

**FINDINGS, CONCLUSIONS AND DECISION
OF THE HEARING EXAMINER FOR THE
CITY OF OLYMPIA**

CASE NO: File 11-0139

APPLICANT: Thurston County
Donald Krupp, Chief Administrative Officer
2000 Lakeridge Drive SW
Olympia, WA 98502-2933

REPRESENTATIVE: Panza
Ms. Jill Severn
P. O. Box 2274
Olympia, WA 98507-2274

SEPA APPELLANT: Industrial Zoning Preservation Association (IZPA)
c/o Phillips Wesch Burgess PLCC
724 Columbia Street NW, Suite 140
Olympia, WA 98501

SUMMARY OF PROCEEDINGS

REQUEST:

Application for a Conditional Use Permit to allow establishment of a permanent site for a homeless encampment, called Quixote Village. The site is within an area zoned Light Industrial/Commercial (LI/C). The installation will provide up to 30 small cabins, a 4,000 square foot Community Building, an 800 square foot restroom and shop building, and a 350 square foot picnic shelter. The facility will include sleeping units, a kitchen, an eating area, living space, toilet rooms and showers. IZPA timely appealed the SEPA Determination of Non-Significance (DNS) for the project.

LOCATION OF PROPOSAL:

A 2.17 acre parcel at 3350 Mottman Road SW in the Mottman Industrial Park within Olympia City boundaries. The parcel is owned by Thurston County.

SUMMARY OF DECISIONS:

The SEPA appeal is denied. The Conditional Use Permit is approved, subject to conditions.

PUBLIC HEARING

A consolidated hearing on the SEPA appeal and the Conditional Use Permit application was held on April 2 and 3, 2012, in the Municipal Court space in Olympia's Old City Hall. The hearing record was left open to allow the County and other parties to respond to conditions proposed by the Appellant. Responses were received within one week, and the Examiner closed the record on April 10, 2012. The Examiner visited the site.

PROCEDURE

A Determination of Non-Significance was issued by the City on December 27, 2011. IZPA timely appealed.

A single consolidated hearing was held on the SEPA appeal and the Conditional Use Permit application. In the SEPA appeal six witnesses were heard, each being subject to cross examination. In the Conditional Use Permit portion, eleven witnesses testified

IZPA submitted a Prehearing Brief dated March 12, 2012, with Exhibits A through F attached. Panza filed a responsive brief dated March 19, 2012. These items, including the exhibits, were admitted to the record.

The City filed a Staff Report on the Conditional Use Permit which contained 18 attachments (A through S). Attachment E was a report responding to the SEPA appeal, containing its own attachments: E-1 through E-8. All of these items were admitted to the record.

In addition, during the course of the hearing, Appellants offered Exhibits A-1 through A-5, the City offered Exhibit C-1, and Public comments were offered as Exhibits P-1 (Tinamarie Swihart), P-2 (IZPA comments on Conditional Use Permit) and P-3 (United Churches statement). All of these items were admitted to the record. Exhibits A through I attached to the IZPA comments were also admitted.

The Examiner announced that all of the items admitted would, as limited by relevance, be applicable to both the SEPA appeal and the Conditional Use application. There is, nonetheless, some duplication among exhibits admitted.

The County requested additional time to respond to conditions proposed by Appellant in Exhibit P-2. The County, the City and Panza were given additional time for such response, and all comments were received within a week of the end of the hearings. The Examiner has admitted these post-hearing comments.

FINDINGS OF FACT

1. This case involves an application for a Conditional Use Permit to create a permanent site for a homeless encampment. The encampment is named Quixote Village. The applicant is Thurston County which owns the site. Over the past several years, the encampment has occupied a number of sites on a temporary basis, moving from church parking lot to church parking lot in the Olympia, Lacey, Tumwater vicinity.

2. The sponsoring organization for the encampment is a volunteer organization called Panza. Panza coordinates the provision of services needed by the encampment. Counsel for Panza described its history and purpose as follows:

Panza, a not for profit charitable corporation, was formed with the hope of both assisting the residents generally with tasks such as reintegrating into the community at large and with assisting the residents in realizing their hope for a more permanent encampment. Its board includes clergy and lay leaders from the faith community.

3. The site proposed as a permanent home for Quixote Village is a currently vacant lot in the Mottman Industrial Park within Olympia City limits. The address is 3350 Mottman Road SW. The zoning is Light Industrial/Commercial. The property across Mottman Road from the site is within the City of Tumwater.

4. In connection with the permit application, Thurston County submitted a State Environmental Policy Act (SEPA) checklist to the City on September 21, 2011. After environmental review, the City issued a Determination of Non-Significance (DNS) on December 27, 2011. The DNS was timely appealed by the Industrial Zoning Preservation Association (IZPA).

5. IZPA is a non-profit corporation whose members are property owners in the Mottman Industrial Park. In its appeal IZPA claims the City failed as a matter of procedure to require sufficient information from the applicant to be able to evaluate traffic and noise impacts. IZPA additionally claims that the DNS was substantively in error because the proposal, in fact, has probable significant adverse environmental impacts as to traffic and noise.

6. The subject application is the outgrowth of a process which involved the enactment by the City of Olympia in 2011 of an ordinance amending the Unified Development Code to allow for a "County Homeless Encampment" on property owned by the County within a Light Industrial/Commercial zoning district of the City. See Chapter 18.50 OMC. The ordinance authorizes such an encampment upon approval of a Conditional Use Permit. The instant application by the County, joined by Panza as sponsoring agency, follows the process established by the ordinance.

7. The project site is a now-vacant 2.17 acre lot located on the north side of Mottman Road. The topography is flat in the core of the site with downward slopes along the north and west edges. Beyond the north boundary the land drops down to Percival Creek. Between the

creek and the subject property is a rail line and a City regional storm water facility. Fencing is to be installed at the top of the slopes. There is an existing parking lot on the property.

8. The proposal is to build and operate a County Homeless Encampment consisting of 30 sleeping units (cabins), 140 square feet each; a 4,000 square foot community building that includes kitchen, eating area, living space, meeting space, common toilet and shower facilities; a separate 800 square foot shop building with restrooms, a central 350 square foot covered picnic area and 11 parking stalls.

9. The site plan shows the parking area next to Mottman Road and the community building just behind the parking. The sleeping units would be arranged in two rows extending back from the community building on either side of the lot with garden areas and open space in the lot interior. The picnic shelter would be behind the community building and the shop/restroom building would be located at the rear of the developed area. Perimeter landscaping and fencing is proposed.

10. Though permanent structures and facilities are proposed, Quixote Village will remain a temporary home for its residents. The goal of Panza is to transition residents from the encampment back into the community. Social service assistance is provided to this end.

11. The proposal is for the County, as landowner, to oversee operations and security at the site and to carry out any enforcement actions that may be required to secure compliance of the camp with applicable ordinances and its conditions of approval.

12. Camp Quixote currently operates under a code of conduct which outlines a regime of self-governance under which the residents themselves democratically determine how the encampment is run, including who is to be admitted and who must go. This self-policing approach has worked very successfully in the past, so much so that a number of prior opponents of the homeless encampment have become supporters. The record and testimony here reveal a high degree of involvement and pride among residents in the orderly and responsible operation of the camp. Security concerns of camp neighbors have not proven to be valid.

13. There is no public transit stop at the proposed site, but the site is located less than 1/4 mile from a bus stop along R.W. Johnson Boulevard. Currently the closest weekend service is on the South Puget Sound Community College campus about .60 miles to the east. The applicant is pursuing obtaining a shuttle van from Intercity Transit and discussing the possibility of changing the current bus route to include the site.

14. The uses bordering the project site include a rental facility for heavy equipment to the immediate east, and a large property used by trucking companies and a construction business across the street to the south. To the west is more property owned by Thurston County with an existing building that is now used as a warehouse. In the future the County intends to use this building as an election shop and records archive.

15. Other properties within the industrial park support a variety of light industrial uses (e.g., bottling, equipment manufacturing, trucking and truck repair businesses, building supply

enterprises). Most of the property in the park is within Tumwater to the south of the project site. No residential uses are presently located within the park.

16. Mottman Road is a paved two-lane street. Within the industrial park, it has no sidewalks. Heavy trucks use this roadway day and night.

17. Current owners of property in the industrial park are opposed to the location of the homeless encampment there because they think it will inevitably lead to conflicts which will adversely affect business operations. They are afraid that the normal business activities of the park will cause noise complaints from the encampment that may force the industrial tenants to alter what they do or subject them to anti-noise enforcement. They are concerned for the security of their property and also concerned for the safety of the encampment residents who will be using the roadways. IZPA members oppose the Conditional Use Permit on grounds of incompatibility. If it is approved, they ask for conditions insuring that its operation will have no effect on the accustomed operations of the park's light industrial and commercial tenants.

18. The DNS was based on the environmental checklist and on the collective experience of staff with homeless encampments and with noise and traffic issues. After the DNS was appealed the City performed some noise monitoring and, in addition, secured some traffic generation information from its Public Works Department -- inputs which reinforced the administrative determination to issue the DNS. No professional studies by outside experts were commissioned by the City.

19. IZPA had both a professional noise monitoring report and a professional traffic impact assessment/parking study prepared. The noise study concluded that significant noise control measures would be needed in order for current light industrial users to avoid exceeding regulatory noise limits on the encampment property, assuming the applicability of limits for residential areas. The traffic study recommended measures to protect pedestrians.

20. At the hearing the City presented evidence that outside noise will be significantly attenuated by the structures in the camp and that, with standard attention to noise reduction, the proposed construction will probably achieve appropriate indoor noise levels.

21. The limited noise monitoring done by the City suggests that noise perceived at the site out of doors will probably not be greater than that experienced, without complaint, at pre-existing homeless encampments. The staff recommendations included a condition that residents of the village be put on notice prior to occupancy that they will be residing in an active industrial area that potentially has loud noises around the clock.

22. Enforcement of the City's noise ordinance is complaint based. Testimony from present residents of Camp Quixote was to the effect that loud noise was the least of their worries. The City of Tumwater reported few noise complaints by persons in residential zones near other parts of the industrial park. No noise complaints are known to have resulted from a comparable developed encampment near the Portland (Oregon) airport.

23. The City's noise control ordinance is interpreted by staff as applying noise limits between zoning districts, not between uses within a district. See OMC 18.40.080(B). Under this interpretation there are no limits on noise between properties in the industrial park. Thus, in the City's view, no level of noise experienced by the homeless encampment from its industrial neighbors would constitute a violation of the law.

24. The Examiner finds that it is highly improbable that any of the users of the industrial property would be subject to a noise enforcement action flowing from a complaint from Quixote Village. Even if the possibility of noise enforcement against neighbors is viewed as an environmental impact, such possibility is remote and speculative at best.

25. As to traffic, the record shows that it is highly unusual for a resident of a homeless encampment to have a car. Most walk, ride bikes or take the bus. There is no standard category used by traffic engineers for a homeless encampment. So the City used the trip generation figures for a somewhat similar use: "congregate care facility." Using this approach, the staff determined that the likely trip generation from the site would be well below the threshold at which a detailed traffic impact analysis is required. Even evaluating the proposal as 30 single-family homes resulted in trip generation below the threshold.

26. The appellants traffic study did not take issue with the City's conclusions on traffic generation, rather it noted that, at least at the outset, the majority of site generated trips will be by bus, bicycle or on foot. With this focus, the traffic study determined that mitigation measures would be needed for the encampment to avoid "significant adverse" impacts on the City's transportation system. These mitigation measures were identified as: (a) sidewalks along Mottman road, (b) re-striping of Mottman Road to allow dedicated Bicycle lanes, and (c) a minimum of 22 parking stalls on the site.

27. The City staff recommended a permit condition requiring that the existing asphalt shoulder extending between Mottman Road and the nearest sidewalk on R.W. Johnson Boulevard be widened to a minimum of four feet. At the hearing this recommendation was changed to a five foot minimum in order to accommodate bikes as well as pedestrians. The City asked that the widened shoulder be bordered by rumble strips. The Examiner finds that such a condition would effectively address the "pedestrian/bicycle" concern.

28. The parking recommendation of appellant's expert resulted from using numbers for a "congregate care facility" However, the new County Homeless Encampment ordinance requires only six on-site parking stalls. OMC 18.50.060(A)(2)(c). This latter figure appears to be based on the City's experience with homeless encampments. The applicant proposed to provide 11 parking stalls and the City agreed to this number.

29. Concerns about parking at the site stem, in part, from a worry that the facilities will be used for meetings of outside groups, not directly involved with operation of the village. Neither the County nor Panza have such intentions. An architect who worked on the plans testified that the village, as designed, does not lend itself to community meetings. It is intended for use by its residents. The only outside users would be service providers, occasional guests,

and, perhaps, the Panza board. The evidence supports a finding that the number of parking spaces to be provided will be adequate.

30. The application was circulated among City departments. Their recommendations are incorporated into the Conditions of Approval for the Conditional Use.

31. The Staff Report analyzes the application in light all of the requirements of the new ordinance applying to a County Homeless Encampment. As conditioned, the staff determined that the proposal is consistent with the ordinance. This includes site criteria, security concerns and health and safety considerations. The Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as if fully set forth.

32. In its presentation for the public hearing on the Conditional Use application, IZPA suggested several conditions in the event the Hearing Examiner were to approve the permit. They involved access to transit, an operations and security plan, providing more parking, limiting use of the community building, a ceiling of 40 as the maximum number of residents, building a sidewalk to connect to existing bus stops, and providing noise mitigation.

33. The other parties were given an opportunity to reply to these suggestions. Panza replied, disagreeing with the need for most of the conditions, but stating it would not object to conditions limiting the number of residents and limiting the use of the community building. The City essentially agreed with Panza. The County explicitly concurred in Panza's response.

34. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. OMC 18.50.060(E)(2)(b), OMC 18.82.120(z).

2. This case stands the usual environmental challenge on its head. IZPA is not concerned that the operation of Quixote Village will directly impose adverse impacts on the environment of the industrial park. Rather IZPA is concerned with how to avoid impacts the present users of the industrial park fear they might impose on the environment of the homeless encampment. In short, the IZPA members fear that Quixote Village may force them to make changes in what they presently do or go to great expense to avoid such changes. At bottom the case is an argument about compatibility of uses, not about the environmental impact of a new use. It is the kind of situation for which the law of Conditional Uses is designed.

APPEAL

3. In the SEPA appeal due deference must be given to the expertise and experience of City staff. OMC 18.75.020(F).

4. The noise issue in this case presents an example of what at common law would be termed "coming to a nuisance." Under this concept one cannot move into an industrial district

and "expect the quiet of a farm." In circumstances such as presented here, the incoming quiet use could expect no recovery against noisy pre-existing users. The decision reached here is consistent with this long-held notion of equity. Under the facts, operation of the homeless village is not likely to interfere with present uses of the industrial park.

5. Noise enforcement is complaint-based and the facts show it is unlikely that residents of the County encampment will make noise complaints. But, even if such a complaint were made, it would not result in a violation under the City's interpretation of its noise ordinance. Under that interpretation, the applicable standards for a noise-receiving property are governed by the zone in which such that property lies. In the City's view of its own ordinance, because the County encampment will be within a light industrial zone, no noise limits will apply.

6. Deference should be given to the City's administrative interpretation of its own standards. The Examiner concurs with Olympia's reading of its noise regulations. The Examiner concludes that noise enforcement against industrial or commercial users of the Mottman park is not a "reasonable likelihood" and therefore cannot give rise to a finding of "significant." WAC 197-11-794.

7. IZPA argues that under the State noise regulation, Chapter 173-60 WAC, the standard for a noise-receiving property is governed by the use of the property, not by its zone, and that therefore, the standards for residential property should apply to noise received within the homeless village. Having accepted Olympia's interpretation of its own regulation, the Examiner is without authority to adjudicate any purported conflict with State law.

8. Accordingly the Examiner concludes that, as to the noise issue, there is sufficient information in the record to support the threshold determination and that the appellant failed to prove that there is a reasonable likelihood for significant adverse impacts from noise.

9. The traffic issue is not about vehicular traffic, but about pedestrian safety. The City has proposed a condition that would require a widened asphalt shoulder separated from the main roadway by rumble strips to more safely accommodate walkers and bike riders. This condition would effectively meet the intent of the improvements suggested by the appellant.

10. The appellant argues that this matter should have been addressed prior to the issuance of the DNS rather than, as here, later during the permit review process. The appellant states that the Examiner has no power to convert the DNS issued here into an MDNS by adding a SEPA-based condition which would eliminate a significant impact.

11. This approach seeks to insist on a sort of procedural formalism which is unnecessary to reach the substantive result sought. SEPA has the aim of producing full disclosure in order that decisions significantly affecting the environment be made by deliberation, not by default. If such disclosure is made before a decision on a project is made, the aims of SEPA have been fulfilled. Therefore, it is irrelevant that the City developed some environmental information after the DNS was issued. The question is what was known and what were the contours of the project at the time of decision on the permit. If full disclosure had been achieved by then, the purposes of SEPA were served.

12. In short, the project to be evaluated now is the project as modified in the approval process. The SEPA issue at this point is whether the conditioned proposal presents a significant adverse environmental impact. The Examiner concludes that the transportation concern has been adequately addressed by the City's condition and that therefore, there is no need to send the application back for the development of additional information under SEPA.

13. The situation might be different if the Examiner had no means for imposing the "widened right of way" condition other than through the mechanism of SEPA. Here, however, the Examiner clearly has independent power to add the condition without recourse to substantive SEPA authority. See OMC 18.48.040.

14. Accordingly the Examiner concludes that, as to traffic, there is sufficient information in the record to support the threshold determination and that the appellant failed to prove the likelihood of significant adverse impacts from traffic.

CONDITIONAL USE

15. In connection with the underlying Conditional Use permit application, the applicant has the burden of showing that the proposal is in compliance with the applicable provisions of the Code. OMC 18.02.120(C). The Examiner concludes that the applicant successfully carried that burden.

16. The Conditional Use provisions of the City code empower the Hearing Examiner to impose additional conditions on a project, if necessary for the protection of surrounding properties, the neighborhood, or the general welfare of the public. OMC 18.48.040. Subsections (C) and (E) provide explicit authority to require structural features to minimize hazards to life and limb and to ensure that the proposed use is compatible with existing and potential uses in the neighborhood.

17. The new County Homeless Encampment ordinance expressly contemplates approval by Conditional Use of such a facility owned by Thurston County and located in a Light Industrial/Commercial zoning district. The appellant urges the Examiner to, in effect, invalidate the ordinance on grounds that it conflicts with the Comprehensive Plan. This matter is currently before the Growth Management Hearings Board. The Examiner's role is to apply the City's ordinances as he finds them. He has no authority to determine their validity.

18. The Examiner has reviewed this project for conformity with the new County Homeless Encampment ordinance and concludes that, the proposal, as conditioned below, meets the requirements of the ordinance. In particular: the facility is consistent with the site criteria for parking needs and proximity to a bus stop; appropriate improvements to the right-of-way are imposed in the interests of safety; the approval calls for notice that the encampment is within industrially zoned property; and the County has announced an intent to establish and enforce an operations and security plan

19. The appellants request for added conditions relating to the population of the encampment and the use of the community building appear an attempt to limit broader impacts which the record does not demonstrate are likely. In an excess of caution however, it does not seem inappropriate to add a condition insuring that activities that occur at the village are related to its operation.

20. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONDITIONS

1. The project shall be constructed and the encampment shall be operated in a manner consistent with the application materials, except as the same may be modified by these conditions.

2. Thurston County shall be responsible for the operations and security plan and any changes therein, as well as for enforcement of the Camp Quixote Code of Conduct and Resident Agreement.

3. The existing asphalt shoulder extending along Mottman Road between R.W. Johnson Boulevard and the project site shall be widened to a minimum of five (5) feet between the existing sidewalk return located at the corner of R.W. Johnson and Mottman Road and the westerly driveway of L&E Bottling. Rumble strips shall be added along the fog line from RW Johnson Boulevard to the subject property to further enhance nighttime safety for pedestrians and bikers.

4. At least half of the width of the proposed gravel path shall be paved for ambulance gurney transport and ADA accessibility.

5. The applicant shall extend a "dry" horizontal standpipe leading to the rear of the project site with the Fire Department Connection (FDC) in the parking lot and a couple of standpipe outlets in locations determined by the Fire Marshall.

6. The applicant shall ensure that residents are put on notice prior to occupancy that they will be residing in an active industrial use area that potentially has loud noises around the clock.

7. Panza or Thurston County shall provide an annual report to the City of Tumwater and the City of Olympia and shall make the report available to the general public and neighbors of the encampment. The report shall be submitted prior to March 1 of each year and shall document the ownership of the site, the current contact names and information for the project, the resident population, any changes proposed for the site or operations, and any problems that have been encountered between the encampment and owners/tenants in the industrial park.

8. A fence and landscape buffer shall be installed around the perimeter of the site, as shown on Attachment K to the City's Staff Report.

9. At the time of development, a minimum of 65 tree units will be required on the site.

10. The applicant shall install water facilities in accordance with provisions of the City of Tumwater standards and specifications. The water system shall be designed to provide adequate domestic plus fire flow at required residual pressure. Detailed engineering review will occur following Land Use Approval and prior to Engineering permit issuance.

11. The applicant shall install sewer facilities in accordance with the provisions of Chapter 7 of the Development Guidelines and Public Works Standards.

12. The stormwater system shall comply with the Drainage Design and Erosion Control Manual (DDECM), dated October 2009, for the City of Olympia.

13. The solid waste enclosure shall be large enough to house a front load garbage dumpster and additional containers for recycling, including possibly cardboard and food scraps.

14. The Community Building shall not be used for events unconnected with the operation of the homeless encampment. Use is expressly permitted by the Panza Board, by service providers, and for reasonable guest visitation.

15. The Hearing Examiner's decision on the Conditional Use Permit is final and conclusive, subject to rights to seek reconsideration and to appeal set forth below.

16. Noncompliance with the conditions herein shall be grounds for rehearing before the Hearing Examiner. The Examiner may suspend or revoke a Conditional Use Permit pursuant to OM 18.48.060 and/or impose penalties for violation of any provisions of the Unified Development Code or the conditions of approval herein.

DECISION

The SEPA appeal is denied. The DNS is affirmed. The Conditional Use Permit is approved, subject to the conditions set forth above.

DATED this 30th day of April, 2012.

Wick Dufford
 Wick Dufford, Hearing Examiner Pro Tempore

Mailed 5/2/2012

N.L.

RECONSIDERATION/APPEAL

This is a final decision of the City. Any party may file a Motion for Reconsideration within 10 days of service of this decision in accordance with OMC 18.75.060. Appeals shall be made to Superior Court pursuant to the provisions of Chapter 36.70 RCW. The filing of a Motion for Reconsideration is not a prerequisite for seeking judicial review. If a Motion for Reconsideration is filed, the time for filing an appeal shall not commence until disposition of the Motion.