



CITY OF
SUMNER
WASHINGTON

1104 MAPLE STREET, SUMNER WA 98390

January 8, 2025

Ms. Emily Terrell
City of Sumner Alternate Hearing Examiner

By Email: emily@soundmunicipal.com

Re: Joint Request to Reopen the Record for the Review of the Sumner Public
Library
Conditional Use Permit, CUP-2024-0007

Sumner Hearing Examiner:

The City of Sumner and the Pierce County Rural Library District jointly request that the record in the above matter be reopened to accept additional information on an item that neither party addressed during the Library District's CUP application hearing. To supplement the record, the parties will present information regarding the recommendation in the District's traffic impact analysis that the City and the District determine the best course of action for addressing pedestrian crossings at the library site. The parties are making this joint request because the midblock crosswalk topic is an important one that warrants greater detailed analysis on the record beyond that provided by the traffic study. The parties performed an analysis in response to the traffic study's conclusion that that, "further analysis and design will be necessary before implementation of a final pedestrian crossing recommendation" (p11). The parties now seek to provide that analysis and information on the record.

As part of the SEPA evaluation, the parties examined the actual engineering for a mid-block crosswalk in the location. The conclusion of these discussions was that installation of a crosswalk at the identified site would not be in the interests of the library, its patrons, or the City. A midblock crosswalk is inappropriate because it cannot be safely designed or constructed. As a result of this shared conclusion, the parties intentionally did not address the topic in the development agreement, nor advocate for further action on the topic at the hearing. It was not foreseeable to either party that a crossing requirement might be imposed since the parties had raised, considered, and addressed the topic, consistent with the recommendation of the traffic impact analysis, and the city had not received public comment regarding the matter. As a consequence, the record is insufficiently developed on the topic.

The parties seek reopening of the record based on interest of justice and fairness. The information the parties will submit is admittedly not new evidence, although the parties saw no need to provide it at the hearing. However, the availability of information should not be the singular criteria for reopening a hearing record. Requests for reconsideration may be submitted under SMC 2.58.150 for various purposes. Similarly, requests to reopen a record should be evaluated more broadly. Yet, all the standards for a reconsideration motion, including the “newly discovered evidence” standard, sets too high a bar for approving requests to supplement a record, such a request carries with it less significance and involves less burden upon the factfinder than a motion for reconsideration. A request to reopen the record does not advocate for a change in a ruling as does a reconsideration motion but simply seeks to place greater information at the examiner’s disposal. Thus, a request, and especially a joint request, should be evaluated more liberally than a motion for reconsideration and subject to less stringent factors. Evaluating a request only according to the “newly discovered evidence” standard risks producing injustice if information that might otherwise inform a ruling is excluded thereby. Here, it is the opinion of both parties that additional information is pertinent to the matter and will be helpful to the examiner’s consideration of the crosswalk condition. Excluding the information simply because the parties were under the impression that their analysis and discussion were no longer germane to any permit conditions risks robbing the record of sufficient evidence for an informed ruling regarding a midblock crosswalk.

In fact, the SMC provides a different, less stringent criterion than the “newly discovered evidence” standard for evaluating whether additional information may be added to the record. SMC 18.56.175 states that “the record shall be based on the record established at the hearing and any other information submitted consistent with sound administrative hearing practice.” It is the parties’ joint opinion that reopening the record to provide each an opportunity to supplement the record on the topic of the installation of a crosswalk at the library site is consistent with sound administrative hearing practice. As previously noted, the topic is sufficiently impactful to require a full discussion of its costs, safety benefits, and engineering implications. As you correctly pointed out “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.”

While the topic demands greater discussion, supplementing the record for that limited purpose should not greatly impact judicial economy. A full discussion of the matter will not involve voluminous submissions by either party. The parties are largely proposing to submit clarifying and background material related to their previous discussions on the crosswalk topic, including analyses by traffic engineers. The information will also not be redundant or cumulative as the record currently contains little discussion of the topic. And the request triggers no additional ruling or analysis by the examiner beyond what SMC 18.48.050 currently requires the examiner to undertake.

Nor is supplementing the record inconsistent with the single hearing requirement of RCW 36.70B.050. The act of reopening the record will not constitute a second proceeding, or even a second hearing. The parties are requesting only the opportunity to submit written material. Once supplemented, there will still exist one record in the matter. Similar to a motion for reconsideration, the additional procedural step of reopening the hearing is part of the full review proceeding. The previously held hearing along with the supplemented record represents one record hearing under RCW 36.70B.050.

Overall, reopening the record serves general concepts of jurisprudence since it allows the hearing examiner a greater opportunity to make an informed ruling. It also ensures that the parties have a full and complete record on all items considered by the examiner if an appeal should become necessary. Most importantly, because this is a joint request, neither party will be aggrieved by the action. Both parties will independently provide the examiner facts that they otherwise would have presented at the hearing if they had not previously reviewed, discussed, and then agreed as part of the SEPA analysis that a crosswalk should not be removed from consideration. Since the current record contains only the traffic study's brief treatment of the matter and its recommendation for further analysis, the examiner should find the supplemental information valuable to evaluate whether a crosswalk is a warranted condition. Thus, re-opening the record to allow the parties to provide more information on this topic is helpful, in furtherance of substantial justice, and consistent with sound administrative practice.

Respectfully,

**CITY OF SUMNER
DISTRICT**

PIERCE COUNTY RURAL LIBRARY

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