

INTRODUCTION

Swedish Medical Center (“Swedish”) applied for approval of a new Major Institution Master Plan (“MIMP”) for its Cherry Hill campus (the “Application”). On July 13, 14, 15, 16, and 17, 2015, the Hearing Examiner (“Examiner”) held a consolidated hearing on the proposed MIMP and consolidated appeals of the Final Environmental Impact Statement (“FEIS”). Appellant Washington Community Action Network (“Washington CAN”) was represented by Claudia Newman-Henry, attorney-at-law; other Appellants appeared pro se; the applicant was represented by Joseph A. Brogan and Steven J. Gillespie, attorneys-at-law; the property owner/development partner Sabey Corporation (“Sabey”) was represented by Jack McCullough, Courtney Kaylor, and Katie Kendall, attorneys-at-law; and the Director of the Department of Planning and Development (“DPD”) was represented by her designee, Stephanie Haines. Appellants were given the opportunity for reasonable cross-examination of witnesses who testified as experts on the MIMP. The Citizens Advisory Committee (“CAC”) was represented by Katie Porter, Chair. Three CAC minority reports were presented by Dylan Glosecki, David Letrondo, and Dean Paton. The record was held open until August 11, 2015 for post-hearing submittals by the parties. In a separate decision, the Hearing Examiner affirmed the Director’s determination that the EIS was adequate.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated. The DPD Director’s Report, Exhibit 26, includes discussion of the proposed MIMP relative to the requirements of the Chapter 23.69. Major Institution Overlay District.

Having considered the evidence in the file and having conducted a site visit on _____, 2015, the site, the Examiner enters the following conclusions and recommendation on the Application:

FINDINGS OF FACT

Background

1. Swedish Medical Center is a non-profit healthcare provider.
2. Hospital uses commenced at the Swedish Cherry Hill campus in 1910 with the establishment of Providence Hospital, and have continued uninterrupted ever since.
3. The Sabey Corporation is a for-profit development and property management company that owns approximately 40% of the property within the Cherry Hill Major Institution Overlay (MIO). Sabey leases 75% of its holdings within the MIO to Swedish. Most of the remainder is occupied by other major institution uses, including LabCorp and the Northwest Kidney Center.
4. Although it also provides clinical space and general health services, the main features of the Swedish Cherry Hill facility are its two highly specialized facilities—the Swedish Heart and

Vascular Institute and the Swedish Neuroscience Institute, which provide tertiary and quaternary treatment of cardiac disease, as well as neurological trauma, spine, cancers, and related disorders.

Site and Vicinity

5. The Cherry Hill campus is within the existing MIO, which encompasses approximately 13.33 acres, generally southeast of the intersection of 15th Avenue and Cherry Street. The easterly boundary of the 12th Avenue Urban Center Village is in 15th Avenue, adjacent to the MIO.

6. The Cherry Hill campus slopes down east-to-west, and less so north-to-south. The site is bounded on the north by Cherry Street, on the west by 15th Avenue, on the south by Jefferson Street, and on the east by shared property lines with private homes on 19th Avenue. The MIO's eastern boundary is mid-block between 18th and 19th Avenues.

7. The underlying zoning for the Cherry Hill MIO is a mix of Single-Family 5000 (SF-5000) on the eastern and western boundaries, with Lowrise 3 (LR-3) in the middle. To the west of the Cherry Hill MIO across 15th Avenue is the MIO for Seattle University (MIO-65 over LR3 within the urban village), which is in major institution use. Property bordering the MIO to the south, east, and northeast is SF-5000, largely in residential use with some small-scale retail to the south. Property bordering the MIO to the north is zoned LR3 and is largely in multifamily residential use, with some office uses.

8. Retail and commercial business in the 12th Avenue Urban Center Village are concentrated along 12th Avenue, three blocks west of the MIO. Several other major institutions are also located nearby, including Seattle University, Swedish First Hill, Harborview Medical Center and Virginia Mason Medical Center. In addition, the King County Juvenile Detention Facility is two blocks southwest of the MIO. Garfield High School is approximately five blocks east.

Current Major Institution Overlay

9. The Cherry Hill campus is located within an existing MIO under a MIMP approved in 1994. Existing facilities include a hospital with 200 beds, clinical space, and research, office, hotel and laboratory space. Kidney Centers Northwest operates a dialysis center, and LabCorp operates testing facilities within the campus. All told, total building area within the existing MIO is approximately 1.2 million square feet.

10. Primary access to the Cherry Hill campus is via Jefferson Street and Cherry Street. King County Metro bus stops are located adjacent to the campus. The main vehicular entrance (pickup and drop-off) to the hospital is on Jefferson Street at the site of vacated 17th Avenue. Access to the main parking structure is from 16th Avenue. The garage is connected to the campus via an existing skybridge.

11. The Cherry Hill campus includes a total of 1510 off-street parking stalls.

12. Existing MIO height limits are 37 feet east of 18th Avenue, 105 feet between 18th Avenue and 16th Avenue, and 65 feet between 16th Avenue and 15th Avenue.

13. The existing MIMP for the Swedish Cherry Hill campus expired in 2011 with approximately 249,000 square feet of authorized building area unbuilt.

14. Swedish operates two dozen clinics throughout the region that feed to its five community hospitals: Ballard, Edmonds, Issaquah, Redmond, and Mill Creek. MIMP Appendix G. Swedish's two medical centers are located at its First Hill and Cherry Hill campuses. The Cherry Hill campus provides highly specialized treatment for complex cardiac and neurological diseases.

Master Plan Process

15. Swedish submitted its notice of intent to prepare a MIMP on November 11, 2011. The CAC was formed and first met in December of 2012. The Draft Master Plan was submitted and a draft EIS was issued on May 22, 2014. Exhibits 22 and 23. Public review during development of the Master Plan and draft EIS included public meetings of the CAC, which included time for public comment; a public scoping meeting; two public comment periods; and a public hearing. The Final Master Plan and FEIS were issued on December 11, 2014. Exhibits 1, 3, & 4. The Director's Report and Recommendation was issued on March 19, 2015. Exhibit 26.

16. The CAC, staffed by the Department of Neighborhoods, held 33 public meetings over a period of 16 months. They CAC received public comments and reviewed and commented on draft Master Plan and SEPA documents. The CAC was instrumental in achieving many changes to the Master Plan that would reduce the proposed MIMP's impact on the surrounding neighborhood. The CAC's Final Report and Recommendation, and three Minority Reports, were issued on May 28, 2015. Exhibit 6.

Proposed MIMP

17. Swedish has applied for a new MIMP to establish its development program and potential for the next 20-30 years. The MIMP would remain in place until Swedish constructs the allowed developable square footage.

18. The final MIMP includes the three required components under SMC 23.69.030: (1) a development program; (2) development standards; and (3) a transportation management program.

19. Details of Swedish's proposed development program are found at pages 49-69 of the MIMP. Ex. 1.

20. Swedish explored development program alternatives that would have achieved its stated need of 3.1 million square feet. Many of the earlier alternatives proposed MIO boundary expansion as well as street vacations. Swedish then explored additional alternatives that eliminated boundary expansions and street vacations, adding approximately 347,000 square feet less than originally anticipated, for a total of 2.75 million square feet. The alternatives considered but not advanced are described in detail in the MIMP Exhibit 1 at Appendix F.

21. Swedish selected one of the latter alternatives—Alternative 12. Swedish proposes no MIO boundary expansion and no street vacations. At the hearing, Swedish amended Alternative 12 by adopting the setbacks recommended by the CAC majority.

22. The MIMP Development Program does not describe a planned order of development. Rather, it describes five development phases, denominated Phases A-E, in no particular order. Exh. 1, MIMP at 62-63. Swedish anticipates development on each phase commencing as financing and need coincide.

Need and Public Benefit

23. SMC 23.69.002 states that the purpose and intent of the Major Institution Code is to:

A. Permit appropriate institutional growth within boundaries while minimizing the adverse impacts associated with development and geographic expansion;

B. Balance the Major Institution’s ability to change and the public benefit derived from change with the need to protect the livability and vitality of adjacent neighborhoods;

C. Encourage the concentration of Major Institution development on existing campuses, or alternatively, the decentralization of such uses to locations more than two thousand five hundred (2500) feet from campus boundaries;

E. Discourage the expansion of established major institution boundaries;

H. Accommodate the changing needs of major institutions, provide flexibility for development and encourage a high quality environment through modifications of use restrictions and parking requirements of the underlying zoning;

I. Make the need for appropriate transition primary considerations in determining setbacks. Also setbacks may be appropriate to achieve proper scale, building modulation, or view corridor;

24. SMC 23.69.025 states that the intent of a MIMP is to “balance the needs of the Major Institutions to develop facilities for the provision of health care or educational services with the need to minimize the impact of Major Institution development on surrounding neighborhoods.”

Need

25. The Director advises that Swedish has shown a credible need for a total of 3.1 million square feet of development capacity.

26. Swedish engaged a consultant named Teri Martin to study its space needs, and her analysis and conclusions are presented at Appendix G of the MIMP. At the hearing, Swedish presented

the testimony of Jeff Hoffman of Kurt Salmon, a consultant who assists hospitals and medical centers all over the United States, to assess their space needs. Mr. Hoffman conducted a peer-review of Ms. Martin's work, and opined at the hearing that Ms. Martin's estimates were conservative—that is, may have understated the true need for expansion at the Cherry Hill campus.

27. During public comment on the MIMP, Jack Hanson, a healthcare policy analyst who lives in the Cherry Hill neighborhood, opined that Ms. Martin's needs assessment actually overstated the need for expansion. Mr. Hanson's criticisms focused on three areas: (1) that Ms. Martin's methodology did not follow the Washington State Health Plan, which he asserted recommends that facilities not plan for beds more than seven years in the future; (2) that the "peer institutions" relied upon by Ms. Martin to establish bed occupancy rates and building gross square footage per bed (BGSF) were not actually "peers" to Cherry Hill (which he labeled a general services hospital), but rather specialized centers requiring extra area; and (3) that Swedish's needs calculation was not presented to the public.

28. Mr. Hanson did not provide an independent analysis of space needs; rather, he asserted that Swedish had not met its burden of establishing its own need.

29. Mr. Hanson spoke during the public testimony period, but also submitted written comment supporting his oral presentation.

30. During his testimony, Mr. Hoffman responded to Mr. Hanson's allegations. He spoke to the difference between the bed needs analysis advanced by Mr. Hanson, which is governed by the state "Certificate of Need" process, and the facility planning exercise reflected in the MIMP. He testified that Cherry Hill is currently licensed for 385 beds and is using 200, and because Swedish is not seeking additional beds at this time, the bed need analysis provided by Mr. Hanson is irrelevant even assuming its accuracy. He disputed Mr. Hanson's premise that Swedish Cherry Hill is a general services hospital, asserting instead that it is a highly specialized quaternary care facility with space needs similar to a children's hospital or other specialty facilities listed as peer institutions. Given that premise, Mr. Hoffman testified that because of the highly specialized nature of the work performed at the Cherry Hill campus, it was appropriate to plan for a lower bed occupancy rate to ensure bed availability, as well as larger BGSF, than would be expected at a general services hospital. Finally, Mr. Hoffman testified that the information necessary to understand Ms. Martin's needs assessment was presented in Appendix G of the MIMP.

31. Mr. Hoffman was cross-examined by Washington CAN's attorney. No other member of the public cross-examined him, including Mr. Hanson.

32. In its public comment letter, Swedish further asserted that it had explained its space needs to the CAC early in the CAC process. The Meeting Notes compiled at the end of the CAC Report (Exhibit No. 6) indicate that at the eleventh CAC meeting, on January 16, 2014, Swedish presented Ms. Martin to further explain her needs assessment, in response to CAC inquiry into the topic.

33. Other public comment questioned Swedish's need to concentrate its growth at the Cherry Hill campus, as opposed to relocating functions slated for the Cherry Hill campus to the First Hill campus or otherwise spreading them around the general hospitals in the Swedish system.

34. Mr. Hoffman and Mr. Cosentino responded to these questions by asserting that highly specialized services require collocation of several functions. They testified that decentralized facilities could not achieve the positive gains in patient outcomes that Swedish has achieved and plans to achieve through the facilities described in the MIMP.

35. A number of physicians provided public comment or testified regarding the type of facility that Swedish currently operates at Cherry Hill, and the type of facility they hope to build there under the proposed MIMP. Much of this comment centered on the goal of creating the world's finest facilities in the world for the treatment of complex neurological and cardiovascular diseases.

36. Some members of the public commented that these services were already provided by the University of Washington hospital system, and it would be inappropriate for another area hospital to create competition in the field.

37. Mr. Hoffman responded to these concerns by describing the differences between public research institutions and non-profit healthcare providers, concluding that the region is best served by having both types of hospitals provide these services.

38. Aside from the impacts of an expanded medical center, neighbors also expressed concerns about whether the Major Institutions Code allowed institutional expansion to serve non-hospital functions, such as clinical space. These commenters suggested that the Major Institutions Code was never intended to allow a for-profit entity like Sabey to obtain the benefits of additional development capacity, and argued that the Major Institutions Code provisions should apply only to non-profit or public entities. These commenters felt that Swedish's stated need was actually a ruse masking Sabey's desire for an unfair market advantage, i.e., additional development capacity that its competitors could not obtain.

39. Mr. Hoffman testified that arrangements like the one between Swedish and Sabey—a non-profit healthcare provider partnering with a for-profit developer—are common throughout the United States. He explained that the arrangement allows the healthcare provider to dedicate its capital dollars to equipment, rather than facilities. Mr. Hoffman testified that several hospitals in the region surrounding Seattle, including, for example, Overlake hospital, employed this approach.

Public Benefit

40. Comments submitted by Washington CAN asserted that Swedish does not currently do enough for the community (mostly in terms of charity care) and that Swedish had not established that the expansion would result in any greater public benefit than Swedish already provides. Washington CAN members testified to their difficulties navigating Swedish's charity care system and the difficulties created by medical debt.

41. Washington CAN's public comment letter, in common with several of the neighbors' testimony, argues that Swedish has not established the public benefits associated with expansion to a sufficient degree of specificity.

42. Swedish submitted testimony and public comment that it provides extensive public benefit. Sherry Williams testified to the charity care process and explained specific programs in the community supported by Swedish and the Cherry Hill facility in particular. The MIMP lists public benefits provided by Swedish and Cherry Hill. *See, e.g.*, MIMP at 3 (Swedish provides \$130M in charity care annually, including at the Cherry Hill campus), 69-72 (listing programs supported by Swedish and Cherry Hill).

43. Several Swedish doctors submitted public comment regarding charity care that Swedish currently provides and would like to provide. For example, Dr. Winston testified that Swedish operates a low-income dental clinic at First Hill and would like to construct a dental clinic to serve low-income patients at the Cherry Hill campus, but currently lacks the space to do so.

44. Swedish's public comment letter argues that the major element of public benefit associated with major institutional expansion is the continued existence and vitality of the institution itself, with the employment opportunities and contributions to community health attendant to having quality healthcare providers in Seattle. Swedish asserts that the public benefits identified in the proposed MIMP are similar in kind and scope to the benefits the City Council has previously approved for Virginia Mason, Seattle Children's, and a number of other medical major institutions.

Development Standards and Transitions

45. The MIMP proposes to substantially increase the development capacity of the existing MIO. This would result in increased heights and increased lot coverage.

46. John Jex, an architect of 35 years' experience designing medical centers and retained by Swedish to design the development program and draft the MIMP, testified that the relatively high density of the proposal was necessitated by Swedish's assent to the community's request that Swedish not seek MIO expansion or street vacation. With additional land area, Mr. Jex testified, Swedish could have designed a facility that met its institutional needs while limiting heights, decreasing lot coverage, and increasing setbacks. Without that additional area to work with, Swedish was constrained. He pointed out that Children's Hospital, by contrast, started off proposing more intense development and no MIO expansion, then in response to neighborhood concerns, proposed MIO expansion that allowed lower heights and greater setbacks.

47. Neighbors asserted that MIO expansion was never an option for Swedish, and that the Cherry Hill community simply cannot absorb development of the intensity proposed.

Height

48. The proposed MIMP requests rezones to increase height limits at three locations within the MIO interior, and reduce height limits at two. Requested height limits are summarized at Table B-3 at MIMP p. 35.

49. The tallest requested height is 160 feet, at the center of campus, to accommodate a future bed tower.

50. Swedish seeks a 150-foot height limit at the lowest part of the campus, along 15th Avenue (adjacent to Seattle University's MIO and the 12th Avenue Urban Center Village). The MIMP establishes, and the testimony of Mr. Jex clarified, that the 150' height limit at the western edge of the campus would cap development on that block with a horizontal plane measured 150 feet above the grade of 15th. Due to site topography, this would result in a façade approximately 125 feet above grade at 16th. Swedish does not propose to alter the height measurement technique of Ch. 23.86 SMC; rather, it proposes a condition limiting heights on the block to that horizontal plane. *See Ex. 1 at 52 n.1.*

51. For the eastern half-block, Swedish seeks an increase from MIO-37 to MIO 50 at two locations, with conditions limiting the height to 45 feet at each. Development at that block would also require a variety of heights ranging from 15 feet at the center to 45 feet.

52. The eastern half-block is currently dominated by surface parking.

53. Swedish proposes to maintain existing MIO height limits at most of the district boundaries, with some exceptions. In addition to the 150-foot limit along the boundary with Seattle University, it also proposes to reduce allowable height from 105 to 40 feet at the northwest corner of 18th and Jefferson, and from 105 feet to 37 feet in the area surrounding the hospital's main pedestrian entrance.

54. The tallest building currently on the campus is the James Tower, at 105 feet.

55. The CAC and the Examiner both heard extensive negative comment on the proposed 160 foot height limit. Concerns expressed included a "canyon" effect on 16th Avenue, and the opinion that 160- and 150-foot towers are simply too tall for an area outside an urban village.

56. The CAC majority recommended reducing the 160-foot height limit to 140 feet, and reducing the 150-foot limit to 105 feet.

57. Several members of the public requested that the height limits remain no taller than 105 for the entire campus. Some requested that heights along 15th Avenue be limited to 65 feet, to match Seattle University's MIO zoning across the street.

58. Members of the public, particularly residents of 19th Avenue, requested that the height limits at the eastern half-block (fronting 18th Avenue) be maintained at the current 37'.

59. Swedish provided testimony that the variation in allowable height in the eastern half-block actually reduces the impacts of height and bulk better than simply maintaining 37-foot height limits along the length of the block.

Setbacks

60. The proposed MIMP includes setbacks that vary with location on campus and height. Proposed setbacks were illustrated in the MIMP, Ex. 1 at pp. 25-34 and summarized in Table B-2 on p. 34.

61. The CAC majority recommended additional setbacks. At the hearing, John Jex confirmed that Swedish would accept, with one exception, the ground-level setbacks recommended in the CAC Report. See MIMP Exhibit 14.

62. Washington CAN argues that because the setbacks in many cases are smaller than those required by the underlying zoning, it is inappropriate to view the setbacks proposed as mitigation for height, bulk, and scale impacts.

63. Dr. Sharron Sutton provided public comment as Washington CAN's expert. She testified that most structures in the neighborhood provide setbacks of 11-40 feet, and the current hospital campus does the same. She alleged that the MIMP will actually reduce open space.

64. Dr. Sutton testified that the upper-level setbacks proposed in the MIMP should be uniform to create a better "room" in the streetscape. She testified that the small ground-level setbacks and the lack of uniformity constituted poor design.

65. Dr. Sutton has no experience designing medical facilities. She did not assert that there are industry standards on which the Council could rely when selecting appropriate setbacks; rather, she testified that setbacks must be set by reference to the setbacks in the neighborhood.

66. Mr. Jex disputed Dr. Sutton's assertions. He testified that even with the physical constraints created by maintaining the existing MIO, open space actually increases at full build-out of the MIMP. He disagreed with her that uniformity in building setbacks was necessary or even desirable, as variation can create visual interest.

Lot Coverage

67. The MIMP proposes to increase lot coverage from the existing 52% to a maximum of 76.5%, measured campus wide.

68. Washington CAN argued that the proposed lot coverage is too intense for the neighborhood.

Transitions

69. Transitions in height, bulk and scale are proposed to be addressed through the pattern of MIO district heights, setbacks, upper-level setbacks, landscaping, and design elements.

70. The EIS demonstrates that the proposed MIMP will have significant height, bulk and scale impacts on existing residential areas in the neighborhood. The various viewpoints in the FEIS at 3.4-7 – 45 demonstrate these impacts.

71. Mr. Jex testified that the combination of height limits at the MIO boundaries, setbacks at the MIO boundaries, upper-level setbacks, façade modulation, and landscaping will provide sufficient transition to the neighborhood.

72. Neighbors disagreed with Swedish and asserted that there was simply no way to provide sufficient transition to the bulk proposed by the MIMP.

Transportation, Access, and Parking

73. Transportation-related impacts are addressed in section 3.7 and Appendix C of the FEIS.

74. The Director's Report addresses the TMP at ¶ III.D on p. 24.

Transportation

75. Swedish has proposed a transportation management program (TMP) that includes the information required by SMC 23.69.030 and SMC 23.54.016. Details of the TMP are discussed in Section D of the MIMP, pp. 74-84, in § 3.7.4 of the FEIS (pp. 3.7-47 – 53), and in FEIS Appendix C, pp. C-110 – C-115.

76. Swedish engaged Commute Seattle to assist with drafting and implementing the TMP. Jessica Szelag of Commute Seattle testified that it is a non-profit entity that serves as the Commute Trip Reduction agency for downtown Seattle and has assisted many businesses and institutions with transportation management.

77. The new TMP proposes changes to the existing TMP, including increasing transit subsidies for employees, free vanpool parking for tenants, new bicycle amenities, and subsidizing the cost of Residential Parking Zones in the surrounding neighborhoods. The full list of changes is summarized in the MIMP at Table D-3 (Ex. 1, pp. 80-84)

78. Swedish's current single occupancy vehicle (SOV) rate is 57%, but through its new TMP, Swedish proposed to reduce its SOV rate to 44% at full build-out.

79. The DPD Director recommended conditioning the first building permit approved under the new MIMP to achieving a 50% SOV rate. The DPD Director recommends reducing the SOV goal by one percentage point every two years to a maximum 38% SOV goal after 25 years (the estimated time of full build-out of the MIMP).

80. Swedish has agreed to the Director's proposed conditioning.

81. Public commenters suggested that because of its location and relatively limited transit service, Swedish cannot meet a 50% SOV goal under any circumstances. Public commenters also pointed to Swedish's past failure to meet its prior 50% SOV goal as evidence that it would not be able to meet any proffered TMP goal.

Construction

82. One neighbor expressed concern at the hearing regarding the potential impacts relating to construction of the various projects described in the MIMP.

83. The Director recommended several conditions to mitigate construction impacts of the proposed MIMP.

Height District Rezone

84. The Director's Report addresses the required rezone in detail relative to the requirements of SMC 23.34.124 on designation of MIOs and SMC 23.34.008, the general rezone criteria. Exhibit 26 at 67-80 (general); 80-84 (MIO-specific).

85. Several neighbors commented that the rezone in the proposed MIMP should be rejected as inconsistent with the Urban Village strategy of the Comprehensive Plan.

Housing

86. Dr. Sutton suggested during her public comment that the Examiner should require mitigation for the loss of housing potential within the MIO.

87. The MIMP proposes no expansion of MIO, and no demolition of occupied housing within the existing MIO.

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapters 23.69 and 23.76 SMC.

Need

2. The Code requires balancing of the institution's projected need for expansion against the need to minimize impacts to the neighborhood. SMC 23.69.025. To do so, it is necessary to know with some degree of accuracy what the Major Institution's needs actually are.

3. Swedish established its space needs through its consultant, Terri Martin. Appendix G of the MIMP presents Ms. Martin's analysis and provides the Council with an adequate understanding of Swedish's need to grow the Cherry Hill campus, as well as the amount of floor area that will accommodate that need.

4. Although the CAC may not negotiate need, in response to CAC questions regarding need, Swedish had Ms. Martin present her analysis at CAC meeting No. 11.

5. Jeff Hoffman provided a peer review of Ms. Martin's work, which he presented at the hearing. Mr. Hoffman's credentials and experience establish him as an expert in the field of

medical institution facilities planning, and the Examiner found his testimony credible. Mr. Hoffman confirmed that, if anything, the needs analysis presented in the MIMP and to the CAC understated the actual need for expansion at the Cherry Hill campus.

6. Jack Hanson's expertise is in the separate field of bed need, which is not an issue in this matter. While Mr. Hanson's testimony was also credible, it did not address the issues before the Examiner.

7. The Examiner concludes that the specialized services offered at the Cherry Hill campus are not duplicated by other area hospitals such as Swedish First Hill or Virginia Mason. While public comment established that there may be some overlap between the specialized services provided at Cherry Hill and similar services provided at the University of Washington, the availability of another provider does not mean that patient needs can be fully accommodated at the other provider. In any event, the question is the province of state hospital regulators, rather than the Hearing Examiner.

8. Without a competing needs analysis, the evidence and public comment offered at the hearing was not sufficient to call Ms. Martin's needs analysis into question. The record supports the conclusion that Swedish will require 2.75 million square feet of development capacity at the Cherry Hill campus in the next 30 years.

9. Although it is unusual in Seattle for a for-profit entity to own substantial property within an MIO, nothing in the Major Institutions Code prohibits it or restricts development under a MIMP to non-profit or public entities. "Major institution uses" are defined without regard to the identity of the user, and the Code expressly allows major institution uses owned or operated by entities other than the Major Institution itself.

All uses that are functionally integrated with, or substantively related to, the central mission of a Major Institution or that primarily and directly serve the users of an institution shall be defined as Major Institution uses and shall be permitted in the Major Institution Overlay (MIO) District. . . . **Permitted Major Institution uses shall not be limited to those uses which are owned or operated by the Major Institution.**

SMC 23.69.008.A (emphasis added).

10. The Examiner concludes that, under the Code as currently constituted, the involvement of Sabey as property owner has no legal relevance to the Council's substantive decision on the MIMP.

11. The Examiner concludes that Swedish established its need for additional space to the extent required by Code.

Public Benefit

12. The Examiner empathizes with the members of the public burdened by healthcare debt through no fault of their own. However, the stories presented by Washington CAN and others are critiques of the manner in which healthcare is funded in the United States generally, rather

than of the practices of Swedish or Cherry Hill in particular. The record taken as a whole, including the testimony provided by Swedish doctors and patients, as well as Ms. Williams, does not support the conclusion that the Cherry Hill campus is dilatory in its provision of charity care or other public benefits, nor that it is uniquely so.

13. The Code provision requiring a showing of public benefits resulting from expansion does not require the level of specificity that Washington CAN requests in its public comment letter. A master planning document is intended to help guide the institution's development and inform the public as to how the institution may grow, not provide a comprehensive list of public benefits the institution intends to provide.

14. The public benefits identified in the proposed MIMP are similar in kind and scope to the benefits the Council has previously approved for Virginia Mason, Seattle Children's, and a number of other medical major institutions.

15. The Examiner concludes that the public benefits identified in the MIMP suffice to support MIMP approval.

Development Standards and Transitions

16. The neighbors' assertion that MIO expansion was not an option available to Swedish is incorrect as a matter of law. Although the Code strongly discourages MIO expansion, in appropriate circumstance, MIO expansion can be allowed to help mitigate the impacts of expansion. This was the path chosen by Children's Hospital during its own hotly debated and closely contested MIMP process, resulting in the MIMP that many of the Cherry Hill neighbors argue should serve as the model for development at the Cherry Hill campus.

17. The evidence supports the conclusion that Swedish acquiesced to the neighborhood's demand that Swedish not expand horizontally. Assuming that Swedish properly established its need, as the Examiner has concluded it did above at 15, this concession necessarily meant that Swedish would have to develop more intensely within its existing MIO.

18. The Major Institutions Code anticipates that major institutional development will be more intense than the underlying and neighboring zoning districts, so the mere fact of differing intensity is not a reason to reject or alter the proposed MIMP. The task for the Examiner, and ultimately for Council, is to find the balance between the needed intensity and the impacts to the neighborhood.

19. While the Examiner agrees that the heights and bulk proposed are significant compared to the rest of the neighborhood, the Examiner concludes that the livability of the neighborhood is adequately protected by the decision to locate maximum heights at the center of campus and downhill while maintaining existing MIO heights at the boundaries, combined with the other varying height limits, ground- and upper-level setbacks, and façade modulation proposed in the MIMP, as amended at the hearing.

Height

20. The proposal to maintain existing MIO height limits at the MIO boundaries helps ease the transition between the scale of MIO development and that of the surrounding neighborhoods.

21. The Examiner finds that the 150-foot height limit along 15th Avenue is appropriate at that location for a number of reasons. First, it is adjacent to the least-sensitive user in the neighborhood, the neighboring MIO for Seattle University. Second, it is located at the lowest part of the campus. Third, due to the proposal to cap the height limit at 150 feet above 15th Avenue and the step up in grade to the east, the look and feel of the development at 16th Avenue will be much smaller, at 125' above the grade of the street.

22. The 160-foot height limit is concentrated at the center of campus and buffered by a series of upper-level setbacks detailed in Section J-J (MIMP p. 31), which shows that all portions of structures above 105 feet must set back 80 feet from Cherry Street.

23. The Examiner agrees with the testimony of Mr. Jex that the variation in allowable height in the eastern half-block actually reduces the impacts of height and bulk better than would maintaining the existing 37-foot height limits along the length of the block.

24. The height limits proposed in the MIMP adequately address the need to protect the neighboring properties.

Setbacks

25. The Major Institutions Code does not mandate setbacks of a certain size. Rather, it directs institutions to “[m]ake the need for appropriate transition primary considerations in determining setbacks.” SMC 23.69.002.I.

26. The Master Plan identifies structure setbacks at the campus boundaries and ground level and upper level setbacks have been proposed with appropriate consideration of height, bulk and scale, views, and uses adjacent to the campus boundaries.

27. Prior to 2001, the Code required Major Institutions to provide setbacks no smaller than those of the underlying zone or neighboring properties. *See* former SMC 23.12.120 (“In no case shall a setback from the boundary be less than required by the greater of the underlying zoning, or the zoning for property adjacent to or across a public right-of-way from the institution.”). However, the Council struck that language in 2001. *See* Ord. 120691 (2001) (§ 2 repealing Ch. 23.12 SMC; § 21 adopting current setback language without the requirement to match underlying zoning).

28. Washington CAN’s assertion that setbacks specified in the MIMP themselves cause impacts because they are not as large as the underlying zoning lacks support in the law. The Council removed the prior Code requirement that MIO setbacks must at least match those of the underlying zones. The Code does not refer to the setbacks of the underlying zone when listing the elements the institution should consider when setting setbacks for the MIO.

29. The setbacks Swedish proposes provide adequate transition to the neighborhood, given the constraints on horizontal MIO expansion.

Lot Coverage

30. The underlying single family zoning restricts lot coverage to 35%. The underlying lowrise zone does not restrict lot coverage per se.

31. While the proposed lot coverage is inconsistent with the underlying single-family zoning, the Major Institutions Code expressly allows an adopted MIMP to vary development standards. SMC 23.69.030.B.

32. The record lacks evidence of any standards on which the Examiner could rely in further limiting lot coverage.

33. The lot coverage complies with the Major Institutions Code.

Transportation Management Plan

34. The proposed TMP proposes changes to the existing TMP, including increasing transit subsidies for employees, free vanpool parking for tenants, new bicycle amenities, and subsidizing the cost of Residential Parking Zones in the surrounding neighborhoods. The full list of changes is summarized in the MIMP at Table D-3 (Ex. 1, pp. 80-84).

35. Swedish's current single occupancy vehicle (SOV) rate is 57%, but through its new TMP, Swedish proposed to reduce its SOV rate to 44% at full build-out.

36. The DPD Director recommended conditioning the first building permit approved under the new MIMP to achieving a 50% SOV rate. The DPD Director recommends reducing the SOV goal by one percentage point every two years to a maximum 38% SOV goal after 25 years (the estimated time of full build-out of the MIMP).

37. Swedish has agreed to the Director's proposed conditioning.

38. The Examiner finds the testimony of both Ms. Zselag and Mr. Shaw to be credible with regard to the comprehensive nature of the TMP and the institutions ability to reach the 38% SOV goal.

Construction

38. The Director's recommended conditions adequately mitigate construction impacts.

Height District Rezone

39. The Examiner is sympathetic to neighbors' assertion that the proposal is inconsistent with the Urban Village strategy, a conclusion shared by the FEIS.

40. However, as the Council wrote in its Findings and Conclusions regarding the Children's MIMP approval, "[t]he City's Land Use Code (SMC Title 23) and substantive SEPA policies (SMC 25.05) authorize reference to the City's Comprehensive Plan as a basis for review of a proposed MIMP only with respect to specific Comprehensive Plan policies identified in those ordinances, neither of which include policies related to the 'urban village' strategy described in that Plan. Therefore the Council lacks authority to consider those policies as a basis for its decision whether to approve the proposed MIMP." Ordinance No. 123263 (2010), Attachment A, Findings, Conclusion, and Decision of the City Council at Conclusion 28.

41. The Council has not amended the Major Institutions Code nor the rezone criteria in any relevant way since it approved Ordinance No. 123263, and its quasi-judicial interpretation of code is binding on the Examiner. The Urban Village strategy forms no part of this recommendation on the MIMP or the rezone.

42. The Comprehensive Plan acknowledges that some major institutions are located outside of the urban villages. The Cherry Hill MIO was created with the adoption of the Major Institution Code in the early 1980's, more than a decade prior to the adoption of the Urban Village strategy. Even as it excluded the Cherry Hill campus from any urban village, the Comprehensive Plan designates the Cherry Hill campus for major institutional uses.

43. While the Examiner has concerns about the extent of the development proposed in the MIMP, on balance, the Examiner concludes that the Director's analysis of the rezone is correct and the Council should adopt it.

Housing

44. Nothing in the Code allows the City Council to condition MIMP approval or a rezone to replace lost housing opportunities. The relevant Code provision is the rezone criterion prohibiting MIO expansion that will result in loss of housing unless replacement housing is provided. SMC 23.34.124.B.7. Because there is no MIO expansion proposed, the City Council lacks authority to require Swedish to provide new housing.