

**FINDINGS, CONCLUSIONS AND DECISION  
OF THE HEARING EXAMINER  
CITY OF SEDRO-WOOLLEY**

**REQUEST FOR RECONSIDERATION**

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**APPELLANT:** Tom Swett

**CASE NO.:** CUP-1-11 (see Exhibit A and Attachments)

**REQUEST:** Applicant is requesting a reconsideration of the Hearing Examiner's decision issued on December 19, 2011.

**FINDINGS OF FACT AND CONCLUSION**

1. The Sedro-Woolley Hearing Examiner issued a decision for CUP-1-11 on December 19, 2011, to deny the requested permit modification to an existing, legal nonconforming self storage facility to allow units to be rented for purposes of indoor growing of plants, in this case medical marijuana (see Exhibit B).
2. A timely Request for Reconsideration of the Hearing Examiner's decision was filed by the applicant on December 27, 2011 (see Exhibit C). The applicant raises issues for each of the three approval criteria that I find to be valid points for further review and reconsideration. These are discussed below.
3. On January 4, 2012, I requested additional information from the applicant relative to actual occupancy of the self storage facility since 2005. I received the requested information in a timely manner on January 9, 2012 (see Exhibit E).

**COMPLIANCE WITH THE COMPREHENSIVE PLAN**

4. In my decision (see Exhibit B) the focus of the review was on the differences in nature of the existing and proposed use, and solely in the context of the modification of an undefined, legal nonconforming use. This comparison was made in response to the applicant's logic that it is the renting of space which makes the two uses substantively similar enough for approval of the use modification. In addition, the applicant had not provided a demonstration that the proposed use modification complied with the Comprehensive Plan.

In the request for reconsideration (see Exhibit C) the applicant specifically addresses the criteria for compliance with the Comprehensive Plan (SWMC 17.56.060.A). He notes on page 1 of Exhibit C that low-intensity agriculture is a use permitted outright in the R-5 zoning district (SWMC 17.12.010.A). He correctly points out that there are no limitations placed on the type or how many plants are allowed, or the manner in which they are cultivated; i.e. no distinction is made between indoor versus outdoor cultivation. The applicant concludes that the indoor cultivation of plants is allowed outright and as a result is in compliance with the Comprehensive Plan.



In as much as the SWMC does not limit the type or manner of cultivation, I must agree that the indoor cultivation of plants does fall within the low-intensity agriculture use category. In addition, there is also no code provision that would prevent an otherwise conforming use to be undertaken in the same facility as a nonconforming use. My conclusion #7 in Exhibit B is, therefore, in error and is withdrawn.

CONCLUSION: The proposed modification of use complies with Conditional Use criteria 17.56.060.A

#### COMPATIBLE WITH SURROUNDING AREA & NO UNREASONABLE ADVERSE IMPACTS

5. It has been discussed in Exhibits A and B that the other potential impacts identified by staff can be adequately mitigated, and that the primary issue came down to traffic. My conclusion that the traffic information was inconclusive stemmed primarily from not having an additional way to gauge how much traffic has actually been associated with the self-storage facility, which is necessary in order to make a reasoned comparison of impacts, and not the use of ITE tables per se. In the request for reconsideration (Exhibit C) it was noted that the most units rented at one time has been 68. This constituted new information that I found relevant to traffic impacts, since it provides an additional point of reference for comparing impacts.

The requested use modification is to allow 40 units to be rented for indoor cultivation, while retaining 15 units for traditional storage. The applicant estimated there would be 13 trips a day associated with the 40 cultivation units in Attachment F of Exhibit A. At the hearing the applicant estimated an average of 3 trips a week per unit, which would equal approximately 17 trips per day. With the 15 traditional units at 4 trips a day this gives a range of 17 to 21 trips a day resulting from the use modification.

The applicant has stated that ninety-five percent of the time there has been 68 units rented at any given time since 2005. This comes out to approximately 19 trips a day based on the ITE Trip Table used in the application (see Exhibit A, Attachment F).

In the absence of an actual history of traffic counts on Warner Street, the above estimates are the best information available from which to compare potential impacts. Based on the information provided, the range of potential trips resulting from the use modification averages out to equal the estimated number of trips associated with self-storage facility over the last six years.

CONCLUSION: The proposed use modification complies with Conditional Use criteria 17.56.060.B

#### PROPOSAL IS WELL PLANNED

6. The applicant has submitted a letter dated May 31, 2005 (see Exhibit C) from the city staff person that inspected the property after approval of CUP #2569. The letter documents substantive compliance with the conditions of that conditional use permit. I find that this constitutes new information that is relevant to this review.

In addition, there are no changes proposed to the exterior of the existing buildings or the property as a whole. Those items identified by staff and neighbors that may have

deteriorated or not been completed (e.g. glare from lights, landscaping) can be adequately mitigated to meet this criterion.

CONCLUSION: The proposed use modification can be conditioned to comply with Conditional Use criteria 17.56.060.C

## DECISION

Based upon the foregoing findings and conclusions, the applicant has met the burden of proof. Therefore, the request to allow the proposed use modification CUP-1-11, allowing for 40 cultivation units and 15 traditional storage units, is APPROVED, subject to the following conditions:

1. All lighting shall be directed downward and away from neighboring properties.
2. The business hours shall be limited to 7:00AM to 8:00PM;
3. Signs, whether on site or off-site, are limited to a combined total of 20 square feet;
4. Applicant shall submit a landscaping plan that includes landscaping at the entrance to the facility and on the south side of the property. The plan must be approved by the Planning Department and the landscaping shall be installed within 3 months of CUP approval;
5. The applicant shall limit the number of outdoor storage of RVs and trailers to a maximum of eight units

Entered this 19<sup>th</sup> day of January, 2012.



Donald B. Lergen  
Hearing Examiner

## APPEAL OF HEARING EXAMINER DECISION

**Appeal of Examiner's Decision.** The decision of the Examiner, approving, modifying, or denying an application or an appeal shall be final and conclusive unless a written appeal is filed according to the City's appeal procedures as set forth in Chapter SWMC Section 2.90.90 E; which states that any party with standing may file an appeal within 14 days of the hearing examiner's decision with the Planning Director, and to be scheduled and heard by the City Council.

**EXHIBITS:**

The following exhibits are entered into the record for this reconsideration request:

- A. Transmittal & Report Memorandum to the Hearing Examiner, file CUP-1-11.
- B. Hearing Examiner's Decision issued on December 19, 2011.
- C. Applicant's Request for Reconsideration, with attachments, dated December 27, 2011.
- D. Memo from Jack Moore, Planning Director, to the Hearing Examiner acknowledging receipt of the Applicants' Request for Reconsideration, and dated December 27, 2011.
- E. Applicant's response to the Examiner's request for additional information dated January 9, 2012.

**PARTIES OF RECORD:**

A complete list of the participants at the public hearing is available from the Planning Department upon request.