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

7 Emily Terrell, Hearing Examiner

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RE: Sumner Public Library  Conditional Use Permit  CUP-2024-0007	<b>DECISION UPON RECONSIDERATION</b>
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13 **OVERVIEW**

14 The City of Sumner (City) and the Pierce County Library District (Applicant) both filed  
15 requests for reconsideration for a January 21, 2025 conditional use permit (CUP)  
16 decision for CUP 2024-0007. The CUP project is for the relocation of the Sumner Branch  
17 Library to a 1.7-acre site located at 15216 Main Street E. Both the City and the Applicant  
18 submitted requests for reconsideration to contest CUP Condition of Approval #5 which  
19 requires the installation of a high-visibility mid-block pedestrian crossing on E. Main  
20 Street. The City and Applicant's Motions for Reconsideration are granted in part. Upon  
21 reconsideration, the examiner finds that as argued by City and Applicant the evidence  
22 does not conclusively demonstrate that a mid-block crosswalk is necessary for the  
proposal. However, the evidence still establishes that there is a reasonable likelihood the  
project may endanger pedestrian safety. Therefore, original CUP Condition of Approval  
#5 is modified to require the Applicant to provide a formal study of the project's potential  
pedestrian safety impacts and for the project to be mitigated accordingly as consistent  
with constitutional nexus and proportionality.

23 **BACKGROUND**

24 Pierce County Library District filed for a Conditional Use Permit (CUP) approval for the  
25 relocation of the Sumner Branch Library to a 1.7-acre site located at 15216 Main Street  
E (CUP-2024-0007). This project also included a separate Development Agreement  
approval for a development agreement between the City of Sumner and the Pierce

County Library District (DA-2024-0001). The Examiner held hearings on both decisions on November 20, 2024.

On December 23, 2024 after the close of the SEPA Appeal Period for the CUP, but prior to the January 6, 2025 approval of the Development Agreement by the Sumner City Council, the examiner erroneously issued the CUP decision contrary to SMC 18.20.040.B.1. Issuance of the final decision was premature because the Council had not yet approved the Development Agreement, therefore the final decision could not yet be released.

Unfortunately, this error was compounded when the City began ex parte communication between themselves, the Applicant and the examiner regarding Condition of Approval #5 of the underlying CUP decision. Not all parties of record were involved in this ex parte communication. Therefore, on January 21, 2025, the Examiner communicated with all parties of record and included all ex parte communication received from December 23, 2024 to January 21, 2025. The examiner issued the final CUP decision on January 21, 2025.

### **REQUEST FOR RECONSIDERATION**

Both the City and the Applicant submitted requests for reconsideration in order to contest CUP Condition of Approval #5 which requires the installation of a high visibility mid-block pedestrian crossing on E. Main Street pursuant to the Applicant's Traffic Impact Analysis Recommendations submitted as part of the original CUP application (Ex. J). Additionally, Bobbi Snider, a party of record, submitted a comment.

The Conditional Use Permit Condition of Approval #5 stated the following:

*The Applicant shall provide a high-visibility, mid-block pedestrian crossing on E. Main Street at the site location.*

There was no mention of the potential pedestrian safety impacts included in the Staff Report or the hearing testimony from any party. In its reconsideration motion, the City suggests this is because the issue was resolved by the time of hearing (Ex. 1, page 3:13-15). As will be discussed in the Findings of Fact, the examiner imposed the condition requiring a high-visibility, mid-block pedestrian crossing based on information contained in the record.

Given that both the City and the Applicant felt this issue needed further vetting, the examiner allowed for the reconsideration and further allowed parties to submit evidence directly related to the crosswalk issue only. Ms. Snider's comment addressed the pedestrian safety crosswalk and several other issues. The analysis of her comments includes only the relevant issue under reconsideration, the potential high visibility crosswalk. Ms. Snider's other comments are untimely as the record for the underlying CUP decision is otherwise closed.

## EXHIBITS

The Exhibits for the underlying CUP decision were entered as Exhibits A-Q at the November 20, 2024 hearing. Exhibits entered into the record for this reconsideration are listed below.

- Ex. 1 City of Sumner Motion for Reconsideration
  - a. Sumner Library Site Plan Showing Crosswalk
  - b. Fehr and Peers Sumner Library Traffic Analysis, September 10, 2024 (Original Ex. J).
  - c. SEPA Checklist, Section 14 (Original Ex. K)
  - d. Snider Comment Letter, January 22, 2025
  - e. City of Sumner Public Works Director Memo, February 10, 2025
  - f. Fehr and Peers Sumner Library Traffic Impact Analysis Clarification of Findings, February 11, 2025
- Ex. 2 Pierce County Library System Memo to Examiner, February 5, 2025

Additionally, the following ex parte communications were received between December 23, 2024 and January 21, 2025.

- Ex. i. Email Waller to Terrell December 23, 2024
- Ex. ii. Library Crosswalk Conflicts Map
- Ex. iii. Adopted Development Agreement, January 6, 2025
- Ex. iv. City of Sumner Joint Request to Reopen the Record for the Review of the Sumner Public Library, January 8, 2025
- Ex. v. Email Beagle to Terrell, January 2, 2025
- Ex. vi. Email Beagle to Terrell, January 3, 2025
- Ex. vii. Email Ruth to Terrell, January 9, 2025
- Ex. viii. Email Waller to Terrell, January 16, 2025
- Ex. ix. Email Ruth to Terrell, January 17, 2025
- Ex. x. Conditional Use Permit Findings of Fact, Conclusions of Law and Decision, January 21, 2025
- Ex. xi. Conditional Use Permit Decision Appendix A
- Ex. xii. Email Terrell to Beagle, Waller, et al January 2, 2025
- Ex. xiii. Email Terrell to Beagle, Waller et al January 5, 2025
- Ex. xiv. Email Terrell to Waller, Beagle, et al January 16, 2025
- Ex. xv. Email Terrell to Waller, December 23, 2024, 5:51 pm
- Ex. xvi. Email Terrell to Waller, December 23, 2024 3:58 pm

## FINDINGS OF FACT

1. Basis for CUP Condition of Approval. The Sumner Library Traffic Impact Analysis (TIA) prepared by national transportation consulting firm Fehr and Peers (Ex. J) provided evidence the project might endanger pedestrian and non-motorized safety.

Specifically, the Summary of Findings on page 2, the Pedestrian Crossing analysis on pages 11-12 and the Mitigation and Recommendations – Pedestrian on page 16. Fehr and Peers studied the intersection for two hours on May 14, 2024 from 4:00-6:00 PM during the weekday PM Peak Period. It's important to note that Sumner High School is located at the intersection of Main Street and Valley Avenue, across Main Street approximately two blocks west of the proposed library location. The high school is, according to Ex. 1e, the most likely origin/designation for many of the pedestrian trips to the project site. The high school instructional day ends before the TIA review period began. Therefore, the TIA counts might underestimate the full pedestrian volume at study intersections.

The TIA documented over 100 pedestrian crossings during the two-hour study period at three study intersections located at E. Main Street and Valley Avenue, a mid-block crossing of E. Main Street between Parker Road and 160<sup>th</sup> Street E, and a crossing at E. Main Street and Graham Avenue. Almost a quarter of these (24 crossings) were documented to occur mid-block. The closest marked crossing from the proposed library site is at Main Street and Graham, 500 feet away. The second closest marked crosswalk is at Valley and Main, near the high school campus. The City notes there are other “unmarked” crosswalks at other nearby roadway intersections including Bock Avenue and 153<sup>rd</sup> Avenue Court East (Ex. 1e). Ms. Snider commented she had personally witnessed pedestrians crossing Main Street at both Graham and 153<sup>rd</sup> Avenue Court and that they had often narrowly missed being hit by vehicles due to the absence of proper pedestrian infrastructure. She stated the safety of families and children using the library should be a top priority (Ex. 1d).

Fehr and Peers noted there is a shared use path running north-south between Main Street E and Washington Street, where there are many multi-family housing units, that ends directly across the street from the proposed library. As noted in the report, a high visibility crosswalk with a pedestrian island

*“would more safely allow people to cross mid-block and connect people to the library from the north side of Main Street from various retail establishments and high-density residential areas. Further analysis and design will be necessary before implementation of a final pedestrian crossing recommendation.”*

The potential mid-block crossing location was depicted in Figure 4 of Ex. J. Under Mitigations and Recommendations – Pedestrian, page 16 of Ex. J, the report states,

*“Based on our assessment of existing conditions including pedestrian crossing counts, a high visibility mid-block pedestrian crossing is recommended on Main Street E. at the site location. Pierce County Library Systems will work with the City of Sumner to understand how they can support the City in identifying the best course of action”.*

1 The were two other exhibits referencing the pedestrian safety improvement. The first  
2 was the October 2, 2024 Site Plan that showed an “Optional Midblock Crossing”(Ex.  
3 C). The other references were in the SEPA Checklist (Ex. K) on pages 16-17 under  
4 Section 14. Transportation, subsections c and g. Section 14.g states

5 *“No significant transportation impacts are anticipated from the proposed*  
6 *project. However, to facilitate safe pedestrian crossings across Main Street*  
7 *E, the project could include installing a mid-block high-visibility pedestrian*  
8 *crossing along Main Street E. This will connect the existing pedestrian path*  
9 *across from the proposed site. Pierce County Library system will work with*  
10 *the City of Sumner to determine appropriate treatment”.*

11 Subsection c states,

12 *“The project could include installing a mid-block high visibility pedestrian*  
13 *crossing along Main Street E to connect the existing pedestrian path across*  
14 *Main Street E to reach the library. However, the City of Sumner did not want*  
15 *this pedestrian crossing and it was eliminated”.*

16 Based on the above information contained within the record, the examiner imposed  
17 a condition of approval that matched the recommended pedestrian safety  
18 improvement described in the Applicant’s TIA (Ex. J).

- 19 2. Appropriateness of Conditioned Mitigation Measure. The City’s Reconsideration  
20 Request (Ex. 1) stated the City had examined the appropriateness of requiring a  
21 crosswalk to connect the new library to the existing pedestrian walkway across the  
22 street. The City provided a memorandum from the City’s Public Works Department  
23 discussing the City’s analysis of the need for a high visibility mid-block crossing at  
24 this location (Ex. 1e). The City stated in late October 2024, City review staff decided  
25 to decline a midblock crossing at this location and acknowledged the issue was not  
discussed at hearing. They further acknowledge the library might increase pedestrian  
traffic. However, the City concluded various situational factors made a mid-block  
crossing ill-advised at this location. The City review team determined a mid-block  
crosswalk would pose safety and traffic issues in the proposed location because of  
proximity to nearby driveways and other legal intersection crossings.

In support of this conclusion, the City provided several new exhibits for  
reconsideration. In Ex. 1e the City provided an existing conditions summary of the  
physical infrastructure in place including the number of lanes and approximate lane  
widths along E. Main Street, the location of the project site with respect to  
surrounding uses, the characteristics of nearby intersections, and the distance and  
characteristics of nearby marked and unmarked crosswalks. The City notes that mid-  
block crosswalks are rare within the city. However, the City did not mention there is  
an existing high-visibility mid-block crosswalk located at the opposite entrance to

the same Fred Meyer complex on Valley Avenue across from the high school in an area with roughly the same lane configuration and assemblage of retail uses.

The City stated the East Main Street Design Strategy (EMSDS) considered two mid-block crossings, including one near the proposed project location and one at the intersection with 153<sup>rd</sup> Avenue Court East (Ex. 1 and 1e). The project will be taking its primary vehicular entrance at the 153<sup>rd</sup> Avenue intersection via an easement across the adjacent property to the project's eastern boundary rather than taking access to E. Main Street directly. This is a T-intersection as 153<sup>rd</sup> Avenue Court East intersects E. Main Street from the south but does not continue north. The intersection of 153<sup>rd</sup> Avenue Court and E. Main Street is 350 feet east of the project site.

The City rejected the proposal for a mid-block crossing directly in front of the proposed library because the closest driveway is only 30 feet east of this location. This driveway is one of two that serve a large mixed-use development with a mix of first floor businesses and second floor residences. The City stated this distance is insufficient for a driver to observe and react to pedestrians crossing E. Main Street. A mid-block crosswalk at the project location may pose sight distance hazard issues with the potential for diminished visibility of oncoming traffic and of pedestrians occupying the sidewalk on the north side of Main Street for drivers traveling eastbound. This may cause drivers to make rushed or distracted turns into the driveway.

The City stated any mid-block crossing would need to conform to the Manual for Uniform Traffic Control Devices (MUTCD), WSDOT Design Standards and industry standard engineering principles. The City stated it is unlikely the minimum infrastructure requirements for a high-visibility, mid-block pedestrian crossing could be achieved at the project location due to the roadway width, the amount of traffic during peak hours, the amount of street parking in the area, the location of the school only a half mile distant and the lack of any other traffic control signal at the midblock location proposed on the Applicant's site plan (Ex. 1e and Ex. C). The City also notes the distance is limited for drivers to prepare for and execute a lefthand turn after navigating around the traffic control devices necessary to create a high visibility pedestrian crossing. The pedestrian islands would largely eliminate the usefulness of the lefthand turn lane for eastbound drivers entering into the mixed-use complex.

Finally, the City argues crosswalks at full intersections or T-intersections are safer than mid-block crossings because the connecting cross streets indicate to a driver that pedestrians may be entering the intersection from adjoining streets (Ex. 1, page 11:17-19).

3. Reasonable Likelihood of Pedestrian Safety Impact. There is a reasonable likelihood the project may endanger pedestrian safety or exacerbate existing pedestrian safety issues. An important factor noted by the City is that the TIA looked at existing pedestrian and non-motorized activity but did not analyze the impact of the new use

1 in any quantitative fashion. Nowhere in the record is there a quantitative and rigorous  
2 analysis of the likely pedestrian and non-motorized trip generation created by the  
3 project itself. The project may or may not exacerbate an existing safety issue. What  
4 that impact may be is not known.

5 The City is correct in arguing there must be rough proportionality between the  
6 government's condition on development and the effects of the proposed land use.  
7 There must be a nexus between the condition and the state interest served by it (Ex.  
8 1, page 5: 13-18 citing RCW 82.02.020, *Rapczak v. City of Kirkland*, 2024 Wash.  
9 Ap. LEXIS 1972 (2024 No. 85626-0-I)(UNPUBLISHED)). Without a proper  
10 engineering study, the potential impacts of the project on pedestrian and non-  
11 motorized safety and reasonable mitigation for those impacts, wherever that  
12 mitigation may be located and in what form, cannot be properly assessed.

13 The City claims that there are unmarked crossings at Bock Avenue and 153<sup>rd</sup> Avenue  
14 Court East, which are closer to the site than the marked crossings at Valley and  
15 Graham (Ex. 1e, page 4). However, the City also cites *Xiao Ping Chen v. City of*  
16 *Seattle*, 153 Wn. App. 890, 906-7 (2009) in stating

17 *"... the law directs pedestrians to use marked crosswalks. Therefore, the city*  
18 *has a corresponding duty to maintain its crosswalks in a manner that is*  
19 *reasonably safe for ordinary travel in light of the circumstances at each*  
20 *particular crosswalk"* (Emphasis added) (Ex. 1, page 14: 11-14).

21 The context of the argument is that the City has liability for harm when pedestrians  
22 are using crosswalks but not when pedestrians are outside of crosswalks. If *Xiao Ping*  
23 *Chen* is to apply, then it is arguably to marked rather than informal or unmarked  
24 crosswalks. No marked crosswalks are located near the project site.

25 The City alternatively refers to the intersection of Main Street E and 153<sup>rd</sup> Avenue  
Court East as an 'unmarked crossing' or a 'mid-block crossing' (Ex. 1e). The City is  
essentially saying it is both the location of an existing unmarked crossing while also  
arguing that this is an undesirable location for a mid-block crossing. On the one hand  
the City is arguing there are nearby crosswalks at Bock and 153<sup>rd</sup> but on the other it  
is deflecting liability for pedestrian harm by failing to classify these as legally defined  
crosswalks. As noted by Snider, she has personally witnessed unsafe crossings at the  
'unmarked crosswalk' at 153<sup>rd</sup> Avenue Court, which is also the location of the formal  
vehicular entrance to the project. The argument that additional pedestrian safety  
crossings represent an indirect burden to the City, while failing to improve the public  
welfare when there is an existing but unmarked crosswalk, is not convincing because  
the crosswalk itself fails the definition under *Xiao Ping Chen*, even given the  
speculation that drivers might expect pedestrians to be entering from an adjoining T-  
intersection (Ex. 1, page 11:17-19).

1 The City makes the further points that the draft TIA did not adequately quantify the  
2 impact that the new development will have on pedestrians or non-motorized users.  
3 This is acknowledged in the Applicant's clarification memorandum from Fehr and  
4 Peers (Ex. 1f). Also, the City notes a "high-visibility crosswalk" is not a term of art.  
5 A better standard for the definition of improvements required would utilize the  
6 Manual for Uniform Traffic Control Devices 2009 ed. 3B.18. p. 385 (as described in  
7 Ex. 1e, page 6) and/or the 2024 WSDOT Design Manual at Section 1510.08, p 1510-  
8 21 (Ex. 1, page 11-13).

9 In Exhibit 1f, Fehr and Peers stated they had prepared the initial traffic impact  
10 analysis (TIA) according to the City of Sumner guidelines and noted the existing  
11 conditions analysis demonstrated a demand for a pedestrian crossing and a gap in the  
12 trail network where the shared use path ends at the north side of Main Street E across  
13 from the project site. Their analysis provided a potential crossing treatment to close  
14 the pedestrian infrastructure gap, but they also stated both in the original TIA (Ex. J)  
15 and the subsequent clarification of findings memo (Ex. 1f) that further analysis and  
16 design will be necessary before implementation of a final pedestrian crossing  
17 recommendation could be made. Fehr and Peers stated the feasibility of a crossing  
18 and further design analysis was not part of the original traffic impact analysis' scope  
19 of work, which was deferred to the City of Sumner. As noted by Fehr and Peers, it is

20 *"ultimately up to the City of Sumner to review the planning-level  
21 recommendation in the TIA and to provide a separate analysis of the  
22 engineering feasibility and other impacts of the mid-block crossing before a  
23 decision on implementation can be made."*

24 Both the City and the Applicant agree that the need for pedestrian safety measures  
25 related to the project's impacts can only be identified through a full pedestrian safety  
study and associated recommendations (Ex. J, Ex. 1f, Ex. 1e and Ex. 2), and further  
that any subsequent improvements should be designed in conformance with the  
MUTCD and/or the 2024 WSDOT Design Manual at Section 1510.08, p 1510-21  
(Ex. 1, page 11-13). The original TIA was not scoped for this purpose though it did  
bring up a potentially significant safety issue. Fehr and Peers thought the issue was  
significant enough to emphasize it in three places within the 17-page TIA (Ex. J).

## 21 DECISION

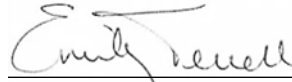
22 Based on the above Findings of Fact, under reconsideration Condition #5 of the  
23 Conditional Use Permit Findings of Fact, Conclusions of Law and Decision dated  
January 21, 2025 is hereby modified to state as follows:

- 24 5. The Applicant shall perform an engineering study of the impact on pedestrian  
25 and non-motorized safety posed by the project. The study shall be stamped and  
signed by a licensed engineer and shall conform to the Manual for Uniform  
Traffic Control Devices and the WSDOT Design Manual. The study shall



determine whether, where, and what form of pedestrian safety improvements are necessary to ensure pedestrian safety and to alleviate pedestrian safety impacts attributable to the project. Staff may require such improvements recommended by the study as consistent with constitutional nexus and proportionality requirements.

Dated this 4<sup>th</sup> day of March 2025.



Emily Terrell  
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.