Community Development Department
Building | Planning | Code Enforcement
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SUPPLEMENTAL Staff Report
Logan's Landing Appeal

Land Use Application Nos.:	SPR 22-001 (Site Plan Review), CAP 22-001 (Critical Areas Permit), SEP 22-003 (SEPA Checklist) Now: WLD-2023-006
Applicant & Property Owner:	Belmont-Lewis Holdings, LLC Attn. Shayne Olsen PO Box 1940 Bend, Oregon 97709
Additional Representative:	Wyndham Enterprises, LLC Attn. Ed and Judy Greer 13023 NE Hwy 99, STE 7-126 Vancouver, WA 98686
Site Location:	Franklin Loop off of Belmont Loop in Woodland, WA 98674.
Parcel No. & Size:	50680023, 50729, and 50730. Parcel 50714 will also be impacted. Approximately 20 acres.
Zoning Designation:	Highway Commercial (C-2), Light Industrial (I-1)
Notice of Complete Application Issued:	Last submittal on August 22nd, 2023
Notice of Application & Likely DNS issued:	NOA issued September 6, 2023
Comment Period & SEPA Appeal Period Ended:	Published September 13, 2023 Comments due September 27th, 2023 for SEPA
Staff Report Issued:	December 21, 2023
Date of appeal:	December 28, 2023

I. SUPPLEMENTAL RESPONSE

Staff needs to point out that there are two webpages that serve as the record for this project and both pages represent the record. Plus, there is a separate page for the SEPA DS appeal that was filed in 2022 for the SEPA DS that was issued. (See links below.)

Appeal Issue – Transportation (Extension of Franklin Loop)

THE PRE-APP

As far back as the Pre-Application Conference for this project in June of 2021, (PRE-21-008) (Attachment D) the applicant proposed eight 4-level buildings to have 17 apartments on each of three residential floors above a ground floor garage. Each building had a token commercial space on the ground floor. (For a site total of 7,776 square feet of commercial space and 408 residential units in those eight buildings.)

The proposal as first submitted for the pre-app, ended Franklin Street at the south end of the buildings and did not extend the road to the property line or to Old Pacific Highway (OPH) for cross-circulation. (See the map attached to the Pre-App Report - Attachment D)

During that pre-app, the report provided feedback that included the need for a second access (Bullet 1 on Page 30 of Attachment D) as well as other comments including the need for the ground floor to be all commercial space. As noted on page 4 of the pre-app staff report, it notes that dwelling units must be located above permissible commercial uses.

Based on the pre-app discussion, the applicant eventually reduced the project from four stories to three and connected the project to Old Pacific Highway with a partially developed fire access. They also increased the ground floor commercial spaces beyond what was proposed at the pre-app but still had residential uses that were not physically above a commercial use on the bottom floor. (See the site plan which was part of the first submission as discussed below.)

FIRST SUBMISSION

The first submission is at: **Logan's Landing - First Submission | Woodland Washington**

On this webpage, the site plan is identified as "Document 27 – Revised Site Plan" and recognizes staff's request by upping the amount of commercial space and by showing a partially developed connection to Old Pacific Highway via an emergency vehicle access. (Though at the pre-app, the staff had pointed to the City's Transportation Improvement Program which includes a street connection named Franklin Loop which connects Belmont Loop and Old Pacific Highway.)

With the first submission, on March 3rd, 2022, staff issued a Determination of Significance (DS) for SEP-22-003 for the project as proposed at that time. (See Attachment A.) That project proposal included a gravel emergency vehicle access for eight buildings with commercial uses

and residential units in each building, on a project site that included commercial and industrial properties. Staff listed 14 bulleted points that constituted the areas of significant adverse impacts that would likely result from the proposal, and a DS was issued so those impacts could be studied.

A major part of that DS was based on the concern about the significant adverse environmental impacts from the project, including the fact that there were hundreds of residential units planned on a single access point.

On March 16th, 2022 the applicant appealed that DS arguing that the issuance was pre-mature and noted that the determination was made on an incomplete proposal because the project was not fully complete yet. There was also an argument that the DS assumed that the project would not be adequately mitigated through the development regulations. (See Attachment C.)

The SEPA DS appeal information is located at: **SEP-22-003 Notice of Appeal Logan's Landing | Woodland Washington**

After a discussion with staff, the applicant ultimately prepared additional information and submittals for review. (Thus, the separation of the project pages on our website.) Staff withdrew the SEPA DS and issued a revised Notice of Application and SEPA preliminary determination on September 6th of 2023, as part of the review for a revised submission packet.

REVISED SUBMISSION

The record for the revised submission on August 14, 2023, is at: **Logan's Landing (Revised Submission 8.14.2023) | Woodland Washington**

Among all that revised info, that packet included a revised site plan (Attachment E) showing half street improvements for the extension of the street to Old Pacific Highway and even the applicant's traffic study considered the extension of the street (Attachment F) in the analysis.

Note that the applicant submitted a revised traffic impact analysis dated July 31, 2023, to supplement the original March 2022 traffic document submittal (that contributed to the SEPA DS). In Figures 4 and 6 of the revised traffic study, (Attachment F) the traffic engineer clearly considered Intersection A to exist at the extension of Franklin Street to Old Pacific Highway.

So, there is a clear progression from where staff indicated that there was a need for cross connection, to the applicant amending their plan to show cross connection, and then to avoid having to analyze the potential environmental impacts of having the project using one access point except in extreme emergencies, the final submittal showed a full half-street connection (as requested).

From non-compliance, to compliance, to maybe compliance?

Staff has a hard time balancing the appellant's request to not build the connector with the fact that the record has a clear progression of the design, from a single point of access; to a proposed second "emergency only" access; then to a final proposal that included a half-street connection as requested by staff. (See the pre-app site plan, #27 revised site plan, then the approved site plan.)

Even the applicant's own two traffic studies include the progression. The first submission traffic report studied one entrance, and the second submittal studied two access points.

Staff can't see how there is an argument that the applicant should be able to get an approval and then decide for themselves when they will implement a condition of approval.

Since the applicant's own project narrative states that after the first phase, additional buildings will be built one at a time, staff can hardly be blamed for interpreting that to say that once the first phase is done and the Franklin Loop is built, they will add buildings as the market will bear.

The idea that the applicant is now arguing that their phasing plan implied that they will extend the road as each building is built, is illogical. If that were the case, they would show phasing lines and how they will provide emergency vehicle turnarounds with each phase. They also wouldn't provide a traffic study for a full buildout of the road, if the street was intended to go building by building. It is again logical that a cross-connected traffic analysis of a cross-connected street was meant to provide proof under SEPA, that the project wouldn't have significant adverse environmental impacts.

The idea that the city would allow them to build a building a year over the next potential decade, before the road gets extended, is not even practical, let alone defensible. Nothing in the application material implies that is what their plan was. If the application material had been clear that that was their intent, staff would be back to the point where such a proposed design might constitute a significant adverse environmental impact that warranted an Environmental Impact Statement. (Which is why this correspondence was started with a case history for the SEPA DS...which was appealed by the applicant...which resulted in staff withdrawing the DS...because the applicant provided additional plans showing the road connection...which was included in their traffic study...and which they are now arguing they shouldn't have to build until ???)

The description specifically says their phasing plan is to build the first two buildings and then build one building at a time.

Since it does not say they will extend the road the length of "one building" at a time. If the Examiner finds in favor of their argument, staff is concerned that the applicant will come back and later argue that there is no commitment to build the road building by building, let alone if they stop building the buildings before the road is complete. So, what is to stop them from

building all but the last building and then say the market can't bear the last building...so they aren't building the road?

To make the approval viable in that light, staff logically conditioned the proposal that once the road is built, the applicant could be given flexibility to extend the approval to add one building a year as the market bears. Otherwise, the application material would show phased cul-de-sacs or turn-around configurations for each building (i.e. phase).

Strictly speaking, as proposed, the site plan has two phases which means the site plan expires after three years for phase one, and one additional year for the second phase (within which the applicant plans on each separate building being built one at a time instead of all at once).

Staff already went the extra mile by recognizing that it would consider the site plan to be extended or "phased" to allow for them to build one building a year, thus extending the 3-year site plan time limit to include an additional 1-year for each building (phase).

If staff had known that the proposal could end up building 7 of the 8 buildings potentially built nine years from now, before they intended to build the road, staff would not have withdrawn the SEPA DS because there would definitely be significant adverse impacts that needed to be fully studied. But the DS was withdrawn because the applicant's revised submittals included a half-street that meets code.

If they wanted to phase the street improvements, they would have proposed site plan with clear phasing, but they didn't. Their site plan has one phase line and they recognize that they may want to build the buildings one at a time. Staff can't justify allowing the applicant go back to the first pre-app style design with only one access point, without again pointing out that such a design will have likely significant adverse impacts that need to be studied.

Not to mention that on page 2 of their revised project narrative, the wetland section specifically acknowledges that a half-street connection will be done as part of Phase 2.

Even their own revised traffic documents don't study a single access design. They don't study the impacts from up to 7 buildings on one access point, let alone when the impacts of a delayed connection to OPH would be. Technically, the first traffic report did that. If that is what they intended to stick to, they would not have produced the second report.

Staff does not see how the appellant can argue to make such a significant post-decision review change without recognizing that it has significant impacts. Especially after arguing that the DS was based on incomplete information. At best, their argument would seem to support the staff's opinion that a DS based on the original single access traffic study, was warranted. At worst, it would seem to imply that they revised the traffic study to convince staff to withdraw the DS, by studying a second access that may not get built.

If the Examiner accepts that the project should be able to build more than the first two buildings without the street extension, then he needs to consider whether it would affect the SEPA DNS (because the was DNS based on documents that misrepresented the proposal and its impacts). That is the problem that staff will face if the Examiner decides that the applicant gets to interpret if and when the road gets built.

Conclusion

The decision is conditioned to give the applicant some flexibility during the final engineering process. But it is at the city's discretion on deciding what the applicant can propose to solve their issue. Please do not remove that authority from the city.

As an alternative, I suggest that the appellant could ask for this appeal issue to be held over until they can go through the final engineering process. Then, if they do not feel that the city is fairly holding to the terms of their codes, they could ask the Examiner to rule on the issue of when Franklin Loop needs to be completed.

As a side note:

> Staff is frustrated that lacking a succinct and clear plan by the applicant, staff provided what could be considered a flexible solution to fill the vacuum, only to have the appellant argue that their flexible solutions go above and beyond the city's authority. Especially given that staff's other practical alternatives were to issue a DS, or to have issued an outright denial for the project. Staff knows the applicant didn't want the DS because staff tried that at first, and the DS was appealed based on the fact that staff didn't have adequate information to issue such a decision. (The unstated response being...yeah, there wasn't enough info...that's why a DS asking for more study was warranted.) The only other option would have been to deny the project for not demonstrating that the proposal could meet the code. This denial at least would have created an appeal process which would provide a clear path to a decision. The course we are on now, gives the applicant more time to settle the details of the project, but upholding this appeal issue also still implies that the applicant can argue with us about every unsettled code issue throughout the entire final engineering process (because so many significant issues may still be contentious to settle without the conditions of approval attached). Lacking details in the submittal, staff wrote conditions that were intended to be flexible. The danger is that it implies both parties can reach an agreement on a reasonable solution. Without the conditions, that may never be true.

APPEAL ISSUE

PARKING AS A USE

As an extension, if the Examiner finds that parking required by code, is in fact a separate use, isn't the next step in the applicant's argument going to be: "Since parking itself is a use, we are going back to our original proposal." Or, "We are going to eliminate the commercial retail/office space on the bottom floor, and we are replacing those commercial tenant spaces with parking." In essence, saying "We are going to build eight apartment buildings and the

ground floor parking meets our need to have ground floor "commercial" uses. Therefore, we want a full floor of ground floor parking."

Any such interpretation by the Examiner would have to be interpreted as eliminating the difference between:

- Parking required for all developments under WMC 17.56;
- "Commercial parking lots and garages" (under WMC 17.36.020(5));
- "Public and private off-street parking facilities" (under WMC 17.32.020(37));
- On-street parking (even that in right of way)
- It could also make apartment buildings with ground floor parking in residential zones a commercial use (After all, parking is now a commercial use.)

By absurd extension, when a subdivision is built, do we need to treat the parking on the lots, either in the driveway or in the garage, as a separate parking use? Not to mention that streets which are wide enough for on-street parking, would need to reviewed for the use of "commercial parking in the right-of-way" in addition to the residential uses in the zone. (That's almost too ridiculous to even write.)

Or would we go the other way and say that since parking is a listed use in the commercial zones, and isn't a listed use in the residential zoning districts, therefore we can't allow parking in residential zones?

Common sense seems to again point to the idea that the code has parking requirements, but it also contemplates that the day may come where someone wants to build a commercial parking facility or parking structure. Not a car sales lot. Not an RV sales lot. Not a coffee shop with parking. There is a straight forward simpleness to accepting that the code lists commercial parking as staff has interpreted it in the staff report for this case.

Conclusion

Staff is asking the Examiner to review the decision for this case and understand that staff has been extremely reasonable in drawing the distinction between commercial parking activities as a use.

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.

They can't double dip. They either need to do a commercial parking use, and then do a separate parking calculation for all other uses on the site (i.e. the residential component), or they need to put in commercial spaces for commercial uses on the ground floor, and recalculate their total parking capacity. (Just like we would do if they proposed a car sales lot. We wouldn't allow

them to not have a customer parking lot, just because they have room to park their 100 cars on the display lot.)

(Though, theoretically, they could also redesign their buildings with upper residential floors at either end where the commercial space is, and a central open-air parking lot in the courtyard between the commercial spaces. But that might require a new site plan.)

Staff asks that you uphold the decision as written and conditioned.

APPEAL ISSUE (continued)
In the appeal the applicant is arguing that ground floor parking is an allowed use. Staff agrees, as "Commercial parking lots and garage" are a permitted use in the zone, which is why the staff report analysis is as stated. You can see the response above.

Staff finds it hard to believe that the traffic engineer modeled trip distribution and assignment to use an access that the applicant shows on the proposed plan, but didn't intend to build. Simple review of the two traffic documents shows that the revised site plan from the first review (which resulted in a SEPA DS because of staff's concerns) does not show that connection, then after the DS was issued and staff discussed their concerns about significant adverse impacts, the revised plan shows an improved road (and supporting analysis). The applicant can't now argue that the connection is not required and they want to revert to the pre-DS design.

The entire purpose of the revised traffic study was to study the half-street road extension of Franklin, and to justify that the development didn't have significant adverse environmental impacts to the city.

After review of that study, the engineer agreed with that conclusion on the presumption that Franklin Loop would be extended to Old Pacific Highway. So, staff conditioned the approval on the fact that the applicant would extend Franklin to Old Pacific Highway.

To have the appellant argue that they have shown that the street extension can be done to mitigate significant adverse impacts, then argue that the road extension should not be required to be completed, is nonsense.

The object isn't to do a study to show a SEPA Environmental Impact Statement isn't needed. The object is to do the work necessary to show that the project is designed to prevent significant adverse impacts that aren't mitigated.

In this case, they want from no connection, to a proposed half-street connection. They can't now argue that they don't plan on doing the street connection. If they intended to phase it, they would have done so. The traffic study clearly shows that the intention is for Franklin to be built and connect to Old Pacific Highway.

If the intention was for them to have all the trips use Belmont Loop to the north, they would not have had to submit a revised traffic plan. The original traffic study submittal included all the units and no cross connection. (Which contributed to the issuance of the DS.)

The appellant can't now argue that they did the revised traffic study with the additional analysis on a completed Franklin, to prove that the original traffic study didn't cause significant adverse impacts.

The opposite seems to be more logical. They revised the study to show that the connection of Franklin to Old Pacific Highway, reduced the impact of the development to a point that a DS was not warranted.

Staff agrees with this. If, as conditioned, and as shown in the revised traffic report, Franklin is extended to Old Pacific Highway, then the project will not cause significant adverse impacts.

The applicant cannot provide additional data to show that a DS is not warranted, then argue that staff doesn't have authority to condition the project to SEPA non-significant levels, as proposed by the applicant.

Staff recommends that the condition to build Franklin Loop as proposed and as analyzed in the revised Traffic Impact Analysis as provided for in the Heath & Associates TIA. (Available in the record.)

<u>Old Pacific Highway Frontage</u>
The one part of their argument that has merit would be the requirement to do frontage improvements along Old Pacific Highway.

Once the half-street connection to Old Pacific Highway (OPH) is completed, staff understands that the actual site frontage for the light industrial property could be postponed till the development of the property fronting OPH. Once the intersection and curb return for Franklin Loop are constructed with this project, the nexus for the rest of the frontage improvements would be development on the light industrial property.

APPEAL ISSUE 2 (preamble)
As noted in the staff report, there is a difference between a parking facility and a parking lot as a use. As opposed to any development where they are providing parking (as required by virtually all development standards in all jurisdictions) to serve the tenants of the development.

But the applicant is arguing that in this case, staff is wrong, and that our development standards for parking requirements <u>is in fact a mandate to provide a specific use on this site</u>.

Or is the logical assumption of code construction and interpretation, the idea that ALL developments need parking, and the code is designed to dictate how much parking is needed

for a project based on an established rate of parking stalls as dictated by code. Our code specifically says that staff can apply flexibility in the parking code based on what the developers ask for.

For parking requirements to be treated as a separate and distinct use, in my opinion, would be a seismic shift for the entire planning profession. If that were the case, applicants everywhere would argue that because codes require parking, jurisdictions are now in fact mandating how they use their property. I don't think that is constitutional. Since we can't constitutionally mandate how people use their property, we couldn't make them install parking on any project. Because we can't arbitrarily mandate all commercial, industrial, and residential developments to include a "use". (i.e. parking a use)

In over 20 years, I have never done a site plan or subdivision that included a requirement to do a separate and distinct review of the parking as separate use. I can't even say that I have heard such an assertion.

There is an entire world of difference between the physical development requirements, and the regulation of uses. As demonstrated by a property having a "zoning" designation (with permitted, conditional uses, and prohibited uses), and by jurisdictions having numerous separate and distinct types of development processes (i.e. site plan, conditional use, short plat, subdivision) for the review and approval of the physical aspects of the development. That'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.

Staff again recommends that the argument for parking to be considered as a use, as the appellant argues.

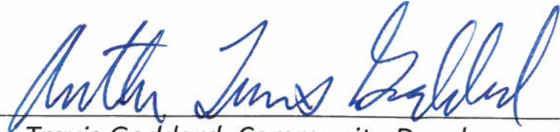
APPEAL ISSUE #2 – Interpretation of architectural façade standards.

With the appellant's argument that parking is a commercial use, wouldn't all parking lots meet the standard for providing clear vision openings?

If you accept that argument, wouldn't all parking be considered a commercial use, and wouldn't all parking lots be 100% visibly connected to the street?

The entire point of the design standard is to ensure a minimum architectural quality standard for commercial structures and commercial developments.

If you accept the applicant's position, you would be accepting that view corridors into parking (whatever the form or function) would provide 100% visibility, and the vision glass standard would be rendered moot if a building is located behind parking. Not only on this site...but on all commercial sites. Clearly, that can't be the intent of the standard.

2/22/2024 **Signature:** 

Travis Goddard, Community Development Director

ATTACHMENTS

A. SEPA DS for SEP-22-003 (aka Document 29) (6 pages)
B. Site Plan (aka First Submission – Document 27) (4 pages)
C. SEP-22-003 Appeal Letter (aka Document 46) (3 pages)
D. Pre-App report PRE-21-008 (aka Document 53) (30 pages)
E. Revised Site Plan (1 page)
F. Revised TIA from Heath & Associates - Figures 2 4, and 6 (3 pages)