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BEFORE THE SEATTLE CITY COUNCIL

In the Matter of the Application of:  
SWEDISH MEDICAL CENTER  
For approval of a Major Institution Master Plan

No. CF 311936  
SABEY CORPORATION'S  
RESPONSE TO APPEALS

**I. INTRODUCTION**

The Sabey Corporation ("Sabey") hereby joins in Swedish Medical Center's ("Swedish") Response to the Appeals filed by Dean Paton, Nicholas Richter, 19th Avenue Blockwatch/Squire Park Neighbors, Cherry Hill Community Council, Citizens Advisory Committee, Squire Park Community Council, and the Washington Community Action Network (collectively, "Appellants"), filed with the City Council on February 8, 2016. For the reasons stated by Swedish, Sabey requests that the appeals be denied and that the City Council approve Swedish's Master Plan for the Major Institution Master Plan ("MIMP"). Sabey also writes separately to address its partnership with Swedish and the vital role it plays on the Swedish campus.

**II. BACKGROUND**

Sabey is a for-profit development and property management company that owns approximately 40% of the property within the Swedish Cherry Hill Campus. Sabey leases 75% of its holdings within the Major Institutions Overlay ("MIO") boundary to Swedish. Most of the

1 remaining space is occupied by other major institution uses supporting the Swedish's integrated  
2 healthcare services mission, including LabCorp and the Northwest Kidney Center. Hearing  
3 Examiner Findings and Recommendations, Findings of Fact ("FF") ¶ 6.

4 Although the Cherry Hill campus also provides clinical space and general health services,  
5 the main features of the Swedish Cherry Hill facility are its two highly specialized facilities—the  
6 Swedish Heart and Vascular Institute and the Swedish Neuroscience Institute, which provide  
7 tertiary and quaternary treatment of cardiac disease, as well as neurological trauma, spine,  
8 cancers, and related disorders. Swedish Cherry Hill also provides an educational center and is  
9 home to Swedish's critical inpatient rehabilitation and psychiatric services. Testimony of Andy  
10 Cosentino ("Cosentino Testimony"), July 13, 2015.

13 As explained in the testimony of Andy Cosentino before the Hearing Examiner, the Vice  
14 President of the Swedish Neuroscience Institute, Swedish's partnership with Sabey is vitally  
15 important to its mission. When Sabey purchased a portion of the campus in 2002, it allowed  
16 Swedish to reinvest into improvement technology, operating rooms, and recruiting—attributes  
17 vital for a world-class institution. Since 2002, Sabey and Swedish together have invested over  
18 \$100 million in capital improvements to build a world-class center for the research and treatment  
19 of cardiac and neurological diseases at Cherry Hill. Sabey's involvement allows Swedish to  
20 focus upon the areas in which it excels, leaving concerns regarding "brick and mortar" to the  
21 private entity. This partnership model—using private development capital to build critical  
22 medical facilities—is being replicated all over the country, including at Johns Hopkins in  
23 Baltimore and Cedars-Sinai in Los Angeles, and is becoming an increasingly common way for  
24 medical institutions to ensure they have the capacity to provide the quality of care that its  
25 patients deserve. Cosentino Testimony.

1 To serve as a hub for tertiary and quaternary care, Swedish Cherry Hill needs to support a  
2 broad array of parallel services on campus that tie into an integrated model of care to treat  
3 complex disease. Myriad services coordinate for this optimal level of care. For example,  
4 services such as imaging, diagnostic lab, pathology, oncology, radiation, rehabilitation, speech  
5 and physical therapy, social services may be needed to properly care for a patient. In addition,  
6 experimental protocols are often used, requiring research scientists and their equipment to be  
7 located on the immediate campus. *See* Cosentino Testimony. This co-location of services is  
8 critical—Sabey’s leased space supports the services vital to integrated care at Swedish Cherry  
9 Hill.  
10 Hill.

## 11 II. ARGUMENT

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13 **A. All uses that are functionally integrated with, or substantively related to, the central  
14 mission of Swedish Cherry Hill are permitted in the Major Institution Overlay  
15 District.**

16 The Seattle Municipal Code (“Code” or “SMC”) provides that “[a]ll uses that are  
17 functionally integrated with, or substantively related to, the central mission of a Major Institution  
18 or that primarily and directly serve the users of an institution shall be defined as Major Institution  
19 uses and shall be permitted in the Major Institution Overlay (MIO) District.”<sup>1</sup> Appellants ask the  
20 City Council to ignore the language of the Major Institutions Code and limit the uses on the  
21 Swedish Cherry Hill campus to those services that, in Appellants view, have direct links or  
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23 <sup>1</sup> The Code provides that,

24 The following characteristics shall be among those used by the Director to determine whether a use is  
25 functionally integrated with, or substantively related to, the central mission of the Major Institution. No one  
26 (1) of these characteristics shall be determinative:

- 25 1. Functional contractual association;
- 26 2. Programmatic integration;
- 27 3. Direct physical circulation/access connections;
- 28 4. Shared facilities or staff;
5. Degree of interdependence;
6. Similar or common functions, services, or products.

SMC 23.69.008.B.

1 associations with cardiovascular and neuroscience services or provide charity care exclusively.  
2 See 19th Avenue Block Watch Appeal, p. 2; Cherry Hill Community Council Appeal, p. 2. This  
3 request must be denied for two reasons. First, it would be contrary to the MIO and inappropriate  
4 for the City Council to artificially limit the range of otherwise-permitted institutional uses on the  
5 campus. Second, and more importantly, the record demonstrates that the Sabey tenants' services  
6 are functionally integrated with and substantively related to Swedish Cherry Hill's mission.  
7

8 It is well-established in Washington that a court, or here, the City Council sitting in its  
9 quasi-judicial capacity, is not permitted to read additional conditions into a statute. This rule of  
10 statutory interpretation "prohibits courts from adding words or clauses to an unambiguous statute  
11 when the legislature has chosen not to include that language." *State v. Kintz*, 169 Wn.2d 537,  
12 549-50, 238 P.3d 470, 477 (2010); see also, e.g., *Dot Foods, Inc. v. Dep't of Revenue*, 166 Wn.2d  
13 912, 919-20, 215 P.3d 185, 188-89 (2009) ("To achieve such an interpretation, we would have to  
14 import additional language into the statute that the legislature did not use."). Here, contrary to  
15 established law and the clear language of the Code, Appellants ask that the City Council  
16 condition its MIMP approval to limit uses to neurological and cardiovascular services.  
17 Appellants' recommendation ignores Swedish's demonstrated need for a broad range of parallel  
18 services on campus to provide the highest degree of integrated care over the next 20 years and  
19 beyond, and is not supported by the record. Their suggestion simply attempts to re-write the  
20 statute to reach a desired result and it is not allowed.  
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23 Appellants further suggest, without support, that the services provided by Sabey's tenants  
24 are not related to the mission of Swedish Cherry Hill and allege that Swedish's stated need was  
25 actually a ruse masking Sabey's desire for an unfair market advantage. See Washington CAN  
26 Appeal, pp. 5-6; 19th Avenue Block Watch Appeal, p. 5; Cherry Hill Community Council  
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1 Appeal, p. 3; Squire Park Community Council Appeal, pp. 2-3. Appellant Washington CAN  
2 goes so far as to imply, without support, that Sabey will locate server farms on the campus.  
3 Washington CAN Appeal, p. 6. These speculative and patently false statements are belied by the  
4 actual record established in the MIMP hearing. Such conjecture further demonstrates that  
5 Appellants do not fully understand the integrated care model of Swedish Cherry Hill.  
6

7 Mr. Cosentino testified to the functional and necessary relationship between a broad array  
8 of parallel services to treat complex disease, many of which are provided by Sabey's tenants.  
9 For example, services such as imaging, diagnostic lab, pathology, oncology, radiation,  
10 rehabilitation, speech and physical therapy, social services may be needed to properly treat a  
11 patient. In addition, experimental protocols are often used, requiring research scientists and their  
12 equipment to be located on the immediate campus. Sabey embraces the co-location model and  
13 has a 14-year history of locating institutional uses on the Swedish Cherry Hill campus;  
14 accordingly, it only leases spaces that support the services vital to integrated care at Swedish  
15 Cherry Hill, as required by SMC 23.69.008. Constentino Testimony. Moreover, tenant  
16 qualification is a zoning issue reviewed by the Seattle Department of Construction and  
17 Inspections during the permitting process. Appellants provided no evidence to the contrary at  
18 the hearing.<sup>2</sup> Their appeals must accordingly be denied.  
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21 **B. Decentralization analyses are based on institutional use, not the identity of the**  
22 **operator.**

23 On paper, Appellants accept the fact that the Code permits private entities to be part of  
24 the MIO use. However, their allegations tell a different story. Appellants claim that Swedish  
25 failed to properly analyze decentralization alternatives because Swedish's need to expand was  
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27 <sup>2</sup> Upon information and belief, no hearing testimony was received regarding NeuVation Group, and should not be  
28 considered now. See Washington CAN Appeal, p. 5. Even if Appellant would have raised this issue at the hearing,  
all Sabey tenants are clearly functionally integrated with Swedish, as established in the record and discussed here.

1 artificially created when Swedish sold 40% of its Cherry Hill Campus to Sabey. See Washington  
2 CAN Appeal at p. 7; Squire Park Community Council Appeal at pp. 3-4; Nicholas Richter  
3 Appeal, pp. 2-3. These claims fundamentally misunderstand both the relationship between  
4 Swedish and Sabey and the Major Institutions Code, and this misguided view was rejected by the  
5 courts more than 30 years ago. See Declaration of Katie Kendall (“Kendall Declaration”),  
6 Exhibit A (*Goldie London v. Providence Medical Center*, King County Superior Court Cause  
7 No. 83-2-06871-1).<sup>3</sup> “Major institution uses” are defined without regard to the identity of the  
8 user, and the Code expressly allows major institution uses owned or operated by a private entity.  
9  
10 The institution must accordingly be analyzed as a whole.

11  
12 In the mid-1980s, the City was a defendant in a case involving a similar question —  
13 whether an independently-operated institutional use may be established within, and subject to the  
14 same zoning regulations as, a campus owned and operated by another institution. At issue in  
15 *Goldie London* were the City’s “Major Institution Ordinances,” which established a system of  
16 dual zoning classification for major institutional campuses. Kendall Decl., Exh. A. Property  
17 within the defined boundaries of a major institution that was owned by or affiliated with that  
18 institution received an “institutional” zoning designation that permitted deviation from height  
19 and other development standards in the underlying zone. Property not owned by the institution  
20 or its affiliate was subject to standard zoning requirements, regardless of whether an institutional  
21 use was established on the property. In other words, the City’s Land Use Code sought to impose  
22 regulations based on the *identity* of the institutional user, rather than on the use itself.  
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25 The King County Superior Court found that the City had violated Ms. London’s  
26 constitutional rights by regulating her boarding home use based on “ownership” rather than the

27 <sup>3</sup> The Kendall Declaration provides a copy of relevant legal authority for the convenience of the City Council. It  
28 does not provide new factual information.

1 services she provided. In response, the City amended its Major Institutions Code and ceased the  
2 illegal practice of regulating institutional uses based on the identity of the operator. *See* SMC  
3 23.69.008.A (“Permitted Major Institution uses shall not be limited to those uses which are  
4 owned or operated by the Major Institution.”).

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6 The Court’s analysis applies with equal force here. Appellants are asking the City  
7 Council to ignore the necessary co-location of Swedish’s services with the services provided by  
8 the Sabey tenants and reject the MIMP. If need were analyzed on an entity to entity basis as  
9 suggested by Appellants, the City Council would be retracing the same illegal path the court  
10 invalidated in the *London* case.

11  
12 Swedish established its need for growth through expert testimony, emphasizing trends in  
13 healthcare, growth to specific patient utilization at Cherry Hill, and pointed to its facilities that  
14 are in need of updates.<sup>4</sup> *See, e.g.*, Testimony of Jeff Hoffman, July 13 and 14, 2015; Cosentino  
15 Testimony. Swedish was not required, or permitted, to analyze only those uses that are owned  
16 by Swedish when determining its need for growth. Appellants have provided no evidence to the  
17 contrary and their appeal must be denied.

### 18 III. CONCLUSION

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20 Sabey asks the City Council to deny the appeals and approve Swedish’s Master Plan.

21 [Signature on the following page]  
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28 <sup>4</sup> Swedish’s response to the appeals fully addresses the Appellants’ claims regarding need. Sabey writes separately only to address the allegations lobbed against Sabey’s role at the campus.

1 Respectfully submitted this 8<sup>th</sup> day of February, 2016.

2 McCULLOUGH HILL LEARY, P.S.

3  
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