment clinic on-site. The traffic consultant determined that the revised traffic impact analysis "should be considered as a valid, conservative representation of traffic impacts" because field studies of comparable facilities showed substantially lower traffic volumes than estimated. The traffic consultant also determined that no reported pedestrian or bicycle accidents had occurred "at or near 268th and Pacific Highway" since 2008. *Exhibit 25.*

interested parties adequate time to respond to these responses or appeal the City's SEPA determination. The MDNS was not appealed. *Exhibits 9 through 14.*

Comprehensive Plan, Zoning, and Surrounding Property

5. The property is 313,631 square feet and vacant, and is not located in any critical areas. It is designated as 'Commercial' under the City Comprehensive Plan. Goal 5-02-05 of the City Comprehensive Plan recognizes that adequate facilities, utilities, and services are needed to ensure that those who reside and work in Des Moines are "reasonably free of safety and environmental hazards, and provided with desired public services." *City Comprehensive Plan, Capital Facilities, Utilities, and Public Services Element, page 5-1 (November 18, 2010).* Comprehensive Plan Policy 5-03-05 directs that City plans and development regulations identify, and provide a process for consideration of the siting of essential public facilities,[4] including difficult-to-site facilities such as substance abuse and mental health facilities. *City Comprehensive Plan, Capital Facilities, Utilities, and Public Services Element, page 5-6 (November 18, 2010).* The City utilizes the conditional use permit process to site essential public facilities. Property to the south is also designated Commercial under the Comprehensive Plan. Adjacent property to the west is designated Single-Family Residential, and Pacific Highway South borders the property to the east. Property to the northwest is designated Single-Family Residential; property to the northeast is designated Townhome Residential and Public Facility. *Exhibit 1, Staff Report, pages 1 and 2; Exhibits 2 and 3; Exhibit 17.*

6. The property is located within the City's Woodmont Commercial (W-C) zoning district.[5] The zone is intended to enhance, promote, and maintain commercial business areas and to ensure land use compatibility among businesses in terms of permitted uses, building height, bulk, and scale; to provide a commercial area that reflects its commercial-oriented function; to serve the general public; and to ensure that development occurs consistent with the goals, policies, and implementation strategies of the City of Des Moines Comprehensive Plan. *Des Moines Municipal Code (DMMC) 18.127.030.* Mental health and substance abuse treatment facilities are an allowed use in the zone subject to a

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[4] As the City's staff report notes, "[f]acility size, location and adverse impacts such as noise, odor, pollution generation, traffic impacts, aesthetics, and health and safety concerns are examples of some of the characteristics that make essential public facilities difficult to site [and] there is often public opposition when jurisdictions or service providers consider new locations for essential public facilities." The Growth Management Act, however, prohibits local comprehensive plans or development regulations from precluding the siting of essential public facilities. *Revised Code of Washington (RCW) 36.70A.200(2)(5); Exhibit 1, Staff Report, page 3.*

[5] The adjacent property to the west, providing secondary access to the site from 16th Avenue South, is designated Single-Family Residential under the Comprehensive Plan and is zoned RS-7200. *Exhibit 1, Staff Report, page 2; Exhibits 17 and 18.*

conditional use permit.[6] *DMMC 18.140.060(5).* Adjacent properties to the north, south, and west are zoned either W-C or residential. Across Pacific Highway to the east, properties are zoned Midway Transit Community under the Kent City Code. *Exhibit 1, Staff Report, page 2.*

7. The Des Moines Municipal Code recognizes that commercial development will sometimes occur adjacent to single-family neighborhoods. Accordingly, DMMC 18.127.060(3) dictates that: (a) every lot shall have a rear yard setback of not less than 20 feet when abutting single-family zoned properties; (b) structures sited within 40 feet of the abutting single-family residential zone must not exceed 45 feet in height; and (c) during design and environmental review, the City Manager may impose other conditions in order to mitigate potential height, bulk, and scale impacts upon adjacent single-family residents not sufficiently mitigated by existing regulations. DMMC 18.127.060(5) requires a side yard setback of 20 feet, and DMMC 18.195.290(1) requires the perimeter of properties adjacent to residential zones provide a 10-foot landscaping buffer. *Exhibit 1, Staff Report, pages 4 and 5.*

Testimony

8. City Land Use Planner Nikole Coleman testified generally about the application and explained that, although the City does not have specific CUP criteria, the City and the Applicant attempted to address concerns raised by the proposal throughout the notice and review process. For instance, Ms. Coleman stressed that, as a requirement of the MDNS, a "return to city of origin" agreement must be separately prepared between the City and Valley Cities, detailing discharge procedures for patients: discharged patients would not simply be given a bus pass and asked to leave following treatment.[7] Ms. Coleman testified that the facility would be designed and lighted with an eye to preventing crime, especially trespassing, and that the Applicant would go through the police department's CPTED process to ensure this. She recognized that residential property owners to the north and west are concerned about the proposal and that a sight-obscuring cedar fence, at least six feet tall, would be required along all residential property boundaries in an effort to adddress these concerns. She also noted that the proposal would meet the height, bulk, and scale requirements of Chapter 18.127 DMMC but that the proposal must still undergo design review and that the design review decision would be appealable to the Hearing Examiner.[8] Ms. Coleman also noted that the City's engineering staff

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[6]Recent changes to the City's code also dictate that such facilities are only allowed in the W-C zone when (a) the facility is a non-profit regional care facility and (b) the facility filed a complete application prior to the effective date of Ordinance No. 1618-A. *DMMC 18.52.010B, note 74.* Although this application vests to older code provisions, it meets both requirements.

[7]Ms. Coleman noted that the City has similar agreements with regional correctional facilities in the area. *Testimony of Ms. Coleman.*

[8] Chapter 18.235 DMMC establishes the City's thorough design review process. Specifically, DMMC 18.235.110 dictates that the Public Works Director may approve, conditionally approve, or deny a design

determined that no traffic mitigation other than traffic impact fees would be required. *Testimony of Ms. Coleman.*

9. City Public Works Director Dan Brewer testified that he would welcome public input on design review and development of the Applicant's construction staging and sequencing plan. He noted that, while the project is being developed, there are mechanisms in place for the City to receive further public comment on the proposal and that, during construction, an on-site foreman or building official would always be available to address public concerns. *Testimony of Mr. Brewer.*

10. Applicant Architect Alan Keimig testified that the proposal would be constructed as a Silver LEED certified facility and, accordingly, has been designed in an environmentally sensitive manner.[9] He testified that, from a design perspective, fences taller than six feet can create shadowing issues and are generally not in-scale with the feel of a residential neighborhood. Accordingly, he recommends the site-obscuring fence separating adjacent residential zones remain at six feet. *Testimony of Mr. Keimig.*

11. Applicant Representative Ken Taylor, Valley Cities CEO, testified that Valley Cities has served South King County as a non-profit corporation for 50 years. He testified that the state's supreme court and the Western District of Washington's federal court have both recognized that Washington's mental health system has serious problems and have both ruled that Pierce and King Counties, in particular, have consistently violated the constitutional rights of the mentally ill by holding them in jail or emergency rooms for extended periods while awaiting competency evaluations and treatment.[10] He believes this facility would provide a small step toward repairing this system and stressed that this proposal does not involve an incarceration facility but, instead, a treatment facility specifically designed to meet the growing needs of an underserved population. Mr. Taylor explained that the first phase of the project would involve building the mental health treatment facility. This portion of the project would house 24 psychiatric beds (16

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review application and that the Director should provide a written report of the decision. DMMC 18.235.120 allows persons aggrieved by such decision to appeal to the Hearing Examiner within 14 days of the decision being issued.

[9] The U.S. Green Building Council offers "Leadership in Energy and Environmental Design" certifications for buildings designed to be environmentally responsible.

[10] In *Detention of D.W. v. Department of Social and Health Services*, 332 P.3d 423 (2014), the Washington Supreme Court unanimously ruled that the common practice of detaining mental health patients in hospitals (rather than at evaluation and treatment centers) for indefinite periods of time because of overcrowding violates due process. *A.B. v. Washington Department of Social and Health Services*, 2014 WL 7338747 (W.D. Wash.) is an ongoing case before Chief Judge Marsha Pechman of the Western District of Washington's federal court. Judge Pechman has already ruled that King County's practice of detaining mentally ill defendants awaiting competency evaluations in jail (rather than in treatment facilities) for extended periods of time violates due process.

beds for involuntary treatment and 8 beds for voluntary treatment). The second phase of the project would involve building the detox facility, which would house 40 beds (16 beds for involuntary treatment and 24 beds for voluntary treatment). The final phase of the project would involve building the main office building, dispensary clinic, and group meeting facility. Mr. Taylor stressed that, after all phases of the project are complete, the facility would introduce patients to the entire spectrum of mental health and/or drug and alcohol treatment services needed for patient recovery and success, and that preventative treatment is one of Valley Cities' major focuses. *Testimony of Mr. Taylor.*

12. Mr. Taylor recognized that neighboring property owners are concerned about the facility. He testified that patients receiving involuntary treatment (both mental health patients and detox patients) are under lock and key 24 hours per day and would not be able to leave the locked facility. Mr. Taylor also testified that Valley Cities built a facility in Auburn adjacent to a residential area approximately five years ago. That facility involves 24 apartments for people with severe mental illnesses. Mr. Taylor noted that, although there was public opposition when the project began, the project has been a success: Valley Cities is currently doubling the size of the project and has received no opposition from neighboring residents or the community. *Testimony of Mr. Taylor.*

13. Monica Whitman, the City of Kent's Senior Transportation Planner, testified that the City of Kent is concerned about traffic impacts of the proposal, especially for pedestrians. The City of Kent would like the Applicant to install a fully integrated signal along Pacific Highway at the facility's entrance or a signalized mid-block pedestrian crossing allowing pedestrians to push a button triggering a stop signal. Ms. Whitman did not present evidence substantiating the City of Kent's concerns over pedestrian safety (and she concurred with the revised traffic impact analysis indicating that no further signals are required), but she noted that the City of Kent would like to see the Applicant more fully address this safety concern if the proposal moves forward. *Testimony of Ms. Whitman.*

14. In response to Ms. Whitman's concerns, Traffic Consultant Greg Heath testified that it is difficult to plan for speculative impacts to pedestrians and that the currently available data suggests traffic facilities are adequate. He noted, however, that it would be appropriate to reassess traffic impacts once the facility is operational. *Testimony of Mr. Heath.*

15. Local resident Jamie Culver testified that he is worried about the impacts of the facility on area property values and is especially concerned about the proposal's proximity to a local elementary school and library. He also noted that a small cottage on 16th Avenue South was recently expanded and converted into a halfway house for heroin addicts and that this has caused problems in the neighborhood. *Testimony of Mr. Jamie Culver.*

16. Megan Culver, another local resident, testified that she is concerned with the proposal's proximity to the local school. She has had a number of problems with the "heroin house"

on 16th Avenue South, which she lives near, including property damage, people knocking on her door in the middle of the night, and slow police response times to disruptive incidents at the halfway house. She does not believe treatment facilities should be located adjacent to residential zones and that the City should focus on helping children, not drug addicts. *Testimony of Ms. Culver.*

17. Adjacent property owner Terry Potvin testified that his property would be approximately 40 feet from the detox facility. He has two grandchildren that live with him and is especially concerned that a six-foot fence would not adequately address privacy and safety concerns. He believes the proposal is incompatible with the existing land use patterns in the area and expressed concern over the facility's proximity to the school and the effect that it will have on neighborhood property values. Although he is concerned that nothing will prevent the visual impacts the facility will cause in the neighborhood, his main concern is that such a facility is inappropriate next to a residential zone.[11] *Testimony of Mr. Potvin.*

18. Chelene Bird, an adjacent property owner, testified that the community already has problems with drugs and prostitution and believes that the proposed facility would increase these negative impacts. She is concerned that a six-foot fence is not high enough to address safety concerns and that additional landscaping would only provide "more hiding places" for illicit activity. She believes allowing the facility would destroy the quality of life in the adjacent residential neighborhoods. *Testimony of Ms. Bird.*

19. Area resident Bryan Whiting testified that he would like to see the CUP application denied. He specifically noted that, as a private facility, the operators will look to reduce costs by cutting security measures. He is concerned that patients will roam the residential neighborhoods and that the facility would overwhelm police and fire services. Mr. Whiting testified that, although he recognizes these facilities are needed somewhere, they should be sited away from residential areas. *Testimony of Mr. Whiting.*

20. Reynaldo Hagood testified that he lives nearby and has two children that attend Woodmont Elementary. He is concerned about their safety and would like to see the application denied. *Testimony of Mr. Hagood.*

21. Arnold Culver testified that he has lived in the area for over 40 years and agrees with the concerns expressed by other residents. He also noted that, although the application is currently for a specific number of beds and for specific types of patients, Valley Cities

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[11] Mr. Potvin also testified that he thought the zoning for the property had recently changed from residential to commercial specifically to allow approval of the facility. Ms. Coleman explained, however, that although the zoning for the property recently changed, that change involved altering the property's designation from one commercial zone to another. The property was not previously zoned residential. *Testimony of Mr. Potvin; Testimony of Ms. Coleman.*

would likely attempt to expand the facility and its services in the future, and this is a serious concern. *Testimony of Mr. Arnold Culver.*

22. Area resident Nadya Curtis testified that she reviewed all the available reports and is concerned that they do not adequately address the potential impacts on 272nd Avenue and Pacific Highway South.[12] She noted that the cities of Kent, Federal Way, and Des Moines all converge at that point, creating jurisdictional problems for law enforcement. Gang activity, drugs, and prostitution are problems in the area, and Ms. Curtis believes data should be compiled from all three cities to understand the kinds of impacts a facility like this may have on the community. She testified that she is concerned the area is already unsafe and that a facility like this would only add to existing problems. *Testimony of Ms. Curtis.*

23. Three Valley Cities' board members -- Kelly Togesen, Suzanne Pak, and Steve Williams -- testified about the need for a facility like this in the area. All three testified that Valley Cities has had success siting similar facilities in the last fifty years – some near residential communities – and that facilities like this actually improve the safety and stability of communities. *Testimony of Ms. Togesen; Testimony of Ms. Pak; Testimony of Mr. Williams.*

24. Mr. Taylor responded at length to public concern over the proposal. He testified that Valley Cities is a non-profit corporation receiving funding from the state and county and is dedicated to providing excellent mental health and drug/alcohol treatment, not higher profits. Mr. Taylor testified that Valley Cities has no intention of expanding the campus in the future and that federal law limits the number of involuntary treatment beds allowed at any one facility. He noted that Valley Cities is committed to being a good neighbor in the community and believes that the facility would actually have a positive by reducing the burden on local law enforcement personnel who encounter mentally disturbed citizens. He stated that many individuals who would benefit from treatment at the facility are already in the area, unsupervised, either loitering on Pacific Highway, living in the woods, or spending all day at the area library. He stated that these individuals could receive treatment at the facility and become integrated back into their communities. Mr. Taylor specifically noted that Valley Cities screens for sex offenders; they are not allowed in the facility. He said that Valley Cities does everything possible to ensure that people leaving the facility have a "72-hour plan" detailing exactly how they will return to their own community and the immediate steps they need to take to integrate back into the community. Such plans reduce neighborhood impacts because discharged patients are less likely to remain in the immediate area of the facility. *Testimony of Mr. Taylor.*

25. Mr. Taylor stated that he has heard "horror stories" similar to those relayed by area residents about the "heroin house." He believes that some facilities are mismanaged and

[12] The revised traffic impact analysis specifically addresses traffic concerns at this intersection. *Exhibit 16.*

should be shut down. He stressed that Valley Cities has no association or affiliation with that facility and that, should Valley Cities create similar problems in the neighborhood, it should be held accountable and shut down as well. To that end, Mr. Taylor agreed to reopening the application hearing one year after phase one of the project is operational (i.e., one year after the mental health treatment facility has been running) to assess the impacts on the neighborhood of the mental health facility before the detox facility becomes operational. *Testimony of Mr. Taylor.*

26. Ms. Coleman responded to concerns about the "heroin house." She noted that the house was a single-family residence that was remodeled and turned into a sober living home. She could not find any permits for the home and stated that she would work with code compliance officers to determine wither the facility is being properly operated. She also testified that the school district and the principal of the nearby school were notified of the project and neither expressed concerns. *Testimony of Ms. Coleman.*

Staff Recommendation

27. Ms. Coleman testified that City staff recommends approval of the CUP application with conditions. These conditions include: Valley Cities entering into a separate agreement with the City to mitigate impacts on public services; payment of traffic impact fees; participation in the police department's CPTED program to ensure safe lighting and parking at the facility; installing a site-obscuring cedar fence; establishing and strictly enforcing a no-trespassing policy; recording an access easement over the adjacent property to the west to ensure continued access from 16th Avenue South; and submitting a construction staging and sequencing plan. *Exhibit 1, Staff Report, pages 6 and 7; Testimony of Ms. Coleman.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted authority to hear and decide conditional use permit applications. The Hearing Examiner may approve, approve with conditions, or deny a CUP application. *Des Moines Municipal Code (DMMC) 18.140.020; DMMC 18.240.180.*

Criteria for Review

The Hearing Examiner may grant a conditional use permit after a hearing only if sufficient evidence is presented that the characteristics of any such proposed use are not unreasonably incompatible with the type of uses permitted in surrounding areas or would not be unreasonably incompatible with the type of uses permitted in surrounding areas if certain conditions are attached to the proposed use. Furthermore, the Hearing Examiner shall give due regard to the nature and condition of all adjacent uses and structures and to any testimony presented with reference to such adjacent uses and structures, and, in authorizing a conditional use, may impose such requirements and conditions with respect to location, landscaping, traffic control, dedication, maintenance, and operation, in addition to those expressly set forth in this chapter

and other ordinances, as may be deemed necessary for the protection of adjacent properties and the public interest. *DMMC 18.140.100.*

In addition to considering the criteria and guidance in the Des Moines Municipal Code, the Hearing Examiner must be cognizant of state laws, regulations, and court decisions that impact what authority a local government has over the siting of essential public facilities, such as in-patient mental health and substance abuse treatment facilities. Revised Code of Washington 36.70A.200(5), for instance, prohibits local development regulations that preclude the siting of essential public facilities. Washington Administrative Code (WAC) 365-196-550(2)(c) recognizes that facilities "generally perceived by the public to have significant adverse impacts" are difficult to site; WAC 365-196-550(3)(b), however, dictates that local jurisdictions may not include criteria in their land use approval process "which would allow the essential public facility to be denied, but may impose reasonable permitting requirements and require mitigation of the essential public facility's adverse impacts." Finally, Washington courts have held that the "legislative purpose of RCW 36.70A.200(2) would be defeated if local governments could prevent the construction or operation of an [essential public facility]." *City of Des Moines v. Puget Sound Regional Council*, 108 Wn. App. 836, 846 (1999).

Conclusions Based on Findings

1. **With conditions, the proposed use would not be unreasonably incompatible with the type of uses permitted in surrounding areas.** City staff provided reasonable notice and opportunity to comment on the proposal. The City determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. This determination was not appealed. Mental health and substance abuse treatment facilities are an allowed use in the W-C zone under these circumstances. At the open record hearing, the City expressed a willingness to allow public input during the design review process and during the approval process of the construction staging and sequencing plan. This involvement would allow concerned citizens to further address the concern—repeatedly expressed during the hearing—over the height of the sight-obscuring cedar fence along the property's northern and western boundaries. Additionally, the Applicant agreed to reopen the public hearing a year after phase one of the proposal is operational (i.e., a year after the mental health treatment facility has been operational) to reassess safety concerns and the facility's impacts on the community. With these measures, and additional conditions designed to mitigate impacts on public services, ensure safe lighting and parking on-site, avoid issues with trespassing, and ensure that construction plans do not unduly burden the area, the proposal would not be unreasonably incompatible with other permitted land uses in the area. *Findings 1 – 27.*

2. **The Hearing Examiner has given due regard for the nature and condition of all adjacent uses and structures, with respect to location, landscaping, traffic control, dedication, maintenance, and operation, in addition to those requirements and conditions expressly set forth within Chapter 18.127 DMMC.** The record establishes the need for in-patient mental health and drug treatment facilities in the region. Nearly

all concerned citizens opposed to the project recognized this in their testimony: their stated reasons for opposing the proposal centered around safety concerns and potential impacts on property value and quality of life in the residential areas abutting the proposed facility. Community opposition alone cannot justify denying a land use application. *See, Sunderland Services. v. Pasco*, 127 Wn.2d 782, 903 P.2d 986 (1995). Instead, such decisions must be based on substantial evidence in the record. *See, e.g., Christianson v. Snohomish Health District*, 133 Wn.2d 647, 653 (1997). Moreover, the Growth Management Act precludes prohibiting essential public facilities where mitigation measures adequately address potential impacts on surrounding areas. Here, City staff and the Applicant have demonstrated that, with mitigation measures and conditions of approval, the proposal would not be unreasonably incompatible with permitted land uses in surrounding areas.

The height, bulk, and scale requirements of Chapter 18.127 DMMC, along with the design review process, would ensure that significant visual impacts of the proposal are avoided. Current traffic studies indicate that no new signalization would be necessary, although this assessment should be revisited in the future once the first phase of the proposal is operational. Landscaping buffers and a site-obscuring fence would reduce impacts on adjacent residential properties. The local school was notified of the proposal and expressed no concerns. The police department and fire marshal also expressed no concerns over the proposal. The local library may benefit from the proximity of the facility as a number of potential patients frequent the library daily while untreated. The Applicant declared a commitment to being a good area resident and is willing to be held accountable if the facility creates (rather than alleviates) problems in the area. Conditions of approval are necessary to ensure that the proposal mitigates impacts on public services, undergoes design review with public input, goes through the police department's CPTED program to ensure safe lighting and parking on-site, has a strict no trespassing policy in place and enforced, maintains two access points in the future, and develops a construction staging and sequencing plan. *Findings 1 – 27.*

DECISION

Based upon the preceding Findings and Conclusions, the request for a conditional use permit to allow construction of a medical and mental health recovery campus, consisting of a 25,340 square foot detoxification facility with 40 beds, a 19,665 square foot evaluation and treatment facility with 24 beds, a 34,160 square foot main office building, a 7,200 square foot dispensary clinic, and an 8,340 square foot common meeting facility at 26915 Pacific Highway South in Des Moines, Washington, is **APPROVED**, subject to the following conditions:[13]

1. Valley Cities shall enter into a separate agreement with the City of Des Moines to mitigate the impacts on public services. This agreement shall be approved by Valley Cities and the City a minimum of five (5) months prior to the City issuance of the

[13] This decision includes conditions required to reduce project impacts as well as conditions required to meet City Code standards.

Certificate of Occupancy. Included in this agreement shall be "return to the city of origin" language. Valley Cities shall not receive a Certificate of Occupancy or final inspections from the City until the agreement has been approved by both parties.

2. As required by DMMC 12.40.040, Valley Cities shall pay traffic impact fees to the City at the time of building permit issuance. Traffic impact fees shall be based upon the number of new peak PM peak hour trips multiplied by the per trip rate in effect at the time that a building permit for the proposed facility is issued by the City.

3. Valley Cities shall review the lighting plan and parking plan with the City of Des Moines Police Department prior to submitting plans for building permit, and obtain recommendations and suggestions for incorporating Crime Prevention through Environmental Design (CPTED) improvements. This shall include a general overview of planned security and emergency protocol for the facility.

4. Valley Cities shall install 100 percent site-obscuring cedar fencing along that portion of the site that abuts residentially zoned properties. The fence shall be a minimum of six (6) feet in height and shall be located on the property line.

5. Parties of record shall be notified of the design review process and be provided an appropriate opportunity to comment on design review. Discussion of appropriate fence height along residential boundaries should specifically be addressed during the design review process.

6. Valley Cities shall establish and enforce a strict policy to prohibit trespassing.

7. To ensure access from 16th Avenue South, Valley Cities shall create and record an access tract through parcel no. 2822049102 prior to issuance of the Certificate of Occupancy.

8. In addition to the items required for a Grading Permit Application established by Chapter 14.20 DMMC, Valley Cities shall submit a construction staging and sequencing plan. Valley Cities shall update this plan as details with the selected contractor are discussed, incorporate provisions for construction operations management, and submit it to the City as part of the Grading Permit Application for review and approval. The updated plan shall contain information and define details which identify areas of the site to be used for construction staging, contractor's office, contractor parking, material storage and provisions for the following:

    a. Temporary screening;
    b. Noise attenuation;
    c. Delivery truck access during construction;
    d. Clear identification site work tasks and sequencing;
    e. Schedule and sequencing of building improvements components;

f. Proper and best management practices proposed to internalize expected building construction impacts;
g. Physical separation from surrounding property requirements during project construction for such nuisances as parking, heavy equipment storage and use, material storage, and debris piles;
h. Identification of equipment likely to produce inordinate noise levels and proposed measures to baffle or minimize noise impacts;
i. Erosion control methods;
j. Measures to minimize dust control;
k. Controlled access points during construction for contractors, hauling, and construction material deliveries and supplies; and
l. Identification of quantities of soil stockpiling, how long soils are to be stockpiled, location of areas where material will be stockpiled, and measures proposed to minimize impacts created by stockpiling material.

9. All mitigation measures associated with the Mitigated Determination of Nonsignificance are incorporated into the CUP approval.

10. No expansion of the facility (such as adding additional beds) or change in patient profiles (such as treating sex offenders) shall occur without formal revision of the CUP.

11. Within two months following one year after the mental health treatment facility has been operational, the City shall reopen this hearing to determine whether the conditions above mitigate the impacts of the proposal such that the use is not unreasonably incompatible with permitted land uses in surrounding areas. Traffic concerns and the potential need for signalization on Pacific Highway should also be addressed at that time.

Decided this 15th day of April 2015.

THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center