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6 BEFORE THE CITY COUNCIL OF THE CITY OF VANCOUVER

7 In the Matter of

No. PRJ-168603/LUP-83119

8 COLUMBIA RIVER MENTAL HEALTH  
9 SERVICES PROPOSED METHADONE  
10 CLINIC

APPEAL OF SONESTA INTERNATIONAL  
HOTELS CORPORATION

11 Pursuant to Vancouver Municipal Code (“VMC”) 20.210.130, Appellant Sonesta  
12 International Hotels Corporation (“Sonesta”) hereby appeals the Findings, Conclusions and  
13 Decision of the Vancouver Hearing Examiner in *In re the Matter of Columbia River Mental Health*  
14 *Services / North Star 2.0 LLC’s Application for Conditional Use Permit*, File No. PRJ-168603 /  
15 LUP-83119, dated July 28, 2023 (“Decision”). A copy of the Decision is attached to this Appeal  
16 as Exhibit A. The specific requirements of VMC 20.210.130 are addressed below.

17 A. Decision Being Appealed:

18 Findings, Conclusions and Decision of the Vancouver Hearing Examiner in *In re the*  
19 *Matter of Columbia River Mental Health Services / North Star 2.0 LLC’s Application for*  
20 *Conditional Use Permit*, File No. PRJ-168603 / LUP-83119, dated July 28, 2023 (“Decision”).

21 B. Case Number Designated by City and Name of Applicant (VMC 20.210.130.A.1):

- 22 1. Case Number: PRJ-168603/LUP-83119  
23

1           2. Applicant Name: North Star 2.0 LLC / Columbia River Mental Health

2           C. Name of Petitioner and Authorized Representative (VMC 20.210.130.A.2):

3           1. Sonesta International Hotels Corporation

4           2. Authorized Representative:

5                     Bob C. Sterbank  
6                     Foster Garvey PC  
7                     1111 Third Avenue  
8                     30<sup>th</sup> Floor  
9                     Seattle, WA 98101

10           D. Statement Demonstrating Standing to Appeal (VMC 20.210.130.A.2):

11           Sonesta has standing to appeal pursuant to VMC 20.210.130(B)(3)(b), because it  
12 participated verbally and in writing through its representatives in the appeal. Verbal testimony and  
13 written comments by Sonesta General Manager Carla Rise are specifically referenced on pages 2-  
14 3 of the Decision. Written comments by the undersigned on behalf of Sonesta were admitted as  
15 Exhibit 5, and are specifically described at pages 3-5; pages 12-13, Findings 33-36; and page 16,  
16 Finding 46 of the Decision.

17           E. Specific Aspects of the Decision Being Appealed and Reasons Why Each Aspect is  
18 An Error of Fact or Law (VMC 20.210.130.A.3):

19           The Decision contains numerous errors of fact and law, which include but are not limited  
20 to the following:

21           1. Errors of Fact:

22           a.       The Decision admits in Conclusion No. 2 that “due to the nature of the drugs  
23 administered on site, concerns regarding loitering and criminal activity are not unfounded.” The  
Decision then erroneously claims in Conclusion 5.b, that the contention that the proposed CUP  
would increase problems related to homelessness and criminal activity “are necessarily  
speculative,” and that “it would be speculative to conclude that the use presents such a public

1 safety risk that the CUP must be denied.” These statements are in error and not only are  
2 unsupported by substantial evidence, but are affirmatively contradicted by it.

3 The Decision also completely fails to acknowledge and make findings based on  
4 undisputed statements by the Applicant’s Chief Medical Officer, Dr. Kevin Fischer (Exhibit 5.1,  
5 Attachment D), that:

6 “many [CRMH] clients come to the agency homeless and without  
7 employment”;

8 The clients are “*observationally more unstable*”;

9 Present “milieu challenges” that include:

10 “Anger”

11 “*Threats of violence*”

12 “*Actual violence*”; and

13 Their “relapse and related behaviors are a feature of” their addiction to illegal  
14 drugs.

15 The Decision also fails to acknowledge that the types of crimes reported at CRMH are  
16 *exactly* the types of crimes reasonably anticipated to be generated arising from the type of CRMH  
17 clients described by Dr. Fischer. See Exhibit 5 at 4-6; Exhibit 5.1, Attachment F.

18 b. The Decision (Conclusion 2) erroneously finds that a post-approval security  
19 plan submitted by the Applicant without input from the public or oversight by the Hearing  
20 Examiner “would provide a means for neighbors to identify issues of concern as they arise.” This  
21 statement is unsupported by substantial evidence, and the Decision’s related Condition No. 1  
22 contains no provision for incorporating any public input into the security plan, no substantive  
23 standards that the security plan must meet (i.e., minimum security guard staffing, patrol  
requirements, reporting of criminal incidents, etc.), no requirement that the Applicant respond or

1 address issues of public concern, and no review or approval of Applicant’s submitted plan by City  
2 staff or the Hearing Examiner.

3 c. The Decision (Finding 45) wrongly states or implies the proposed CUP  
4 location (7105 NE 40<sup>th</sup> Street) would “operate as a satellite facility” with reduced scope of services  
5 and limited hours of operation. Substantial evidence in the record (Ex. 5.1, Att. D) demonstrates  
6 that the proposed CUP use will represent a significant *expansion* of CRMH services, in terms of  
7 clients served, treatment rooms, and square footage, with similar or expanded hours of operation.

8 d. The Decision wrongly states / implies at Conclusion 5.b that Sonesta or  
9 other parties seek to punish or penalize applicant. No evidence in the record supports such as  
10 statement. The Applicant bears the burden of proof of establishing compliance with VMC Section  
11 20.245.040, including the obligation to show that “[i]dentified impacts on adjacent properties,  
12 surrounding uses and public facilities have been adequately mitigated.” Under VMC  
13 20.245.040.B, “the Hearing Examiner may impose conditions on the approval of a conditional use  
14 in addition to or above and beyond those required elsewhere in this Title, which are found  
15 necessary to ensure the use is compatible with other uses in the vicinity.”

16 2. Errors of law

17 a. The Decision, Findings 44-45 and Conclusion 7, wrongly fails to require the Applicant to  
18 comply with the essential public facility criteria and decision procedures, is not supported by substantial  
19 evidence, and constituted an erroneous interpretation of law, specifically, an erroneous interpretation of  
20 VMC 20.150.040(B), Ch. 20.855 VMC, RCW 36.70A.200 and Ch. 1 2023 Washington Laws 1<sup>st</sup> Spec.  
21 Sess. Sec. 12, because Northstar 2.0 is an “essential public facility” as defined by applicable law.

22 b. The Decision, Conclusion 2.b, is an erroneous interpretation of the law, by  
23 stating that “Sonesta’s requested conditions are unreasonable (particularly in as much as they

1 require the Applicant to police adjoining properties and public right-of-way and be financially  
2 responsible for off-site criminal activities.” VMC Section 20.245.040.A expressly provides that  
3 a CUP may not be granted unless “[i]dentified impacts on *adjacent properties, surrounding*  
4 *uses and public facilities* have been adequately mitigated.” (Italics added).

5 c. The Decision contains additional errors of law in Conclusions 2 and 5.b, by  
6 concluding “[a]s conditioned, identified impacts on adjacent properties, surrounding uses and  
7 public facilities would be adequately mitigated.” Conclusions 2 and 5.b are not supported by  
8 substantial evidence but are contradicted by substantial evidence. Conclusions 2 and 5.b conclude  
9 that “public safety issues identified during public comment” “appear to reflect existing problems  
10 within the community and not necessarily impacts resulting from the proposed opioid treatment  
11 facility,” label those concerns “speculative” despite prior admission that such concerns are “not  
12 unfounded,” ignore statements in Vancouver Police Department reports indicating that  
13 perpetrators of crime are in fact CRMH clients and/or the crimes occur directly on CRMH  
14 property, ignore CRMH’s Chief Medical Officer’s testimony (Ex. 5.1, Attachment D) that  
15 CRMH clients are homeless, are “observationally more unstable,” present “milieu challenges”  
16 including “anger, threats of violence and actual violence,” and are prone to relapses and  
17 related criminal behaviors,” and ignore research (Ex. 5.1, Attachment B) documenting that  
18 opioid treatment facilities increase crime within a 200-meter radius.

19 The Decision, Conclusion 5.b, commits an additional error of law by concluding  
20 contrary to evidence in the record that the number of incidents in which CRMHS clientele were a  
21 danger to the public was “relatively small,” and by wrongly concluding and wrongly relying on  
22 its mistaken conclusion that “it is not clear how many of these incidents related to the NorthStar  
23 use as opposed to other services provided on the site.”

1           d.       The Decision is not supported by substantial evidence, but includes multiple  
2 paragraphs labeled “Findings” that are legally inadequate. The bulk of the Decision consists of  
3 Findings (*e.g.*, Findings 27-48) that merely consist of summarizing evidence presented, or the  
4 contentions of the parties, without any guidance as to how issues involving disputed factual issues  
5 or evidence were resolved by the hearing examiner, and on what basis. Such Findings are  
6 inadequate as a matter of law, per *Weyerehaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498  
7 (1994) (“Statements of the positions of the parties, and a summary of the evidence presented, with  
8 findings which consist of general conclusions drawn from an “indefinite, uncertain,  
9 undeterminative narration of general conditions and events”, are not adequate.”).

10           e.       The Decision, Conclusion 5.c, commits an additional error of law by  
11 wrongly concluding that adverse impacts to property values testified to by Sonesta and other public  
12 commenters were “better characterized as speculative and as community displeasure, rather than  
13 evidence effectively demonstrating that the impacts alleged would likely occur.” In so concluding,  
14 the Decision is not supported by substantial evidence and commits errors of law by ignoring  
15 CRMH’s Chief Medical Officer’s testimony (Ex. 5.1, Attachment D), Vancouver Police  
16 Department reports (Ex. 5.1, Att. E and F), peer-reviewed research documenting increased crime  
17 generated by opioid treatment facilities (Ex. 5.1 Att. B) and reports of additional crime associated  
18 with opioid treatment facilities in other cities, both in Washington and other states (Ex. 5.1 Att. C  
19 and T).

20           f.       Although the Decision states at Conclusion 2 that “the instant approval is  
21 conditioned on ending dispensing medication by 3:00 p.m.” the Decision erroneously fails to  
22 include such a condition in the “Conditions” identified at pages 20-21, and instead allows the  
23 Applicant the ability to identify unlimited hours of operation including medication dispensing in

1 the Applicant’s security plan. The Decision commits additional errors of law by failing to include  
2 other conditions of approval requested by Sonesta in Exhibit 5, at 10-11, which conditions are  
3 necessary to mitigate identified impacts to Sonesta, other adjacent properties, surrounding uses  
4 and public facilities.

5 g. The Decision erroneously relied on evidence (City rebuttal letter Ex. 6, see  
6 Finding) claiming that staff had determined essential public facilities requirements did not apply,  
7 when no evidence of any city staff determination was admitted into the record, no sworn  
8 declaration or testimony by City staff was provided, and Sonesta was never given opportunity to  
9 cross examine staff on the contention raised in Exhibit 6, contrary to *Weyerhaeuser v. Pierce*  
10 *County*, 124 Wn.2d at 35.

11 h. The Decision failed to consider and grant Sonesta’s motion to strike  
12 Applicant’s speculative claim (Applicant’s Final Evidence and Rebuttal, Ex. 7 at 4), in which  
13 Applicant stated that it “would ventures to guess” at a level of criminal activity at other properties.

14 i. The Decision is based on multiple procedural errors that violated Sonesta’s  
15 constitutional rights to due process. Sonesta was deprived of the lengthy advance written notice  
16 of application provided to other adjacent property owners, because staff mailed notice not to  
17 Sonesta’s address at 7301 NE 41<sup>st</sup> Street, but instead to 7600 NE 41ST Street, Unit A195. The  
18 Hearing Examiner wrongfully refused Sonesta’s request for sufficient continuance of the hearing  
19 to allow Sonesta to prepare to attend and participate in the hearing, and refused to allow Sonesta  
20 sufficient time to gather evidence related to the CUP application and submit it into the record.

21 ////

22 ////

1 F. Statement Demonstrating That Appeal Issues Were Raised During Open Record  
2 Period (VMC 20.210.130.A.4):

3 The specific appeal issues raised herein were raised in verbal testimony and written  
4 comments (Exhibit 4(B)) by Sonesta General Manager Carla Rise, and in the written comments  
5 by the undersigned (Exhibit 5). See Exhibit 4(B)(2) and (3); Exhibit 5 at 2, 8, 9-10 (failure to  
6 comply with essential public facility criteria); at 2, 8-10 (requirement to mitigate impacts on off-  
7 site adjacent properties and surrounding uses); at 2, 3-6 (failure to mitigate off-site violent crime  
8 and drug use impacts); at 7-8 (due process violations); at 10-11 (failure to impose requested  
9 conditions to mitigate impacts to adjacent properties and surrounding uses).

10 G. Relief Requested.

11 Sonesta respectfully requests that the City Council determine that:

- 12 1. The Hearing Examiner engaged in unlawful procedure and/or failed to follow a  
13 prescribed process, and the error was not harmless; and
- 14 2. The Decision is an erroneous interpretation of the law, is not supported by  
15 substantial evidence when viewed in light of the whole record before the  
16 Council; is a clearly erroneous application of the law to the facts; and violates  
17 Sonesta's constitutional rights.

18 Based on the foregoing errors, Sonesta respectfully requests that the City Council grant the  
19 appeal and reverse the Decision, with direction that any renewed or revised application be  
20 processed as an essential public facility pursuant to Ch. 20.855 VMC. Alternatively, the City  
21 Council should grant the appeal, reverse the Decision and determine that the criteria in VMC  
22 20.245.040.A are not met, and impose such conditions necessary to ensure compliance with said  
23 criteria, including at a minimum the conditions requested by Sonesta at pages 10-11 of Exhibit 5.



1 DATED this 11<sup>th</sup> day of August, 2023.

2 Respectfully submitted,

3 FOSTER GARVEY PC

4 By: Bob C. Sterbank  
5 Bob C. Sterbank, WSBA 19514  
6 Attorneys for Sonesta International  
Hotels Corp.

7 SONESTA INTERNATIONAL HOTELS  
8 CORPORATION

9 By: Megan Bigelow  
10 Megan Bigelow  
11 VP, Assistant General Counsel

EXHIBIT A

**BEFORE THE HEARING EXAMINER  
FOR CITY OF VANCOUVER**

In the Matter of the Application of	)	NO. PRJ-168603/LUP-83119
	)	
<b>NorthStar 2.0 LLC</b>	)	Columbia River Mental Health NorthStar Clinic
	)	
	)	
For a Conditional Use Permit	)	
_____	)	

**SUMMARY OF DECISION**

The request for a conditional use permit to operate an opioid treatment facility as a Medical Center use at 7105 NE 40th Street is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

NorthStar 2.0 LLC (Applicant) requested a conditional use permit to operate an opioid treatment facility as a medical center use within an existing building located at 7105 NE 40th Street, Vancouver, Washington.

**Hearing Date:**

A virtual open record hearing on the application was originally scheduled for May 16, 2023. However, technical problems relating to the virtual hearing platform prevented the May 16, 2023 hearing from going forward, and the hearing was rescheduled to June 6, 2023. At the conclusion of the June 6th hearing, the record was held open through June 8, 2023 to allow post-hearing written comment from members of the public who were unable to participate in the virtual hearing due to technology problems, with additional time arranged for responses by the parties. In addition, the record was held open through June 27, 2023 for Sonesta International Hotels Corporation (Sonesta) to submit written comments on the application, and through July 6, 2023 for City Staff and the Applicant to respond to Sonesta’s and other public comment. A post-hearing order was issued, amending the post-hearing schedule announced on the record at hearing, and reopening the record for additional information that had been requested at hearing but omitted from the post-hearing schedule. All invited/requested documents were submitted, and the record closed on July 6, 2023, resulting in a decision issuance deadline of July 20, 2023. However, due to the volume of information submitted after the hearing by Sonesta and the written materials submitted post-hearing by those who testified at hearing (which were admitted during the hearing), the decision issuance period was extended one additional week. See Procedural Findings section for additional information relating to motions to continue that were denied.

**Testimony:**

At the open record hearing the following individuals presented testimony under oath:

Kristian Corbin, Senior Planner, City of Vancouver

Jamie Howsley, Attorney, Applicant Representative

Casandra Schoenwald, CFO, Columbia River Mental Health Services (CRMHS)

Anne Willis, Chief Clinical Officer, CRMHS

Kevin Fischer, MD, Chief Medical officer, CRMHS

Michael Graves, Facilities Manager, CRMHS

Victor Jackson, CEO, CRMHS

Derik Pomaville

Becky Pomaville

Miriam Hammer

Annmarie Taylor Haldeman

Gary Bang

Alexia Zarate

Rosa Pulido

Jennifer Sigman

Bob Sterbank, Sonesta International Hotels

Philip Gigler, Assistant City Attorney, City of Vancouver

Carla Rise, General Manager, Sonesta

**Exhibits:**

At the open record hearing, the following exhibits were admitted in the record:

1. Staff Report, dated May 2, 2023 with the following attachments:
  - A. Application
  - B. Applicant Narrative
  - C. Applicant's Conditional Use Permit Narrative
  - D. Proposed Development Plans
  - E. Notice of Application, dated February 28, 2023
  - F. Traffic Study by Lancaster Mobley, dated January 10, 2023
  - G. Comment emails/hearing inquiries from Kevin Fischer, CRMHS (March 6, 2023); Jennifer Sigman, Wendel Family Dental Centre (April 21, 2023); Dulce Gomez, Holiday Inn Express (April 20, 2023); and Pauline Little, Ryerson Square HOA (Marcy 28, 2023)
2. City PowerPoint Presentation
3. Additional Public Comment, including:
  - A. Letter from Gary Bang, Pillar Hospitality Inc. (DBA Holiday Inn Express & Suites Vancouver Mall/Portland Area)

- B. Email from Kristian Corbin, dated June 7, 2023 revising testimony regarding public comment<sup>1</sup>
- 4. Written materials submitted with verbal public comment and responses by Applicant and Staff, including:<sup>2</sup>
  - A. Becky Pomaville post-hearing email, dated June 6, 2023, with attached “Substance Abuse and Mental Health Services Administration. *Federal Guidelines for Opioid Treatment Programs*. HHS Publication No. (SMA) XX-XXXX. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015”<sup>3</sup>
  - B. Hearing Comments of Carla Rise, General Manager of Sonesta Hotels, with attached:
    - 1. Google Maps Aerial Map depicting locations of Sonesta, proposed clinic, and existing clinic
    - 2. Ruth A. Moyer & Greg Ridgeway, The effect of outpatient methadone maintenance treatment facilities on place-based crime, 16 J. Experimental Criminology 227 (2020).
    - 3. Vancouver Washington Destination Master Plan Implementation Matrix
  - C. City response to post-hearing materials, email from Philip Gigler, dated June 8, 2023
  - D. Applicant response to post-hearing materials, email from Jamie Howsley, dated June 8, 2023
- 5. Letter from Bob Sterbank, Foster Garvey, dated June 27, 2023, with attached:
- 5.1 Declaration of Bob C. Sterbank in Support of Comments by Sonesta International Hotels Corporation, with the following attachments:
  - A. Vicinity map created from Google maps showing the location of Sonesta’s hotel at 7301 NE 7301 NE 41st Street in Vancouver, the existing Columbia River Mental Health Services “Northstar” Clinic located at 6926 NE Fourth Plain Boulevard in Vancouver, and the proposed “Northstar 2.0” clinic at 7105 NE 40th Street
  - B. Ruth A. Moyer & Greg Ridgeway, “The effect of outpatient methadone maintenance

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<sup>1</sup> At the hearing, Mr. Corbin testified that he had received written comments from a Lisa Meier, and these comments - assigned exhibit number 3B - were to be submitted after the hearing. The following day, Mr. Corbin sent an email to the Hearing Examiner’s clerk explaining that the name he had provided as sender of the additional comment was wrong: there had been no written comment from a Lisa Meier, but a request to attend the June 6 hearing was submitted by Coleman Brown and April Velilla of Columbia Commercial on June 5, 2023. The request to attend the hearing was not submitted for the record with Mr. Corbin’s comments. Mr. Corbin’s email was made exhibit 3B.

<sup>2</sup> An email was submitted June 7, 2023 by Dulce Gomez, manager of the Holiday Inn Express, who declined to testify during the public comment portion of the hearing. Neither the email nor the attached statement allege technology difficulties as the reason for not participating in the June 6<sup>th</sup> hearing, which condition is prerequisite to submittal to submittal of post-hearing written comment; this comment was not admitted in the record.

<sup>3</sup> Attached to this post-hearing email, invited by the undersigned on the record, Ms. Pomaville included both the Federal Guidelines she had discussed in her testimony and also an undated PowerPoint Presentation prepared by an unknown person regarding a facility in Sequim. On review, the undersigned has determined that the Federal Guidelines have value in these proceedings and they are admitted, but the PowerPoint presentation is not sufficiently relevant and comes with inadequate foundation information; it is not admitted.

- treatment facilities on place-based crime,” 16 J. *Experimental Criminology* 227 (2020).
- C. “*Everett business warns Lynnwood community of impacts of neighborhood ‘methadone’ clinic,*” <https://www.fox13seattle.com/news/everett-residents-have-warning-for-lynnwood-community-on-impacts-of-neighborhood-methadone-clinic>
  - D. PowerPoint presentation by Columbia River Mental Health Services Chief Medical Officer Dr. Kevin Fischer to the Clark County Council on November 30, 2022, along with undated Columbia River Mental Health memorandum and December 19, 2022 letter to City of Vancouver City Council, pages 000195 – 000206 produced in response to PRR C000311-052223
  - E. Spreadsheet of City of Vancouver police responses to calls for service at existing Columbia River Mental Health produced in response to PRR P003746-051823
  - F. City of Vancouver Police Department Incident Reports, pages 000001 – 000181 produced in response to PRR P003746-051823
  - G. E-mail on May 16, 2023 from Vika Fidkevich of Church of Truth to Kristian Corbin, page 144 of records produced in response to PRR C000311-052223
  - H. E-mail on April 21, 2023 from Jennifer Sigman of Wendel Family Dental Centre to Kristian Corbin, page 144 of records produced in response to PRR C000311
  - I. E-mail on April 20, 2023 from Dulce Gomez of Holiday Inn Express to Kristian Corbin, page 660 of records in produced in response to PRR C000311
  - J. Code Compliance Web Complaints, dated January 22, 2018, November 18, 2019, March 13, 2018 and February 17, 2020, produced as pages 000017-20 of PRR C000311-052223
  - K. E-mail on May 18, 2023 at 5:24 p.m. from City of Vancouver Police Records Division to Bob C. Sterbank
  - L. E-mail on May 22, 2023 at 5:35 p.m. from City of Vancouver Public Records Division to Bob C. Sterbank
  - M. E-mail on May 24, 2023 at 2:30 p.m. from City of Vancouver Police Records Division to Bob C. Sterbank
  - N. E-mail on May 31, 2023 at 8:20 a.m. from City of Vancouver Public Records Division to Bob C. Sterbank
  - O. E-mail on June 9, 2023 at 2:21 p.m. from City of Vancouver Public Records Division to Bob C. Sterbank
  - P. E-mail on June 9, 2023 at 2:30 p.m. from City of Vancouver Police Records Division to Bob C. Sterbank
  - Q. E-mail thread between Bob C. Sterbank and Vancouver Assistant City Attorney Phillip Gigler between June 7-9, 2023

- R. E-mail exchanges between Kristian Corbin and Michael Graves and James Howsley, and between Clarissa Bowen and Hearing Examiner Rice on May 12, 2023, produced as pages 55-56 and 724-28 of City of Vancouver response to PRR C000311-052223
- S. Pre-application Conference Memorandum, dated April 30, 2020, for existing Columbia River Mental Health Northstar facility, produced as pages 671-707 of City of Vancouver response to PRR 0000311-052223
- T. “Residents protest the move of controversial methadone clinic to Newhallville,” <https://yaledailynews.com/blog/2022/02/06/residents-protest-the-move-of-controversial-methadone-clinic-to-newhallville/>
- U. The following news articles:
  - “REI to close only Portland store, citing break-ins, theft,” [https://www.google.com/search?q=rei+to+close+only+portland+store&rlz=1C1GCEB\\_enUS1055US1055&oq=rei+to+close+only+&aqs=chrome.0.0i512j69i57j0i390i650l2j69i64j69i60.4343j0j4&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=rei+to+close+only+portland+store&rlz=1C1GCEB_enUS1055US1055&oq=rei+to+close+only+&aqs=chrome.0.0i512j69i57j0i390i650l2j69i64j69i60.4343j0j4&sourceid=chrome&ie=UTF-8)
  - “Starbucks CEO on store closings: ‘There are going to be many more,’” <https://www.cnn.com/2022/07/19/business/starbucks-closures/index.html#:~:text=%E2%80%9CWe%20are%20beginning%20to%20close,going%20to%20be%20many%20more.%E2%80%9D;and>
  - “Westfield leaving downtown San Francisco,” <https://www.nbcbayarea.com/news/local/westfield-leaving-san-francisco/3250315/>
- 6. Memorandum from Kristian Corbin, Senior Planner, dated July 6, 2023 (City Staff Responses to Post Hearing Order), with the following attachments:
  - A. Letter from Washington Department of Health, dated February 14, 2023 re: change of location
  - B. Columbia River Mental Health Services OTP Community Relations Plan received by Department of Health on January 5, 2023
- 7. Letter from Jamie Howsley, Jordan Ramis, dated July 6, 2023 (Applicant’s Final Evidence and Rebuttal)

Also included in the record is a Post-Hearing Order Revising Post-Hearing Schedule and Reopening Record for Further Information, issued June 9, 2023.

Additional documents were submitted and reviewed in the course of two motions for continuance submitted on behalf of Sonesta International Hotels Corporation. These documents are included in the record as detailed in Appendix A at the end of this document.

After considering the testimony and exhibits admitted in the record, the Hearing Examiner enters the following findings and conclusions:

## FINDINGS

1. NorthStar 2.0 LLC (Applicant) requested a conditional use permit (CUP) to operate an opioid treatment facility as a Medical Center use within an existing building located at 7105 NE 40th Street, Vancouver, Washington. *Exhibits 1.A, 1.B, and 1.C.*
2. The application was submitted on January 1, 2023 and deemed fully complete on February 14, 2023. *Exhibit 1.E.*
3. The subject property is 1.52 acres in area and is developed with a one-story, 7,910 square foot building previously used as Elmer's Restaurant, and associated surface parking. The lot is bordered by NE 40th Street to the north, 72nd Avenue to the east, and SR-500 to the south. The Andresen Road/SR-500 interchange is a short distance to the west. Surrounding land uses include a dental office to the north across NE 40th Street; a Holiday Inn Express hotel to the northeast across NE 72nd Avenue; general office space to the east across NE 72nd Avenue, and, east of that office building, a Sonesta ES Suites hotel; auto repair and dealerships to the south across SR-500; and a bank to the west. Although there are no residential uses, churches, or parks immediately surrounding the site, there are high-density residential uses and a church within approximately one quarter mile north of the subject property, and a park (Jaggy Road Park) also nearby. Walnut Grove Elementary School is 1.1 miles to the north on 72nd Avenue. *Exhibits 1, 1.G, 4.A, and 4.B.1; Testimony of Derik Pomaville, Becky Pomaville, and Jennifer Sigman; Google Maps site view.*
4. Columbia River Mental Health Services (CRMHS) has provided behavioral health services in Clark County since 1942. CRMHS has operated an opioid treatment facility known as the NorthStar Clinic for 17 years from its main facility located at 6926 NE Fourth Plain Boulevard, approximately three-quarters of a mile southwest of the subject property. CRMHS also has administrative offices at 4106 NE 77th Avenue. Due to capacity constraints and increasing demand for services, CRMHS proposes to move all of its NorthStar operations from 6926 NE Fourth Plain Boulevard to the subject property. CRMHS would continue to provide other mental health services at the Fourth Plain Boulevard location. *Exhibits 1.B and 4.B.1; Jamie Howsley Comments; Cassandra Schoenwald Testimony.*
5. The Applicant proposes an interior remodel to make the existing building suitable for the use, including dividing the space into treatment rooms, waiting areas, and associated office spaces. The building occupancy would be 165 people. Only minimal external changes are proposed to the building, including the addition of a screened trash enclosure, changes in signage, siding repairs, and painting. No building expansion is proposed. *Exhibits 1, 1.C, 1.D, and 2; Jamie Howsley Testimony.*
6. The subject property and all adjacent parcels are zoned General Commercial (CG). *Exhibits 1 and 2; Kristian Corbin Testimony.* The intent of the CG zone is "to allow for a full range of retail, office, mixed use and civic uses with a city-wide to regional trade area." *Vancouver Municipal Code (VMC) 20.430.020.C.* "Medical centers" are allowed in the CG zone with approval of a CUP. *VMC Table 20.430.030-1.* The municipal code



defines medical centers as “facilities providing inpatient, outpatient, emergency, and related ancillary services to the sick and inform, including drug and alcohol treatment.” *VMC 20.160.020.B.8; Exhibits 1 and 2; Kristian Corbin Testimony.* The Applicant is licensed by the US Drug Enforcement Administration (DEA) and the Washington Department of Health (DOH) Board of Pharmacy to operate an opiate treatment program, and by the DOH to provide behavioral health services. The proposed facility would provide Medication Assisted Treatment (MAT) for opioid addiction, as well as individual and group counseling, case management, peer support services, and support in housing and employment. These services would be provided on an out-patient basis. *Exhibit 1.B.*

7. The proposed facility would operate six days per week from 5:30 pm to 4:30 pm.<sup>4</sup> *Exhibit 1.B.* The number of staff persons on site would range from 25 to 30 on a typical day. These staff persons would include nurses, therapists, and drivers. It is expected that between 200 and 400 patients would visit the site per day, for visits ranging from 15 minutes to 90 minutes, with an expected maximum daily occupancy of 70 persons at one time. Patients would arrive on foot, by private vehicle, and by public transportation. *Testimony of Anne Willis and Kevin Fischer.*
8. Private, on-site security would be provided similarly to the existing facility. During hours of operation, one to two security guards would be present patrolling inside and outside the clinic. Police would be called for incidents occurring off site and within public right-of-way. *Exhibit 1.B; Kevin Fischer Testimony.* In addition, CRMHS staff are trained in de-escalation techniques to help diffuse issues that might arise on site. *Anne Willis Testimony.* At the hearing, City Staff recommended as a condition of approval that the Applicant provide a security and maintenance plan for review and approval by the City. Staff recommended that the plan include hours of operation, an explanation of security measures, and contact information for members of the public if they have concerns about the property. *Exhibit 6; Kristian Corbin Testimony.*
9. The City’s off-street parking requirements are contained in VMC Chapter 20.945. The parking standard for “medical center” uses is based on the number of beds, requiring one parking space per four beds for hospitals and one parking space per two beds for nursing home and similar facilities. *VMC Table 20.945.070-2.* Because the proposed facility would have no beds, the City determined, based on the authority in VMC 20.945.070.A.1, that the “medical office” use would be the most similar to the proposed use for parking purposes, and its parking standard should be applied. The medical office parking standard is one space per 200 square feet, or 40 spaces for the 7,910 square foot building. There are currently 80 parking spaces on site. *Exhibit 1, pages 8-9.*
10. The Applicant submitted a professionally prepared traffic analysis report dated January 10, 2023. The trip generation of the proposal was estimated using the rates contained in the Institute of Transportation Engineers (ITE) *Trip Generation Manual, 11th Edition* for Land Use Codes 630 (Clinic) and 720 (Medical-Dental Office Building). Using the rate

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<sup>4</sup> In Applicant’s closing comments, it is stated that medication dispensing is planned to end at 3:00 pm; this was not otherwise specified in documents or testimony. *Exhibit 7.*

for Clinic, the use is expected to generate 298 vehicle trips per day, including 22 AM peak hour trips and 29 PM peak hour trips. Using the rate for Medical-Dental Office Building, the use is expected to generate 284 vehicle trips per day, including 25 AM peak hour trips and 31 PM peak hour trips. Use of either set of trip generation rates would result in lower trip generation than the previous Elmer's restaurant use. Based on ITE Land Use Code 932 (High-Turnover Sit-Down Restaurant), the prior use would have generated 848 vehicle trips per day (or 484 net of pass-by trips, which add trips to the site access but not to the larger transportation network), including 76 AM peak hour trips and 72 peak hours trips (or 44 AM peak hour trips and 42 PM peak hour trips, net of pass-by trips). Because the proposed use would not add new PM peak hour trips to the transportation system, the transportation concurrency requirements of VMC 11.70 do not apply to the project. *VMC 11.70.020.B; Exhibits 1 and 1.F.*

11. Access to the subject property is from existing driveways from NE 40th Street and NE 72nd Avenue. *Exhibit 1.F.* For projects resulting in fewer than 10% or 10 (whichever is less) PM peak hour trips, the developer is required only to make the frontage improvements "that are clearly necessary in order to provide minimally safe access." *VMC 11.80.080.B.1.* In this case the adjacent street frontages are fully constructed and no change in access is proposed. The City did not request any frontage improvements as a condition of approval of the proposal. *Exhibit 1, page 8.*
12. City water and sewer utilities are available to the site within the street frontages. *Exhibit 1, pages 10-11.*
13. Because the site is fully developed and no new impervious surfaces are proposed, there are no City stormwater or erosion control requirements that apply to the use. *Exhibit 1, page 11; Exhibit 1.A.*
14. There is existing landscaping around the perimeter of the site. No changes to the landscaping are proposed. *Exhibit 1, page 8; Jamie Howsley Testimony.*
15. The existing building meets all setback and height standards applicable to development within the GC zone. No changes in building dimensions or footprint are proposed. *Exhibit 1, page 8.*
16. The minimum solid waste storage requirement for the 7,910 square foot building per VMC 20.970.040.C.2 is 132 square feet. The storage area dimensions must be adequate to accommodate receptacles, and exterior storage areas must be screened by a wall, fence, and/or vegetation. *VMC 20.970.040.B.1 and B.3.* The Applicant proposes an approximate 300 square foot exterior trash and recycling enclosure. The dimensions are sufficient for two wheeled dumpsters. The enclosure would consist of six-foot tall chain link fencing with privacy slats for screening. There is existing vegetation on the south and east sides of the proposed enclosure. *Exhibit 1.D; Exhibit 1, page 9.*
17. Pursuant to VMC 20.790.820.A, "Each department within the City that receives an application for a license ... shall determine whether the license and/or the proposal is

exempt” from review under the State Environmental Policy Act (SEPA). “The department’s determination that a proposal is exempt shall be final and not subject to administrative review.” *VMC 20.790.820.A*. The Community Development Department determined that the proposal is exempt from SEPA as “minor new construction” pursuant to *VMC 20.790.840.A* because no significant site changes are proposed. *Exhibit 1, page 8*.

18. The Vancouver Fire Department reviewed the proposal and determined that the requirements of *VMC Title 16* can be met on the site with recommended conditions. The recommended conditions, which have been incorporated into Planning Staff’s recommended conditions of CUP approval, address items such as fire lane and address signage. *Exhibit 1, page 11*.

*Procedural Findings Related to Notice of Hearing*

19. Notice of application and remote public hearing (for the original hearing date of May 16, 2023) was issued on February 28, 2023. *Exhibit 1.E*. The notice was published in the City’s newspaper of record, was posted on site, and was mailed to owners and occupants of property within 500 feet of the boundaries of the subject property on that same date. *Kristian Corbin Testimony*.
20. Vancouver Municipal Code 20.210.060.E and *VMC 20.210.050.F(2)* require notice of application and hearing to be published in the City’s paper of record and sent to “all owners and residents of record of property as shown on the most recent property tax assessment roll, located within 500 feet of the site.” (emphasis added) If the hearing date is not known at time of notice of application, subsequent notice of hearing must be sent by mail not less than 10 days prior to hearing to the applicant and all owners of the subject property, parties of record, any neighborhood or community organization recognized by the City Council whose boundaries include the site, any person who has submitted a written request to be notified; and the appellant and all parties if the matter is an appeal. Notice of the hearing must also be published in the City’s paper of record and posted on site at least 10 days prior to hearing. *VMC 20.210.B(1)*.
21. On May 12, 2023, the Hearing Clerk received via email a letter from out of state legal counsel for Sonesta International Hotels Corporation (Sonesta) (letter dated May 11, 2023) stating that the hotel operator had not received written notice of application and hearing, and that the hotel requested a 45-day continuance to allow them to retain local counsel, allow counsel opportunity to review the staff report and exhibits, allow counsel to obtain relevant background records including potential public records requests to the City, and to allow counsel to prepare to participate in the hearing. *Record Document 1*. In considering the motion for continuance, the undersigned asked for the City and Applicant attorneys to respond to the request for continuance.<sup>5</sup> Via the Hearing Clerk, the City Attorney’s office replied by email on May 12th deferring to the examiner’s discretion without comment on the motion. By email to the Hearing Clerk on May 12th, a non-attorney representative of the Applicant objected to any continuance; this

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<sup>5</sup> The undersigned notes for the record that the request would have been granted had there been no objection.

communication contained the mailing labels provided to the City by the Applicant. The Hearing Clerk forwarded to the undersigned the mailing lists provided by the Applicant to which notice had been sent. The lists, which included 12 certified owner addresses and 12 certified situs addresses, had been generated and “certified” by the Clark County Geographic Information System.<sup>6</sup> *Record Document 2*. This is the source of notice addressing typically relied upon by the City and considered to satisfy the noticing requirements of the code. *Kristian Corbin Testimony; Exhibit 7*.

22. Because the Applicant had provided mailing lists certified by Clark County GIS, to which notice had been timely mailed, the undersigned concluded that the City and Applicant had complied with the letter and intent of the notice provisions. To the extent that the Clark County Assessor had an incorrect address on file for the occupant of one property within the notice radius, or for some other reason the party had not received mailed notice, this fact did not negate the Applicant and City’s acts of having mailed to the owners and residents of record. The lack of advance notice resulting from an apparent situs addressing error in the Assessor records (not under the control of the City or the Applicant) could be cured consistent with code by holding the record open after the hearing to provide that nearby parcel occupant for a period of time to prepare comments to be included in the record. The first Sonesta request for continuance was therefore denied. All parties were notified via email from the Hearing Clerk that the hearing would be convened as scheduled on May 16, 2023.
23. Due to unforeseen technical problems with the City’s usual virtual meeting platform, the May 16, 2023 hearing could not be conducted as scheduled.<sup>7</sup> The hearing was rescheduled for June 6, 2023. Notice of the June 6, 2023 hearing was issued on May 25, 2023. In addition to publishing, posting, and mailing the hearing notice, the City sent notice directly to those individuals who had registered to attend the original May 16, 2023. *Kristian Corbin Testimony; Exhibit 2*.
24. On May 25, 2023, Sonesta’s Washington state legal counsel submitted a second request for continuance, attaching two responses from Vancouver Public Records Center acknowledging public records requests submitted to the City by Sonesta on May 22 and May 24, 2023. This continuance request requested the hearing be continued to a date after August 1, 2023, in order to allow completion of the City’s public records disclosure and time for Sonesta to prepare comments based on the information they contained. *Record Documents 3, 3a, and 3b*. The undersigned requested, via email through the Hearing Clerk, that the Applicant and City representatives respond to the continuance

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<sup>6</sup> The undersigned takes notice of the following. Clark County Assessor Property Information Center provides a return for the address 7301 NE 41st Street, Vancouver as Assessor Parcel Number 160448000. It identifies the owner as HPT IHG PROPERTIES TRUST, the mailing address as C/O THOMSON REUTERS PO BOX 847 CARLSBAD CA, 92018, and the situs address as 7600 NE 41ST ST UNIT A195, VANCOUVER, WA 98662. <https://gis.clark.wa.gov/gishome/Property/?pid=findSN&account=160448000> Both this owner address and this situs address are on the certified mailing lists submitted by the Applicant. *Record Document 2*.

<sup>7</sup> The undersigned notes that following this event on May 16, 2023, the City changed platforms for its virtual hearing examiner meetings from GoToMeeting to Microsoft Teams.

request.

25. Legal counsel for the Applicant submitted a letter objecting to the continuance request, contending that notice had been mailed consistent with code, and that beyond the requirements of code, staff of the Applicant had personally spoken with staff of the Sonesta hotel in advance of the May 16 hearing date. *Record Document 4.*
26. The parties to the continuance request were notified via email by the hearing Clerk that the motion for continuance was denied, and the hearing was convened on June 6, 2023 as noticed.
27. At hearing, CHRMS Facilities Manager Michael Graves testified that he met with representatives of several nearby businesses including US Bank, Holiday Inn Express, and Sonesta among others personally and offered to tour them through the existing facility so they could observe how the facility looks and operates where services are currently provided. *Michael Graves Testimony.* Applicant's counsel provided dates of those communications between Mr. Graves and Sonesta staff as April 14 and May 5, 2023. *Jamie Howsley Testimony.*

*Public Comment and Responses by the Parties*

28. Several individuals, including representatives from businesses in the vicinity, testified and/or submitted written comments opposing the CUP. The witnesses described issues relating to crime and homeless encampments in the vicinity of the subject property, as there had previously been a homeless encampment on or adjacent to the subject property, and there is currently an encampment on the east side of the Sonesta ES Suites hotel property. Witnesses have observed incidences of open drug use, threatening behaviors, and trespassing. Numerous property crimes have occurred in the area. For example, the adjacent dental office has had its windows shot out, its back door set on fire, and its dumpsters broken into, and an insurance agency to the east has had vehicles and mailboxes repeatedly broken into. Several surrounding businesses expressed concerns about economic impacts, and some residents expressed concerns about property values. Another witness testified that a nearby 7-11 convenience store is a location with high crime activity. Others spoke to lived experiences with similar substance abuse treatment facility located elsewhere, testifying that as they lived near those facilities, they witnessed and experienced increasing rates of property crimes, such as car prowls, vandalism, and theft. *Exhibit 1.G (Jennifer Sigman email); Testimony of Jennifer Sigman, Alexia Zarate, Anne Marie Haldeman, and Carla Rise.*
29. One of the concerns raised in public comment was that the proposed facility would attract a homeless encampment back to the subject property or increase the risk of homeless persons trespassing on surrounding properties, because some of CRMHS's patients are homeless. Individuals from an encampment located near the existing NorthStar facility have been observed entering that facility. There was also concern that clients of the proposed facility would loiter outside the facility or attempt to use the nearby hotel restrooms. *Testimony of Carla Rise, Jennifer Sigman, Annmarie Taylor Haldeman, and Gary Bang.*

30. Multiple witnesses noted the frequent presence of children in the neighborhood, walking to school bus stop(s) and attending programs at the nearby church, and expressed concern regarding the close proximity of the use to the church, Jaggy Park, and multifamily residential housing. Noting that the Applicant proposes to provide security onsite for staff, guests, and clients, and that it specifically indicated that it has no ability to ensure security on surrounding private properties, some neighbors expressed that they are more concerned about new crime off-site than on-site and they are concerned that the Applicant has no plan for addressing this impact to the neighborhood. *Testimony of Derik Pomaville, Becky Pomaville, Annmarie Taylor Haldeman, and Alexia Zarate.*
31. At least one commenter - who stated she lives in the vicinity and works for CRMHS at the PeaceHealth campus - expressed support for the proposal, noting that opioid crisis exists throughout the City, and that the services proposed would reduce drug-related crimes by providing treatment to those who struggle with substance use issues. The commenter submitted that the proposed services would benefit the neighborhood by helping people get on proper medication, which she believes makes the neighborhood safer and helps people get off the streets. *Miriam Hammer Testimony.*
32. The Vancouver Municipal Code does not contain any regulations specifying any minimum distance between the proposed use (classified as a Medical Center) and other land uses such as parks and schools. *Kristian Corbin Testimony.*
33. One of the businesses opposed to the CUP, Sonesta International Hotels Corporation, operating Sonesta ES Suites Portland Vancouver (Sonesta) at 7301 NE 41st Street, submitted a compilation of 45 police reports<sup>8</sup> for incidents at 6926 NE Fourth Plain Boulevard (CRMHS main facility) from the time period of January 1, 2018 to May 15, 2023. Many of these incidents were property crimes (e.g., vandalism, vehicle or vehicle part theft, illegal dumping) in which the perpetrator was unknown. Two incidents (customers bringing in forged prescriptions) occurred at a pharmacy sharing the same address, which pharmacy would not be moved to the subject property. One incident was only a request for a patient welfare check. Sonesta highlighted five incidents related to CRMHS activities<sup>9</sup> in support of its opposition to the CUP application, including two incidents in which a client or former client verbally threatened violence (with follow-up impeded by the client's lack of address), one incident in which a client brandished a weapon against a security guard, one incident in which a client was hallucinating in the parking lot, and one incident involving stolen prescription papers.<sup>10</sup> *Exhibits 5 and 5.1.E,*

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<sup>8</sup> Both a spreadsheet of police incidents (Exhibit 5.1.E) and a set of police reports (Exhibit 5.1.F) was submitted. The undersigned notes that not all of the submitted reports are included on the spreadsheet.

<sup>9</sup> Because CRMHS operates multiple programs from the same address, it is unclear which of the police incidents related to NorthStar or NorthStar clients. The Applicant's legal counsel submitted that two were thought to be related to NorthStar but did not identify the two or provide evidence in support of that statement. *Exhibit 7.*

<sup>10</sup> In reviewing the police reports, there are actually a few more incidents that appear to have direct nexus to CRHMS, though not necessarily NorthStar. Of note, most are reports made by CRHMS staff and occasionally clients who experienced something at CRHMS property (e.g., cell phone left in bathroom disappeared, family

5.1.F, and 5.1.P.

34. Sonesta provided documentation of four code compliance complaints filed with the City for activities at 6926 NE Fourth Plain Boulevard from 2018 to 2020. These include complaints regarding a homeless encampment in the area and associated solid waste issues.<sup>11</sup> *Exhibit 5.J.*
35. The manager of the Sonesta ES Suites hotel, which is approximately 400 feet east of the subject property, expressed concern that the proposed use would create guest and staff safety issues and would harm the hotel economically by driving away customers and causing the hotel to have to spend money on private security. *Exhibit 4B; Carla Rise Testimony.*
36. In support of its opposition to the CUP, Sonesta submitted a journal article describing research on the effect of outpatient methadone maintenance treatment (OMMT) facilities on place-based crime, which considered 19 OMMT facilities in Philadelphia between 2007 and 2017. The findings of the research included the following:
- Within 200 m of an OMMT facility, there is a significant decrease in total crime and property crime, but a significant increase in violent crime and drug crime.<sup>12</sup> Specifically, within 200 m, total crime and property crime decreased by approximately 18% and 29%. By contrast, within 200 m, violent crime and drug crime increased by approximately 7% and 31%. There was no significant change in incivility crimes within 200 m.
- Exhibit 5.1.B, pages 239-40.* Although Sonesta focused on the language regarding increases in violent crime and drug crime (*Exhibit 5, page 3; Carla Rise Testimony*), the Applicant argued that an increase in violent crime is not evident in the police reports submitted by the Applicant. *Exhibit 7, page 4.*
37. CRMHS argued that the issues of homelessness and drug-related crimes are existing problems that are common in the City, and which do not arise because of the opioid treatment center use. CRMHS argued that, due to the supervised treatment that would be provided, the proposed facility should have the effect of reducing these impacts on the

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argument in a parking lot in which someone was slapped, a stolen vehicle used to drop client off to their appointment, among others). Also of note, in cases of homicidal or suicidal statements made during counseling sessions, the reports demonstrate that the Applicant is proactive in contacting law enforcement. *Exhibit 5.1.F.*

<sup>11</sup> Based on testimony, it is possible that some of these complaints were submitted by CRMHS staff. *Testimony of Miriam Hammer and Jennifer Sigman.*

<sup>12</sup> The categories are described in the article as follows: The "Property" category includes burglary, embezzlement, fraud, forgery/counterfeiting, motor vehicle theft, receiving stolen property, recovered stolen motor vehicles, theft from vehicle, and thefts. The "Incivilities" category includes disorderly conduct, gambling violations, liquor law violations, prostitution/commercialized vice, public drunkenness, vagrancy/loitering, and vandalism/criminal mischief. The "Total Violent" category includes aggravated assault, other assaults, sex offenses, homicide, rape, and robbery. The "Drug" category includes any drug offenses. The "All" category includes all of the above offenses as well as weapons offenses, arson, driving under the influence, and miscellaneous, or unknown, offense types. *Exhibit 5.1.B, page 232.*

community; their clients have had success transitioning from homelessness through the course of treatment. Speaking to concerns about increased homeless activity as a result of the clinic, CRMHS staff testified that they have strong relationships with Vancouver Heart Team, the Homeless Response Team, and Council for the Homeless, and that when they find people camping around their properties, or in general in the community, they engage mobile health response teams that provide outreach seeking to connect homeless individuals with services. Specifically responding to neighbor concerns that siting the use where proposed would increase crime on surrounding private property, Applicant representatives testified that they cannot control people accessing property that belongs to other individuals. Addressing the public's security and safety concerns, Applicant representatives stated that during hours of operation they would have one to two security guards present patrolling inside and outside the clinic addressing issues as they occur. Additionally, the clinic would have an internal crisis response team trained in de-escalation to respond to issues arising inside the clinic. *Testimony of Kevin Fischer and Anne Willis*. CRMHS argued that the crime information submitted by Sonesta lacked context and did not demonstrate that the treatment facility would increase crime. *Exhibit 7*.

38. The Applicant argued that the reduction in total crime observed in the study is relevant to the CUP application, highlighting the following from the study:

Nonetheless, total crime significantly decreased within 200 m. Admittedly, this analysis does not address the effect on crime in all of Philadelphia; instead, it addresses only the crime effect in the specific areas around OMMT facilities. Yet, from a place based criminological perspective, OMMT facilities are not necessarily criminogenic. Instead, consistent with previous clinical-level research, OMMT facilities may reduce OUD-related offending because they provide OUD sufferers with access to much needed treatment. Also, because OMMT facilities are subject to intense governmental regulation, they may be less criminogenic than one might presume. This intense governmental regulation requires OMMT facility staff to be effective place managers, perhaps causing, as an ancillary matter, total crime reductions around OMMT facilities.

*Exhibit 5.1.B, page 240.*

39. An additional document submitted during public comment on the application was the *Federal Guidelines for Opioid Treatment Programs* (hereafter, "Federal Guidelines"). The Federal Guidelines "describe the Substance Abuse and Mental Health Services Administration's (SAMHSA) expectation of how the federal opioid treatment standards found in Title 42 of the Code of Federal Regulations Part 8 (42 CFR § 8) are to be satisfied by opioid treatment programs (OTPs). Under these federal regulations, OTPs are required to have current valid accreditation status, SAMHSA certification, and Drug Enforcement Administration (DEA) registration before they are able to administer or dispense opioid drugs for the treatment of opioid addiction." *Exhibit 4.A, page 4.*
40. The Federal Guidelines do not specifically address facility siting. However, there is a section on community relations and education, which states that facilities "must have



policies and procedures to measure and minimize the negative impact an existing or new program may have on a community... .” *Exhibit 4.A, page 16*. The policies “should address” development and implementation of a community relations plan that includes “policies and procedures to effectively address or resolve community problems (including patient loitering and medication diversion) and ensure that program operations do not affect community life adversely.” *Exhibit 4.A, page 17*. The policies also contain recommendations addressing safety and security issues for patients and staff, stressing the need for staff training in recognizing mental health emergencies and in de-escalation, and the posting or providing of emergency contact information in waiting areas (e.g., physicians, hospitals, emergency medical technicians), and provision of an after-hours emergency contact system for patients and community health and law enforcement needs. *Exhibit 4.A, pages 13-14*.

41. The Applicant has applied with the Washington Department of Health (DOH) to change the facility location and has submitted to the DOH a Community Relations Plan<sup>13</sup> documenting community outreach conducted as of the date of submittal (January 5, 2023). *Exhibits 6.A and 6.B*. The outreach included a presentation to Clark County Council, a letter to the Vancouver City Council, and contacts with medical organizations (including PeaceHealth emergency department staff). Although the Community Relations Plan form identifies potential stakeholders as also including law enforcement, business leaders, and neighborhood associations, there is no documentation of outreach to these entities. Consequently, in the sections of the Community Relations Plan documenting stakeholder concerns and proposed mitigation strategies, there is only one entry, which relates to how treatment success should be defined. No location-specific concerns are listed. *Exhibit 6.B*.
42. The owner of the Holiday Inn Express requested that additional study be conducted prior to approving the use, including SEPA review and input from the City of Vancouver Police Department. *Exhibit 3A; Gary Bang Testimony*.
43. City Planning Staff did not consult with the Vancouver Police Department on the application, testifying that such consultation is not typical with conditional uses. *Kristian Corbin Testimony*.
44. Sonesta submitted that the use should be considered an essential public facility, triggering heightened notice requirements and consideration of alternative locations pursuant to VMC 20.855.020. As evidence of this, Sonesta submitted a 2020 pre-application conference report for a project at the existing CRHMS site. The details of the project are unclear, but the project involved new buildings with beds, suggesting a residential treatment facility. In the pre-application conference report, Staff submitted that essential public facilities requirements applied to that project. *Exhibits 5 and 5.1.S*.
45. City Planning Staff determined that the proposed facility in the instant proceedings does not constitute an essential public facility based on the definition set forth in VMC

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<sup>13</sup> The Community Relations Plan is on a fill-in-the-blank form provided by DOH.

20.150.040(B):

Public facilities and privately-owned or operated facilities serving a public purpose that are typically difficult to site. They include but are not limited to: airports, state education facilities, state or regional transportation facilities, prisons, jails, other correctional facilities, and solid waste handling facilities.

These facilities are of state-wide and regional significance, as opposed to facilities which only serve Clark County. Therefore, local transit service is not considered an essential public facility. Essential public facilities will be allowed in locations appropriate for the services provided and the people served.

*VMC 20.150.040.B.* Staff submitted that the proposed facility can be distinguished from the existing facility because it would operate as a satellite facility with a reduced scope of services, with limited hours of operation and no overnight stays. *Exhibit 6.* Although in its written argument Sonesta noted that the state legislature has amended its definition of essential public facilities to specifically include opioid treatment programs (*Exhibit 5*, page 8), this change is not effective until August 15, 2023.

<https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/5536-S2.SL.pdf>

46. Sonesta recommended several conditions if the CUP is approved, including conditions that would (paraphrased): limit hours of medication distribution to no later than 3:00 pm; require three security guards during all hours of operation; require that all clinic use be by appointment only; require CRMHS to ensure that clients do not congregate in the parking lot, adjacent sidewalks, or adjacent properties; require CRMHS to execute a no protest agreement for formation of a parking/business improvement area and imposition of an assessment to fund additional maintenance and security; require CRMHS to install six-foot wood fences between its property and a homeless encampment along SR-500<sup>14</sup> and around the Sonesta and Holiday Inn Express properties; require CRMHS to pay for exterior security cameras at Sonesta and Holiday Inn Express; and require CRMHS to post a bond to cover damage caused by clinic users. *Exhibit 5; see also Exhibit 4B.*
47. The Applicant objected to Sonesta's recommended conditions, except that with respect to hours of operation, submitted that CRMHS already intends to stop distribution of medication by 3:00 pm. With respect to security, the Applicant argued that while three security guards are used at the main facility, that level would be unreasonable at the proposed clinic, which would be smaller. The Applicant submitted that CRMHS's current practice is to prevent loitering on the property, but objected to any requirement to police public right-of-way or neighboring properties. *Exhibit 7.*
48. City Planning Staff recommended approval of the CUP, arguing that the CUP criteria are designed to address impacts to the built environment, and that issues of human behavior and illegal conduct are addressed by other departments (such as the police). *Exhibit 6.* The City did not recommend that Sonesta's requested conditions be incorporated into the

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<sup>14</sup> The Applicant argued that there is no encampment between the subject property and SR-500, but that the encampment is farther east. *Exhibit 7.*

conditions of CUP approval. However, in response to public comment, Planning Staff recommended that the Applicant submit a security and maintenance plan with its commercial building permit application, which staff would keep on file. In their post-hearing submittal, Staff clarified its expectation that this plan should include hours of operation, explanation of security measures, and contact information for the general public if they have concerns about the property. *Kristian Corbin Testimony; Exhibit 6.* The Applicant did not object to the additional condition or to the original conditions set forth in the staff report. *Jamie Howsley Testimony; Exhibit 7.*

## CONCLUSIONS

### **Jurisdiction:**

The Hearing Examiner has jurisdiction to conduct an open record hearing and decide applications for conditional use permits – a Type III procedure - pursuant to Vancouver Municipal Code 20.210.060 and 20.210.020-1.

### **Conditional Use Criteria for Review:**

Pursuant to VMC 20.245.040.A, the Hearing Examiner shall approve, approve with conditions, or deny an application for a conditional use based on findings of fact with respect to each of the following criteria:

1. The site size and dimensions provide adequate area for the needs of the proposed use;
2. The impacts of the proposed use of the site can be accommodated considering size, shape, location, topography, and natural features;
3. All required public facilities have adequate capacity to serve the proposed development;
4. The applicable requirements of the zoning district, and other applicable documents are met except as amended by the conditional use permit or variances requested pursuant to Chapter 20.290 VMC; and
5. Identified impacts on adjacent properties, surrounding uses and public facilities have been adequately mitigated.

### **Conclusions Based on Findings:**

1. The site size and dimensions are adequate for the use. The existing building meets all dimensional standards of the underlying zone, and no increase in the building footprint are proposed. The maximum building occupancy exceeds the number of staff and clients expected to be on site at any one time. The amount of parking available far exceeds the amount required by the VMC. Adequate area has been allocated for a solid waste enclosure meeting code requirements. *Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 18.*
2. With conditions, the impacts of the proposed use can be accommodated considering size, shape, location, topography, and natural features. The site is already improved with a building, parking lot, landscaping, and two driveways to adjacent streets. Minimal

external changes are proposed. Available off-street parking is approximately twice that required by code. There are no natural or topographic features that would affect or would be affected by the proposal. Traffic from the proposed use would be less than that of the former restaurant use of the site. The proposal is exempt from SEPA review, and there is no administrative appeal of the City's SEPA exemption determination. With respect to whether impacts can be accommodated considering the property location, the subject property is not immediately adjacent to land uses such as schools or parks, and the nearby church is across the street. There are preexisting issues relating to crime and homeless encampments in the vicinity, and the local homeless population could benefit from the services provided on site. From that perspective the location is appropriate. However, due to the nature of the drugs administered on site, concerns regarding loitering and criminal activity are not unfounded. While the Hearing Examiner concurs with the Applicant that Sonesta's requested conditions are unreasonable (particularly in as much as they require the Applicant to police adjoining properties and public right-of-way and be financially responsible for off-site criminal activities), Planning Staff's recommendation that the Applicant be required to develop a security and maintenance plan is adopted and added to. With contact information to be made available to the public, the plan would provide a means for neighbors to identify issues of concern as they arise. Additionally, because it was requested by the public and the Applicant indicated that it intended to end medication dispensing activities by 3:00 pm, the instant approval is conditioned on ending dispensing medication by 3:00 pm. *Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48.*

3. Existing public facilities have capacity to serve the project. Utilities are available to serve the site. The project is exempt from transportation concurrency requirements because the use would generate less traffic than the previous use. *Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 18.*
4. As conditioned, the use satisfies the applicable standards of the CG zone and other applicable City development regulations. Due to the developed condition of the site, zoning standards such as building height and setbacks are not at issue. The site is landscaped and has adequate parking for the use. The proposed solid waste enclosure has sufficient area to meet the requirements of VMC 20.970 and would be designed to ensure that the dumpsters contained within would be screened from view. No additional stormwater management is required. The conditions of approval incorporate the requirements identified by the Vancouver Fire Department. *Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 18.*
5. As conditioned, identified impacts on adjacent properties, surrounding uses and public facilities would be adequately mitigated.
  - a. With respect to the built environment, the traffic generated by the use is expected to be less than the previous restaurant use, and no frontage improvements or other traffic mitigation is required. Adequate parking would be provided on site. Existing

landscaping would be retained. The street frontages are already improved. *Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 18.*

- b. With respect to the public safety issues identified during public comment, these appear to reflect existing problems within the community and not necessarily impacts resulting from the proposed opioid treatment facility. The criminal activity in the vicinity of the subject property described by neighboring business owners/residents is a preexisting condition, as is the presence of homeless encampments. The assertion that the use would increase these problems is necessarily speculative. Similarly, the police reports submitted into the record with respect to incidents reported at 6926 NE Fourth Plain Boulevard demonstrate that there is a certain level of crime in that neighborhood, but not that the NorthStar facility itself generates a significant amount of crime. The Applicant should not be penalized because CRHMS, its employees, and its clients have been victims of property crimes over the years. As attested to during public comment, existing businesses surrounding the subject property have been victims of property crime also (dental office, insurance office, 7-11), yet they are not prohibited from continuing to conduct business because of that crime. The Applicant should also not be penalized because CRMHS employees have been taking the step of filing police reports when clients or others entering the property express the intent to harm themselves or others. The number of incidents identified by Sonesta in which CRMHS clientele were or were potentially a danger to the public was relatively small, and it is not clear how many of these incidents related to the NorthStar use as opposed to other services provided on the site. Consequently, on the record submitted, it would be speculative to conclude that the use presents such a public safety risk that the CUP must be denied. *Findings 3, 4, 5, 6, 7, 8, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48.*
- c. Concerning impacts to property values, Washington courts have held that, while neighbors' fears may reduce property values, it is important to distinguish between well founded fears and those based on inaccurate stereotypes and popular prejudices, and that the latter cannot justify zoning restrictions. *Sunderland Servs. v. Pasco, 127 Wn.2d 782, 794 (1995)(internal citations omitted)*. With respect, newspaper articles containing lay persons' opinions of impacts of similar facilities in other cities are not sufficiently factual to be persuasive. Given the small number of police reports relating to crime at the existing Columbia River Mental Health Services facility, and the inability to even assign 100% of those incidents to the NorthStar clinic portion of that facility, and the record's lack of other specific evidence tending to show (rather than opine or speculate) that the project in the proposed location would result in increased criminal activity, the undersigned concludes that the record as a whole contains evidence in opposition to CUP approval that is better characterized as speculative and as community displeasure, rather than evidence effectively

- demonstrating that the impacts alleged would likely occur.<sup>15</sup> *Findings 28, 29, 30, 31, 32, 33, 34, 35, 36, 37,38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48.*
- d. That said, given the property’s relative proximity to church, park, residential, and school uses, Planning Staff’s recommended condition that the Applicant prepare and submit a detailed security and maintenance plan is appropriate. *Findings 3, 8, 28, 29, 30, 32, 33, 34, 35, 36, 37,38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48*
6. Addressing the public’s assertion that the project has failed to comply with the public outreach element of the Federal Guidelines, determining the Applicant’s compliance is outside the scope of this CUP process. Compliance with any applicable state or federal siting guidelines would be determined by the State Department of Health through its review of the proposed new location. The instant CUP process provided notice of the proposed use and an opportunity for affected persons and entities to identify issues of concern. It also appears that Planning Staff’s recommended security and maintenance plan, which would provide contact information for the public, would be compatible with the guidance on community relations. *Finding 8, 39, 40, and 41.*
  7. Regarding Sonesta’s contention that the project must undergo review for approval of an essential public facility, based on the law in effect at the time of complete application, the City’s determination that the proposed use is not an essential public facility is not in error. The proposed use can easily be distinguished from the regional and state-wide uses (airports, prisons, etc.) listed in VMC 20.150.040.B as examples of essential public facilities. It can also be distinguished from the in-patient use reviewed in 2020 and deemed by Staff to be an essential public facility. Further, the amendment to state law cited by Sonesta and which Sonesta purports would render the instant proposal an essential public facility does not go into effect until August 15, 2023. *Findings 44 and 45.*

## DECISION

Based on the preceding findings and conclusions, the requested conditional use permit to operate an opioid treatment facility as a medical center at 7105 NE 40th Street is **APPROVED** subject to the following conditions.

### Prior to Issuance of Occupancy

1. The Applicant shall submit to the Community Development and Planning Department a premises security plan addressing, at a minimum, the following:
  - a. Hours of operation, including hours of medication dispensing;

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<sup>15</sup> “While the opposition of the community may be given substantial weight, it cannot alone justify a local land use decision.” *Sunderland Servs. v. Pasco*, 127 Wn.2d 782, 797 (1995); *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 805 (1990); *Kenart & Assocs. v. Skagit County*, 37 Wn. App. 295, 303, review denied, 101 Wn.2d 1021 (1984).


- b. The number and qualifications of security personnel intended to be on site during and after business hours, and their expected duties;
- c. The facility's policy for addressing loitering, car camping, and other encampments on and adjacent to the subject property;
- d. Emergency management plan detailing policies and procedures for responding to violence and threats of violence by and/or against clients, guests, and staff; and
- e. 24 hour contact information to be made available to the public for reporting issues arising from activities at the facility.

The Planning Department shall keep this plan on file and make it available on request to members of the public.

- 2. The Applicant shall obtain all required commercial building permits.
- 3. Street and address signage shall be visible and legible from the street fronting the property for emergency response. If applicable, individual suite numbers shall be posted at the suite doors. Where applicable, apartment building designations shall be visible and legible from all potential fire lane approaches.
- 4. Required fire lane signage shall be installed.
- 5. Any fire protection features identified as being required during the construction permit review shall be installed and approved prior to occupancy.
- 6. If a fire department Knox Box was identified as a requirement during the construction permit review, it shall be installed at an approved location and locked with the required content.
- 7. Permanent vehicle gates crossing required fire lanes shall remain unlocked or open until approved by the fire department.
- 8. Conditions identified in the construction permit shall be met.
- 9. All requirements of the applicable fire and building codes and their referenced standards shall be met notwithstanding approved construction plans.

Decided July 28, 2023.

By:



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Sharon A. Rice  
City of Vancouver Hearing Examiner

Note: The hearing examiner’s decision may be appealed to the Vancouver City Council within fourteen (14) calendar days after the date the examiner’s decision is mailed. Appeals must be made in writing and be received within this time period. The letter of appeal shall state the case number designated by the city and the name of the applicant, name and signature of each petitioner, a statement showing that each petitioner is entitled to file the appeal under VMC Chapter 20.210.130.B, the specific aspect(s) of the decision being appealed, the reasons each aspect is in error as a matter of fact or law, and the evidence relied upon to prove the error (VMC 20.210.130.A). A fee of \$2,286.00 must accompany the appeal. However, if the aggrieved party is a recognized neighborhood association, the fee assessed is \$173.00. The association must demonstrate at the time of appeal submittal that the decision to appeal was made pursuant to association bylaws. Due to the limited days the permit center is open for walk-in assistance, the appeal request shall be emailed to [eplans@cityofvancouver.us](mailto:eplans@cityofvancouver.us) as well as to the case manager’s e-mail address ([Kristian.corbin@cityofvancouver.us](mailto:Kristian.corbin@cityofvancouver.us)) and the appeal fee electronically paid to the City of Vancouver.

**Appendix A – Other Record documents:** *(cited in the findings as “Record Document”)*

1. Sonesta International Hotels Corporation letter dated May 11, 2023, requesting a 45 day continuance
2. Applicant representative M. Graves email and attached mailing list in response to first motion to continue, submitted May 12, 2023 by M. Graves via email to Hearing Clerk
3. Sonesta International Hotels Corporation letter dated May 25, 2023, requesting a continuance until a date later than August 1, 2023
  - a. Vancouver Public Records Center response to Public Records Request C000311-052223, dated May 22, 2023
  - b. Vancouver Public Records Center response to Police Records Request P003746-051823, dated May 24, 2023
4. Applicant Response to Sonesta's 2d request for continuance, dated May 31, 2023
5. Sonesta International Hotels Corporation Motion to Strike/*In Limine*, July 12, 2023<sup>16</sup>

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<sup>16</sup> The undersigned did not request responses from Applicant and Staff to this motion, having determined that the language objected to constituted argument rather than assertions of fact intended to be relied upon. The admissibility of the language to which the motion objects is appropriately left to the examiner’s discretion to assign weight and credibility.



