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BEFORE THE HEARING EXAMINER FOR THE CITY OF LAKEWOOD

RE: Washington State Dept. of Social and Health Services (DSHS))	DECISION UPON RECONSIDERATION
Master Plan Amendment)	
LU20-00027)	
)	

The DSHS August 30, 2022 request for reconsideration is granted with a minor modification requested by the City in its reconsideration request. DSHS’ reconsideration request was limited to revising Condition No. 6 and striking Condition No. 9 of the August 19, 2022 Final Decision. Condition No. 9 is stricken as request. Condition No. 6 is revised to replace “864-bed facility” with “864-patient facility.” Each condition is addressed separately below.

Background

The Final Decision for the above-captioned matter was issued on August 19, 2022. The Final Decision expressly identified that any requests for reconsideration would be posted at the City’s website. DSHS submitted its request for reconsideration on August 30, 2022. An order setting a briefing schedule for the reconsideration request was issued on September 6, 2022. The order authorized responses from any hearing participants by September 16, 2022. A DSHS reply was authorized by September 22, 2022. The only response filed to the request was from the City, dated September 16, 2022. DSHS filed a reply dated September 21, 2022. All documents identified herein were linked at the City’s website at <https://wshmasterplan.org/>. The City limited its response to a discussion of Condition No. 6.

Condition No. 6

Condition 6 limits approval to an 864-bed facility as follows:

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2 6. For purposes of mitigating traffic impacts, the proposal is considered to be
3 limited to an **864-bed facility** for the reasons identified in Conclusion of Law No. 3.
4 Any increase in that number of beds shall be considered a modification to the
approved Master Plan and shall be processed accordingly.

5 (emphasis added).

6 In its reconsideration request, DSHS requested that “864-bed facility” be changed to “963-bed
7 facility” to reflect the fact that DSHS needs to some excess capacity to provide flexibility to move
8 patients between wards, to adjust for staff availability, to be able to close wards for repairs and to
9 implement quarantine precautions. The City’s response was to change “864-bed facility” to “864-
10 patient facility.” The City’s suggestion most accurately addresses the concerns raised in the Final
11 Decision, i.e. that trip generation estimates are based upon the 2031 projection for 864 patients as
opposed to the maximum capacity of the facility, which could result in an increase in patients after
2031. The City’s suggestion links maximum facility usage to trip generation and therefore is
found to be an acceptable revision to Condition No. 6.

12 **Condition No. 9**

13 Condition No. 9 prohibits the waiver of development standards specifically applicable to the PI
14 zone as follows:

15 9. The master plan design specifications identified in Finding No. 20 of the
16 staff report are not authorized to the extent they conflict with Chapter 18A.70.A
LMC.

17 In its reconsideration request, DSHS identified that LMC 18A.60.080A authorizes the setting of
18 development standards for master plans in the PI zone on a “case-by-case” basis. This argument was
19 already addressed in Footnote No. 6 of the Final Decision. As pointed out in Footnote No 6, LMC
20 18A.60.080C-E is rendered meaningless if the standards imposed by those sections could be waived
21 the same as any other standard applicable to all zones under LMC 18A.60.080A. The standards
22 imposed by LMC 18A.60.080C-E already generally apply in the PI zone (as they apply in all other
23 zones) regardless of whether they are mentioned in LMC 18A.60.080. Consequently, listing them
serves no purpose if they can be waived under LMC 18A.60.080A. As noted in Footnote No. 6, all
code provisions should be interpreted in a manner that doesn’t render them meaningless. The only
way to give any purpose to LMC 18A.60.080C-E is to construe them as separate from the other
generally applicable regulations that can be waived under LMC 18A.60.080A.

24 In its response to the DSHS reconsideration request, the City did not address Condition No. 9. This is
25 construed as the City agreeing with DSHS that the standards of LMC 18A.60.080C-E can be waived
26 on a case by case basis. Given the lack of objection from the City (or any other hearing party) and the
room for reasonable disagreement on how to apply LMC 18A.60.080C-E, upon reconsideration it is
concluded that the standards of LMC 18A.60.080C-E can be waived on a case-by-case basis as
authorized in LMC 18A.60.080A. This is a marginal interpretation at best, but appears to be in line

1 with the spirit of master plan review, which is to provide flexibility in development standards so long
2 as surrounding uses and the environment are not adversely affected. As a result, there is no basis for
3 Condition No. 9 and it should be stricken.

4 **DSHS Reply**

5 The Final Decision also raised some questions about the metrics used to estimate trip generation. The
6 Final Decision did not require any revision to those metrics since they were not timely appealed as part
7 of SEPA review. Despite this, DSHS still addressed the issue in their reconsideration reply briefing.
8 The reply is not consistent with the data provided in the master plan itself.

9 The metrics were questioned on the basis that trip generation estimates were based upon number of
10 projected beds, while master plan data showed a significant increase in staffing levels despite a
11 decrease in the number of beds. As noted in the Final Decision, the conversion from civil to forensic
12 beds resulted in a significant increase in staffing levels despite a significant reduction in the number of
13 beds. The DSHS reply stated that the staffing ratios “*are the same for both civil and forensic
14 patients.*”

15 The numbers in the master plan don’t show an equal staffing ratio between current civil and projected
16 forensic use. Table 1 of the master plan identifies the “base” (2019-21) number of beds as 922 and the
17 2029-31 number of beds as 864 with the addition of the residential treatment facility. Page 32 of the
18 master plan identifies that the “current” staffing is 2,800 full time equivalents across multiple shifts.
19 On the same page, the “build-out” staff is projected to be 3,155 with addition of the residential
20 treatment facility. The master plan was completed in 2021 so the “base” number of beds is construed
21 as the same year as the “current” staffing level. Given these parameters, the staff to patient ratio in
22 2019-21 was 3.04 staff/bed and for 2029-31 it is projected to be 3.65 staff/bed, a 20% increase in
23 staffing per bed over base conditions.

24 DSHS has not had a full opportunity to address these disparities and there likely is a reasonable
25 explanation for their position that staff ratios remain the same when master plan data suggests
26 otherwise. The issue is just raised here to be addressed in future stages of development review should
there be opportunity to assess traffic impacts again.


27 **Decision**

28 Upon reconsideration, Condition No. 9 of the August 19, 2022 Final Decision is stricken and
29 Condition No. 6 is revised as follows:

30 *6. For purposes of mitigating traffic impacts, the proposal is considered to be
31 limited to an 864-bed patient facility for the reasons identified in Conclusion of Law
32 No. 3. Any increase in that number of beds shall be considered a modification to the
33 approved Master Plan and shall be processed accordingly.*

34 All other portions of the August 19, 2022 Final Decision remain in effect and are superseded only to
35 the extent inconsistent with this Decision Upon Reconsideration.

1
2 DATED this 21st day of September, 2022.

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Phil A. Olbrechts

5 Hearing Examiner for Lakewood

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7 **Appeal Right and Valuation Notices**

8 LMC 18A.20.080 provides that the final decision of the Hearing Examiner is subject to appeal to
9 superior court. Appeals of final land use decisions to superior court are governed by the Land Use
10 Petition Act (“LUPA”), Chapter 36.70C RCW. LUPA imposes short appeal deadlines with strict
11 service requirements. Persons wishing to file LUPA appeals should consult with an attorney to
12 ensure that LUPA appeal requirements are correctly followed.

Affected property owners may request a change in valuation for property tax purposes
notwithstanding any program of revaluation.

13 **Reconsideration**

14 No further requests for reconsideration are allowed.
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