



Appeal of Conditional Use Permit for Columbia River Mental Health Methadone Clinic

Sonesta International Hotels

Presented by Bob Sterbank
October 9, 2023



Introduction: What Sonesta's Argument Will Cover

- What Is a Quasi-Judicial Land Use Appeal, and What Rules Govern?
- What is the Proposal, and What Laws (City Code Sections) Apply?
- “Essential Public Facility” Definition and Statutory Requirements -- --RCW 36.70A.200(1)(a)
- “Essential Public Facility” Definition, Purpose and Code Requirements – VMC 20.150.040(B) and 20.855.010 - .020
- Conditional Use Permit Code Requirements -- VMC 20.245.040(A)
- What Does the Evidence Show Are the Documented Impacts of the Proposal?
- Why Does the Hearing Examiner's Decision Fail to Require Adequate Mitigation?
- Relief Requested – How Should the City Council Fix It?

Key Principles:

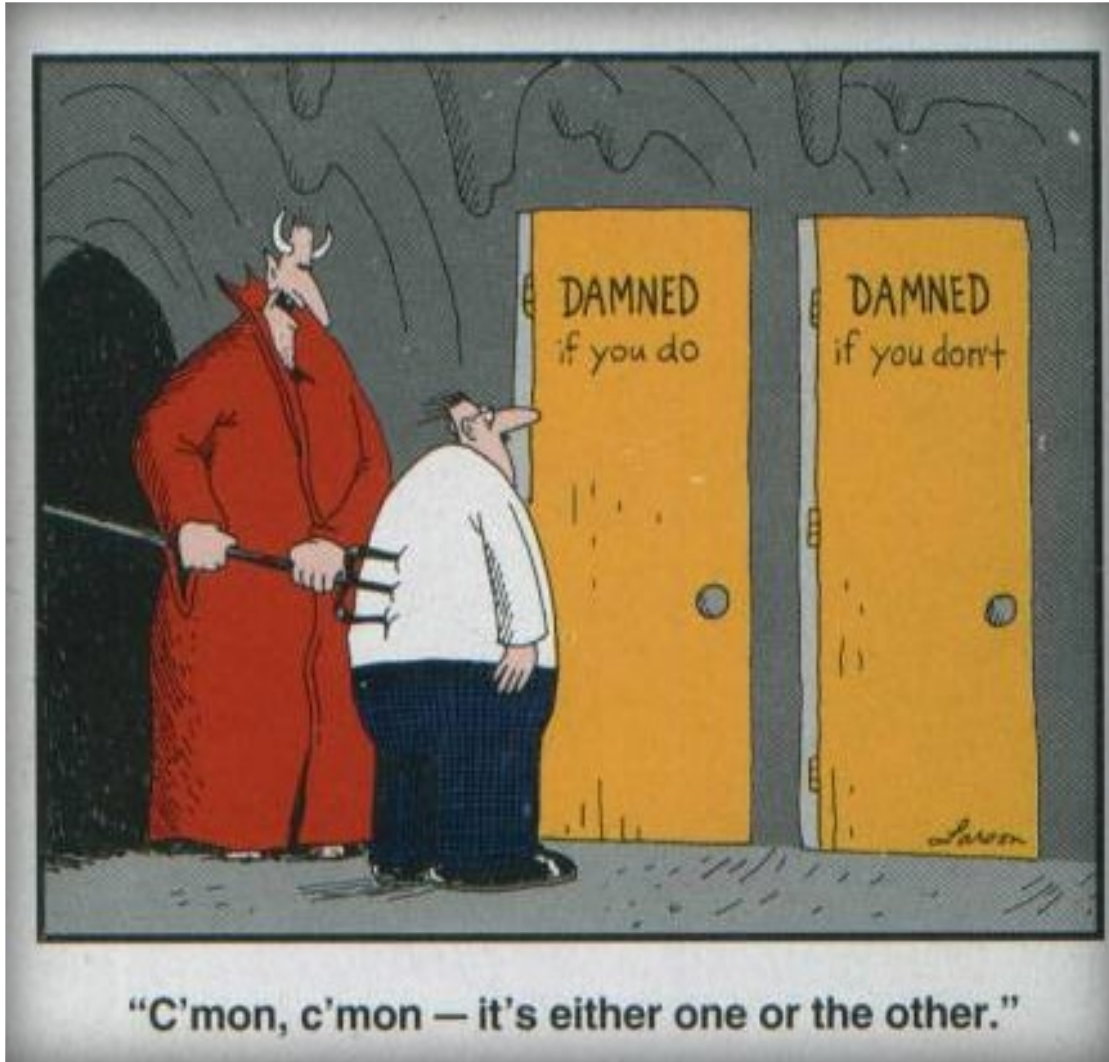
Two things can be true at once:

- (1) Opioid treatment facilities may be needed; *AND*
- (2) They are accompanied by significant, adverse impacts to neighboring people and property

The Applicant and the City can do two things at the same time:

- (1) Comply with City code procedures for essential public facilities and conditional uses; *AND*
- (2) Adequately mitigate documented impacts to neighboring property owners like Sonesta and other hotels.

Not This:



But This:



Quasi-Judicial Land Use Appeals:

“Quasi-judicial actions. . .are those actions of the legislative body. . . which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding.” RCW 42.36.010.

Courts look at, among other things:

(1) whether the action involves the application of existing law to past or present facts; and (2) whether the action resembles the ordinary business of courts as opposed to that of legislators or administrators.

Chaussee v. Snohomish Cy. Council, 38 Wn.App. 630, 634–35, 689 P.2d 1084 (1984).



Quasi-Judicial Land Use Rules:

Closed record: the Council considers only the Hearing Examiner's record, which includes the testimony and exhibits admitted by the Examiner.

The Council's decision must:

not be an erroneous interpretation of the law, or a clearly erroneous application of the law to the facts

be supported by "substantial evidence in the record," meaning "evidence that would persuade a fair-minded person of the truth of the statement asserted"; and

Not be based on an unlawful process or procedure.

RCW 36.70C.130.



Two Main Reasons Why the Hearing Examiner's Decision is Wrong:

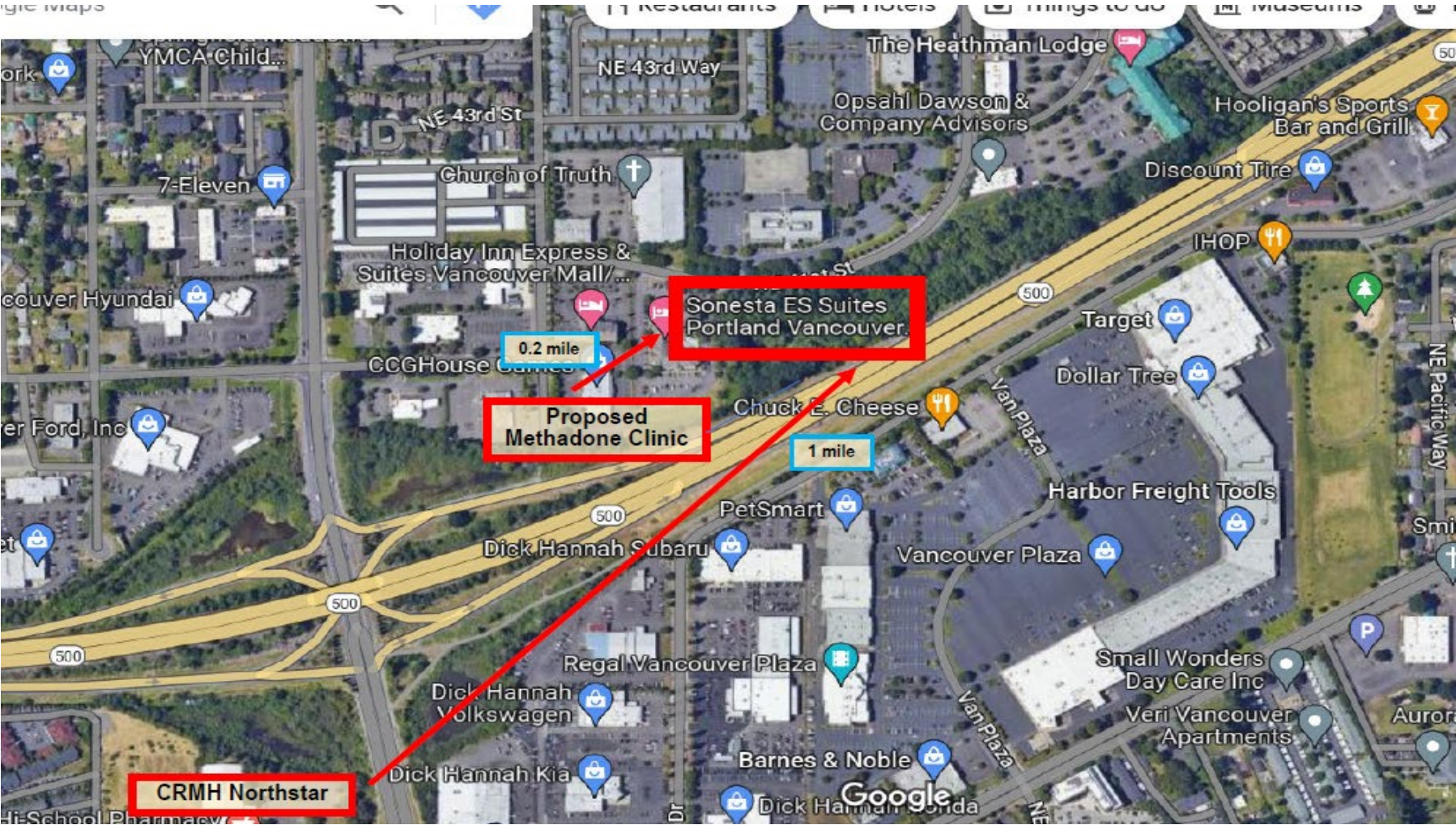
Examiner committed error of law, and endorsed unlawful procedures, by excusing Applicant from Essential Public Facility process and requirements; and

Examiner ignored substantial evidence of significant impacts to Sonesta, and failed to impose conditions to adequately mitigate those impacts.

The Proposal: Relocate Expanded CRMH Northstar to 7105 NE 40th

1. 8,000 (approx.) square foot facility
2. 18 treatment rooms
3. Serve more than 600 patients
4. Expansion needed because “we’ve outgrown our space,” despite expanding hours and walk-in appointments, because “clinic census doubled 2019-2022.”
Dr. Fischer presentation, Sterbank Decl., Ex. D, p. 12.


Vicinity Map



What's Involved in the Proposal?

Ex. D to Sterbank Declaration

*Presenting to Clark County Council
NorthStar Clinic
Expanding to Serve Clark County*



Kevin Fischer, MD
Chief Medical Officer
November 30, 2022

What's Involved in the Proposal?

Ex. D to Sterbank Declaration

November 30th Clark County, Washington Council Meeting:

Present: Councilmembers Bowerman, Medvigy, Rylander, Olson

Others: Rebecca Messinger, county residents, Sheriff elect Horch, Mitchell Kelly

Presenters: Dr. Fischer – Medical Director for CRMHS

- **PowerPoint Presentation attached. General information provided about the opioid epidemic, MAT services available, methadone, suboxone/bup benefits and risks.**

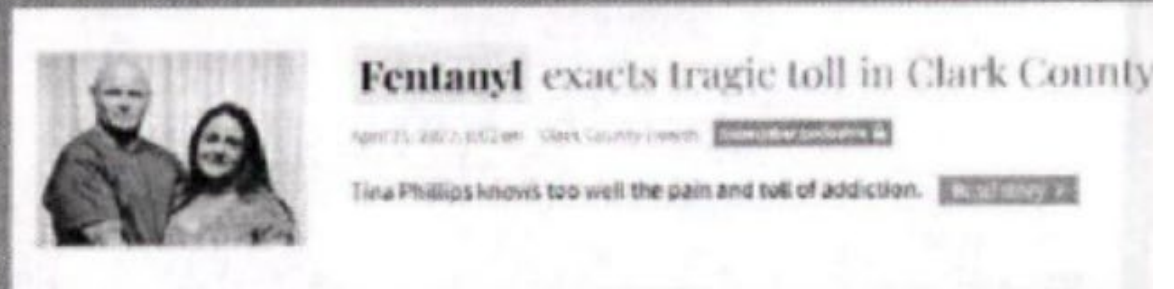
services and developing treatment plans with the client to define success. Dr. Fischer also explained that many clients come to agency homeless and without employment a

Impacts of the Proposal

Ex. D to Sterbank Declaration

Clark County: Fentanyl Use & Treatment Observations

- Generic Suboxone[®]: more complicated to start, some patients report less effective than past experiencing stopping heroin or Rx opioid use
- Methadone treatment still effective, patients at higher doses
- **Patients** early in treatment **observationally more unstable**
 - Milieu challenges
 - **Anger**
 - **Threats of violence**
 - **Actual violence**



Impacts of the Proposal

Ex. D to Sterbank Declaration

Addiction is a Chronic Disease of the Brain

- Long term, progressive & relapsing disease of the brain
- Marked by stages of progress and regression
- Relapse and related behaviors are a feature of the illness rather than an indication of failure of the treatment plan or patient-effort
- With treatment, success rates for recovery from SUD are similar to other chronic diseases like Type II Diabetes and congestive heart failure
- Disease model approaches equal better outcomes



Hearing Examiner Error No. 1:

1. The Examiner failed to require the Applicant to comply with Vancouver's Essential Public Facility ("EPF") siting requirements, in VMC Section 20.855.020
2. Is it UNDISPUTED that City staff required CRMH to follow EPF siting requirements for the existing Northstar facility (Sterbank Decl., Ex. S), but did NOT require CRMH to do so for its proposed Northstar relocation to 7105 NE 40th Street.

What is an EPF and Where Do They Come From?

Statutory Requirements in the GMA, RCW 36.70A.200

City comprehensive plan and development regulations must “include a process for identifying and siting essential public facilities.”

“No local comprehensive plan or development regulation may preclude the siting of essential public facilities.”

Essential public facilities *include those facilities 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, solid waste handling facilities, *opioid treatment programs including both mobile and fixed-site medication units, recovery residences, harm reduction programs excluding safe injection sites*

- *Focus is on whether the use is difficult to site..*
- Opioid treatment programs and related expressly included, in 2023 legislative amendment.

Vancouver Code Definition of “Essential Public Facility” - VMC 20.150.040

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.

- Vancouver’s code, adopted in 2004, focuses on whether the use is *difficult to site, and regional significance* of the use or service.
- *The definition does not address the “size” of the facility*, contrary to Applicant’s misquotation on Slide 6 of its argument.
- Purpose of VMC EPF provisions “*is to fulfill the requirements of the Growth Management Act by accommodating Essential Public Facilities. . . .*” VMC 20.855.010.

What Are Vancouver EPF siting requirements? - VMC 20.855.020(5): early notice to affected citizens, plus

5. Applicants for such a facility shall provide an analysis of the alternative sites considered for the proposed facility. This analysis shall include the following:

- a. A justification of the need for the proposed facility in the proposed location. **The applicant shall demonstrate that less impacting alternatives have been considered and found not to be feasible.**
- b. **The applicant shall also describe the process used to identify and evaluate alternative sites.**
- c. An evaluation of the sites' capability to meet basic siting criteria for the proposed facility, such as size, physical characteristics, access, and availability of necessary utilities and support services.
- d. The sites' relationship to the service area and the distribution of other similar public facilities within the service area or jurisdiction, whichever is larger.
- e. A description of the relative environmental, traffic and social impacts associated with locating the proposed facility at the alternative sites that meet the applicant's basic siting criteria. **The applicant shall also identify proposed mitigation measures to alleviate or minimize adverse impacts**

Why the Examiner Was Wrong:

- The GMA (RCW 36.70A.200(1)) expressly defines an EPF to include “*opioid treatment programs including. . .fixed-site medication sites.*” This state law provisions applies today, and the City Council must apply it.
- VMC EPF provisions were adopted “to fulfill the requirements of the Growth Management Act. . . .” VMC 20.855.010.
- It is irrelevant that GMA amendment was not yet effective at the time of Examiner’s decision. It applied to CRMH Northstar relocation proposal because it was curative, remedial, and retroactive, similar to SeaTac Third Runway case. *Des Moines v. Puget Sound Regional Council*, 98 Wn.App. 23 (Div. I 1999), quoting *Tomlinson v. Clarke*, 118 Wash.2d 498, 510–11, 825 P.2d 706 (1992).
- EPFs include both existing facilities, as well as expansions of existing EPFs. WAC 365–196-550(1)(c).The existing Northstar was permitted as an EPF (Sterbank Decl. Ex. S); the proposed Northstar relocation is an expansion. Examiner Decision at Finding 4; Sterbank Ex. D. at 12.

Why the Examiner was wrong cont'd.

- Northstar facility relocation is / was an EPF under Dept. of Commerce regulations, even in absence of 2023 GMA amendment, because “the major component in the identification of an essential public facility is whether it provides or is necessary to provide a public service and whether it is difficult to site.” See WAC 365-196-550(1)(f) and (2).
- CRMH is *not vested* to pre-amendment of RCW 36.70A.200(1). There is no vesting to local ordinances adopted to comply with state law. *Snohomish County v. Pollution Control Hr'ngs Bd.*, 187 Wn.2d 346, 386 P.3d 1064 (2016).
- Examiner wrongly relied on claim that City staff had determined EPF did not apply because Northstar relocation does not propose overnight stays. *No such determination or decision is in the record*, because none exists.

Hearing Examiner Error No. 2

- The Hearing Examiner ignored substantial evidence in the record of significant impacts to Sonesta, and failed to require CRMH to adequately mitigate those impacts.
- Why is that important? Because the City's Conditional Use Permit code ***requires*** it. Why?
- **VMC 20.245.010** **Purpose.**

General. In many zones there are uses that may be compatible but because of their size, *operating characteristics and/or potential off-site impacts warrant review on a case-by-case basis. The purpose of the conditional use review process is to determine if such a use is appropriate at the proposed location and, if appropriate, to identify any additional conditions of approval necessary to mitigate potentially adverse impacts.* (Italics added).

Vancouver CUP Permit Criteria

VMC 20.245.040. Approval Criteria.

A. Approval standards. The Hearings Examiner shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter 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;
- * * *
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.*

Why the Examiner Was Wrong:

- The Examiner completely ignored evidence in the form of Dr. Fischer’s candid PowerPoint presentation (Sterbank Decl. Ex. D). Dr. Fischer admits that CRMH Northstar clients are “observationally unstable,” prone to “anger, threats of violence [and] actual violence,” and whose recurring relapses and reversion to “related behavior” (anger, threats of violence and actual violence) is a “feature” of their condition.
- The Examiner improperly discounted journal-published research documenting that Opioid Medication Maintenance Treatment (“OMMT”) facilities cause a significant increase in violent crime and drug-related crime within 200 meters (approx. 700 feet). Sonesta is within this distance of the proposed relocated Northstar facility.
- The Examiner improperly discounted Vancouver Police Department reports documenting anger, threats of violence and actual violent crimes, as well as drug and property crimes, associated with the existing Northstar facility. Sterbank Decl. Ex. F.

Why the Examiner Was Wrong:

- The Examiner wrongly treated the number of criminal incidents at Northstar as “relatively small,” and “penalizing” CRMH staff for reporting the crimes. The Examiner should have imposed conditions to protect Sonesta and the public from those crimes at the new location, rather than minimize them CRMH staff for reporting them.
- The Examiner improperly refused to consider evidence of increased crime near OMMT facilities in other cities (Everett, WA and New Haven, CT). Sterbank Decl. Ex. C and T. That evidence is consistent with Dr. Fischer’s statements, documented research, and VPD incident reports at the existing CRMH Northstar facility, and must be considered as part of the record as a whole.
- Examiner was wrong to consider Sonesta’s exhibits in isolation, rather than cumulatively as a whole.
- $1 + 1 + 1 + 1 = 4.$

Hearing Examiner Error No. 2, cont.

- The Examiner failed to impose conditions to address potential impacts to Sonesta.
- Listed conditions primarily address only physical conditions on Applicant's site.
- The requirement to submit a “security plan” does nothing for potentially adverse impacts to adjacent and nearby properties.
- Security “plan” condition imposes no minimum security personnel requirements;
- Conditions of approval impose no limitation on hours of operation or medication dispensing. Conclusion 2 mentions a 3:00 p.m. limitation, but no condition of approval imposes that or any other limit.
- To the extent any security plan requirement even mentions adjacent or nearby properties, the condition only that CRMH's “plan” describe CRMH's *policy* towards those properties – the condition does not require CRMH to *do anything* about impacts to Sonesta or others.

Relief Requested

Reverse Hearing Examiner and remand to staff; OR in the alternative,

- Require application be processed as EPF in accordance with VMC Ch. 20.855
- Require early notice to public (including Sonesta), disclosure and evaluation of alternative sites and impacts
- CUP hearing and decision process only after EPF requirements followed.

Reverse Hearing Examiner and deny CUP due to unmitigated impacts; or

- If relocated Northstar is not an EPF, City may deny.

IF Council decides to affirm CUP permit, reverse Examiner findings/conclusions and impose conditions to mitigate impacts to Sonesta.

Requested Conditions:

- Limit the hours of operation, to conclude methadone distribution by no later than 3 p.m. earlier in the day before drug dealers and drug users are active on the street and vicinity;
- Require that the relocated Northstar clinic be staffed by three security guards at all hours of operation: the same staffing level at the existing Northstar facility.
- Require security guards to regularly patrol both interior and exterior of the CRMH property, and prevent clients or others from loitering on the site or adjacent sidewalks or property.
- Limit clinic use to appointment only; require that early morning clients be only those verified as having employment and needing to obtain medication early.
- Require clinic clients to come to the facility, receive medication / services and leave, without congregating in parking lot or on nearby sidewalks, rights-of-way or adjacent properties.

Requested Conditions –Improvements and Financial guarantees:

- Require CRMH to install 6-foot wood fencing between its property and the encampment adjacent to SR 500, and pay for similar fencing around Sonesta and between it and encampment on City detention pond property east of Sonesta parking lot.
- Require CRMH to pay the costs of installation of exterior security cameras covering clinic entrances/exits and parking areas, and entrance/exits and parking areas at Sonesta Hotel.
- CRMH to execute a No Protest Agreement for formation of a parking / business improvement area and imposition of special assessments pursuant to Ch. 35.87A RCW, to fund additional maintenance and security.
- Require CRMH to post a bond of sufficient size be posted to cover potential crimes and/or property damage to other nearby persons or businesses by clinic users or associates.

Thank you.



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