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6 **BEFORE THE HEARING EXAMINER FOR THE CITY OF SUMNER**

7 Phil Olbrechts, Hearing Examiner

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RE: Heritage Park Conditional Use Permit CUP-2024-0005	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
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13 **OVERVIEW**

14 The City of Sumner has applied for a conditional use permit to redesign the Heritage
15 Park block as part of the Heritage Park Master plan. The proposal includes a new outdoor
16 park space, a new three story and approximately 18,000 square foot event and public
17 facility building and frontage improvements. The park space will include walkways,
18 landscaping, playground, synthetic grass area, stage, indoor and outdoor restrooms,
19 lighting and seating areas. The application is approved with conditions.

20 The proposal drew some opposition from Sumner business owners and residents. Some
21 commentators felt that City funds were better spent on other projects. Those concerns
22 are beyond the scope of conditional use permit review and should be voiced to the City
23 Council. In broad strokes, conditional use permit review is limited to ensuring that
24 proposed development is compatible with its surroundings. Staff's detailed review and
25 associated conditions of approval have done a thorough job in mitigating all potential
impacts, thus assuring compatibility.

A major concern of the business owners that is an important part of conditional use
permit review is adequacy of parking. Commentators made the compelling point that

1 parking is a problem in the commercial areas of Sumner. The design review process has
2 adequately addressed that concern by requiring the implementation of off-site parking
3 agreements to address the parking demand generated by the proposal. As shown in Ex.
4 Q, the City has several off-site lots that can be used to meet the parking demand
5 generated by the proposal. The City's development standards include standards
6 specifying the amount of parking necessary for each of the uses proposed for the project.
7 The off-site parking available to the City meets these standards. Conformance to those
8 standards, a City Council policy choice, is determinative of the adequacy of parking.

9 Soil contamination is another issue raised in the public comments. The Washington State
10 Department of Ecology (DOE) is currently overseeing the City's remediation of
11 contaminated soils at the project site. Under the conditions of approval adopted by this
12 decision, no certificate of occupancy shall issue until DOE clean-up requirements are
13 met (excluding on-going monitoring and the like).

14 Comments were also made that the scale of the proposed building is not consistent with
15 surrounding development. Those compatibility issues have already been adequately
16 addressed in the City's design review process. The bulk, scale and design of the
17 structures of the proposal are regulated in detail by the City's design review standards.
18 That review process involved review by the City's Design Commission and received a
19 Design Review Directors Decision approving the design. The Director's Decision was
20 not appealed and therefore is determinative on the adequacy of design, which in turn is
21 determinative on issues regarding bulk and scale.

22 **ORAL TESTIMONY**

23 A computer-generated transcript of the July 10, 2024 hearing has been prepared to
24 provide an overview of the hearing testimony. The transcript is provided for
25 informational purposes only as Appendix A.

26 **EXHIBITS**

27 Exhibits A-P on page 17 of the July 10, 2024 Staff Report are entered into the record¹.
28 Additionally, the following exhibits are admitted during the hearing:

29 ¹ A couple letters were submitted after close of the September 11, 2024 hearings. Those
30 letters were not admitted as untimely. As identified during the hearing, additional written
31 comment would only be admitted from persons who were unable to participate in the
32 virtual part of the hearing due to technical issues. The letters submitted after close of the
33 hearing did not identify any problems with attending virtually.

1 Exhibit Q – Parking Analysis

2 Exhibit R – Lighting Plan

3 Exhibit S – Heritage Park Event Photographs

4 Exhibit T – DOC-SEPA-2024-0014 SEPA Determination of Consistency

5 **FINDINGS OF FACT**

6 **Procedural:**

7 1. Applicant. Drew McCarty City of Sumner 1104 Maple Street, Sumner WA
8 98390.

9 2. Hearing. The City held a hybrid public hearing on September 11, 2024 at 3
10 pm at Sumner City Hall and Zoom.

11 **Substantive:**

12 3. Site/Proposal Description. The City of Sumner has applied for a conditional
13 use permit to redesign the Heritage Park block as part of the Heritage Park Master plan.
14 Project to include a new outdoor park space, new three story and approximately 18,000
15 sf event and public facility building and frontage improvements. The park space will
16 include walkways, landscaping, playground, synthetic grass area, stage, indoor and
17 outdoor restrooms, lighting and seating areas.

18 The project occurs over a triangular shaped City block between Kincaid Avenue, Maple
19 Street and Cherry Avenue. The site is predominantly flat and includes remnants of
20 previous development on the south end of the park. The north section of the site has been
21 and is currently used as a park.

22 4. Characteristics of the Area. The site is located in the Town Center Plan
23 area (TCP) just south of Main Street and is in the vicinity of the following land uses:

- 24 * North: Main Street is located at the north end of the park with a variety of
25 commercial establishments within the Town Center Plan area.
- * East: Commercial business establishments within the Town Center Plan
area and Hops Alley.
- * South: Single family, multifamily and proposed commercial uses all
within the Town Center plan area.
- * West: Commercial business establishments within the Town Center Plan
area.

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2 5. Adverse Impacts. As mitigated and conditioned, there are no significant
adverse impacts associated with the project.

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4 A. Critical Areas. Staff have found aquifer recharge, volcanic hazard and seismic
hazards at the project site². Staff have determined that those hazards are adequately
5 addressed under the City's critical area regulations by requiring the recording of notice
of those hazards on the project site. Beyond those critical areas staff found no other
6 critical areas at the project site. There are no designated shorelines as defined by the
Sumner Shoreline Master Program within 200 feet of the boundaries of the site per
7 Sumner's Shorelines Map. Additionally, there are no wetlands on the site as defined by
the National Wetlands Inventory or the 2007 City of Sumner Wetland Inventory Map.
8 In the absence of any evidence in the record that staff have failed to comply with the
critical area standards, the staff's review is determinative on compliance. Compliance
9 with the City's critical areas standards is in turn determinative on adequate mitigation.

10 B. Parking. Parking was a major issue of concern for some nearby business
11 owners. The proposal includes seven new parking spaces. Policy 1.7 of the City's
Comprehensive Plan Parks and Open Space Element prohibits parking at community
12 parks. However, the proposed building includes other uses that require parking.
Parking generated by the proposed building uses has been adequately addressed by the
13 Design Review Director's Decision. That decision requires that prior to approval of
building permits for the event building, shared parking and/or offsite parking
14 agreements will need to be in place. SMC 18.42.060 requires that shared parking
facilities be within 500 feet of the proposed uses. Ex. Q establishes that sufficient
15 shared parking facilities are available within 500 feet of the proposed event building
uses to meet City parking standards. These include the City Hall parking lot as well as
16 other city lots. Conformance to City parking standards establishes adequate parking
and Ex. Q demonstrates that the City will be able to conform to its parking standards.
17

18 C. Compatibility. The proposed development will be compatible generally with
19 the surrounding land uses in terms of traffic, building and site design. City staff have
determined that limited traffic impact is anticipated since the use is continuing as a park.
20 The section of the site being developed with a building will be consistent with the Town

21 _____
22 ² The staff report doesn't provide any detail on these critical areas except to recommend
23 a condition of approval that requires notice on title. Seismic hazards are addressed in
24 detail during building permit review. Critical area regulations typically don't require
any additional action for the type of development proposed for volcanic and aquifer
25 recharge areas.

1 Center code and Design guidelines. Sumner’s Design Commission reviewed and
2 recommended approval on the buildings design. The Town Center code would allow
3 for a three-story building such as this proposal and would permit up to six stories in
4 certain locations. Proposed uses in the Town Center range from multifamily, a variety
5 of commercial uses and mixed use projects. Therefore, a building such as this with a
6 variety of different uses and spaces is consistent with the surrounding area. Pedestrian
7 circulation and safety is a central feature of the proposal as shown in the landscape plan,
8 Ex. E. A pedestrian promenade lines the perimeter of the park with a pedestrian plaza
9 located on the northern end.

10 D. Soil Contamination. The north end of the park has some contaminated soil that is
11 currently in the process for remediation and will be seeking a no further action
12 determination from Department of Ecology (see Exhibit O and condition of approval
13 #8). DOE has adopted an extensive set of regulations designed to ensure that
14 contaminated soils are safely remediated. There being no evidence to the contrary, the
15 DOE regulations and oversight of the remediation of contaminated soils at the project
16 site is found sufficient to mitigate the contaminated soil impacts of the project site.

17 E. Noise. The proposal is conditioned to adequately mitigate potential noise impacts.
18 A condition of approval requires a noise study to be conducted and implemented and
19 also prohibits food trucks using generators.

20 F. Homelessness. At hearing Staff testified that they and the design team have looked
21 into how the design can deter people from using the park during off-hours. A condition
22 of approval requires implementation of design features that deter use of the park during
23 off-hours. Beyond that what constitutes acceptable levels of adverse impacts from
24 homelessness is set by evolving standards under case law, “camping” and related local
25 ordinances and police budgets.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. Conditional use permits are Type V
decisions requiring a public hearing and decision by the hearing examiner (SMC
18.56.030.I and SMC 18.56.020.F).

Substantive:

2. Zoning Designation. Town Center Zone (TCP).

1 3. Review Criteria. The criteria for a conditional use permit are governed by
2 SMC 18.48.050, which are quoted below and applied through corresponding conclusions
of law.

3 **SMC 18.48.050:** *The director or hearing examiner shall be guided by the following*
4 *criteria in granting an administrative or conditional use permit:*

5 A. *The proposed use will not be materially detrimental to the public welfare or injurious*
6 *to the property or improvements in the vicinity of the proposed use or in the district in*
which the subject property is situated;

7 4. The criterion is met. The proposal will not create any significant adverse
8 impacts for the reasons identified in Finding of Fact No. 5 and for that reason is not found
to create any injury or materially detrimental impacts.

9 **SMC 18.48.050.B:** *The proposed use shall meet or exceed the performance standards*
10 *that are required in the district it will occupy;*

11 5. The criterion is satisfied for the reasons identified at Pages 11-14 of the staff
12 report.

13 **SMC 18.48.050.C:** *The proposed development shall be compatible generally with the*
14 *surrounding land uses in terms of traffic and pedestrian circulation, building and site*
design;

15 6. The criterion is met for the reasons identified in Finding of Fact No. 5C.

16 **SMC 18.48.050.D:** *The proposed use shall be in keeping with the goals and policies of*
17 *the Sumner comprehensive plan;*

18 7. This criterion is met for the reasons identified in Section 5 of the staff report.

19 **SMC 18.48.050.E:** *All measures have been taken to minimize the possible adverse*
20 *impacts which the proposed use may have on the area in which it is located.*

21 8. This criterion is met. Staff have recommended 9 conditions of approval
22 adopted by this decision that are designed to mitigate all project impacts to the extent
23 authorized by the Sumner Municipal Code. As conditioned, as determined in Finding of
Fact No. 5 all adverse impacts of the proposal have been fully mitigated with adoption
of these conditions.

DECISION

Based upon the application and Findings of Fact and Conclusions of Law, the requested conditional use permit is approved, subject to the following conditions:

1. Noise –
 - a. Prior to issuance of the event space building, the noise monitoring study shall be submitted to the City along with proposed measures to ensure that any equipment will operate in compliance with noise levels in SMC 8.14.
 - b. Food trucks shall operate without the use of generators, unless they receive prior approval from City event staff after showing that proposed generator use will operate in compliance with SMC 8.14.
2. The project shall generally comply with the design and layout shown and approved under Design Review DR-2024-0006.
3. Prior to issuance of a building permit for the event building, a Right of Way vacation shall be completed. The ROW vacation shall ensure that the building footprint is located entirely within the parcel's boundaries, with the exception of permitted overhangs allowed in the code such as awnings and balconies.
4. A boundary line adjustment/lot line consolidation shall be completed prior to the event buildings certificate of occupancy. The Change in lot line shall be such that the event building and parcel(s) comply with all applicable development standards.
5. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non- forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.
6. Work shall immediately stop and the City of Sumner, the State Department of Archaeology and Historic Preservation (DAHP), the Puyallup Tribe of Indians, and the Muckleshoot Tribe shall be immediately notified if any artifacts of possible historic, cultural, or archaeological value are uncovered during excavation. In such cases, the

1 developer shall be required to provide for a site inspection and evaluation by a
2 professional archaeologist or historic preservation professional, as applicable, in
3 coordination with the state and/or affected tribes to ensure that all possible valuable
4 historic, cultural, or archaeological artifacts is properly protected or salvaged.

5 7. The property shall record on the title the following hazard area notifications:

- 6 a. Aquifer recharge area,
- 7 b. Seismic hazard area,
- 8 c. Volcanic hazard area

9 8. Environmental Remediation shall be completed, consistent with any approved
10 Ecology clean-up plan and schedule, concurrent with or consecutive to the project's
11 development and shall include cleanup of the entire Site (as that term is defined in the
12 approved clean-up plan) sufficient to obtain a No Further Action (NFA) determination.
13 Work associated with the park and building may occur at the applicant's own risk prior
14 to issuance of a NFA or NFA likely by the Department of Ecology. No Certificate of
15 Occupancy shall be granted until a NFA is issued unless the circumstances in the
16 following sentence are present. If the approved clean-up plan requires long-term
17 compliance monitoring to be conducted prior to Ecology issuing a No Further Action
18 determination, a demonstration that exposure pathways are incomplete for building
19 occupants or park users, and written Ecology concurrence, is sufficient to allow for use
20 of the occupation of the building through a temporary certificate of occupancy. All
21 current and future permits must comply with Ecology clean up regulations and any issued
22 NFA and its conditions.

23 9. The Project shall abide by all local, State and Federal regulations and receive
24 necessary approvals prior to commencement of work.

25 10. As testified at the conditional use permit hearing, City staff shall investigate and
implement to the extent reasonable and practicable design features that discourage use
of park facilities when and if the park is closed.

Dated this 23rd day of September 2024.



Phil A. Olbrechts
City of Sumner Hearing Examiner

Appeal Right and Valuation Notices

Appeals of this decision may be filed with the City Council subject to SMC 18.56.180.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

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Conditional Use

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Findings, Conclusions and Decision