

**BEFORE THE HEARING EXAMINER  
FOR ISLAND COUNTY**

In the Matter of the Application of	)	No. SPR 241/21
	)	
<b>Baz Stevens, on behalf of</b>	)	Shelter Site Plan Review
<b>South Whidbey Homeless Coalition</b>	)	
	)	
	)	FINDINGS, CONCLUSIONS, AND
<u>For Approval of Site Plan Review</u>	)	DECISION

**SUMMARY OF DECISION**

The request for site plan review approval to allow for the conversion of a vacant church into an emergency night-to-night shelter for up to 30 guests, on a 1.94-acre property located at 331 W. Morris Road, in the Coupeville area of unincorporated Island County, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on July 18, 2022, using remote access technology. The record was left open until July 25, 2022, to allow for parties having difficulty accessing the hearing to submit comments and for the Applicant to submit a final statement.

Testimony:

The following individuals testified under oath at the open record hearing:

John Lanier, Assistant Director, County Planning & Community Development Department  
Shellie Moore, Applicant Representative  
Faith Wilder, Applicant Representative  
Julie Lloyd  
George A. Lloyd  
Michael Thorpe  
Traci Clements  
Bobbi Laurenson  
Lisa Connolley  
B. Jason Brent  
Mary Williford  
George Saul  
Liz Wassink  
Henry Nydam

*Findings, Conclusions, and Decision  
Island County Hearing Examiner  
South Whidbey Homeless Coalition Shelter  
Site Plan Review  
No. SPR 241/21*

Della David  
Kelly Burke  
Rufus Rose  
Vivian Rogers Decker  
Baz Stevens, Applicant Representative

Exhibits:

A list of the exhibits admitted into the record is provided as Attachment A, appended to this decision.

Based upon the admitted testimony and exhibits, the Hearing Examiner enters the following findings and conclusions:

**FINDINGS**

Background

1. On September 14, 2020, South Whidbey Homeless Coalition (Applicant) submitted to Island County (County) an application for a zoning code interpretation (No. 234/20 ZCI) to determine whether an “emergency night-to-night shelter” would be permissible in the Rural zoning district. The County determined that the ZCI application was complete on September 18, 2020. On October 7, 2020, the County published notice of the ZCI application in the *Whidbey News Times* as required under Island County Code (ICC) 16.19.140.A.1, with a comment deadline of October 14, 2020. The County’s notice materials for the ZCI request stated that the request would be addressing a proposal by the Applicant to convert a vacant church to operate an emergency night-to-night shelter for up to 30 people, on an approximately 1.94-acre property, at 331 Morris Road. *Exhibit E*.
2. The County received over 100 comments on the proposal from members of the public in response to the ZCI application notice materials, many of which expressed opposition to the proposed overnight shelter use of the vacant church. Some of the comments expressing opposition to the proposal during this public comment period expressed concerns about the availability of services to overnight shelter guests in a rural area and about the potential crime impacts to the neighborhood from shelter guests. Because requests for a zoning code interpretation are processed as Type II administrative decisions that do not include an open record hearing, input on the proposal from members of the public was limited to the written comments submitted during the applicable comment period. *ICC 16.19.040; ICC 17.03.190.C. Exhibit E*.
3. The County reviewed the ZCI application, as required by ICC 17.03.190 and, ultimately, determined that the proposal would be “consistent with Island County’s adopted Development Regulations and Comprehensive Plan” and that “the establishment of an emergency night-to-night shelter in Island County’s Rural Zone should be considered a

*Findings, Conclusions, and Decision*  
*Island County Hearing Examiner*  
*South Whidbey Homeless Coalition Shelter*  
*Site Plan Review*  
*No. SPR 241/21*



Conditional Use.” *Exhibit E*. The ZCI decision, dated December 15, 2020, further dictated that any request for an emergency night-to-night shelter must meet the following conditional use criteria:

1. Emergency night-to-night shelters shall be defined as follows:  
A facility providing, without charge, single-night, temporary lodging, with or without meals, for people with no ordinary or regular home or residence address. Emergency night-to-night shelters shall be contained within the structure of, and operated by a public institution, not-for-profit corporation, or charitable organization. Emergency night-to-night shelters shall differ from group homes, assisted living facilities, supportive housing, and other forms of housing in that emergency shelters shall not provide for permanent residency or extended services to the same guests.
2. Emergency night-to-night shelters for 12 people or less shall be a Type II decision.
3. Emergency night-to-night shelters for 13-30 people shall be a Type III decision and subject to the criteria for Class B essential public facilities per ICC 17.03.180.CC.
4. Parcels 2.5 acres or greater in size shall be preferred for emergency night-to-night shelters for 13-30 people. For parcels less than 2.5 acres, justification shall be provided which demonstrates how neighboring properties shall not be affected by noise, lighting, glare, unsightly structures or parking areas, or other nuisances.
5. All Emergency night-to-night shelters located farther than a half mile from an Urban Growth Area shall provide a location alternatives analysis consistent with the provisions of ICC 17.03.180.CC.3.c. As part of that analysis, applicants shall document how the shelter’s function or service area is best served by a location outside of an Urban Growth Area.
6. Emergency night-to-night shelters in the Rural Zone shall not be permitted if the extension of public sewer service is required. Emergency night-to-night shelters must be designed so that onsite sewage disposal systems are adequate to support the facility.

7. Emergency night-to-night shelters must be served by public water systems.
8. Emergency night-to-night shelters shall take primary access, in order of priority, off a county arterial, county collector road highway, or state highway. An access permit may be required.
9. Emergency night-to-night shelters shall not be located within any Aircraft Accident Potential Zone Overlays; to include the Clear Zone, APZ I, and APZ II.
10. Food service for guests and staff of the shelter is permitted in conjunction with an emergency night-to-night shelter. Food service shall conform with the provision of Title VIII of Island County Code for health, welfare, and sanitation. Food sales, table service, and cooked-to-order food is prohibited except as part of an approved restaurant.
11. All emergency night-to-night shelters shall be subject to the following Island County Code provisions:
  - a. Lighting, site coverage, and non-residential design and screening guidelines set forth in ICC 17.03.180;
  - b. The provisions of Title VIII of Island County Code for the service of potable water sewage disposal, solid waste handling, and food service;
  - c. The provisions of Title XI of Island County Code for land development, clearing and grading, stormwater and surface water, and transportation concurrency;
  - d. Where applicable, the provisions of Title XIII of Island County Code for water system and fire flow standards; and
  - e. The provisions of Title XIV of Island County Code for building and construction.
12. Review of applications for emergency night-to-night shelters shall also address:
  - a. Transportation of guests to and from the site;
  - b. Hours of operation;
  - c. Staffing of the facility;
  - d. Proximity of the shelter to services for the guests;



- e. Noise management; and Management of complaints from neighboring residents or businesses.

*Exhibit E.*

4. The County's ZCI decision provided appeal information, but no appeals of the decision were received. Following the County's issuance of the ZCI decision, the Applicant applied for Type II site plan review (SPR) administrative approval for "Phase I" of the church conversion project to allow up to 12 guests at the proposed overnight shelter, with a "Future Phase II" of the project identified as requiring additional permitting to allow up to 30 guests at the shelter. Regarding phasing of the project, the Applicant specifically stated in the SPR application form, "Seeking Type II approval initially (up to 12 resident[s]/guests) to be closely followed by Type III approval (up to 30 guests)." *Exhibit G.* The County determined that the Type II SPR application was complete on June 3, 2021, and provided notice of the application consistent with ICC 16.19.140.A.1, with a comment deadline of June 24, 2021. The County received 49 comments on the proposal in response to its notice materials, the majority of which expressed opposition to the proposal. The County also received a petition opposing the project that contained approximately 430 signatures. Comments opposing the project generally raised concerns about the property's distance from services and necessities, shelter guests leaving the property and wandering the local area, the size of the property, water and septic conditions, noise impacts, the related zoning code interpretation being incorrect or incomplete, and potential crime impacts. As with the earlier zoning code interpretation, the Type II administrative process for reviewing the SPR request to allow the first phase of the proposal would not include an open record hearing component and, therefore, input on the proposal from members of the public was limited to the written comments submitted during the applicable comment period. On December 3, 2021, the County issued a decision approving, with conditions, the requested Type II SPR to allow for Phase I of the proposal to move forward. *Exhibit G.*
5. On December 16, 2021, area resident Kyle Green timely appealed the County's decision approving the Type II SPR to allow Phase I of the proposal. The appeal contended that, in approving the SPR, the County failed to adhere to several regulatory standards, address concerns from neighbors and local businesses, or impose reasonable conditions to address impacts of the proposed use. Mr. Green later filed an appeal statement on December 23, 2021, which requested that the Hearing Examiner reverse the County's SPR decision, asserting that the decision was arbitrary, capricious, and contrary to law. Following an appeal hearing on February 28, 2022, the Hearing Examiner issued a decision granting the appeal, and vacating the Type II SPR approval for Phase I of the proposal. That decision, dated April 4, 2022, specifically determined:

**The Appellant has met its burden of showing that the County erred in approving South Whidbey Homeless Coalition's request for a Type II**

*Findings, Conclusions, and Decision*  
*Island County Hearing Examiner*  
*South Whidbey Homeless Coalition Shelter*  
*Site Plan Review*  
*No. SPR 241/21*



**Site Plan Review to convert a vacant church building to an overnight shelter for up to 12 guests, because the County was fully aware that the full scope of the proposal would include an overnight shelter use for up to 30 guests at the time such decision was rendered.** A stated purpose of the County's site plan review (SPR) procedures is to "provide a predictable and clear review process for such development proposals." *ICC 16.15.010.B.* Consistent with this purpose, *ICC 16.15.040* provides detailed guidelines on the requirements for an SPR application, including the requirement that the application contain a "description of and schedule for phases of the project." *ICC 16.15.040.C.5.* In addition, *ICC 16.15.090* provides that SPR applications shall be processed under the land use review process of Chapter 16.19 ICC. Similar to the purpose of the County's SPR procedures, *ICC 16.19.010* provides that the purpose of the County's land use review process is to "provide a concise and easily understood process for the review of land use and development proposals." This purpose is achieved in part by "[e]stablishing uniform processes for the review of land use and development proposals" and by "[c]onsolidating the application, review and approval processes." *ICC 16.19.010.A; ICC 16.19.010.B.* Under the County's land use review process, Type II SPR applications are reviewed without an open record hearing and administratively decided by the County Planning Director, whereas Type III SPR application are reviewed and decided by the Hearing Examiner following an open record hearing. *See ICC 16.19.040; ICC 16.19.160; ICC 16.19.170.* The Hearing Examiner also has authority to review Type II permit applications associated with a Type III permit application concerning the same proposed project through the County's consolidated permit review process. *ICC 16.19.040.A.5; ICC 16.19.130.*

In accordance with the procedures outlined above (and consistent with the purpose of the County's SPR and land use review procedures to provide a clear, uniform, and consolidated process), clearly identified phased project proposals requiring different levels of review should be reviewed by the highest review authority through a consolidated permit process, not in a piecemeal fashion. Pursuant to the County's earlier zoning code interpretation—a process that, incidentally, did not require a public hearing either—emergency night-to-night shelters for up to 12 people are processed as a Type II decision, and emergency night-to-night shelters for 13 to 30 people are processed as a Type III decision and subject to the criteria for Class B essential public facilities. Substantial evidence in the record demonstrates that, *from the outset and consistently throughout the permit review process*, the Applicant has intended for the project to



provide an emergency night-to-night shelter for up to 30 people, which would require Hearing Examiner approval through the Type III decision process involving an open record public hearing.

The Applicant clearly and unequivocally stated its intent to provide an emergency night-to-shelter for up to 30 people in its initial application for a zoning code interpretation and in its application for Type II SPR approval for Phase I of the project, in which it noted that the Type II application would be “closely followed” by a Type III application for approval of Phase II. The County was aware of Applicant’s intent for the project to include an emergency night-to-night shelter for up to 30 guests because it received and began processing the Type III application for Phase II of the project *months before* administratively approving the Type II SPR for Phase I of the project. Thus, this is not a situation where an applicant has stated only a vague intention to potentially expand on a proposal through future project phases, where a project proponent changes the details of a project during the iterative permit approval process, or where the County was not aware of specific details regarding future project phases. Instead, the County knew that the full project would eventually include an emergency night-to-night shelter for up to 30 guests and, accordingly, should have processed the application through the Type III process required for 30-person emergency night-to-night shelter uses in the Rural zoning district under the County’s zoning code interpretation. Processing the application in this manner would be consistent with the uniform and consolidated approach promoted under the County code and would still have allowed for phasing of the project upon approval by the Hearing Examiner, while ensuring that members of the public could voice their concerns at the open record hearing required for Type III applications.

In addition, processing the application in this consolidated manner, and in accord with the Type III application process required for 30-person emergency night-to-night shelter uses in the Rural zone, would avoid the piecemeal review prohibited under SEPA. *See Murden Cove Preservation Ass’n v. Kitsap County*, 41 Wn. App. 515, 526, 704 P.2d 1242 (1985) (stating “Piecemeal review is permissible if the first phase of the project is independent of the second and if the consequences of the ultimate development cannot be initially assessed. . . . Piecemeal review is impermissible where a series of interrelated steps [constitutes] an integrated plan and the current project is dependent upon subsequent phases.”) (Internal quotation marks and citations omitted.)



To be clear, the Hearing Examiner is not determining that the Type II SPR application at issue in this appeal fails to meet the applicable criteria for approval. Moreover, nothing in the record reflects that the Applicant attempted to circumvent the appropriate review process that should have occurred. Nevertheless, process matters. And, here, the Hearing Examiner is left with the firm conviction that the appropriate process for reviewing and approving the application was not followed and, therefore, vacating the administrative decision approving the Type II SPR is warranted. That said, the record also reflects that the County has been reviewing the Type III SPR that was always contemplated by the Applicant and, accordingly, review of “Phase I” of the proposal may be reconsidered by the Hearing Examiner through the required, consolidated review of the phased project.

*Exhibit G.*

#### Application and Notice

6. As noted above, South Whidbey Homeless Coalition (Applicant) now requests Type III SPR approval to allow for the conversion of a vacant church into an emergency night-to-night shelter, called “The Haven,” for up to 30 people. The shelter would serve homeless individuals and families on Whidbey Island. The Applicant has been operating a temporary shelter in several churches in Oak Harbor on a rotating basis since 2017. Shelter guests would be screened and then transferred from Oak Harbor at 6:00 p.m. each night and would be driven back to Oak Harbor each morning at 7:00 a.m. via vans operated by the Applicant. The only daytime on-site activities would be staff doing office work. The site is adjacent to State Route 20, a state highway and access to the site would be provided by Morris Road, a county collector road. Paid, trained staff would be on-site at all times to oversee shelter guests. Guests would only be permitted outside the building during two supervised smoke breaks. The site is served by the Haven Well System, a group A public water system. A septic system would provide sewer services to the parcel. The Applicant would construct a 240 square foot addition on the southwest corner of the existing building to accommodate the fire suppression system that would match the current aesthetic of the building. The property is located at 331 W. Morris Road.<sup>1</sup> *Exhibit A, Staff Report, pages 1, 7 through 9; Exhibit A.b; Exhibit B; Exhibit C.*
7. Island County (County) determined that the Type III SPR application was complete on June 11, 2021. On August 30, 2021, the County provided notice of the application by mailing notice to property owners within 300 feet of the subject property, routing notice to reviewing departments and agencies, and publishing notice in the *Whidbey News-*

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<sup>1</sup> The property is identified by Tax Assessor Parcel No. R13101-331-0830. *Exhibit A, Staff Report, page 1.*  
A legal description of the property is included with the application materials. *Exhibit B.*



*Times*, with a comment deadline of September 22, 2021. On June 29, 2022, the County mailed notice of the open record associated with the proposal to property owners within 300 feet of the property and publishing notice of the hearing in the *Whidbey News-Times*. Notice materials related to the open record hearing explained that written comments on the proposal should be submitted in advance of the hearing commencing on July 18, 2022. The County received numerous comments opposing and in favor of the proposal, discussed in further detailed below. *Exhibit A, Staff Report, pages 1 and 9; Exhibit D.*

8. The County received the following comments from reviewing departments and agencies in response to its notice materials:
- The County's Environmental Planner noted that a Category E wetland is approximately 563-feet to the south of the property, and the Westside Prairie/Natural Heritage Program (NHP) areas are approximately 2,500 feet to the west and east and the Applicant must demonstrate reasonable efforts to avoid impacts to critical areas and associated buffers pursuant to Island County Code (ISS) 17.02B.080. The Environmental Planner commented that it had no objects to the proposal and that a review of the proposal showed that all development would fall outside maximum buffers for nearby critical areas and would not involve any conversion of regulated habitat.
  - Island County Public Health commented that it has no objection to the site proposal so long as: the Applicant obtains a Food Establishments License if, in a future phase, food would be prepared on site; and the Applicant contacts that area sanitarian to determine necessary permits for any potential future upgrades to the existing sewage disposal system.
  - Island County Public Works commented that it has no objection to the proposal as long as: the Project is limited to the work as proposed; the proposed development would not result in the diversion of surface water, or create new drainage channels, increasing runoff to downslope properties or critical areas; disturbances to critical areas or associated buffers are not authorized without appropriate permits from Island County Planning and Community Development Department; and appropriate erosion and sedimentation control Best Management Practices (BMPs) are employed during all ground disturbing construction activities. Public Works approved a Transportation Concurrency Certificate (No. 100342021) and a permit to access County right-of-way was approved for the location (PW21-0483).

*Exhibit A.f; Exhibit A.g; Exhibit A.h.*

#### State Environmental Policy Act

9. The County acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). On May 6, 2022, the County provided notice of

*Findings, Conclusions, and Decision*  
*Island County Hearing Examiner*  
*South Whidbey Homeless Coalition Shelter*  
*Site Plan Review*  
*No. SPR 241/21*



the SEPA environmental review process, with a comment deadline of May 25, 2022. The County received numerous additional comments from the public in response to its notice materials, detailed below. The County reviewed the Applicant's environmental checklist and other information on file and determined that the proposal would not have a significant adverse impact on the environment. Accordingly, The County issued a Determination of Nonsignificance (DNS) on May 26, 2022, with an appeal deadline of June 9, 2022. The DNS was not appealed. *Exhibit A, Staff Report, pages 2, and 9 through 11; Exhibit A.a; Exhibit A.b; Exhibit D.*

#### Comprehensive Plan and Zoning

10. The County Comprehensive Plan designates the property as "Rural Lands." The purpose of the Rural Lands designation is "to permit land uses that are compatible with the rural character and to preserve open space, agricultural opportunities, recreational opportunities, and the protection of natural resources." *Comprehensive Plan, page 33.* County staff reviewed the proposal and determined that it would be consistent with the Comprehensive Plan.

The Applicant identified the following Comprehensive Plan goals and policies as being relevant to the proposal:

- Housing Goal 3: Promote fair access to housing and shelter for all persons.
- Housing Policy 3.1: Identify appropriate location to support and facilitate transitional housing, coordinated with critical support services, for youth, adults, seniors, families, and those with disabilities.
- Housing Policy 3.2: Identify appropriate locations to support and facilitate the development of emergency shelters and short-term housing for those in need.

*Exhibit A, Staff Report, pages 1 and 7; Comprehensive Plan, page 4-23.*

11. The property is zoned Rural (R). The R zone is the principal land use classification for Island County; limitations on density and uses within the R zone are designed to provide for a variety of rural lifestyles and to ensure compatible uses. *ICC 17.03.060.* As detailed above, the County issued a Zoning Code Interpretation (ZCI 234/20) on December 15, 2020, finding that an emergency night-to-night shelter is a permitted conditional use in the Rural zone. An emergency night-to-night shelters for 13-30 people are a Type III decision and subject to the criteria for Class B essential public facilities under *ICC 17.03.180.CC.3.* *ZCI 234/20, page 7.* Under *ICC 17.180.CC.3*, an applicant must hold a community meeting regarding the proposal with 30 days prior notice. On May 6, 2022, the Applicant held a community meeting using remote access technology after posting notice on-site, advertising in the newspaper, posting on Facebook and sending invites to the site's nearest neighbors. *Exhibit A, Staff Report, page 3; Exhibit B.*



12. ICC 17.03.180.P.3.b provides general guidelines related to non-residential design, landscaping, and screening standards for development in the R zone. County staff reviewed the proposal and determined that it would meet these standards, finding that regional native vegetation would be retained to the extent possible and non-native vegetation would also be retained for screening. There is existing vegetation along the east side of the property, screening the main building from the neighboring residence. The Applicant indicated that it would install additional vegetative screening upon request. *Exhibit A, Staff Report, pages 4, 5 and 10.*

Existing Site and Surrounding Development

13. As noted above, the 1.94-acre property is currently developed with a 3,960 square foot church building, a 45-space parking lot, a 308 square foot outbuilding housing the water system, and approximately one acre of open pasture field. The eastern property line is adjacent to State Route 20, a state highway. The site is across from a gun shooting range. Other surrounding parcels are developed with single-family residences. The property is located near the Navy's Outlying Field operations and is situated in the Air Installations Compatible Use Zones (AICUZ) Noise Zone >75 decibels. The property is not, however, located within any aircraft Accident Potential Zone (APZ) overlays. *Exhibit A, Staff Report, pages 2, and 5 through 8.*

Ebey's Landing National Historical Reserve Design Review

14. The parcel is located within the Ebey's Landing National Historical Reserve Design Review Area 1. Activities located in the design review area that do not contain a historic structure, building, or resource, or are within 100 feet of a historic building or structure require the approval of a Level C certificate of appropriateness from the Historic Preservation Commission. *ICC 17.04A.120.A.* In accordance with *ICC 17.04A.110*, the Historic Preservation Commission reviewed the proposal and found that the application is consistent with the appropriate design guidelines for new construction and accessory structures within the Reserve. On September 23, 2021, the Commission issued an approval recommendation of the certificate, with the condition that the door be the same color as the building and have white trim. *Exhibit A, Staff Report, page 2; Exhibit F.*

Site Plan Review

15. The criteria for review adopted by the County Commissioners implements the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed developments to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*



16. Emergency night-to-night shelters for up to 30 people are allowed as a conditional use in the Rural zone (pursuant to the County's 2020 zoning code interpretation), requiring a site plan review recommendation to the Hearing Examiner pursuant to Chapter 16.15 ICC. Section 16.15.060 ICC provides general criteria for approval of non-residential conditional uses in the R zone. Except for essential public facilities, no application for a non-residential use in the R zone shall be approved unless a specific finding is made that the proposed conditional use is appropriate in the location for which it is proposed, consistent with the general review criteria of ICC 16.15.060. County staff reviewed the proposal and determined that it would meet all applicable criteria of ICC 16.15.060, noting:

- The proposal would not result in a significant adverse environmental impact.
- The proposed development is conditionally permitted within the subject zone and complies with all of the applicable regulations.
- The subject site is physically suitable for the type, density, and intensity of the use being proposed.
- The location, size, design, and operating characteristics of the proposed parking area would not be detrimental to the neighborhood, nor be detrimental to the public interest, health, safety or welfare of the County in conformance with the standards of ICC 17.02B, and 17.03.
- The proposed use and its design fulfill the definition of rural character as defined in ICC 17.03.

*Exhibit A, Staff Report, pages 2 and 3.*

17. ICC 16.15.080 provides specific criteria for SPR approval. The criteria are listed below:

- **Open space.** Provide open space in the amount required by chapter 17.03 or chapter 17.06, as applicable. The location, use and design shall meet the following standards: (a) Include critical areas designated and regulated by chapter 17.02B; and (b) Include areas of prime soils identified by NRCS.
- **Site lay-out.** The location of the development, parking, landscape screening and buffers shall meet the requirements of chapter 17.03 or chapter 17.06, as applicable and following standards: (a) Locate development to minimize the amount of disturbance to natural features and landscape; and (b) Development shall be located so as to minimize the amount of agricultural land loss and shall not be located on prime soils.
- **Lighting.** Shall comply with the requirements of chapter 17.03 or chapter 17.06, as applicable.
- **Building design.** Shall comply with the applicable non-residential design guidelines set forth in chapter 17.03 or chapter 17.06, as applicable, except that for essential public facilities the approving authority may waive design



requirements as determined by the approving authority to be necessary and appropriate to the type and location of the essential public facility.

- **Surface water drainage.** Shall meet the requirements of chapter 11.03 and special attention shall be given to proper site surface drainage so that site drainage will enhance groundwater recharge and not adversely affect downstream properties and the site.
- **Utility services.** Wherever feasible, electric, telephone, and cable utility lines shall be underground.
- **Advertising features.** The size, location, design, color, texture, lighting, and materials of all exterior signs and outdoor advertising structures or features shall be harmonious with the design of proposed and existing buildings and structures and surrounding properties and shall comply with the requirements of chapter 17.03 or chapter 17.06, as applicable.
- **Traffic and circulation.** Shall comply with the requirements of chapter 17.03 or chapter 17.06, as applicable.

County staff reviewed the proposal and determined that it would satisfy these criteria. Specifically, County staff determined that:

- The application meets open space requirements and all critical areas requirements.
- Development is located to minimize the amount of agricultural land loss and shall not be located on prime soils.
- The proposal meets all open space, site coverage, and setback requirements in IC 17.03.060 and 17.03.180.S. The proposal is 25 feet from the eastern property boundary. All structures are greater than five feet from the side and rear property lines. The church building is existing non-conforming in that it does not meet the current state highway setback requirement of 30 feet, however, the right-of-way for State Route 20 has been widening through the adjoining curve since the building's construction. The Rural zone does not have an established site coverage limitation on parcels smaller than five acres. The subject parcel is approximately 1.96 acres, and therefore no site coverage standard shall apply.
- Surface water drainage will not adversely affect downstream properties and the site. The proposal has been reviewed by Public Works for compliance with chapter 11.
- No new signage is currently proposed or approved. Any proposed future signage must comply with ICC17.03.180.R, and the Applicant would be required to obtain the necessary building permit and certificate of appropriateness for the sign.
- The Planning Department and Public Works have determined the existing parking spaces provide an adequate number for proposed off-street parking facilities in accordance with ICC 17.03.180.Q.2. Proposed drainage adequately disperses surface water, as reviewed, and approved by Island County Public Works. Location and design of entrances were reviewed by Public Works. Parking lots in

*Findings, Conclusions, and Decision*  
*Island County Hearing Examiner*  
*South Whidbey Homeless Coalition Shelter*  
*Site Plan Review*  
*No. SPR 241/21*



the Rural zone may be gravel. Access and circulation were reviewed and approved by Island County Public Works in accordance with 17.03.180.Q.7. Design minimizes interference with traffic flow on adjacent roads and does not interfere with access to adjacent and nearby properties.

- The existing building and parking lot has several exit lightings for safety. The proposal would not include any additional lighting. The only building alteration would be a 240 square foot addition on the existing building that would house the fire suppression system and be constructed in the same style as the existing building.

*Exhibit 1, Staff Report, pages 5 through 6; Exhibit B.*

18. As detailed above, the County's 2020 ZCI Decision (No. 234/20 ZCI) contains additional requirements for SPR approval specific to emergency night-to-night shelters. County staff reviewed the proposal and determined that it would satisfy these requirements. The requirements are listed below, under relevant section headings, together with applicable information provided by the Applicant and/or County staff. *Exhibit E.*

#### *Location*

19. All emergency night-to-night shelters located farther than half a mile from the Urban Growth Area (UGA) must provide a location alternatives analysis consistent with the provisions of ICC 17.93.180.CC.3.c. As part of that analysis, an applicant must document how the shelter's function or service area is best served by a location outside of an Urban Growth Area. The guidelines for the analysis of alternative sites are listed below (in bold), together with the Applicant's responses:

- **An evaluation of the site's capability to meet basic siting criteria for the proposed facility, such as size, physical characteristics, access, and availability of necessary utilities and support services.** The 1.94-acre allows for neighbors to have privacy but is not too large as to be cost prohibitive to purchase or a burden to maintain. The open field to the south would act as a buffer between the site and neighboring properties. Additional vegetative barrier can be planted upon request to provide additional screening. The 3,960 square foot building suits the Applicant's needs; the large open space room has room for 15 bunk beds. The Haven requires a minimum of 2,800 square feet to operate. The facility is well insulated, energy efficient, and quiet indoors, despite being in Noise Zone 3. Though close to the Navy's Outlying Fields, the site is outside the Accident Potential Zone (APZ). The building is handicap accessible and has existing ADA accessible bathrooms. The existing septic system was built to handle 500 gallons a day. The existing group A well system has adequate flow and a 2000-gallon back-up domestic water shortage tank that exceeds the needs of the shelter and neighbors who share the well. The Washington State Department of Health certified that the well is a group A public well system. The building

*Findings, Conclusions, and Decision*  
*Island County Hearing Examiner*  
*South Whidbey Homeless Coalition Shelter*  
*Site Plan Review*  
*No. SPR 241/21*



would require a fire suppression system. The Applicant has raised the funds and signed a binding contract with a professional company to design and install the system.

- **An explanation of the need for the proposed facility in the proposed location.** Most would agree that Island County requires a permanent night-to-night shelter for those in need. The subject parcel is the only location presenting itself as available and has the advantages of centrality, discussed in further detail below. The site has low desirability for residential uses since it is adjacent to the main island highway, across from a shooting range and proximal to the Navy's Outlying Field (OLF) operations. Although all guests to The Haven must register through the portal in Oak Harbor, the Applicant's staff and volunteers live in all parts of Whidbey Island.
- **The site's relationship to the service area and the distribution of other similar public facilities within the service area or jurisdiction, whichever is larger.** The proposed location just outside of Coupeville is situated conveniently in a central location. The site is less than a five-minute drive to many of the county's services in Coupeville, including the Island County Housing Support Center, where individuals must be present to be considered for housing services in Island County, and Island County Human Services, which provides case management, opioid outreach services, and mental health services. The Coupeville area also contains a hospital, courthouse, Sunrise Services, which provides addiction support, and Compass Housing, which provides mental health support. The site is less than a mile from Ryan's House for Youth, a shelter for individuals experiencing homelessness aged 18-23.
- **A general description of the relative environmental, traffic, and social impacts associated with locating the proposed facility at the alternative sites which meet the Applicant's basic siting criteria. The Applicant shall also identify proposed mitigation measures to alleviate or minimize significant potential impacts.** The site is adjacent to State Route 20, the busiest road on Whidbey Island. The Applicant operates its own vans, which typically make two runs in the evening and two runs in the morning. Some guests who are employed and prequalified to bring a vehicle to the shelter, are permitted to drive to the shelter (typically two to three vehicles). All other guests arrive and depart via the shelter van. The only other vehicles that would be associated with the operation would be staff and volunteers (approximately four to six vehicles). Compared to other businesses in the area, including the OLF, a gun range, Ryan's House, Pacific Rim Institute, the County waste transfer station, and Island Transit, the facility would likely be on the low end of the generated vehicle traffic volume.
- **The application shall also briefly describe the process used to identify and evaluate the alternative sites.** The search to find and secure an affordable and appropriate site for a permanent overnight shelter occurred over several years.



The Applicant began its search in the City of Oak Harbor. The Oak Harbor Mayor's office and Oak Harbor Planning Department indicated during separate consultations that there were no current city ordinances in place that would allow for a permanent homeless shelter within the city's limits, and it would take several years to change city ordinances to permit it. Oak Harbor did support the issuance of temporary permits of 3-months in length at designated churches. Over time it was clear that the extensive temporary use of churches and their continued availability were not sustainable. The Applicant was unable to find an appropriately sized building and lot, at any price, close to Oak Harbor. Searches for commercial buildings available on parcels 2.5 acres or larger in Island County yielded only three results: Lam Links Golf Course, a 27.96-acre parcel containing a 4,268 square foot building for a price of \$975,000; 107 South Main Street in Coupeville, a 3.17-acre lot containing a 30,272 square foot building for a price of \$6,050,000; and Dancing Fish Vineyards in Freeland, a 6.18-acre parcel containing a 4,788 square foot building for a price of \$2,450,000. All of these locations were far outside the price range of the Applicant. When the subject property was identified, the Applicant petitioned the County for a ZCI. When a favorable AZI was issued, the Applicant purchased the property for \$409,000 with a grant from the Washington State Department of Commerce.

*Exhibit A, Staff Report, pages 5 through 7; Exhibit B.*

#### *Parcel Size*

20. Parcels 2.5 acres or greater in size are preferred for emergency night shelters for 13-30 people. For parcels less than 2.5 acres, the Applicant must provide justification that demonstrates how neighboring properties would not be affected by noise, lighting, glare, unsightly structures or parking areas, or other nuisances. The subject property is 1.94 acres in size. The Applicant provided the following justification demonstrating how neighboring properties would not be affected by noise, lighting, glare unsightly structures or parking areas, or other nuisances:

- **Concerning Noise:** The people who are guests at The Haven come for a good night's sleep in a warm, safe, and dry place, so they are generally very quiet. The building itself, which fully complies with the standards for construction in OLF Noise Zone 3, is very well insulated for sound. There is no coming and going for guests once admitted and, except for a couple short and supervised smoke breaks during the early evening which are confined to a limited designated area, no activity occurs outside the building. Staff are instructed to keep guests quiet so as not to disturb or be a nuisance to neighbors. Lights out are 9:00 p.m. [Note: The Haven has offered temporary shelter since 2017 at three churches in Oak Harbor, namely, the Methodist Church, the First Reform Church, and the Christian Reform Church. WHC has consistently maintained good relationships with these host churches and their neighbors].



- **Concerning Light and Glare:** This property was developed in the 1990s as a church on a 1.94-acre corner parcel. The site development was very well thought out. There is vegetative screening along the east side of the property and the building is set back to the furthest west as possible to allow for significant distance between the neighboring residence and the Main Building on the property. Over the past 20 years, the landscaping has matured beautifully; one cannot see the home from the church vice versa. The building has a couple of exit lights, and the parking lot has a few lights for safety, but the design was carefully chosen and tastefully installed to impose minimal impact on the neighbors. There is no plan for additional lighting.
- **Concerning Unsightly Structures or Parking Areas:** The two buildings on the property are in very good repair, and architecturally appealing. The 240 square foot addition to the building (required to be constructed for the fire suppression system) will be constructed in the same style and painted in the same manner as the existing building. The parking lot is well designed with numerous decorative plantings and shade trees. Access to personal vehicles would be strictly limited. Since all of the guests coming to The Haven must be screened and registered in Oak Harbor and then most transported to this facility in WHC vans, the parking lot would be accessed by just a few vehicles per day. This is certainly less volume than the original church use, with dozens of cars coming for a meetings and religious gatherings.
- **Concerning Complaints:** The Haven seeks to address all incidents promptly with the involved parties. Should any community member have a concern they would like to raise, they should feel free to call either of the two phone numbers for assistance (both to be permanently posted on The Haven's entrance door: WHC's 24/7 phone (hot) line (360-900-3077); and The Haven office line (360-929-733) where staff can be reached from 5:00 p.m. until noon the following day). Any complaint would be listened to with respect, details would be gathered and recorded (what, what, where, when), and involvement of others will be pursued, if necessary. Responses may include outreach, referrals, or mutual discussion about how to best change procedures or how WHC can improve its service provision. WHC staff participate in mandatory de-escalation trainings, have staff policies in place, and The Haven maintains strict behavior guidelines for its guests. For in-house issues, guest infractions may include separation from services for a determined period. WHC trained staff know when to call the authorities for back-up and have enjoyed a good ongoing relationship with local law enforcement.

*Exhibit A, Staff Report, pages 3 through 5; Exhibit B.*



#### *Utilities*

21. Emergency night-to-night shelters in the Rural zone are not permitted if the extension of public sewer service is required. The facility must be designed so that on-site sewage disposal systems are adequate to support the facility. Emergency night-to-night shelters must also be served by public water systems. *ZCI 234/20, page 7*. The proposal would not require extension of public sewer facilities. The Applicant has applied for a septic system permit with Island County Environmental Health. The site is served by public water system 0055X, The Haven Well System, a group A water system located on-site. *Exhibit A, Staff Report, page 7; Exhibit B*.

#### *Access*

22. Emergency night-to-night shelters shall take primary access, in order of priority, off a county arterial, county collector road highway, or state highway. An access permit may be required. *ZCI 234/20, page 7*. Access permit PW21-0483 has been issued for the site for ingress and egress off Morris Road, a county collector road. *Exhibit A, Staff Report, page 8; Exhibit B*.

#### *Food Service*

23. Food service for guests and staff of the shelter is permitted in conjunction with an emergency night-to-night shelter, subject to the provisions of Title VIII of Island County Code for health, welfare, and sanitation. *ZCI 234/20, page 7*. No food service has been proposed as part of the project. *Exhibit A, Staff Report, page 8; Exhibit B*.

#### *Facility Operations*

24. Review of applications for emergency night-to-night shelters should also address aspects of facility operations. The requirements are listed below (in bold), together with the Applicant's responses:

- **Transportation of guests to and from the site:** The Whidbey Homeless Coalition is a registered 501c3. As such, we secure our funding through a variety of sources including government grants, grants from foundations, fundraising events and donations from private individuals, faith-based organizations, and private businesses. These funds are how we pay for all aspects of our organization's programming including transportation. Our guests have a designated check-out time in the morning where they are bussed back to the point of registration or to Spin Café, which provides daytime activities for our guests.
- **Hours of operation:** Our shelter is in operation from 6:30 p.m. to 7:00 a.m. from Monday to Sunday. We also have daytime office staff that can be reached from 8:00 a.m. to 5:00 p.m. as well as an after-hour number where we can be contacted outside normal business hours.
- **Staffing of the facility:** We employ ten staff members. At any given time, there is a minimum of one trained staff on site. All staff go through conflict de-



escalation training, mental health first aid training, trauma-informed care training, AED, CORE, and several other relevant trainings.

- **Proximity of the shelter to services for the guests:** The location is actually quite a bit closer to services as most county services are based in Coupeville. This would take what would have been a 15-to-20-minute drive, longer if using public transport, and make it less than a five-minute drive. The proposed location just outside of Coupeville is situated conveniently in a central location. It provides convenient access to the Island County Housing Support Center where individuals must be present to be considered for housing services in Island County. Case management, opioid outreach services, and mental health services are also provided through Island County Human Services, which is in the City of Coupeville. In addition to these services, the Coupeville area also is where the hospital, courthouse, Sunrise Services (addiction support), and Compass Housing are situated.
- **Noise management:** We have found that the building is quite soundproof. With no glazing it is quite effective at minimizing the effect of noise and meets the high noise abatement standard for being proximal to OLF. However, if there is a need to add additional insulation for soundproof purposes, we are happy to oblige. Guests are only permitted outside the building for two supervised smoke breaks. At these times, staff will be instructed to keep guests quiet so as not to disturb neighbors. We are also willing to work with neighbors to provide natural barriers (e.g., tree and shrub plantings) that could help provide privacy and/or block nuisances that the neighbors may identify.
- **Management of complaints from neighboring residents or businesses:** We seek to address all incidents promptly with the involved parties. Guest infractions may result in separation from services for a determined period of time. In addition to our office phone number 360-900-3077, we also have a number directly for The Haven, 360-929-0733, where we can be reached if the community had a concern they would like to raise. We have enjoyed a good ongoing relationship with law enforcement.

*Exhibit A, Staff Report, pages 8 and 9; Exhibit B.*

#### Written Comments

25. As noted above, the County received a substantial number of public comments on the proposal, both from area residents opposed to and in support of the project. Comments opposing the project generally related to the following topics:
- **Site Location:** Comments on this topic expressed concerns that the proposal would be located in a remote, rural location. Many commenters noted that the proposed use would be more appropriate in Oak Harbor. For example, Trenna Atkins, Verleen and Ron Boyer, Robert Fenstermacher, Wayne Flaaten, Dottie Kingrey Hunt, Becky Hart, Judy Thorpe, Charles McDonald, Erica McDonald,



Julie and George Lloyd, April Miller, Kim Robinett, Jill Zitnik, Curtis Coyne, Mike Schaeffer, Carol Ann Leonessa, Steve Foster, Philip Hestbeck, Christopher and Barbara Bradley, and Bethany Hestbeck expressed concerns that the shelter would not be located near services relevant to shelter guests. Wayne Flaaten, Michael Thorpe, Robert and Pamela Thompson, Bethany Hestbeck, and Randy and Dave Furnas raised concerns that proposal was more than one half-mile from the urban growth center. Several commenters raised concerns that the proposed use would be near a gun club.

- **Crime:** Comments on this topic expressed concerns that the proposal would lead to increased crime in the area. For example, Robert Fenstermacher, Kim Robinett, William and Monica Haselbauer, Zill Zitnik, Edwin Hilkey, Robert and Jeanette Daniel, Steve Hutchinson, Carol Ann Leonessa, Philip Hestbeck, Al Lindell, Judy Thorpe, Bethany Hestbeck, Michael Sadler, and Catherine Wilson expressed concern that the proposal would lead to increased drug use in the area and increased theft, trespassing, squatting, and break-ins on neighboring properties. Sarah Wescott, Michael Thorpe, April Miller, Wayne and Lynn Flaaten, Curtis Coyne, David Penrod, Al Olsen, Michael Sadler, and Alana Hutchinson raised concerns that law enforcement is currently understaffed and would be unable to adequately respond to issues at the proposed shelter.
- **Noise:** Comments on this topic expressed concerns that shelter residents would be negatively impacted by noise in the area. For example, Wayne Flaaten, Michael Thorpe, Trenna Atkins, Judy Thorpe, Julie and George Lloyd, Kim Robinett, Curtis Coyne, Steve Hutchinson, and Alana Hutchinson raised concerns that the site is near the Navy Outlying Field and shelter residents would be subjected to operation noise pollution.
- **Facility Operations:** Comments on this topic expressed concerns about the facility's operations. For example, Sarah Wescott, David Penrod, and Alana Hutchinson expressed concerns that staffing at the facility would be inadequate, shelter guests would not remain inside the shelter, and individuals ejected from the facility would wander the surrounding area.
- **Building Design:** Comments on this topic expressed concerns that the existing building was designed as a church and was not compatible with the proposed use.
- **Parcel Size:** Comments on this topic expressed concerns that the proposal would be located on a parcel less than 2.5 acres in size.
- **Adequacy of Application Materials:** Comments on this topic expressed concerns that the Applicant's application materials contained inaccuracies and did not adequately address alternative site locations.
- **Utilities:** Comments on this topic expressed concerns that the well system and on-site septic system were inadequate to handle the proposed use.
- **Property Value:** Comments on this topic expressed concerns that the proposed use would lower property values in the area.



- **Pedestrian Safety:** Comments on this topic expressed concerns that the proposed use is near a busy highway that shelter residents may travel on.

*Exhibit A.i; Exhibit A.j; Exhibits H through V.*

26. As noted above, several members of the public submitted comments expressing their support for the proposal. Comments supporting the project generally related to the following topics:

- **Community Need:** Comments on this topic expressed the need for a permanent emergency night-to-night shelter in the area. Several commenters also commented on the difficulty of maintaining temporary shelters, though there had been very few problems with guests at the temporary locations.
- **Building and Location:** Comments on this topic stated that the building and location of the subject site would be suitable for the proposed use.

*Exhibit A.i; Exhibit A.j; Exhibits H through V.*

27. In addition to the individual written comments it received, the County also received two petitions, a petition opposing the proposed use, with about 430 signatories, and a petition in favor of the proposal, with about 450 signatories. *Exhibit A, Staff Report, page 10; Exhibit A.k; Exhibit O.*

#### Testimony

28. County Planning and Community Development Department Senior Planner John Lanier testified generally about the proposal and whether it would meet the requirements for SPR approval under the County code. He explained that the Applicant sought a Zoning Code Interpretation (ZCI) to determine whether an emergency night-to-night shelter could be located in a Rural zone and gave an overview of the ZCI process. He commented that about 20 people were expected to use the shelter on average, with up to 30 guests during inclement weather. Mr. Lanier noted that both the Ebey's Landing National Historical Reservation Design Review certificate approval and the SEPA Determination of Nonsignificance had not been appealed. *Testimony of Mr. Lanier.*
29. Applicant Representative Shellie Moore gave an overview of Whidbey Homeless Coalition (WHC), which formed in 2014 to address the growing issue of homelessness on Whidbey Island. She emphasized that WHC has been working with communities in the north end of the island for five years and has a good relationship with the neighborhoods and law enforcement. She explained that WHC needed a permanent shelter, noting the difficulty WHC and the church had with setting up the shelter each night and packing it up each morning. Ms. Moore explained that WHC could afford the subject parcel because it was undesirable for other uses due to its proximity to the highway and a gun club. Ms. Moore noted that Washington State has mandated that counties establish emergency shelters. She commented that WHC has been diligent in addressing public



comments via email and at community meetings. She noted that Central Whidbey Fire and Rescue has toured the site has worked with the Applicant to develop a fire suppression system. She explained the guests would only be at the site overnight and only staff would be on-site during the day. *Testimony of Ms. Moore.*

30. Applicant Representative Faith Wilder briefly described WHC's process of looking for a space to permanently host the shelter, noting that WHC had searched exhaustively for rental spaces in cities and looked at more than nine properties. She explained that modifications of existing spaces to conform with the proposed usage would have cost tens of thousands of dollars. Ms. Wilder noted that WHC has formed out of open community meetings and many Whidbey Island community members and organizations donate time and money to the organization, which serves the vital function of providing emergency housing for community members in need. *Testimony of Ms. Wilder.*
31. Julie Lloyd testified that she lives on an historic farm near the subject property and has concerns about community safety, including increased trespassing and breaking and entering into adjacent properties. She asked how WHC would prevent trespassing onto adjacent properties. She noted that the subject property is adjacent to a dangerous stretch of property and expressed concerns for pedestrian safety. She also raised concerns about the project's proximity to Ryan's House and the increased concentration of emergency shelter beds in the area. Ms. Lloyd expressed concerns that people would not know about the facility's portal system and would show up at the property and not be able to stay there overnight. *Testimony of Ms. Lloyd.*
32. George A. Lloyd testified that he owns a neighboring farm and expressed concerns about increases in crime, including theft, break-ins, and trespassing, in the area. He also raised concerns about impacts to Ebey's Landing National Historical Reservation and historic farmsteads. He expressed concerns that the proposed use is not compatible with the site's location. He raised concerns that individuals who had been removed from the shelter would get stranded in the area. *Testimony of Mr. Lloyd.*
33. Michael Thorpe, representing himself and Island County Citizen Alliance, expressed opposition to the proposed site use. He raised concerns that the proposed use was not compatible with the Comprehensive Plan or with uses in the surrounding area and would not benefit the general public. He expressed concern that the proposed use was subject to spot zoning, did not meet the 2.5-acre parcel requirement, and did not meet the definition of an essential public facility. He also raised concerns that the septic system was inadequate and law enforcement in the area is understaffed. Mr. Thorpe expressed concerns that the issuance of the SEPA Determination of Nonsignificance prevented public input and that the alternatives analysis was inadequate. He also raised concerns about the impact of flight operations and noise on the site. *Testimony of Mr. Thorpe.*



34. Traci Clements testified about her concern that properties in the area do not have fences and have unsecured outbuildings. She raised concerns about shelter guests complying with WHC's rules. She also expressed concerns about the site's location, including its proximity to the highway and its distance from relevant services. *Testimony of Ms. Clements.*
35. Judy Thorpe expressed concerns about crime impacts, the proposal's proximity to a gun range, and about the potential for mental health issues and criminality amongst the shelter population. *Testimony of Ms. Thorpe.*
36. Bobbi Laurenson testified that she has been driving a van for WHC since 2017 and never felt threatened or had seen inappropriate behavior. She noted that the majority of shelter residents are from the island and guests are registered and vetted. She clarified that no guests are left at the shelter site in the morning and all individuals must take the shuttle back. *Testimony of Ms. Laurenson.*
37. Lisa Connolley, a minister with the Methodist Church, testified that she had experience working with shelters and it was common for churches to be converted into shelters. *Testimony of Ms. Connolly.*
38. B. Jason Brent testified that he had been driving with WHC and working overnight at The Haven since 2017. He commented that he had never seen residents fighting or heard complaints from neighbors in previous hosting locations. *Testimony of Mr. Brent.*
39. Mary Williford testified that WHC stepped up to assist people in need in the northern part of the island. She noted that the shelter has strict rules for shelter guests. *Testimony of Ms. Williford.*
40. George Saul testified that he is in favor of approving the application. He explained that he served as a nighttime volunteer in temporary locations, and had only positive experiences, noting that shelter guests were appreciative of being put in touch with services. *Testimony of Mr. Saul.*
41. Liz Wassink testified that she lives a half-mile from the site and is in favor of approving the application. She noted that she is a member of a church that served as a temporary host, and she never heard of any problems or complaints from neighbors. *Testimony of Ms. Wassink.*



42. Henry Nydam testified that he is a member of church that served as temporary host and had concerns before the church was used a shelter that never materialized. He noted that he has volunteered as a van driver for WHC and never had any issues. He also explained that he has worked the grounds for a host church and never saw any people hanging around the parking lot or in the adjacent woods. *Testimony of Mr. Nydam.*
43. Della David testified that at a nearby dog park, three cars have been broken into over the last three years. She expressed concerns that the proposal could lead to increased theft and decreases in property value. She also raised concerns about pedestrian safety on surrounding busy roads. *Testimony of Ms. David.*
44. Sandra Duerksen asked to review the shelter's screening criteria. She testified about her concerns that service facilities in Coupeville would be closed during the shelter's hours of operation. She also expressed concerns that law enforcement is understaffed, and the proposed use is not appropriate for the site's location. *Testimony of Ms. Duerksen.*
45. Kelly Burke testified that she lives near the subject parcel and is in favor of the proposed use. She noted that she is part of a church group that works with The Haven and has never had a negative experience. *Testimony of Ms. Burke.*
46. Rufus Rose raised concerns that the subject site is located in the accident potential zone for the adjacent airport. *Testimony of Mr. Rose.*
47. Katie Watkins, a former president of the WHC board, testified that she is in favor of approval. She emphasized that during her five years with WHC, the organization explored every permanent shelter opportunity, including rental options. *Testimony of Ms. Watkins.*
48. Vivian Rogers Decker testified that she is a previous board member of WHC, lives within a mile of the subject site, and is in favor of the proposal's approval. She noted that the shelter would always need a permanent location. *Testimony of Ms. Decker.*
49. Applicant Representative Baz Stevens noted that the existing building exceeds flight zone noise abatement requirements. *Testimony of Mr. Stevens.*

#### Staff Recommendation

50. Mr. Lanier testified that County staff recommends approval of the proposal, with conditions. Ms. Moore testified that the Applicant agrees with the proposed conditions and would adhere to them. *Exhibit 1, Staff Report, pages 3 through 11; Testimony of Mr. Lanier; Testimony of Ms. Moore.*



## CONCLUSIONS

### Jurisdiction

The Hearing Examiner is granted authority by the County Commissioners to receive and examine available information, conduct public hearings, and prepare a record thereof, and enter decisions on applications for Type III Site Plan Reviews. *ICC 16.13.110.B.4; ICC 16.19.040, Table A and Table B; ICC 16.19.180.*

### Criteria for Review

Except for essential public facilities, no application for a non-residential use in the rural, rural residential, rural agriculture, rural forest, or commercial agriculture zones shall be approved unless a specific finding is made that the proposed conditional use is appropriate in the location for which it is proposed.

The criteria for making this determination are:

- A. The proposed use shall not result in a significant adverse environmental impact that cannot be mitigated by reasonable mitigation measures.
- B. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.
- C. The proposed development/use is one conditionally permitted within the subject zone and complies with all of the applicable provisions of this chapter and all other applicable regulations, including prescribed development/performance standards and all applicable development standards and design guidelines;
- D. The subject site is physically suitable for the type, density and intensity of the use being proposed;
- E. The location, size, design and operating characteristics of the proposed development/use would not be detrimental to the neighborhood, nor be detrimental to the public interest, health, safety, or welfare of the County in conformance with the standards of this chapter, chapters 17.02B, and 17.03.
- F. The proposed use and its design fulfill the definition of rural character as defined in chapter 17.03.
- G. Proposals within the rural agriculture or commercial agriculture zones shall not be located on prime agricultural soils or interfere with agricultural use of the land.

*ICC 16.15.060.*



The municipal code also contains criteria for approval of site plan review applications. Specifically:

1. Open space. Provide open space in the amount required by chapter 17.03 or chapter 17.06, as applicable. The location, use and design shall meet the following standards:
  - a. Include critical areas designated and regulated by chapter 17.02B; and
  - b. Include areas of prime soils identified by NRCS.
2. Site lay-out. The location of the development, parking, landscape screening and buffers shall meet the requirements of chapter 17.03 or chapter 17.06, as applicable and following standards:
  - a. Locate development to minimize the amount of disturbance to natural features and landscape;
  - b. Development shall be located so as to minimize the amount of agricultural land loss and shall not be located on prime soils.
3. Lighting. Shall comply with the requirements of chapter 17.03 or chapter 17.06, as applicable.
4. Building design. Shall comply with the applicable non-residential design guidelines set forth in chapter 17.03 or chapter 17.06, as applicable, except that for essential public facilities the approving authority may waive design requirements as determined by the approving authority to be necessary and appropriate to the type and location of the essential public facility.
5. Surface water drainage. Shall meet the requirements of chapter 11.03 and special attention shall be given to proper site surface drainage so that site drainage will enhance groundwater recharge and not adversely affect downstream properties and the site.
6. Utility services. Wherever feasible, electric, telephone, and cable utility lines shall be underground.
7. Advertising features. The size, location, design, color, texture, lighting, and materials of all exterior signs and outdoor advertising structures or features shall be harmonious with the design of proposed and existing buildings and structures and surrounding properties and shall comply with the requirements of chapter 17.03 or chapter 17.06, as applicable.
8. Traffic and circulation. Shall comply with the requirements of chapter 17.03 or chapter 17.06, as applicable.

*ICC 16.15.080.A.*

ICC 16.15.080 also provides that no application for site plan review shall be approved unless it meets the requirements of Titles 8, 11, 13, and 17 ICC pertaining to such development. *ICC*

*Findings, Conclusions, and Decision  
Island County Hearing Examiner  
South Whidbey Homeless Coalition Shelter  
Site Plan Review  
No. SPR 241/21*



16.15.080.A. ICC 17.03.180.P contains requirements intended to address applicable standards for building design, landscaping, and screening in the Rural zone, as detailed above. Moreover, as detailed above, the County's 2020 ZCI decision contains requirements that apply to emergency night-to-night shelters, including specific requirements related to location, parcel size, structures, noise and light management, site improvements, and facility operations.

The criteria for review adopted by the County Commissioners implements the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed developments to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

#### Conclusions Based on Findings

1. **With conditions, the proposed use would meet the specific criteria for a non-residential conditional use in the Rural zoning district under ICC 16.15.060.** The subject parcel is zoned Rural. The site has been previously used as a church and would be used as emergency night-to-night shelter operated by Whidbey Homeless Coalition (WHC). WHC has been operating a temporary emergency night-to-night shelter in three churches on a rotating basis since 2017. An emergency night-to-night shelter is allowed as a conditional use (Type III SPR decision) in the Rural zone, per Zoning Code Interpretation (ZCI) 234/40. The subject parcel is surrounded by properties zoned for rural development. The County provided reasonable notice and opportunity to comment on this phase of the proposal, including the open record hearing that occurred before the Hearing Examiner.<sup>2</sup>

At the outset, it must be noted that community displeasure, alone, cannot be the basis of a permit denial. *Kenart & Assocs. v. Skagit Cy.*, 37 Wn. App. 295, 303, 680 P.2d 439, review denied, 101 Wn.2d 1021 (1984). It is important to stress that, in these circumstances, the County received numerous comments from the public both in support of and opposing the project—as evinced by both petitions, one for (Exhibit O) and one against (Exhibit A.k) the proposal, each receiving over 400 signatures.

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<sup>2</sup> The Hearing Examiner does not mean to suggest that the process that ultimately led to the Type III SPR hearing was at all times reasonable or without serious problems. The lengthy block quote from the Hearing Examiner's earlier appeal decision concerning a previous iteration of this proposal was included to convey otherwise. Moreover, the Hearing Examiner has serious concerns about the zoning code interpretation process under ICC 17.03.190 as such process essentially allows the County's Planning Director to temporarily amend the use tables of the zoning code, on a piecemeal basis, without input or oversight from the County's Board of Commissioners, let alone a public hearing. Determining the types of uses that are allowed within various zoning districts is precisely the type of legislative and/or political process that the elected members of the Board are best equipped to address. Nevertheless, the Hearing Examiner lacks authority to invalidate provisions of the municipal code or deny a permit based on his own such concerns.



Members of the public opposing the project raised concerns about: the proposed site being located far away from applicable services for those that would use the shelter; the site's proximity to a nearby gun range and airport and the potential risks these adjacent uses may pose to shelter guests; the potential for increased crime; that area law enforcement agencies are understaffed; pedestrian safety on the adjacent state highway and the potential risks this may pose to shelter guests; impacts to area property values; the inadequacy of the parcel's size; and the building's compatibility with the proposed use as an overnight shelter. Members of the public in favor of the proposal commented about the necessity of a permanent emergency night-to-night shelter, that the location and building suit the proposed use, and there have been few problems at the shelter's temporary locations.

In terms of the proposal, shelter guests would be vetted and driven from Oak Harbor every evening and driven back every morning via vans operated by the Applicant. Vehicles in the parking lot would be limited to four to six staff vehicles and two to three shelter guest vehicles that would be preapproved. Paid, trained staff would be on-site at all times and shelter guests would be required to comply with shelter rules. The only outside activity would be two supervised smoke breaks. This proposal would retain open space on-site and proposes no significant new structures, ground disturbance, intensification, clearing or grading. The only construction would be a 240-square foot addition to the main building that is required for the fire suppression system.

The County determined that the proposed use would not have an adverse impact on the environment and issued a Determination of Nonsignificance, that was not appealed. The conversion of the former church for the purpose of emergency night-to-night shelter would not result in greater traffic or environmental impacts than the previous use as a church. The Historic Preservation Commission reviewed and issued a Level C certificate of appropriateness. The proposal would be served by a group A public well system and an on-site septic system.

The County determined that the proposed emergency night-to-night shelter would not impose burdens on existing utilities, services, or infrastructure. The Hearing Examiner concurs with this assessment. Conditions of approval, as detailed below, are necessary to ensure compliance with the standards for SPR approval. *Findings 1 – 50.*

2. **With conditions, the proposal would meet the specific criteria for site plan review approval under ICC 16.15.080.** This proposal would retain open space and proposes no significant new structures, ground disturbance, intensification, or other construction. The only construction would be a 240-square foot addition to the main building that is required for the fire suppression system and would match the style and color as the existing structure. The building meets all setback requirements, except for the highway



setback requirement of 30 feet, however the highway has been widened since the church was built, making it a non-conforming structure. No evidence in the record suggests that there were significant issues associated with the reduced setback from the highway with the previous use of the site as a church and shelter activities on-site would be comparable (if not more limited and controlled) such that no significant impacts from the reduced setback are reasonably expected. No agricultural land is being removed by this project. Existing outdoor lights include building exit lighting and parking lot lights. There is no proposed additional lighting for this project. The proposal would be served by a group A public well system and an on-site septic system. The proposed development does not generate any greater need for utility services. Proposed drainage would adequately disperse surface water. There is no additional signage proposed. Any future signage must comply with ICC17.03.180.R, and the Applicant would be required to obtain the necessary building permit. A Transportation Concurrency Certificate (No. 100342021) was approved and access to the site is provided via Morris Road. A permit to access County right-of-way was approved for the location (PW21-0483). The internal circulation pattern identified in the site plan is anticipated to be adequate for safe and convenient circulation provided fire lines are unencumbered. Conditions, as detailed below, are necessary to ensure compliance with the standards for SPR approval.

*Findings 6 – 50.*

3. **With conditions, the proposal would comply with all other requirements applicable to an emergency night-to-night shelter, as required by the County's 2020 zoning code interpretation (No. 234/20 ZCI).** The proposed use is subject to additional standards for emergency night-to-night shelters pursuant to the former Planning Director's 2020 zoning code interpretation (No. 234/20 ZCI). County staff reviewed the proposed use for consistency with those standards and concluded it was consistent. The Hearing Examiner concurs with County staff's assessment. Washington State has mandated that counties establish emergency shelters for those in need. Members of the Applicant's staff and board as well as members of the public indicated that there is a need for this type of facility in the area. Vegetative screening and an open field to the south of the main building would act as a buffer between the proposed use and neighboring properties. Though close to the Navy's Outlying Field Operations, the site is outside the Accident Potential Zone and protected from overhead noise pollution. The 240-square foot addition would be constructed in the same manner and style as the existing building. The building is ADA accessible and contains ADA accessible bathrooms. The site would be served by a group A well system and an on-site septic system. The proposal would not require the extension of public sewer service and would be served by a public water system. The site contains building exit lights and parking safety lights. No other outdoor lighting is proposed. Existing structures would comply with landscape, lighting, signage, site coverage, and nonresidential design, landscape, and screening guidelines.



The Applicant searched for both rental and ownership options in Oak Harbor and in the areas outside the cities and were not able to identify an option that met their budget constraints and would be appropriate for their proposed use, until they located the subject parcel. The subject site is less than a five-minute drive from a hospital, courthouse, and housing, mental health, opioid outreach, and case management services in Coupeville. The Applicant operates its own van service and would transport shelter guests from Oak Harbor each evening after they are vetted. Each morning the Applicant would bus shelter guests back to Oak Harbor of Spin Café, which has daytime activities for shelter guests. Approximately two to three preapproved vehicles from guests may be anticipated on-site. Staff and volunteers would park at the site, adding approximately four to six vehicles to the site. Access to the site would be provided from Morris Road, a county collector road. Access, parking, and internal circulation have been reviewed and approved by Public Works.

Once guests arrive at the facility, there is no activity outside the building except for two supervised smoke breaks. Shelter staff are expected to keep guests quiet. No food service has been proposed as part of the project. The proposal would have two phone numbers that neighbors could contact concerning any concerns, including a 24/7 hotline. Shelter staff are trained in de-escalation techniques, trauma-informed care training, mental health first aid training, AED, CORE, and other relevant trainings. Conditions of approval, as detailed below, are necessary to ensure compliance with the standards for SPR approval. *Findings 1 – 50.*

### DECISION

Based on the preceding findings and conclusions, site plan review approval to allow for the conversion of a vacant church into an emergency night-to-night shelter for up to 30 guests, on a 1.94-acre property located at 331 W. Morris Road, in the Coupeville area of unincorporated Island County, is **APPROVED**, subject to the following conditions:

1. The work and construction authorized by this decision shall conform to and be limited to that shown on the Approved Plot Plan, dated July 1, 2022, except that minor substantive changes may be made in order to accommodate any modification requested by the Island County Building Official during the building permit review process.
2. The Applicant shall retain native and non-native vegetation.
3. The Applicant shall adhere to the conditions, recommendations, and requirements noted in the memo dated August 30, 2021, from Shawn Morris, Island County Environmental Planner.
4. The Applicant shall adhere to the conditions, recommendations, and requirements noted in the memo dated September 28, 2021, from Clea Barenburg, Island Public Health.

*Findings, Conclusions, and Decision*  
*Island County Hearing Examiner*  
*South Whidbey Homeless Coalition Shelter*  
*Site Plan Review*  
*No. SPR 241/21*



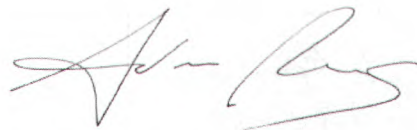
5. The Applicant shall adhere to the conditions, recommendations, and requirements noted in the memo dated June 29, 2022, from Cambria Edwards, Island County Public Works.
6. No signage is approved by this action. Any proposed future signage shall comply with the sign standards in Island County Code (ICC) 17.03.180.R and the Applicant would obtain the necessary building permit and certificate of appropriateness for the sign.
7. Parking shall be contained on-site and provided in conformance with applicable code, with this decision, and with the Conditions of Approval.
8. This decision shall not be construed to authorize work, development, construction, or other site modifications in excess of that which is specifically authorized by this decision. Excavation and site disturbing activities shall be strictly limited to the minimum necessary to accomplish the work authorized in this decision. Additional work to the above-mentioned parcel or modification of this decision would require a new and separate permitting process.
9. This project is required to comply with Washington State and Island County water quality standards, Washington State and Federal laws and regulations protecting archaeological sites and resources and all other pertinent laws, rules, regulations, codes, and ordinances.
10. The Applicant bears full responsibility of notifying site crews of all permit conditions and shall be held fully accountable for any activity which results in, on or off-site violations, hazards, or damages.
11. Erosion and Sedimentation Control Best Management Practices shall be employed throughout the approved development.
12. All construction and demolition debris shall be disposed of at a site approved by Island County Public Works Department.
13. No encroachment onto any legally existing easement or property line (or onto any required setback for such) is authorized by this decision beyond what is specifically shown and authorized herein. Island County Planning does not verify easements and property lines with the Island County Auditor's Office and with a licensed land surveyor, if necessary, prior to the start of development or construction. Encroachment, whether knowing or unknowing, would not be considered by Island County to be grounds for the permitting of said encroachment.

*Findings, Conclusions, and Decision  
Island County Hearing Examiner  
South Whidbey Homeless Coalition Shelter  
Site Plan Review  
No. SPR 241/21*



14. In the event that any ground-disturbing activities, other project activities related to this development, or in any future development uncover protected cultural materials (e.g., bones, shell, stone tools, beads, ceramics, old bottles, hearths, etc.), the actions as listed in the Inadvertent Archaeological and Historic Resources Discovery Plan for Island County must be followed. Compliance with all applicable laws pertaining to archaeological resources (Revised Code of Washington (RCW) 27.53, 27.44 and Washington Administrative Code (WAC) 25-48) and human remains (RCW 68.50) is required. Failure to comply with this requirement could constitute a Class C Felony.
15. The conditions of approval identified in this decision are subject to change if any information provided by the Applicant or their authorized representative is found to be inaccurate.
16. All development activities on and use of the subject parcel shall be in compliance with all applicable Washington State laws and Island County codes.
17. This Site Plan Review is conditioned upon compliance with the conditions of approval and any building permits for development of the site shall be obtained pursuant thereto being utilized within five years after the effective date of site plan approval per ICC 16.15.160.

**DECIDED** this 5<sup>th</sup> day of October 2022.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center



- A. Staff Report & Recommendation, dated July 1, 2022, with attachments
  - a. SEPA Determination of Nonsignificance, dated May 26, 2022
  - b. SEPA Environmental Checklist, dated May 1, 2022, with attachments
  - c. Review Letter Replies, dated October 15, 2021, and May 2, 2022
  - d. Site Plan
  - e. Parking and Landscape Plan
  - f. Comment from Shawn Morris, Island County Environmental Planner, dated August 30, 2021
  - g. Comment from Clea Barenburg, Island County Public Health, dated September 28, 2021
  - h. Comment from Cambria Edwards, Island County Public Works, dated June 29, 2022
  - i. Public Comment Matrix
  - j. Public Comments
    - 1. Comment from Trenna Atkins, dated September 21, 2021
    - 2. Comment from Verleen and Ron Boyer, dated September 18, 2021
    - 3. Comment from Phyllis Brett, dated September 20, 2021
    - 4. Comment from Faith Bryan, dated September 22, 2021
    - 5. Comment from Coralee Hill, dated June 17, 2021
    - 6. Comment from Sandra Duerksen, dated September 21, 2021
    - 7. Comment from Bruce and Kari Fee, dated September 26, 2021
    - 8. Comment from Robert Fenstermacher, dated September 22, 2021
    - 9. Comment from Wayne R. Flaaten, dated June 14, 2021
    - 10. Comment from Wayne R. Flaaten, dated September 22, 2021
    - 11. Comment from Dottie Kingrey Hunt, dated June 22, 2021
    - 12. Comment from Sarah Wescott, dated June 23, 2021
    - 13. Comment from Michael Thorpe, dated June 21, 2021
    - 14. Comment from Trenna Atkins, dated June 21, 2021
    - 15. Comment from Gail Pierce, dated June 18, 2021
    - 16. Comment from Julie Lloyd, dated September 3, 2021
    - 17. Comment from George Lloyd, dated May 6, 2021
    - 18. Comment from George Lloyd, dated May 6, 2021
    - 19. Comment from Gary Harle, dated September 22, 2021
    - 20. Comment from Becky Hart, dated September 21, 2021
    - 21. Comment from Mark Helpenstell, dated September 21, 2021
    - 22. Comment from Judy Thorpe, dated June 23, 2021
    - 23. Comment from Julie and George Lloyd, dated June 20, 2021
    - 24. Comment from Carol Ann Coyne Leonessa, dated September 22, 2021
    - 25. Comment from Julie and George Lloyd, dated September 21, 2021
    - 26. Comment from Parrish and Debbie Lockwood, dated September 24, 2021
    - 27. Comment from Charles McDonald, dated August 18, 2021



28. Comment from Erica McDonald, dated August 23, 2021
29. Comment from April D. Miller, dated September 22, 2021
30. Comment from Kim Robinett, dated September 21, 2021
31. Comment from Vivian Rogers Decker, dated September 28, 2021
32. Comment from Valerie Roseberry, dated September 21, 2021
33. Comment from Lori Taylor, dated September 22, 2021
34. Comment from Judy Thorpe, dated September 21, 2021
35. Comment from Michael Thorpe, dated September 21, 2021
36. Comment from Bob Wallin, dated September 21, 2021
37. Comment from Lachlan Waterbury, dated September 23, 2021
38. Comment from Wayne and Lynn Flaaten, dated May 4, 2021
39. Comment from Sarah Wescott, dated September 21, 2021
40. Comment from Pete and Tracy Wessel, dated September 22, 2021
41. Comment from William and Monica Haselbauer, dated June 15, 2021
42. Comment from Jill K. Zitnik, undated
43. Comment from Edwin L. Hilkey, dated May 21, 2022
44. Comment from Robert Cribbs, dated May 20, 2022
45. Comment from Curtis J. Coyne, dated May 17, 2022
46. Comment from Robert and Jeanette Daniel, undated
47. Comment from Robert Fenstermacher, dated May 23, 2022
48. Comment from Julie and George Lloyd, dated May 23, 2022
49. Comment from Steve W. Hutchinson, dated May 22, 2022
50. Comment from Judy Thorpe, dated May 25, 2022
51. Comment from Susan Branam, dated May 17, 2022
52. Comment from Mike Schaeffer, dated May 17, 2022
53. Comment from Carol Ann Leonessa, dated May 17, 2022
54. Comment from Unsigned, dated May 17, 2022
55. Comment from Steve Foster, dated May 17, 2022
56. Comment from Gary Hienhuis, dated May 19, 2022
57. Comment from Rich Anderson, dated May 17, 2022
58. Comment from Unsigned, dated May 19, 2022
59. Comment from Kelly Gustafson, dated May 19, 2022
60. Comment from Philip Hestbeck, dated May 24, 2022
61. Comment from Al Lindell, dated May 10, 2022
62. Comment from Julie and George Lloyd, dated May 21, 2021
63. Comment from Ed Scheinert, dated May 19, 2022
64. Comment from David Penrod, dated May 11, 2022
65. Comment from Christopher and Barbara Bradley, dated May 22, 2022
66. Comment from Wayne Flaaten, dated May 13, 2022
67. Comment from Michael Thorpe, dated May 9, 2022
68. Comment from Al Olsen, dated May 10, 2022



- 69. Comment from Mike G, dated May 17, 2022
- 70. Comment from Judy Thorpe, dated May 17, 2022
- 71. Comment from Robert and Pamela Thompson
- 72. Comment from Darryl and Pamela Carver, dated May 21, 2022
- 73. Comment from Bethany Hestbeck, dated May 16, 2022
- 74. Comment from Randy and Dave Furnas, dated May 24, 2022
- 75. Comment from Michael Thorpe, dated May 17, 2022
- 76. Comment from Larry and Lori Walker, dated May 17, 2022
- 77. Comment from Michael Sadler, dated May 19, 2022
- 78. Comment from Sarah Wescott, dated May 17, 2022
- 79. Comment from Alan Hutchinson, dated May 17, 2022
- 80. Comment from Catherine Wilson, dated May 18, 2022
- 81. Comment from David Young, dated May 17, 2022
- 82. Comment from Don Shanholtzer, dated May 10, 2022
- 83. Comment from Kay Blanford, dated May 18, 2022
- k. Petition to Oppose the Creation of a Homeless Shelter in Coupeville, received September 20, 2021
- l. Inadvertent Archaeological and Historic Resources Discovery Plan for Island County
- B. Application Materials, dated October 15, 2021, with attachments
- C. Site Data, dated
- D. Notice Materials
  - a. Notice of Application, undated
  - b. Notice of Application Affidavit of Mailing, dated August 30, 2021
  - c. Notice of Application Affidavit of Mailing, dated May 6, 2022
  - d. Affidavit of SEPA Determination of Nonsignificance Notice Mailing, dated May 26, 2022
  - e. Notice of Public Hearing, undated
  - f. Notice of Hearing Affidavit of Mailing, dated June 29, 2022
- E. Zoning Code Interpretation 234/20, dated December 15, 2020, with attachments
- F. Ebey's Staff Report EBY-21-037
- G. Green Site Plan Review Appeal Decision, dated April 4, 2022, with associated exhibits
- H. Public Comments received by July 15, 2022
- I. Comment from Julie Lloyd, undated
- J. Comment from Michael Thorpe, dated July 18, 2022, with attachments
- K. Comment from George Lloyd, undated
- L. Comment from Greg Anderson, dated July 18, 2022
- M. Comments from Jeff and Connie Spring, dated July 18, 2022, and Kelly Burke, dated July 18, 2022
- N. Applicant's Closing Statement, dated July 18, 2022
- O. Petition in Favor of Permit Approval, dated July 17, 2022

*Findings, Conclusions, and Decision*  
*Island County Hearing Examiner*  
*South Whidbey Homeless Coalition Shelter*  
*Site Plan Review*  
*No. SPR 241/21*



- P. Comment from Judy Thorpe, dated July 15, 2022
- Q. Comment from Don Shanholtzer, dated July 18, 2022
- R. Comment from Ron Boyer, dated July 16, 2022
- S. Comment from Judy Thorpe, dated July 15, 2022
- T. Comment from Tanya Stager Gran, dated July 25, 2022
- U. Comment from Michael Thorpe, dated July 25, 2022
- V. Letter from Shellie Moore, Applicant Representative, July 25, 2022