From: Emily Terrell
Sent: Sunday, January 5, 2025 8:28 PM
To: Doug Beagle; Phil Olbrechts
Cc: Scott Waller; CNeville-Neil@piercecountylibrary.org
Subject: RE: Response to HE regarding City of Sumner Library CUP decision

Doug,

Thank you for your email.

Here's where I'm at with this request. SMC 18.56.177 and SMC 2.58.150 provide a process for reconsideration once the final decision is issued, which can't happen until the approval of the development agreement (SMC 18.20.040.B). No new evidence may be presented other than "*the discovery of evidence which could not be reasonably available at the prior hearing*" (SMC 2.58.150).

We generally do not reopen a hearing unless there is new evidence concerning an issue in which parties did not have a fair opportunity to be heard. Can you identify why you believe re-opening the record is justified given the one hearing limitation of RCW 36.70B.050(2)?

RCW 36.70B.050 Local government review of project permit applications required—Objectives.
Not later than March 31, 1996, each local government shall provide by ordinance or resolution for review of project permit applications to achieve the following objectives:

(1) Combine the environmental review process, both procedural and substantive, with the procedure for review of project permits; and

(2) Except for the appeal of a determination of significance as provided in RCW 43.21C.075, provide for no more than one open record hearing and one closed record appeal.

Thank you,

Emily

Emily Terrell
Principal | Planner | Hearing Examiner
Sound Municipal Consultants
emily@soundmunicipal.com
253.709.6044

SOUND MUNICIPAL CONSULTANTS

From: Doug Beagle <dougb@sumnerwa.gov>
Sent: Friday, January 3, 2025 9:25 AM
To: Emily Terrell <emilyt@soundmunicipal.com>; Phil Olbrechts <olbrechtslaw@gmail.com>
Cc: Scott Waller <ScottW@sumnerwa.gov>; CNeville-Neil@piercecountylibrary.org
Subject: RE: Response to HE regarding City of Sumner Library CUP decision

Emily,

Yes, the City is requesting that you re-open the record. Both the City and the Library are interested in having you review the additional information considered and provided by both parties, and allowing all parties of record to comment is great. Please let me know how the City can assist in providing notice to all parties of record of their opportunity to comment, and please let me know how long you'll re-open the record to receive additional information (i.e. what the deadline for submittal will be).

Thank you

Doug Beagle

Development Services Director
253-299-5715
dougb@sumnerwa.gov

From: Emily Terrell <emilyt@soundmunicipal.com>
Sent: Thursday, January 2, 2025 4:49 PM
To: Doug Beagle <dougb@sumnerwa.gov>; Phil Olbrechts <olbrechtslaw@gmail.com>
Cc: Scott Waller <ScottW@sumnerwa.gov>; CNeville-Neil@piercecountylibrary.org
Subject: RE: Response to HE regarding City of Sumner Library CUP decision

****EXTERNAL EMAIL****

Doug,

I withdraw the decision until it's ripe under SMC 18.20.040.B. I didn't realize the Council hadn't acted yet on the DA. Scott didn't mention that in our 12/23 communication. At the time, I asked specifically about the SEPA but not the DA timing. I'm sorry I missed that.

The record is closed so I can't act on your additional information without formally re-opening the record and giving all parties of record an opportunity to comment. As it is, there is literally nothing in the record regarding the crossing besides the safety recommendation in the Applicant's Traffic Report and one sentence in the SEPA Checklist. If we want to deal with this issue, we need to re-

open it. And I'll just note there are several mid-block crossings on the same road starting one block away.

How would you like to proceed?

Emily

Emily Terrell
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From: Doug Beagle <dougb@sumnerwa.gov>
Sent: Thursday, January 2, 2025 4:27 PM
To: Emily Terrell <emilyt@soundmunicipal.com>
Cc: Scott Waller <ScottW@sumnerwa.gov>; CNeville-Neil@piercecountylibrary.org
Subject: Response to HE regarding City of Sumner Library CUP decision

Hi Emily,

Hope you had a great Holiday and enjoyed some time off. I am responding to you since Scott Waller is on vacation until January 6th.

I wanted to reach out regarding the timing of your decision on the Pierce County Library District's CUP application. The project's development agreement, which accompanies the CUP, has not yet been approved by City Council/authorized by the Mayor. Since the Development Agreement is still in process, the CUP decision can't be issued yet. SMC 18.20.040(B)(1) requires that the Hearing Examiner hold the CUP decision in abeyance until the Development Agreement is approved.

SMC 18.20.040(B)

1. If the final decision on the underlying project permit application is made by the hearing examiner, then the hearing examiner shall consider both the project permit application and the proposed development agreement

together during the public hearing. The hearing examiner shall make a recommendation to the council on the development agreement and his/her decision on the underlying project permit application shall be held in abeyance until the city council considers the proposed development agreement in a public hearing. If the city council approves the development agreement, the council shall, by ordinance or resolution, authorize the mayor to execute the development agreement on behalf of the city. At this point, the hearing examiner may then issue his/her final decision on the underlying project permit application. Nothing in this section obligates the hearing examiner to forward a recommendation to the city council for further consideration if the hearing examiner denies the underlying project permit application.

I also want to take this opportunity to provide some more background on your inclusion of a condition for a midblock crosswalk at this site. In response to the Traffic Study's recommendation that Pierce County Library and the City conduct *further* analysis to determine the best course of action for the crossing, the City and applicant did engage in numerous conversations about a mid-block crosswalk for the project. However, the City's engineers determined that a mid-block crosswalk could not be safely installed in this location and therefore was not something the City asked the applicant to provide. This safety determination was based on the inherent risk of midblock crosswalks and the particular location of the potential crosswalk in relation to other nearby driveways.

Midblock crosswalks always pose some degree of safety concern. The MUTCD recommends the installation of additional traffic controls for mid-block crossings (e.g. warning signs, pedestrian actuated signals, curb modifications to limit sight-obstructions from parked cars) because these crossings are naturally hazardous. The crossings are generally unexpected by motorists approaching the crossing as they do not occur at a break in the road or intersection where a driver can expect pedestrians to be legally crossing. Generally, pedestrians do not make this distinction and are given a false sense of security when using them. Thus, purposefully directing pedestrians to midblock crossings may increase the risk of a pedestrian-vehicle collision.

A crosswalk located at the particular site will raise specific safety concerns. As you know, Main Street is a three-lane roadway with the middle lane acting as a turn lane. The northside of the street is the site of several major businesses, which generate significant traffic. This traffic accesses Main Street from driveways connected to the street. One of these driveways is the entrance for an apartment complex and bar that is a mere 30 feet from the traffic study's proposed crosswalk location. For reference, the City's design specifications require driveways to be located no less than 150 feet from an intersection, where crosswalks are typically located.

As a consequence of this diminished separation distance, a crosswalk at the proposed location may present sight-distance and obstruction concerns for drivers exiting the driveway. Regarding the latter, the traffic report notes that an existing midblock crosswalk a mile East on main Street includes pedestrian islands. The City anticipates that a midblock crossing at the Library site would also require similar islands at a minimum, for pedestrian safety. As indicated by the attached diagram, a crosswalk island placed within 30 feet of the driveway entrance would present an obstruction for eastbound drivers turning left into the driveway. Islands positioned this close to the driveway would largely eliminate the usefulness of the left turn lane for eastbound drivers.

The City's engineers were also concerned by sight hazard issues that the crosswalk may pose. When the crosswalk is being used, the same eastbound drivers may also have diminished visibility of oncoming traffic and of any pedestrians occupying the sidewalk on the northside of Main Street. This presents a risk of vehicle to vehicle and vehicle-pedestrian accidents occurring outside the crosswalk. The proximity of the crosswalk to the driveway may cause drivers to make rushed and uninformed turns into the northside driveway and as a result impact on-coming traffic or pedestrians. Thirty feet is a very short distance for drivers to prepare and execute a lefthand turn after navigating around traffic control devices.
A crosswalk at the site presents similar issues for drivers exiting the northside driveway. These drivers will have limited visibility of any individuals entering the crosswalk, especially at night, and limited distance to react to pedestrians suddenly running through the crosswalk. The street parking located on the northside of Main Street will further limit a driver's visibility

when any of the easterly stalls are occupied. While curb bulb-outs at the location might address the latter concern, these and other enhancements will do little to address the distance concern and visibility limitations posed by vegetation and pedestrians located west of the driveway.

These same concerns will be duplicated on the South side of Main Street if the entrance to the new library is located there. As you saw from the proposed Library building footprint, the Library plans to have the entrance to the new library connect to 153rd Ave, which is located two parcels east of the new library site. However, the availability of this entrance relies upon the Library obtaining easements from the adjacent parcel owners. Both the City and the Library are actively pursuing these easements, but the execution of each is not guaranteed. If either parcel owner obstructs the Library's plan, the ingress and egress for patrons of the new library will be a driveway positioned on the easterly edge of the Library site, roughly the same. 30-foot distance away from the proposed midblock crosswalk as is the northside, apartment/bar driveway. If the City's permit issuance is conditioned upon the installation of the midblock crossing, eastbound drivers entering the library site and westbound drivers turning out of the site will face the same potential hazards as previously identified for patrons of the businesses on the north side. A midblock crosswalk will attract pedestrians away from the intersection crossings, yet those pedestrians will not experience the same level of safety as exists at the intersection crossings. Library patrons entering and existing the site by vehicle will have little distance and time to both react to pedestrians in the crosswalk and to avoid the refuge islands placed to protect them.

A crosswalk in the proposed location, like any crosswalk, will invite and funnel pedestrians to the crossing and away from existing, safer and well-established intersection crossings. Having invited pedestrians to use a crosswalk, a City has a duty to make the crossing safe and not attract pedestrians into a trap. The conclusion of the City's analysis was that the City could not safely require a high-visibility mid-block crosswalk at the Library site.

A further consideration of the parties was the level of improvements required for a high-visibility midblock crossing. If a crosswalk was to be installed at the

Library site, it would need to include significant infrastructure beyond the standard stripping used at intersections. As mentioned, the MUTCD guidelines list signage and actuated signals as necessary improvements for a midblock grossing. Due to the current permitted parking on Main Street and the extent of business establishments in the area, the City concluded that the installation of curb bulb-outs would also be advisable. And as indicated by the Library's traffic study, refuge islands in the middle turn lane are needed to address the presence of three lanes of travel. This combination of enhancements would be the minimum requirements and when paired with other signage and traffic controls nearby, could cause drivers to become overwhelmed and distracted while approaching the crosswalk location.

The City is not at leisure to disregard any of these suggested enhancements. Based on prior litigation against the City and neighboring jurisdictions, there is a myriad of caselaw requiring the City to provide pedestrians safe passage and to address the risks of a street crossing after a crosswalk is permitted to be installed. Cases such as Xiao Ping Chen v. City of Seattle, 153 Wn.App. 890 (2009), Berglund v. Spokane County, 4 Wn.2d 309, and Tarutis v. City of Seattle, 2010 Wn. App. 2501 (2010) have found municipal liability for insufficiently signed crosswalks. As a result, the installation of a properly designed crosswalk is an expensive endeavor. Based on recent crosswalk projects of a similar nature, the City estimates that installation of a midblock crosswalk at this site would cost the Library District between $750,000 and $1.2 million. This is a significant expense in a $17 million taxpayer funded project. Since the District's new Sumner library will be funded by voter-approved bonds and the crosswalk may be a condition imposed on that project, funding to construct a crosswalk would not otherwise be available for construction of the actual library building. The additional traffic control may ultimately result in a reduction of the size or the quality of library provided to the public.

Considerations of cost would not be driving the decision or concern for the City if its engineers' analysis had shown that installation of a crosswalk would materially improve pedestrian safety in this location. However, since its engineering evaluation indicated marginal safety improvements combined with potentially substantial risk, the City could not disregard the cost impacts

and their implications. Based on its safety analysis, the City determined there was insufficient justification for the imposed crosswalk.

I make these points partly because I want you to be aware that neither the City nor the Library disregarded the traffic study's observations. The study called on the parties to analyze and discuss the possibility of installing a midblock crosswalk at the site and to determine the best course of action. The parties did so. However, a traffic study is not an engineering study, and its scope is not sufficiently broad to analyze all aspects of installation of traffic controls. The study recognized that further analysis was required. When the City conducted this analysis, it concluded that a midblock crosswalk was not advisable in the location. The Library agreed with this assessment and the City confirmed that is still their position. Both parties feel improvements necessary to create a "safe" midblock crosswalk would be cost prohibitive to the project and go beyond standard frontage improvements. And, the result of those discussions was that neither party included it as a recommended project condition.
The City Council is scheduled to consider the development agreement on Monday, January 6th. I'll forward you the ordinance for the Development Agreement once it has been completed so your CUP decision can be timely reissued.

Please keep communicating with Scott Waller.

Thanks

Doug

Doug Beagle

Development Services Director
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