

1
2 **BEFORE THE HEARING EXAMINER FOR THE CITY OF BELLEVUE**

3
4 In the Matter of the Application of)
5 **Seattle Humane Society**)
6)
7 For a Conditional Use Permit for)
8 construction of a new facility at)
9 13212 SE Eastgate Way, Bellevue.)
10

FILE NO. 14-141381-LB

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

11 **SUMMARY**

12 **Decision.** The application should be **APPROVED**, subject to conditions.

13 **Proposal.** The applicant, the Seattle Humane Society, seeks a Conditional Use Permit
14 (CUP) at 13212 SE Eastgate Way, Bellevue, to replace and expand its existing facility with a
15 three-story building that will house an animal shelter, veterinary clinic, administrative and
16 support offices, classrooms, and adoption services. Expansion of a legally non-conforming use
17 requires a condition use permit.

18 **Issue Presented.** The primary issue in this matter is whether the proposed project at the
19 Seattle Humane Society meets the criteria for Conditional Use Permit approval under in the
20 Bellevue Land Use Code at LUC 20.30B.140. The record establishes that the proposed project
21 meets the conditional use permit criteria.

22 **Procedural History.** Jane Gooding, Johnston Architects, applied for a conditional use
23 permit for the proposed removal and replacement of Seattle Humane Society's existing facility
24 on September 18, 2014. A notice of application and public meeting was published on October 9,
25 2014. A public meeting was held on October 16, 2014. No members of the public attended this
26 meeting. Only one written comment was submitted, but the comment did not bear on the CUP
27 approval.

28 The proposal affects Sunset Creek, steep slopes and buffer areas. Thus, the applicant also
29 filed for a Critical Areas Land Use Permit (CALUP). The CALUP application was published. No
30 public comments were received.

1 The Director of the Development Services Department (DSD) approved the CALUP
2 application and issued a determination of nonsignificance (DNS) on the application under the
3 State Environmental Policy Act (SEPA). Notices of these determinations were issued on May 7,
4 2015. The deadline for CALUP and SEPA appeals expired on May 21, 2015. No appeals were
5 filed.

6 A public hearing was scheduled for May 21, 2015, before the undersigned hearing
7 examiner.

8 The Director of the Development Services Department recommended approval of this
9 Conditional Use Permit application, subject to conditions (Exhibit 1, DSD Staff Report).

10 **Hearing Examiner Jurisdiction.** The role of the hearing examiner in this matter is to
11 hold a public hearing, take testimony on the proposal, and issue a decision based on the record
12 established by examiner. LUC 20.35.015.

13 **The Hearing.** This case came before the undersigned hearing examiner for a public
14 hearing on May 21, 2015, at 7 PM in the Bellevue City Hall.

15 Reilly Pittman, an Associate Land Use Planner with the Development Services
16 Department (DSD), City of Bellevue, testified on behalf of the Department. David Loewe, Chief
17 Executive Officer, Seattle Humane Society, testified on behalf of the Humane Society. Sara
18 Gollersrud of the Office of the Hearing Examiner recorded the proceeding. There was no public
19 testimony.

20 **Exhibits.** The DSD's land use staff report on the conditional use application and other
21 file reports were admitted into evidence as Exhibit 1 and the DSD's Power Point presentation at
22 the hearing was admitted as Exhibit 2.

23 FINDINGS OF FACT

24 1. The factual matters in the foregoing **SUMMARY** are adopted by the undersigned
25 examiner as findings.

26 2. The site of the proposed project at issue is the Seattle Humane Society at 13212 SE
27 Eastgate Way, Bellevue—a two-parcel site zoned Light Industrial (LI) in the Richards Valley
28 subarea of the city, just north of I-90. The surrounding properties also are zoned LI and include a
29 King County Solid Waste Transfer Station property to the west and a moving a storage facility to
30

1 the east. The property has street frontage to the south on SE Eastgate Way, and to the north on
2 SE 32nd Street.

3 The proposal envisions replacement of present Seattle Humane Society structures with a
4 new three-story building that will provide an animal shelter, veterinary services, administrative
5 and support offices, classrooms, and adoption services. These proposed uses are all allowed in
6 the LI zone except for the adoption function, which is similar to kennel use under the Land Use
7 Code and not allowed. However, the Seattle Humane Society is a legal non-conforming use that
8 was permitted by King County before the City of Bellevue annexed the property in 1966. Under
9 the Land Use Code, a legal non-conforming use can be expanded or rebuilt. LUC 20.20.560.

10 Seattle Humane Society is a private non-profit organization devoted to people and
11 animals, as its Chief Executive Officer David Loewe testified credibly.

12 3. The site includes part of the Sunset Creek ravine, and that area will not be developed.
13 The western edge of the site has an area of steep slopes.

14 The present developed area of the site will contain most of the proposed project, and the
15 proposed new building will be built within the existing paved surfaces with a slight intrusion on
16 the stream buffer outside the existing structure footprint (See Exhibit 1, Staff Report, Page 7).
17 Existing undeveloped area will remain intact except for relocation of trails that conform to
18 critical-area construction standards. The existing eastern driveway off SE Eastgate Way will be
19 removed and restored with a 10-foot wide pedestrian trail in place of the eastern driveway.

20 4. The proposed reconstruction of the facility here requires a Conditional Use Permit
21 (CUP) under the Land Use Code for a non-conforming use.

22 The proposal calls for demolition of existing structures in phases to allow use of the
23 existing facility as the new, three-story building is constructed and parking is expanded and
24 reconfigured.

25 Essential functions of the existing facility will remain open during construction because
26 relocating many of the animals is not feasible. The existing administration building and adjoining
27 parking will be demolished for the new building. The dog kennel, veterinary area, adoptions, and
28 admissions buildings will remain during construction until these uses can be housed in the new
29 building and these existing buildings can be demolished.

30 5. The proposed construction project meets and exceeds the dimensional requirements for
the LI zoning district (Exhibit 1, Staff Report, page 8).

1 The proposed three-story building will replace and consolidate existing buildings that
2 house separate functions. The new building will be 54,000 square feet in three stories with a
3 28,600 square-foot footprint.

4 The proposed design is intended to provide for all existing functions and future growth of
5 the Humane Society with more inviting public spaces and more functional spaces, including dog
6 housing as well as a loading area, food storage, and trash collection at grade for ease of access.
7 The building front will face Eastgate Way and parking will be adjacent to the street.

8 6. The critical areas study on the affected areas establishes that impacts of any permanent
9 and temporary disturbance can be successfully mitigated (Staff Report). The staff report details
10 the contemplated disturbances. Based on this information and other factors, the Director of the
11 Development Services Department approved with conditions the Critical Areas Land Use Permit
12 (CALUP) for construction of the proposed facility. That decision was not challenged.

13 Further, the applicant has submitted geotechnical and critical areas reports under LUC
14 20.25H. Technical reviews are summarized in the staff report.

15 The Director's critical areas determinations are detailed in the staff report.

16 7. The proposed project is consistent with the Comprehensive Plan. This finding is
17 supported by the credible testimony of City Land Use Planner Reilly Pittman.

18 8. The proposal is supported by Comprehensive Plan goals and policies. LUC
19 20.30B.140. The proposal conforms to the City's critical areas ordinance and maintains the
20 current level of development. See Subarea Policies S-NH-1 and S-NH-5. (See also Exhibit 1,
21 Staff Report, Pages 29-30). The proposal also will also result in improved landscaping as well as
22 a more attractive facility that is planned with "sensitivity" to its surroundings. See Subarea
23 Policy S-NH-8.

24 The project also conforms to environmental policies. The stream corridor will be
25 restored, protected under the Native Growth Protection, and virtually unaffected by the new
26 construction. See Environmental Policies EN-38, EN-41, EN-45 and EN-67.

27 With plans for stream corridor restoration and trail construction and improvements, the
28 project also conforms to land use policies on open space, tree preservation, and adequate
29 pedestrian connections. See Land Use Policies LU-15, LU-16 and LU-24.
30

1 9. The site responds to its surroundings in this area zoned LI and the project will result in
2 improvement in the character and appearance of the existing site and present structures. LUC
3 20.30B.140.

4 10. Existing public utilities will serve the site, and the Departments for Utilities,
5 Transportation and Fire have reviewed the project and found that it conforms to their codes or
6 they have required improvements if necessary.

7 11. The project maintains existing use of the site and will not be detrimental to uses or
8 property in the immediate vicinity. Indeed, the existing facility will be upgraded and improved.

9 12. The requested conditional use complies with the provisions of the Land Use Code
10 (Staff Report and findings *supra*).

11 13. Land Use Planner Mr. Pittman's testimony was credible and consistent with these
12 findings, the determinations in the Staff report, and the other record evidence.

13 14. The Development Services Department presented un rebutted evidence, as discussed
14 in its staff report, that the Seattle Humane Society proposal meets the criteria for approval of a
15 Conditional Use Permit under LUC 20.30B.140.

16 15. The undersigned examiner concurs with the DSD's findings and recommendations
17 on the conditional use application for the Seattle Humane Society project.

18 16. Any conclusion herein, which may be deemed a finding, is adopted as such.

19 CONCLUSIONS OF LAW

20 1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding.
21 The application is subject to Process I procedures. LUC 20.35.015.

22 2. Requirements under the State Environmental Policy Act have been satisfied.

23 3. A Critical Areas Land Use Permit was approved for the project at issue by the
24 Director of the Development Services Department. That decision was not appealed.

25 4. The Examiner, as required, has accorded substantial weight to the recommended
26 approval of the conditional use permit by the Development Services Department Director. LUC
27 20.35.250(F).

28 5. The proposed project complies with the Land Use Code Dimensional Standards at
29 LUC 20.20.
30

1 2. The applicant shall comply with all conditions of approval listed in the Development
2 Services Department Staff Report on the conditional use permit (Staff Report, Section XI)
3 including the following conditions (as further detailed in the staff report).

4 **A. General Conditions of Approval**

- 5 1. Holiday Construction and Traffic Restrictions. BCC 14.30.060
6 2. Provisions for Loading. LUC 20.20.590.K.4 and BCC 14.60.150.
7 3. Obtain all necessary permits. LUC 20.25H.
8 4. Construction hours. BCC 9.18.040
9 5. Geotechnical Recommendations. LUC 20.25H.
10 6. Utilities. BCC 24.02, 24.04, 24.06.

11 **B. For Issuance of Clearing and Grading Permit**

- 12 1. Transportation Department approval of civil engineering plans. BCC Title 14.
13 2. Tree Protection. LUC 20.20.520 and BCC 23.76.060.
14 3. Arborist Recommendations. LUC 20.02.520.
15 4. NGPA Easement Fencing and Signage. LUC 20.25H.
16 5. Animal Use of NGPA Easement. 20.25H.080.A.5.
17 6. Maintenance Surety and Five-Year Monitoring. LUC 20.25H.
18 7. Separate Maintenance and Monitoring Plan. 20.25H.220.
19 8. Edge of Trail Planning. 20.25H.080.A.5.
20 9. Hold Harmless Agreement. LUC 20.30P.170.
21 10. Temporary Parking Agreement. LUC 20.20.590.
22 11. Trails. LUC 20.25H.C.3.f. and 20.25H.C.3.g.

23 **C. Prior to Building Permit Issuance**

- 24 1. Transportation Impact Fee. BCC 22.16.
25 2. Building and Site Plans—Transportation. BCC 24.60.060, 110, 120, 160, 181, 190,
26 240, 241.
27 3. Recycling and Solid Waste Collection Area. 20.20.725.

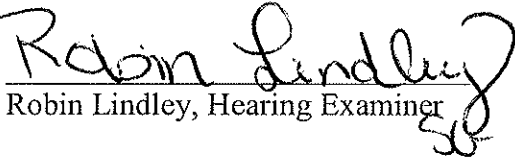

28 **C. Prior to Issuance of Certificate of Occupancy**

- 29 1. Street Frontage Improvements. BCC 14.60 (See Staff Report for Specific Provisions).
30 2. Pavement Restoration (BCC 14.60.250; Design Manual Design Standard #23).
31 3. Land Use Inspection. 20.25H
32 4. Native Growth Protection Act Easement. LUC 20.25H.030.

1 **DECISION**

2 The requested Conditional Use Permit should be **approved**, subject to the above stated
3 conditions.

4 **SO ORDERED**, this 29th day of May, 2015.

5 
6 Robin Lindley, Hearing Examiner
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9 **NOTICE OF RIGHT TO APPEAL**

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11 **RIGHT TO APPEAL—TIME LIMIT**

12 A person who submitted written comment to the Director before the hearing, or submitted
13 written comments or made oral comments during the hearing on this matter, may appeal the
14 decision of the hearing examiner to the Bellevue City Council by filing a written appeal
15 statement of the Findings of Fact or Conclusions being appealed, and paying any appeal fee, no
16 later that 14 calendar days following the date that the recommendation was mailed. The appeal
17 must be received by the City Clerk by **5:00 p.m., June 12, 2015**.

18 **TRANSCRIPT OF HEARING—PAYMENT OF COST**

19 An appeal of the hearing examiner’s decision requires the preparation of a transcript of
20 the hearing before the hearing examiner. Therefore, the request for appeal must be accompanied
21 by an initial deposit of \$100 for each tape. Should the actual cost be less than the amount of the
22 deposit, any credit due shall be reimbursed to the appellant. Should the cost for transcript
23 preparation be more than the deposit, the appellant will be additionally charged.

24 **WAIVER OF TRANSCRIPTION FEE**

25 Upon request, the City Clerk will waive transcription fee upon submission by an
26 appellant of the following documentation: a) an affidavit stating that the appellant’s net financial
27 worth does not exceed \$20,000; b) an affidavit stating that the appellant’s annual income does
28 not exceed \$5,200; c) a brief statement of the issues sought to be reviewed; d) a designation of
29 those parts of the record the party thinks are necessary for review; e) a statement that the review
30 is sought in good faith.