

Memorandum

To: Joe Turner, City of Woodland Land Use Hearings Examiner

From: LeAnne M. Bremer, P.C.

Subject: Logan's Landing Site Plan Approval Appeal (WLD-2023-006): FINAL REBUTTAL

Date: February 29, 2024

Introduction

The purpose of this Memorandum is to respond to the City of Woodland's Supplemental Staff Report (City Rebuttal) and Clark County Fire & Rescue's Response, entered into the record on February 22, 2024. According to the schedule set out by the Hearings Examiner, this is the Appellant's final rebuttal, and the parties' final submittal in this post-hearing briefing.

This rebuttal will be organized by appeal issue.

Rebuttal

I. Appeal Issue #1 – Parking.

The Appellant proposes constructing buildings in which a portion of the ground floor is dedicated to off-street parking facilities, which can also be considered commercial parking garages. These parking uses are expressly identified and listed as permissible commercial uses in the C-2 zoning regulations (which incorporate C-1 commercial uses under the vested version of the code). These parking uses also help the Appellant meet parking requirements for the proposed uses under WMC 17.56.010 and 17.56.020. Providing a permitted commercial use, listed as a Permitted Use in the zoning code (and not an Accessory Use), allows the Appellant to construct residential uses above the ground floor.

Staff has been unable to persuasively argue an alternative reading of the code, which, by its plain terms, permits what the Appellant is proposing. Staff, instead, seem opposed to the project based on what it would rather have built, an impermissible reason to condition a project. An additional point Staff argues in City Rebuttal is the fear that the Appellant will change its proposal and provide parking within the entire ground floor of the buildings. While

the code would allow this, the Appellant cannot change the project after approval without submitting a revised application. In any event, this is not responsive to whether the use is allowed or not.

The other additional point Staff makes in the City Rebuttal is one it previously made: that if the Appellant were right, then all parking would be considered a separate use and would not be allowed unless listed as a separate use in, for instance, residential zoning regulations. We agree with Staff that this is an “absurd extension,” because it is not a position the Appellant is arguing, nor a result if the Hearings Examiner adopts the Appellant’s position. The Appellant’s point is narrow. Certain parking facilities are listed separately as Permitted Uses in the C-1 and C-2 zones. This makes them separate, allowed uses. But parking areas and spaces are not listed as separate uses, are defined in code, and are accessory uses or are required to meet a development standard. All these things can be true at once. The Appellant’s position does not lead the City to require (e.g., “mandate”) parking facilities, lots, or garages as a separate use; developments must still independently provide parking to serve proposed uses under chapter 17.56 WMC. To that end, we agree with Staff when they say on page 10 of the City Rebuttal “[t]hat’s why parking standards are in a separate chapter (WMC 17.56) than the zoning discussion of uses, WMC 17.36 for Highway Commercial (C-2) zones in this case.”

After making its argument that parking cannot be a separate use, Staff then inconsistently states this:

Staff recognizes that parking as a commercial use could be proposed by the applicant, and that such a commercial parking use could be placed on the first floor. Such a step would help the proposal meet the “above commercial” stipulation of the Woodland code under which they are vested. But in that scenario, those spaces would have to be treated as a dedicated use, and therefore could not be used to meet the required parking standards.

It makes no logical sense that the Appellant cannot count parking spaces in a building it constructs and dedicates to its other proposed uses towards the parking requirements for the entire project. Starting with the general requirement in code, WMC 17.56.005 provides:

Every building hereafter erected shall be provided with parking spaces, and such parking spaces shall be made permanently available and be permanently maintained for parking purposes and, except for parking areas used for playground purposes in connection with schools, shall be used only for the parking of automobiles or trucks. Any areas used to provide required off-street parking shall be of such size and shape and so designed that the area will accommodate the number of cars to be provided for. If structural alterations or additions to a building or use result in additional floor space, seats, beds,

employees, users, or students, as the case may be, parking shall be provided as required in this chapter according to the total development, the existing, plus the addition.

WMC 17.56.010.A. further states that “[a]ll developments in all zoning districts shall provide a sufficient number of parking spaces to accommodate the number of vehicles that ordinarily are likely to be attracted to the development in question.” Counting parking in the buildings meets these requirements. The Appellant has also pointed out that WMC 17.56.020 provides the following:

The city recognizes that, due to the particularities in any given development, the inflexible application of the parking standards set forth in Sections 17.56.030 through 17.56.050 may result in a development either with inadequate parking space or parking space far in excess of its needs. The former situation may lead to traffic congestion or parking violations in adjacent streets as well as unauthorized parking in nearby private lots. The permit-issuing authority may permit deviations from the presumptive standards of Sections 17.56.030 through 17.56.050 and may require more parking or less parking whenever it finds that such deviations are more likely to satisfy the standard set forth in subsection 17.56.010(A).

The Appellant does not believe this flexibility is needed because it can comply with the strict requirements of the code by counting the parking spaces in the buildings to meet the parking requirements for the project—something the code does not prohibit if the parking is also considered a separate, permitted use. If, however, this provision is applicable, then what it shows is that the City need not require parking far in excess of a development’s needs, which would be the result if the Appellant could not count the building parking spaces towards the parking requirements.

II. Appeal Issue #2 – Façade

In its submittal, Staff points out that the Appellant’s argument would mean “all parking lots [would] meet the standard for providing clear vision openings.” City Rebuttal, at 10. Staff fail to see the difference between parking lots and parking in buildings. The visibility standards seek to create a physical environment emphasizing buildings and not parking lots. Where buildings are provided, they must provide transparency into the interior for 30% of the façade. The Appellant is proposing 65% transparency through a combination of vision glass and unobstructed openings, meeting the intent of the code, which intent is part of the code requirement itself. WMC 17.36.130.H.4. See updated building elevation-typical submitted in this appeal.

III. Appeal Issue #3 – Transportation

A. Timing of the Franklin Extension

The appeal issue regarding the timing of the connection between the extension of Franklin and Old Pacific Highway, whether it be an emergency access or a full half-width improvement, is necessarily connected to when the Franklin Street connection is extended through the site from Belmont Loop south. Importantly, the timing of construction of the Franklin Street extension through the site has already been decided in the Decision and that issue is not on appeal.

The Appellant’s plan all along was that the Franklin Street extension would be built out as the buildings are constructed, which would occur in phases. The narrative for the formal application describes a Phase 1 and subsequent phases. Specifically, the narrative states:

Construction Phasing. The project proposes a phased development consisting of 8 similar buildings located on both sides of the proposed southerly extension of existing Franklin Street.

Phase 1 consists of Bldgs A and B, the stormwater facility, 0.4 acre of active open space, and an approximately 600 feet of southerly extension of Franklin Street, within the limits indicated on the Preliminary Site Plan. Subsequent phases will be determined by market demand.

Page 1 of Narrative.

The site plan clearly shows and labels the “Limits of Phase 1” line as crossing Franklin Street just south of Building B. The site plan also shows a turnaround for emergency vehicles in Phase 1. Staff states that if that were the Appellant’s plan then “they would show phasing lines and how they will provide emergency vehicle turnarounds with each phase.” City Rebuttal, at 4. In fact, the Appellant did just that, as the record clearly shows.

In the Decision, Staff approved the project that it described as follows:

The construction of the first phase of the building, including buildings A and B for a total of 10,1160 Sq Ft of commercial space and 68 residential units and associated improvements, is expected to start in the summer of 2025 and be

completed in 2026, with each additional phase (consisting of one building each) being completed each year based on market demand. Partial construction of the extension of Franklin Loop that has been identified as a part of the City's Transportation Improvement Program (TIP), along with other associated civil improvements *will be completed alongside the development . . .*¹

To find now that it would be impractical and indefensible for the City to allow the Appellant "to build a building a year over the next potential decade, before the road gets extended" and that "[n]othing in the application material implies that is what their plan was"² is contradicted by the very Decision Staff made.

Further, the Decision includes Finding #69 which states that all public facilities necessary to serve a phase *shall be completed prior to or with the development of the phase*. Page 23 (emphasis added).

The Decision also includes Condition 15:

Provide as part of the final engineering plan review, a complete phasing plan will be required. The phasing plan must include exact phasing lines outlining the timing of public improvements including streets and utilities, bonding, parking and landscaping, and the timing for each phase.

Thus, despite what Staff argues in the City Rebuttal, it was the Appellant's plan, accepted by the City in the Decision, to phase the Franklin Street extension as the project is built out in phases, with the phasing plan to be approved by the City. This unappealed issue cannot be addressed in this appeal.

B. Nature and Timing of the West-East Connection to Old Pacific Highway

In the City Rebuttal, Staff recognizes that the Applicant's revised site plan and March 3, 2022 submission showed an emergency access to Old Pacific Highway. Page 3. Staff also point out that the Appellant's traffic engineer studied this intersection with Old Pacific Highway. Staff brings up these points to argue that the Appellant seems to be changing its position on this connection, but it is not. Showing and studying the connection was entirely appropriate because it was always the Appellant's plan that a connection would be built eventually and it was important to show the impact of that connection. Specifically, the Appellant's traffic impact analysis dated July 31, 2023, on page 4, states that "[m]oreover, this Franklin Street roadway

¹ Decision, at 2 (emphasis added).

² City Rebuttal, at 4.

extension is proposed to provide direct connection to Old Pacific Highway via #: 50714 upon full site build-out.”

Even today, as a result of the hearing testimony from the fire official, the Appellant is proposing an emergency connection when 200 residential units are built per the fire code requirement, and the Appellant will build a full half-street improvement for this connection when the last phase of the project is built, even though it is arguable that the full improvement is not required. For that reason, it was logical for the Appellant’s traffic engineer to study the impact of the eventual connection to Old Pacific Highway and for the site plan to show the connection.

Contrary to what Staff may be arguing now, the Appellant is not walking back what it is proposing to do, but instead it is clarifying the timing of the connection, an issue that arose because of a vague condition in the Decision that the Appellant is challenging (Condition #3) and further compounded by testimony at the hearing. This condition, with associated Finding #5, requires the full half-street improvements connecting the Franklin Street extension to Old Pacific Highway and frontage improvements to Old Pacific Highway. It was necessary for the Appellant to appeal this condition because it was not clear when these improvements would be required. It turns out the Appellant had a right to be concerned because in this appeal it became apparent that the City desires to have the Franklin Street extension and the connection to Old Pacific Highway built ahead of the development alongside the street extensions.

In its narrative, the Appellant explained the timing of the connection:

Phase 1 will provide less than 100 residential units, therefore a secondary access is not required until Phase 2 is constructed. At that time, a half street connection to Old Pacific Highway will be constructed as shown on the Preliminary Site Plan.

Phase 1 will construct 68 residential dwelling units. Since subsequent phases will add additional residential units, Phase 2 will construct a half street connection from the end of proposed Franklin Street to existing Old Pacific Highway on tax parcel 50714, also owned by Belmont Lewis Holdings, LLC. Also, each driveway will provide a turnaround in compliance with the fire code, refer to the Detail on the Preliminary Site Plan.

Page 7 of Narrative.

Based on testimony at the hearing, the Appellant clarified its proposal as to the timing of the connection in its February 15, 2024 post-hearing rebuttal:

The Appellant proposes that at the time of construction of the sixth building (when a total of 204 residential units will be built), it will provide a 20-foot emergency access consistent with the fire code connecting to the extension of Franklin, wherever it then terminates, to Old Pacific Highway. At the final phase, the Appellant will provide the full half-street improvement between Franklin and Old Pacific Highway.

This is fully consistent with fire code requirements. In short, because all buildings will be sprinklered, the fire code only requires one access point until 200 residential units are constructed. At that time, the Appellant will build a 20-foot emergency access from the end of Franklin Street extension, at wherever it then terminates, to Old Pacific Highway to comply with the applicable requirement in Table D103.4 of the fire code that allows 20-foot width roads for emergency vehicle turnarounds (in this case, a through-street). As further phases are built out, the Franklin Street extension will be improved to City standards pursuant to unchallenged Finding #69, with the full half-street improvement across tax lot 50714 being completed at the last phase.

In its post-hearing submittal, CCFR argues that because the project will eventually have over 200 units, a secondary access is required “prior to the construction of any buildings.” This is not supported by the fire code and is illogical. The applicable fire code provision exception in D 106.1 states that “[p]rojects having up to 200 dwelling units shall have not fewer than one approved fire apparatus access road where all buildings, including non-residential occupancies, are required throughout with approved automatic sprinkler systems installed in accordance with section 903.3.1 or 903.3.1.2.” The operative words are “projects having.” Until there are 200 dwelling units, no secondary access is required. The requirement exists so that emergency vehicles have a second way in to respond to emergencies occurring in buildings. Until a certain number of units are actually constructed, this secondary access is not required.

On other fire code provisions, the Appellant will also provide fire hydrants as development is built out consistent with IFC 507.5.1.

In sum on transportation requirements, nothing in code or due to level of service or safety impacts requires the Appellant to construct the full Franklin Street extension and connection to Old Pacific Highway with or prior to the first phase of the development. Statutory and constitutional limitations also support deferring the connection to Old Pacific Highway until last phase under the nexus and rough proportionality tests to justify an exaction from case law and under RCW 82.02.020. Only exactions necessary to mitigate a direct impact of the development and that is proportional to the impact can be required. A half a million dollar improvement to provide a secondary access ahead of when the fire code requires, where there are no level of service or safety issues, does not meet the applicable legal tests. The Appellant’s

traffic engineer submitted a supplemental analysis into the record during the open record portion of this appeal demonstrating that one access point for the project will not degrade any City intersection below LOS D, even at full build-out of the project. WSDOT similarly stated that no state facilities would be adversely affected. The City has submitted no evidence in the record to meet its burden justifying the exaction.

Lastly on transportation issues, Staff agrees that frontage improvements to Old Pacific Highway can be deferred until the property fronting Old Pacific Highway (50714) is developed and once the connection to Old Pacific Highway. City Rebuttal, at 9. The Appellant agrees for the reasons stated in its appeal letter, although the parties still disagree on when the connection must be made.

IV. SEPA

There is no requirement that if the Appellant's appeal is granted in whole or in part that the City be required to conduct additional environmental review on the project. Additional environmental review is only required if there is new information about a project or substantial changes to the proposal. WAC 197-11-600(3)(b). Neither exists in this case. The Appellant has been consistent from the beginning about the proposed uses within the project, including proposed parking as both a use and to meet a development standard, the phasing of the development and construction of the Franklin Street extension, and the timing of the connection to Old Pacific Highway. Conditions of approval that have not been challenged requiring further actions and approval from the City continue to apply so that the additional study of impacts and mitigation can occur prior to construction (i.e., Condition #8, revised critical areas report required).

V. Proposed Findings and Conditions to Address Appeal Issues

Based on the record, the Appellant respectfully requests that the Hearings Examiner make the following findings:

1. Commercial parking garages and public and private parking off-street parking facilities are allowed uses in the C-2 zone, and, accordingly, are permissible commercial uses for the purposes of WMC 17.32.020(10) that allows residential uses above these uses.
2. Parking spaces within the buildings may be counted towards the parking spaces required for the project under WMC 17.56.005 and 17.56.010.A.
3. Unobstructed openings on the ground floors of the buildings can meet the 30% transparency requirements in WMC 17.36.130.H.4 because such openings fulfill the intent of

this section to provide visual connection between activities inside and outside of buildings and encourage pedestrian activities on the fronting public streets.

4. The extension of Franklin Street, built with each phase of the development, meets the requirements of Finding #69 in the Decision.
5. Construction of a secondary emergency access road at the time 200 residential units are built meets the requirements of IFC D106.1 if all buildings have approved automatic sprinkler systems installed in accordance with Section 903.3.1.1 or 903.3.1.2.
6. An emergency access road from the terminus of Franklin Street to Old Pacific Highway 20-foot wide meets the requirements of IFC Table D103.4.
7. Frontage improvements to Old Pacific Highway are not required until development occurs on tax lot 50714.
8. No fire hydrants are required until buildings or facilities are constructed pursuant to the requirements of IFC 507.5.1.
9. Condition #32.f. resolves Appeal Issue #4 and takes precedence over Finding #43.
10. No additional SEPA review is warranted under WAC 197-11.600(3)(b) with the granting of this appeal.

In addition, the Appellant respectfully requests that the Hearings Examiner modify the conditions in the Decision as follows:

1. Replace the second sentence of Condition #12 with "Said calculations may include parking that is internal to the buildings."
2. Condition #32.c. is amended to state:
 - c. Building elevations and site plan details showing how each building will meet the articulation and massing provisions in WMC 17.6.130.H.4, and unobstructed openings in ground floor facades are equivalent to clear vision glass for the purposes of this section.
3. The following is added to the end of Condition #3:

At the time of construction of 200 residential units, the Applicant must provide a 20-foot emergency access consistent with the fire code connecting to the extension of

Franklin Street, wherever it then terminates, to Old Pacific Highway. At the final phase of development, the Applicant must construct a full half-street improvement along this connection across tax lot 50714, consistent with City standards. At the time tax lot 50714 is developed, frontage improvements to Old Pacific Highway must be provided.

4. All findings inconsistent with the above revised or additional conditions are stricken from the Decision, including all challenged findings listed in the appeal letter.³

The Appellant respectfully requests that the Hearings Examiner grant this appeal in full consistent with the above.

³ Finding ##: 5, 19, 20-28, 43, 61-63, and 65.