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BEFORE THE HEARING EXAMINER FOR THE CITY OF LAKEWOOD

RE: Washington State Dept. of Social and Health Services (DSHS)

Master Plan Amendment

LU20-00027

)  
) ORDER SETTING RECONSIDERATION  
) BRIEFING SCHEDULE  
)  
)  
)  
)

DSHS has requested reconsideration of the August 19, 2022 Final Decision of the above-captioned master plan amendment application. A briefing schedule for responses and DSHS reply is outlined in the Order below. The DSHS reconsideration request is dated August 30, 2022 and is available on the City’s website at <https://wshmasterplan.org/>.

In summary, DSHS requests reconsideration on two points. First, DSHS requests reconsideration of Condition No. 6 of the Final Decision. Condition No. 6 requires that if the bed count of the facility exceeds 864 beds, the facility will have to be subject to review as a modification of the proposal. As outlined in Finding of Fact 5B and Conclusion of Law No. 3 of the Final Decision, the limitation to the 864 beds is based upon the fact that the 864 beds are the projected number of beds the WSH facility will use in 2031, as opposed to the bed capacity of the facility which could result in an increase in beds after 2031. In its reconsideration request, DSHS asserts that it will never reach capacity and further appears to suggest that 864 beds will be the actual maximum number of beds used. If that is the case, DSHS faces the argument that if it believes its bed count won’t exceed 864 beds, then it shouldn’t be concerned about having to do additional traffic assessment/mitigation if that bed count is exceeded.

Second, DSHS requests reconsideration of Condition No. 9 of the Final Decision. Condition No. 20 prohibits waiver of mandated master plan development standards proscribed by LMC 18A.60.080C-E. The waiver issue is addressed in Conclusion of Law No. 23 and Footnote No. 6 of the Final Decision.


As outlined in the Final Decision, no new evidence is allowed in the reconsideration process. The parties should base their arguments on what has been admitted into the hearing record (i.e. the hearing

1 testimony and the admitted exhibits). However, the Examiner is legally authorized to consider prior  
2 Examiner decisions. In this regard, on the waiver issue, if City any prior Examiner decision that has  
3 previously interpreted the requirements of LMC 18A.60.080C-E as subject to waiver in master plan  
4 review, production of those decisions would be very useful in assessing whether deference is due to  
5 the staff's interpretation<sup>1</sup>.

### 6 **Order on Reconsideration Briefing Schedule**

- 7 1. Written responses to the DSHS reconsideration request may be made by any person who  
8 submitted written comment or verbal testimony on the DSHS master plan amendment  
9 application. Responses are due by 5:00 pm, September 16, 2022. A City public works  
10 response to the traffic reconsideration request would be particularly useful.
- 11 2. DSHS may submit a written reply to the responses by 5:00 pm, September 22, 2022.
- 12 3. All responses and the DSHS reply shall be emailed to Courtney Brunell  
13 [cbrunell@cityoflakewood.us](mailto:cbrunell@cityoflakewood.us) and Briana Schumacher [bschumacher@cityoflakewood.us](mailto:bschumacher@cityoflakewood.us).
- 14 4. No new evidence is allowed as part of the reconsideration submissions authorized above. All  
15 argument must be based upon the exhibits and testimony admitted for the Final Decision of the  
16 above-captioned matter.

17 DATED this 6th day of September, 2022.

18   
19 Phil A. Olbrechts

20 Hearing Examiner for Lakewood

21 <sup>1</sup> RCW 36.70C.130(1)(b) limits deference staff interpretations to “*such deference as is due the  
22 construction of a law by a local jurisdiction with expertise.*”

23 *The statute does not require a court to show complete deference , but rather, “such deference  
24 as is due.” Thus, deference is not always due—in fact, even a local entity's interpretation of an  
25 ambiguous local ordinance may be rejected. Instead, the interpreting local entity bears the  
26 burden to show its interpretation was a matter of preexisting policy. No deference is due a  
local entity's interpretation that was not part of a pattern of past enforcement, but a by-product  
of current litigation. A local entity's interpretation need not be memorialized as a formal rule  
but the entity must prove an established practice of enforcement.*

27 *Ellensburg Cement Prods., Inc. v. Kittitas Cnty. & Homer L. (Louie) Gibson, 317 P.3d 1037, 1047  
(2014)(citations omitted, emphasis added).*