



CITY OF SNOHOMISH

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March 7, 2014

VIA FACSIMILE: 206-829-2401
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Mr. Theodore Paul Hunter
City of Snohomish Hearing Examiner
Sound Law Center
4500 Ninth Avenue, N.E., Suite 300
Seattle, WA 98105

RE: 17-13-CUP

Dear Mr. Hunter,

Per the Post-Hearing Order issued February 28, 2014, the hearing record has been kept open until March 7, 2014, to allow the Applicant and the City to respond to questions raised in Hearing Exhibit 45. This letter provides the City's responses. Enclosed with this letter, and referenced in the responses below, is the City Attorney's legal opinion requested by the Hearing Examiner regarding the legality of an age restriction in the conditions of approval for the proposal.

The format of this letter presents each questions posed in Exhibit 45 with fidelity to the emphasis provided by the author. The staff responses are in italic text immediately following each question.

1. Who from Snohomish will be responsible for monitor the conditions of use?

City response: A planner from the Snohomish Department of Planning and Development Services will be primarily responsible for monitoring the conditions of (approval) use. Compliance with conditions will be confirmed through the permitting and review processes already specified in the recommended conditions of approval, many of which provide for "gated" sequencing which does not allow the project to move forward until the conditions are met. In terms of on-site monitoring, staff would recommend that the inspection interval be no more frequent than annually. If residents of the area perceive a violation (or potential violation) staff would encourage making a report at any time to have those matters investigated.

Staff is also aware that other agencies will be inspecting the facility from time-to-time with regards to life-safety and facility licensing requirements. Staff recommends that the facility owner be required, as a further condition of approval, to provide all resulting inspection reports by whatever agencies to the Department of Planning and Development Services. In this way, those inspection reports may be placed on file and made more accessible to community residents. In addition, other city staff may be called upon, such as the Department of Public Works, if there are questions or issues relating to public infrastructure or improvement issues.

2. Since the application does not specify frail and elderly, is there an expectation that seniors can be anyone 55 and older?

City response: *It is the City's position that the proposed use cannot be open to all persons 55 years or older. Residents must meet the definition of "resident" in WAC 388.78A.2020. Further clarification is provided below.*

Materials provided by the applicant described the proposal as "senior assisted living facility" (Exhibit 1) and as an "assisted senior living facility" (Exhibit 29, Page 7). Page 9 of Exhibit 29 describes residents as "25 senior citizens". No further clarification of the intended age range or other characterization of planned residents of the facility was provided. Due to the application's lack of specificity in the residents or the assistance services proposed, it was necessary for the City to narrow the description of the proposed use so that there is a common and specific understanding of the use requested for approval. Additionally, limitations on proposed parking for the project require an assumption that residents will be non-drivers. This suggests that intended residents would be infirm or otherwise limited so that vehicle ownership or the necessity for immediate access to a vehicle is not likely. With specific reference to the question above, if residents can be anyone 55 and older, there is a reasonable expectation that vehicle ownership will exceed the on-site parking proposed.

As noted in the staff report (Exhibit 38), the SMC contains no definition of the senior citizen assisted use listed in the Land Use Table in SMC 14.207.070. According to common understanding of its terms, senior citizen assisted is interpreted to include a significant care component (the term "assisted") and a resident population of a middle- to advanced-age ("senior citizen"). As discussed at the public hearing, thresholds of age 55 and age 62 are used variously in SMC provisions relating to "senior citizens" (SMC 14.235.050 and SMC 14.285.020(B)(2)).

To better define and hence understand the parameters of the "senior assisted living facility" use proposed by the applicant, the City recommends a condition that the facility be required to be consistent with the "assisted living" definition in RCW 18.20.020. Further, to help ensure that

this definition continues to describe the proposed facility over time, a condition requiring an assisted living license from the Washington State Department of Social and Health Services (DSHS) is recommended. These recommended conditions were not challenged by public testimony or by the applicant at the public hearing or in materials submitted for the record.

The definitions in RCW 18.20.020 do not specifically address the age of residents of an assisted living facility, except that the definition of “resident” includes the phrase, “. . . by reason of age or disability, chooses to reside in the assisted living facility . . .” Based on the definitions in the RCW, it was the City’s expectation that an assisted living facility could serve any population described by the definition of “resident”. It was under this understanding, and consistent with the applicant’s proposal description, that the City proposed a minimum threshold of 62 years for residency at the proposed facility.

A question raised at the public hearing is whether an age restriction is allowable under state and federal law and thus whether it is an enforceable condition for a state-licensed assisted living facility. To provide clarification of this issue, the Hearing Examiner requested a legal interpretation from the City Attorney, which is provided as an enclosure to this letter.

The City Attorney was unable to identify any provision in either the federal Fair Housing Act or Chapter 18.20 RW that would conflict with an age restriction. The Fair Housing Act, in fact, provides an exemption for housing intended for and solely occupied by persons 62 years of age or older. However, the Washington State Department of Social and Health Services (DSHS) prohibits admission criteria within its rules for licensing of assisted living facilities in WAC 388-78A-2020 unless such criteria are necessary for the provision of assisted living services. The City does not believe an age restriction would be found to be necessary for the provision of assisted living services. In discussions with City staff, DSHS staff stated that an age restriction would preclude issuance of an assisted living facility license. Therefore, including a condition of approval requiring a minimum age for residency in the facility would be in direct conflict with a condition requiring for a DSHS assisted living facility license. From the perspective of the SMC, there is no inconsistency. However, the two conditions would evidently have the effect of precluding the applicant from opening the facility.

It is the City’s position that the onus of ensuring that a proposed resident population is consistent with applicable DSHS standards rests with the applicant. Confirming compliance with the requirements of all agencies with jurisdiction—or at a minimum, determining what such requirements are—is typically part of the applicant’s due diligence. The City enforces the Snohomish Municipal Code, not the Washington Administrative Code. The applicant had the option of proposing a use that was strictly consistent with the rules in WAC 388-78A but that may not appear consistent with any land use listed in Chapter 14.207 SMC. In such cases, SMC

14.207.060 grants the City Planner authority to issue a determination regarding whether and how an unlisted use may be permitted. This option was not exercised by the applicant.

If the proposal is to be approved with conditions that allow licensing under WAC 388-78A, as understood by the City per the City Attorney's opinion, the use must either provide assisted living services or must be restricted to a minimum age threshold. If the decision is to incorporate one or the other, it is the City's position, as discussed above, that the assisted living aspect is more critical to defining the use of the property and the impacts of the use on adjacent uses than the age threshold. Without provision of assisted living services, the use would function as a boarding house, a use that has been considered and clearly rejected by the City Council and the community. Boarding houses are defined in Chapter 14.100 SMC.

Without a definition of the senior citizen assisted use in the SMC, whether such facilities must exclusively serve those over a certain age, which is itself somewhat arbitrary, is open to question. The Fair Housing Act defines "housing for older persons" as either housing "intended and operated for occupancy by persons 62 years of age or older or housing intended and operated for occupancy by persons 55 years of age and older, where at least 80 percent of the units are occupied by at least one person who is 55 years and older. Clearly, the federal protections are intended to allow for mixed-age occupancies with an emphasis on those at the upper end of the age spectrum. Further, based only on observation and anecdotal information, the typical resident of an assisted living facility appears to be a person infirm by virtue of age. While a condition requiring a strict minimum age criterion would evidently conflict with the WAC requirements for an assisted living facility license, a condition requiring that most residents exceed a certain age may be allowable under the WAC. Therefore, the City proposes the following new condition for the Hearing Examiner's consideration:

"Eighty percent of beds shall be reserved for those 55 years or older. If documentation is provided from the Washington State Department of Social and Health Services of denial of an Assisted Living Facility license based exclusively on this condition, the City shall provide notice and re-open the hearing record for fourteen days to allow additional public comment on potential impacts of an assisted living facility occupancy with no age restriction."

3. Will the CUP include verbiage to include "no cars allowed for residents"?

City response: *This issue was raised during the hearing for Case 17-13-CUP. A condition prohibiting residents from maintaining vehicles on or in the vicinity of the site was proposed by the Hearing Examiner and concurred with by the City.*

4. Since the “new section” was not completed when the last CUP was approved, will all the newly (associated with the 2008 CUP) constructed materials have to be removed and built to current building standards?

City response: All “new work” will be required to be performed under new building, plumbing, mechanical or fire protection/suppression permits (or new CUP) and will need to comply with the current codes as adopted under Snohomish Municipal Code (SMC) 19.04 Construction Codes and Title 14 SMC Land Use Development Code. Installation of windows, doors (interior/exterior), and exterior wall coverings, wood trim, etc. would be considered new work.

Any existing exposed framing may be upgraded, repaired or replaced as recommended by a Structural Engineer. Plywood sheathing installed after removal of existing exterior wall coverings that has been subject to or exposed to weather elements that is no longer capable of supporting imposed loads may also be replaced or upgraded as recommended by a Structural Engineer. Existing floor sheathing may be upgraded, repaired or replaced as recommended by a Structural Engineer. Any of these elements that are upgraded, repaired or replaced must be in conformance to the minimum requirements of the codes adopted under SMC 19.04.

It is my understanding that all previously existing plumbing, mechanical and fire suppression/protection systems have been removed, so work in these areas would be treated as new work. Anything that may exist in this regard would need to be evaluated at the time of the applicable permit application.

5. Does an environmental assessment have to be done to establish habitability of such an old and unused structure and concerns for the rain-soaked and moldy newer construction?

City response: The applicant has previously retained the services of a Structural Engineer who had recommended further evaluation and analysis of the structural frame and existing framing that has been subject to weather elements and mold. At this point the building is uninhabitable, and environmental issues would need to be addressed as part of the building permit process.

6. Current Comprehensive Plan (CP) identifies quietness and stability. How is this possible with a commercial facility.

City response: Staff views the Assisted Living Facility use as a residential use first, which also requires the essential services for daily living that can usually be provided only by a licensed and regulated business specialized in providing these services. In this regard, staff views the services provided by licensed ALF staff to be a “reasonable accommodation” necessary to ensure that the residents who require assisted living services have equal housing opportunity on

par with other non-disabled community residents. As mentioned in the footnote on page 3 of the staff report for Case 17-13-CUP, communities may not regulate residential structures for occupancy by handicapped or disabled persons any differently than they would for other families or unrelated individuals. (RCW 35A.63.240)

The city council legislated "Senior Citizen Assisted" as a conditional use in the Single Family Residential designation use table (SMC 14.207.070). Staff interprets that fact as evidence the council considered the consistency and appropriateness of the "Senior Citizen Assisted" use in the context of the applicable Comprehensive Plan policies as is required of the code amendment process in SMC 14.65.010.A.

The terms "quietness" and "stability" are not defined in the plan nor in the code. In particular, quietness may be a subjective standard. What might be considered quietness in one neighborhood might not be tolerated in another.

Although quietness may be the goal, it is expected that all land uses (even single family residential) will contribute some noise and activity to the surrounding neighborhood. To the extent that potentially objectionable noises can be identified, it can then be determined whether a reasonable condition of approval might be required to mitigate or restrict that particular noise or activity. It would be difficult to justify a CUP denial on the basis of non-specific objections which cannot be enumerated or for which no reasonable condition of approval might first be considered before determining the use to be so incompatible with its surroundings that there is no form in which it might be approved as a conditional use identified in the Single Family Residential designation.

With regard to the word "stability", the term in Goal LU 4 is more fully set forth as "land use stability". Staff interprets this term a couple of ways. First, the term addresses the nature of zoning standards such that they are not intended to be amended or altered arbitrarily or capriciously. When people make investment backed decisions to buy a home, they expect that the rules applicable to the neighborhood will be stable for the duration of their ownership/occupancy. Of course zoning standards can be amended over time, but the process is much more deliberative and time consuming as a community wide policy matter than would be the case for a site specific quasi-judicial zoning review.

The other interpretation that staff attributes to the term "land use stability" is the preservation of the status quo in neighborhoods to the greatest degree possible. People may buy into a neighborhood with a "what you see is what you get" perception. The reality is that change over time is inevitable due to the passage of time, fires, disasters, or the desire of individual property owner to improve or expand their property. Within the framework and limitations of the Single

Family Residential designation, this change is intended to be implemented incrementally over time, once a subdivision has been completely built out, so that substantial and disruptive change does not occur in neighborhoods all at once. Where nonconformities exist, they are encouraged to move towards conformity with the code over time with no fixed time period or amortization schedule.

7. Current CP SF 4.2 identifies 6 units for acre. How can we accommodate this large building on such a small lot?

City response: *The code defines “density” in SMC 14.100 (Definitions) as the number of dwelling units on one acre of land. The code also defines “dwelling unit” as, “one or more rooms with internal accessibility, designed for one family to live or sleep in, containing kitchen facilities and a bathroom. The term includes individual apartment units and manufactured homes.”*

*The code also defines “family” as, “one or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage, no such family shall contain over five persons. Domestic servants employed on the premises may be housed on the premises without being counted in the above. Not more than three roomers or boarders may be included in a family. The term excludes a fraternity, sorority, club, or other institutional group. **For the purposes of this definition, persons with a disability or otherwise protected by the Federal Fair Housing Act (42 U.S. C. 3601 et seq.) shall not be counted as unrelated persons.**” (emphasis added)*

In the staff report and recommendation, staff has tried to ensure the use will maintain a single-family residential character. Condition of Approval #5 specifically restricts residency to exclude staff or other non-residents from occupying the facility. Staff does not equate the proposed staff working at the ALF as being equivalent to a “servant” as described in the definition of family. Therefore, it is not intended that staff would live on the site.

Just as a family can be any number of persons related by blood or marriage, persons qualifying under the Federal Fair Housing Act are equivalent to this same unrestricted by specific number notion of what comprises a family. Therefore, staff views this facility as a single dwelling unit, occupied by 25 individuals comparable to a large family, on a single parcel identified by the Snohomish County Assessor as being .33 acres. (This may be subject to modification once the property has been properly re-platted with a new BLA as required in Condition of Approval #6.) One dwelling unit on a third acre site equals a density of about three dwelling units per acre.

In order to ensure the proposed land use maintains consistency with the above definitions, staff recommended Condition of Approval #3, that the facility be limited to a single kitchen with no meal preparation in resident rooms. In proposed Condition of Approval #5, staff further recommends that the site have no unlicensed rooms, such that all resident occupants of the facility should be receiving assisted living services and in that way qualify under the Federal Fair Housing Act, 1988. Condition of Approval #6 requires that the previously approved BLA be recorded (or a new BLA be requested if necessary) so that there is no question that there will be no more than one dwelling on .33 acres and not two dwellings on .52 acres as indicated in the 1989 recorded Lot Line Adjustment. (Exhibit 35)

8. Issue of Mass and Scale. This building is completely out of scale with the single family surrounding homes. How can this be resolved?

City response: *Unless a building is determined to be a threat to public health and safety, staff does not have the authority to require demolition of a structure that was legally built at a time when the code allowed it to be constructed. SMC 14.82 (Non-conforming Structures) addresses the status of such structures and encourages them to move towards conformity over time. Enlargement or alteration of such a structure is only allowed if the expansion meets all current code requirements. If a non-conforming structure is accidentally destroyed, it may be fully restored within one year of destruction, otherwise the non-conforming rights are determined to be abandoned or otherwise terminated.*

Staff notes that the applicant has proposed to remove certain portions of the structure in order to eliminate encroachment in the alley and to provide additional off-street parking. Although it does not strictly address mass and scale, Condition of Approval #4 (Landscaping) and Condition of Approval #13 (Historical Design Standard Review) will, of necessity, consider the improvements offered in the context of the buildings mass and scale. In this way the overall site improvements will be adjusted in order to provide the best, most compatible fit with the surrounding single-family homes under the circumstances.

9. Mass and Scale. The current building is huge compared to surrounding single family houses. With provisions to accommodate the on-site parking, ramps and covered area such as employee smoking areas, will this not increase the size even more?

City response: *Except for setback encroachments, the current building does not violate the dimensional standards in SMC 14.210.330. No additional internal floor area is proposed. As noted in the response to Question #8 above, a portion of the existing structure is to be removed to provide room for additional off-street parking. Staff did not observe a smoking area designated on the site plan or in the application narrative. Ramps for handicap accessibility or*

as emergency egress would likely be considered a “reasonable accommodation” under both the Federal Fair Housing Act, 1988 and the American’s with Disabilities Act.

10. Additional parking will take up more open space on the lot. Does this need to be taken into consideration?

City response: *Per SMC 14.210.330, there is no open space requirement or lot coverage restriction in the Single-Family Residential designation. New parking stalls will be located behind the building, as viewed from the primary entry on Avenue E, and behind a low berm and landscape screening, as viewed from Fourth Street. The integration of parking into the overall development will be a focus of consideration while reviewing the landscaping plan required in Condition of Approval #4.*

11. Current CP SF 4.10 Assisted Living, low density MAY be allowed as nursing home or managed care on 3 acres. How do we justify such large building on such a small lot?

City response: *Comprehensive Plan Policy SF 4.10 states, in full, “Maintain a practice that low density apartments may be allowed as conditional use in conjunction with the operation of a nursing home in single-family areas, provided: that they are used for housing or are managed care facilities and the at the size of the overall operation will be on a site of three acres or more.” The current proposal is not a nursing home and does not include apartments. Staff understands the intent of the policy to allow a multi-family use (“apartments”) on a limited basis in Single Family designations where they would not otherwise be permitted. Regulations applicable to Senior Citizen Assisted uses are not restricted by code or policy to sites of three acres or more.*

12. Current CP SF 14.65 Adequate Streets. Assuming this includes City maintained alley ways, how does this affect the entire alley way between 4th and 5th streets? Paving? Widening?

City response: *Per recommended Condition 7, the alley will be paved from Fourth Street to the north west corner of 410 Avenue E at a minimum width of 12-feet in accordance to the City standards or the existing width if wider than 12-feet. Improvement of the southern portion of the alley is anticipated to confine the majority of traffic associated with the proposed use to the Fourth Street access point.*

13. Concerns for continued use of the building. Currently Senior Care facilities such as Emeritus have a vacancy rate of _____. Once established and the business can’t survive economically, can the owners change its purpose/designation?

City response: *The economic viability of a land use is not a criterion for CUP consideration under the standards at SMC 14.65.020.B. It is the right of any property owner to change the use of a site or building provided that the new use is permitted under the zoning regulations and subject to compliance with all applicable standards and review processes. Any new conditional use would require application for and approval of a conditional use permit before the new use is established. A change to the land use designation (zoning) is a legislative process that must be enacted by City Council ordinance according to the requirements of the Growth Management Act. Granting of the requested conditional use permit does not confer any rights to change the use from that approved or to receive a different land use designation that are not similarly available to any other property owner.*

Recommended Condition of Approval #1 requires that any change in client type or increase in the number of residents shall require approval of a new conditional use permit.

14. Who will be able to monitor the conditions of operations and any conditions of this unique business with the current size of city government.

City response: *The Department of Planning and Development Services (PDS) will be the lead on any requirement to monitor CUP Conditions of Approval. As such, PDS will coordinate with other city departments and state entities as needed to investigate issues outside of PDS expertise or authority.*

As a facility required to be licensed and operated under RCW 18.20 and WAC 388-78A, it will be the responsibility of the Washington Department of Social and Health Services to monitor the operations of the ALF. In this regard, it might be advisable to require the property owner/facility operator be responsible for producing a copy of all ALF related inspection reports for inclusion in the City of Snohomish property file so that the public may be able to locate such reports in one location without the need to contact each relevant agency or entity individually.

15. Are there any Americans with Disability Act (ADA) provisions that need to be incorporated into this CUP?

City response: *At least one Van Accessible ADA Parking Stall will need to be provided at the parking area. ADA provisions related to the building will be reviewed at time of building permit.*

The Americans with Disability Act (ADA) will apply to this development because it is federal law. Also, the definition of disability in the ADA is nearly identical to the definition of handicap in the Federal Fair Housing Act, 1988 (FFHA). The ADA deals particularly with physical barriers to

equal access by disabled persons whereas the FFHA deals with barriers to equal housing access for the handicapped and disabled.

Under the ADA, disabled persons should be able to go anywhere and participate in any activities that non-disabled persons have unrestricted access to. This Act is focused on removing barriers for disabled persons so that they can live and make life choices without respect to their disability. The ability to make choices as non-disabled persons do, about where to live and how to get where they need to go safely is considered a basic right under the act. Because the ADA has been in existence for years, many of the provisions dealing with accessible parking, building accessibility, sidewalk design and facility safety have become part of the building and life safety codes. In addition, the state regulation of ALF's also take into account certain ADA requirements.

16. Parking on surrounding streets: Parking restrictions in the local area currently are only enforced when a citizen calls police. How will any limitations of vehicles on the surrounding streets be monitored and enforced?

City response: *Parking restriction enforcement will follow its current policy.*

17. Parking on surrounding streets: Currently there is a grandfathered 5-plex diagonally across the intersection. There are up to 13 vehicles parking on the street and behind the house. Should additional parking use in the surrounding area be considered when deciding this CUP?

City response: *The number of parking spaces is determined based on the type and scale of use. With application for a CUP or other development or change of use, the applicant must demonstrate that applicable off-street parking requirements are met, in accordance with Chapter 14.235 SMC, Off-Street Parking, Loading, and Access Requirements. On-street parking spaces are not credited toward compliance with parking requirements. The City concurs with the Hearing Examiners proposed condition of approval to prohibit residents from maintaining vehicles on-site, or in the vicinity of the site.*

Additionally, the use of on-street parking is regulated under SMC Title 11.08 (Parking), which provides a separate and distinct standard under which on-street parking is regulated. It is questionable whether a CUP under SMC 14.65 could be used to justify the restriction of a property from the use of on-street parking under SMC 11.08 if the minimum standards of off-street parking in SMC 14.235 are met.

Staff did not investigate or produce any comparison between the proposed CUP and the aforementioned 5-plex. The 5-plex sounds like a non-conforming use in the Single-Family Residential designation. Such nonconformities cannot be used to justify greater use density simply because such a use exists in the neighborhood. Similarly, the existence of such a nonconformity should not detract from the permitting of uses that may otherwise conform with current code standards, subject to reasonable conditions of approval related to the standards for a CUP under SMC 14.65. Except where infrastructure capacity will be reduced below a functional or policy level and the capacity can be increased with infrastructure improvements, a new use or development cannot be required to mitigate the impacts of other uses within the vicinity of the site. In the case of parking, compliance with off-street parking requirements is determined to adequately account for new parking demand.

18. Has the city sought the expertise of the fire department on how they will be able to access the alley side of the building in the event of a fire?

City response: *The City sought the expertise of Snohomish County Fire District #4 with regard to the previous proposed construction and this question. The City received the following comment from Fire Chief Simmons. "In the current configuration the alley could not be used for emergency vehicle access. The driving surface of the alley would need to be widened to code, and there would need to be more separation from the building."*

Fire District personnel could still access the building from the alley without the use of emergency vehicles. Fire hydrants and emergency vehicle access is available from Fourth Street and Avenue E, with adjacent streets and fire hydrants available from these adjacent streets.

19. City what happened in Quebec in January 2014, will the staff be able to evacuate all of the occupants in an expeditious manner in the event of a fire?

City response: *This building will be provided with a complete fire sprinkler system and monitored fire alarm system as part of the building permit requirements. The 2012 International Fire Code (2012 IFC), Section 404 requires fire safety, evacuation and lockdown plans and associated drills be prepared and performed in accordance with Section 404 as amended by the State of Washington, which includes the use proposed.*

One of the requirements for Fire Safety Plans provides for a life safety strategy and procedures for notifying, relocating or evacuating occupants including occupants who need assistance. (Section 404.2.1 2012 IFC)

One of the requirements for the Fire Evacuation Plan provides for procedures for assisted rescue for persons unable to use the general means of egress unassisted, and accounting for employees and occupants after evacuation has been completed. (Section 404.2.2 2012 IFC)

Associated drills that requires the participation of all occupants must be performed at least four times a year in accordance with the 2012 IFC Table 405.2 Emergency Drill Frequency and Participation.

The Department of Social and Health Services may also have requirements in addition to the International Fire Code, which they would identify as part of their Construction Review Services.

20. Will emergency egress plans be required for this CUP?

City response: *Emergency egress is reviewed as part of the building permit application in conformance with the 2012 International Building Code. The Department of Social and Health Services may also have requirements in addition to the International Building and Fire Code, which they would identify as part of their Construction Review Services.*

21. There appear to be more power outages in this section of the city. (This must be verified)
Will there be emergency generators required for this type of facility?

City response: *The 2012 International Building and Fire Codes contain provisions for when Emergency Power and Standby Power is required and the Standards they must meet. This may be accomplished through the use of batteries, stationary emergency and standby generators or other source that complies with the National Electrical Code and Standards. The applicant would be required to demonstrate compliance as part of the building permit review. The Department of Social and Health Services may also have requirements in addition to the International Building and Fire Code, which they would identify as part of their Construction Review Services.*

22. If the applicant is planning on frail and elderly to occupy the building, why should proximity to bus lines be used as an argument to approve this CUP? Bus service one block away is very infrequent.

City response: *Proximity to bus lines is not a justification for granting the CUP, but adequacy of public transit is included in the criteria in Chapter 14.65.020(B) applicable to all conditional use applications. It is possible that certain public facilities may be adequate but not necessary for a particular conditional uses.*

23. With the current use of alley ways by residents and garbage trucks will there be an additional city maintenance plan for the alley? (The potholes in the alley between D and E are an indication of what additional daily commercial vehicle usage can do.)

City response: *No change is proposed to current maintenance levels for alleys.*

24. Will a caretaker be allowed to reside on the property?

City response: *According to recommended Condition of Approval #5, no separate living unit would be allowed for a caretaker or other employee of the facility.*

25. Will visitor's parking spaces be designated onsite?

City response: *Chapter 14.235 SMC, Off-Street Parking, Loading, and Access Requirements, requires off-street parking to be provided on the basis of the overall use. There is no guidance contained therein that would indicate certain spaces must be designated for certain users of the facility. That said, staff concurs with the Hearing Examiner's proposed condition that the residents of the ALF should not be allowed to have or park vehicles on or in the vicinity of the site.*

26. Will deliveries be restricted to certain hours and only during workdays?

City response: *The applicant has committed to restrict deliveries to 402 Avenue E between 8AM and 4PM. This was proposed to be memorialized in Condition of Approval #14. There was no proposal to limit such deliveries to weekdays only.*

27. Will lighting be designed and verified to have no impact on the surrounding neighborhood?

City response: *The application of a "no impact" standard would be hard to justify because every dwelling in the Single-Family Designation is allowed to light their entryways and parking areas in a reasonable fashion. To apply a "no impact" standard in this case would appear to give this property disparate treatment from other property in the same designation.*

The applicant has indicated in the SEPA submittal document that the lighting fixtures would be shielded to avoid glare and light spill onto adjacent properties. Staff would agree that glare should not be allowed to affect other residential properties in the area and that to the extent feasible, the light from these fixtures should be focused only on the property to be served.

28. Will there be opportunities to re-open the hearing to allow consideration of additional conditions to mitigate specific impacts to the surrounding community since this is a very unusual large business to place in a single family neighborhood?

City response: *Staff has agreed that monitoring the site would be something to consider as a reasonable condition of approval. In Case 19-08-CU, the Hearing Examiner included a Condition of Approval that allowed two opportunities to re-open the record as follows:*

There shall be two opportunities to reopen the record. Within 10 days after six months and within 10 days after one year from the date of operation of the facility, a party of record may request that the Hearing Examiner re-open the hearing to allow consideration of additional conditions to mitigate specific impacts to the surrounding neighborhood not anticipated at the time of hearing.

Such a condition may be appropriate in this case as well, given that the applicant has not committed to a specific operator for the facility and the facility may not be ready to occupy for some time.

29. Are there any restrictions on the current owner on how long he must maintain this business before it can be sold?

City response: *As indicated in the staff report for Case 17-13-CUP, zoning regulates the use, structure and the characteristics of the use. It does not regulate ownership. There is no specified time frame for continued ownership once a Conditional Use Permit (CUP) is granted. The grant of CUP approval runs with the land in perpetuity for the life of that use unless it is discontinued, abandoned by virtue of a conversion to another permitted or conditional use, or it is otherwise limited in duration as a condition of CUP approval.*

Anyone who would acquire the property would be subject to the same restrictions on the use as the current owner and would have to do one of the following: 1) Continue to operate the Assisted Living Facility in accordance with the CUP approval and conditions associated with Case 17-13-CUP; 2) Re-apply for a new CUP in order to change any aspect of the use that is subject to the CUP approval and conditions associated with Case 17-13-CUP; or, 3) Convert the property to another permitted or conditional use that is allowable in the Single Family Residential designation according to the zoning codes that are in effect at that time. A new CUP would require compliance with the processes and criteria in effect at the time of application.

While the CUP is viewed to run with the land, it is staff's understanding that the licensing of the ALF by the DSHS is specific to the operator and that a new operator would need to obtain a new

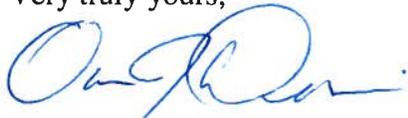
site specific license in order to provide ALF services at this location, subject to the requirements attached to the CUP as conditions of approval.

30. Will the city or the state be responsible for monitoring the operations of this business, i.e. occupants well-being, employee administration, sanitation, building and grounds maintenance, health, fire and safety, aspects?

City response: The well-being of residents occupying an Assisted Living Facility (ALF) is the responsibility of the Washington Department of Social and Health Services. This is the agency responsible for licensing the operations and monitoring for compliance with adopted state standards in RCW 18.20 (Assisted Living Facilities) and Chapter 388-78A WAC (Boarding Home Licensing Regulations). Conditions uniquely pertinent to the CUP approval, or which are already required as a matter of local regulation under zoning, building, traffic, parking, landscaping and other related codes would be the responsibility of the local government.

The city does not have the authority or expertise to regulate the operations of an Assisted Living Facility that is regulated by the state. In this regard it would be staff's intention to ensure compliance through coordination and communication with other agencies whenever possible, so as not to duplicate efforts, and to focus the available resources on those items which fall clearly within the city's jurisdiction.

Very truly yours,



Owen J. Dennison
Planning Director

Enclosure: Letter from Pat Anderson, Weed, Graafstra and Benson, Inc., P.S.

c: Duane Dvorak, Senior Planner
Sharon Pettit, Building/Fire Official
Yoshihoro Monzaki, City Engineer
Andrew Sics, Project Engineer