



CITY OF ARLINGTON NOTICE OF DECISION

Wisemark Commons Binding Site Plan and Conditional Use Permit

The City of Arlington has issued a Notice of Decision for a Binding Site Plan and Conditional Use Permit as required by Arlington Municipal Code. The following project has been **APPROVED**, with the conditions listed in the attached Hearing Examiner Decision.

Project Name: Wisemark Commons Binding Site Plan
Wisemark Commons Conditional Use Permit

Proponent: Michael Weinstein, Synthesis Interests

Project Number: Binding Site Plan – PLN #1139
Conditional Use Permit – PLN #1140

Description of Proposal: The applicant is proposing to construct a Mixed-Use Development known as Wisemark Commons on 4.91 acres located at 6804 204th Street NE, Arlington, Washington, on parcel number 31051400200600. The proposed project will be constructed in conformance with Title 20 (Zoning) of the Arlington Municipal Code, including Chapter 20.110, the Mixed-Use Development Regulations.

The Wisemark Commons community consists of a mixed-use project with ten buildings on the site consisting of a mixed-use building with up to 8 commercial spaces (12,422 sf) on the first floor and 52 multi-family residential units on the second and third floors, a restaurant building (3,372 sf), seven multi-family residential buildings with 98 residential units, a facility club house (2,325 sf).

The project improvements include 309 parking stalls (302 standard stalls, 7 ADA stalls, with 28 EV stalls), pickleball court, dog run, playground equipment, patios, benches, planters, water feature, fire pit, water feature, sidewalks, open space, tables and chairs, bicycle racks, public art, and landscaping. Frontage improvements along 67th Avenue include a median, drive aisle, 25 back-in angled parking spaces, bus stop and crossing, curb, gutter, sidewalk, and street trees. Stormwater runoff from the proposed development will be conveyed and managed on-site through detention facilities located under the parking and drive aisle areas.

The project site consists of vacant 4.91-acre parcel that are primarily flat and zoned Commercial Corridor (CC). The development is proposing a Binding Site Plan under PLN #1139, that splits the property into 3 lots and 1 Tract (to be dedicated as right-of-way to the City of Arlington). The subject properties will be developed under the City's Mixed Use Development Regulations, with a mix of residential and commercial uses, with existing commercial, industrial, and residential uses surrounding the subject site to the north, east, south, and west. The property is situated on a corner lot with 204th Street NE to the north and 67th Avenue NE (Centennial Trail) to the west. A restaurant is located on the north side of 204th Street NE, the Burlington Northern Santa Fe Railroad tracks are located to the east, with industrial uses east of the railroad tracks, a commercial contractor business and an industrial storage building is located to the south, and the Arlington Municipal Cemetery is located on the west side of 67th Avenue NE. The project will be served by City of Arlington utilities.

Location: 6804 204th Street NE, Arlington, WA 98223

Hearing Examiner Decision: Approved, with Conditions

Notice of Decision Date: April 10, 2024

End of Appeal Period: May 1, 2024

Conditional Use Permit Expiration Date: April 10, 2026

Binding Site Plan: The Binding Site Plan is required to be signed by the property owners and City staff prior to recording. The recording of the document is required to be completed within 30 days of the issuance of this decision.

Appeals: A Party of Record may file an appeal of this decision within twenty-one (21) calendar days from issuance of this Notice of Decision. Appeals shall be delivered to Snohomish County Superior Court at 3000 Rockefeller Avenue M/S 502, Everett, WA 98201, pursuant the Land Use Petition Act, Chapter 36.70 RCW, by **Wednesday, May 1, 2024**.

Staff Contact: Amy Rusko, Planning Manager, arusko@arlingtonwa.gov, 360-403-3550

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF ARLINGTON**

In the Matter of the Application of)	Nos. PLN#1139 and PLN#1140
)	
)	
Wisemark Commons)	Wisemark Commons CUP and BSP
)	
)	
For a Conditional Use Permit and)	FINDINGS, CONCLUSIONS,
<u>a Binding Site Plan</u>)	AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit and binding site plan to allow construction of a mixed-use development, known as “Wisemark Commons,” on 4.91 acres, with ten buildings on the site consisting of a mixed-use building with up to 8 commercial spaces on the first floor, 52 multi-family residential units on the second and third floors, a restaurant building, seven multi-family residential buildings with 98 residential units, and a facility club house, located at 6804 204th Street NE, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on March 26, 2024, using remote access technology.

Testimony:

The following individuals presented testimony under oath at the open record hearing:
Amy Rusko, City Planning Manager
Michael Weinstein, Applicant

Exhibits:

The following exhibits were admitted into the record:

- Exhibit 1 Staff Report, undated
- Exhibit 2 Conditional Use Permit Application, dated October 4, 2023
- Exhibit 3 Binding Site Plan Application, dated October 4, 2023
- Exhibit 4 Binding Site Plan, dated January 23, 2024
- Exhibit 5 Site Plans, dated November 30, 2023
- Exhibit 6 Landscape Plans, dated February 20, 2024
- Exhibit 7 Lighting Plans, August 14, 2023

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- Exhibit 8 Preliminary Engineering Plans, February 22, 2024
- Exhibit 9 Architectural Plans, dated November 30, 2024
- Exhibit 10 Vicinity Map, undated
- Exhibit 11 Approved Water Sewer Availability, dated July 25, 2023
- Exhibit 12 Lot Closures, undated
- Exhibit 13 Lot Descriptions, dated September 29, 2023
- Exhibit 14 SEPA Checklist, undated
- Exhibit 15 Traffic Impact Analysis, prepared by Heath & Associates, dated November 27, 2023
- Exhibit 16 Complete Streets Checklist, undated
- Exhibit 17 Parking Memo, prepared by Heath & Associates, dated September 19, 2023
- Exhibit 18 Cultural Resources Assessment, prepared by Legacy Anthropology, LLC, dated December 4, 2023
- Exhibit 19 Engineering Narrative, undated
- Exhibit 20 Preliminary Drainage Narrative, prepared by Bayler Consulting, dated October 3, 2023
- Exhibit 21 Geotechnical Report, prepared by Geotest, dated July 6, 2018
- Exhibit 22 Arborist Report, prepared by Huckleberry Landworks, dated July 9, 2020
- Exhibit 23 Draft Avigation Easement, dated September 5, 2023
- Exhibit 24 Site Aerial, undated
- Exhibit 25 Public Notice Materials, various dates
- Exhibit 26 Stillaguamish Tribe of Indians Comment, dated January 23, 2024
- Exhibit 27 Department of Archaeology and Historic Preservation Comments, dated December 15, 2023
- Exhibit 28 Notice of Public Hearing Documents, published March 8, 2024
- Exhibit 29 Notice of MDNS Decision Documents, issued February 8, 2024
- Exhibit 30 Neighborhood Meeting Notes, dated November 14, 2023
- Exhibit 31 Notice of Application and Notice of Neighborhood Meeting Documents, published October 20, 2023
- Exhibit 32 Resubmittal Extension Letter, dated November 9, 2023
- Exhibit 33 Notice of Complete Application, published October 11, 2023
- Exhibit 34 Chapter 20.110, revised October 2022
- Exhibit 35 Post Hearing Memo, dated March 27, 2024

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Michael Weinstein (Applicant) requests approval of a conditional use permit (CUP) and Binding Site Plan (BSP) to allow construction of a multi-family housing and commercial mixed-use development known as Wisemark Commons, a mixed-use project with ten

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buildings on the site consisting of a mixed-use building with up to 8 commercial spaces (12,422 square feet) on the first floor and 52 multi-family residential units on the second and third floors, a restaurant building (3,372 square feet), seven multi-family residential buildings with 98 residential units, a facility club house (2,325 square feet). The property is located at 6804 204th Street NE at the intersection of Southeast of the 67th Avenue NE and 204th Street NE. *Exhibit 1, Staff Report, page 11; Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5.*

2. The application for a Conditional Use Permit and a Binding Site Plan was received on October 5, 2023. The application was deemed complete on October 11, 2023. The City issued review comment letters on November 3, 2023, January 19, 2024, and February 13, 2024. The Applicant submitted revised plans and requested information on January 5, 2024, January 25, 2024, and February 23, 2024. The Applicant received a resubmittal extension letter dated November 9, 2023. The Notice of Application was issued on October 20, 2023 and was published in the City's official newspaper (*The Herald*), posted on site, mailed to required parties, and posted on the City's website on October 20, 2023. The City issued a Mitigated Determination of Non-significance (MDNS) per Arlington Municipal Code (AMC) 20.98.120 on February 8, 2024. The notice was published in *The Herald*, posted on site, mailed to required parties, and posted on the City's website on February 9, 2023. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 2; Exhibit 3; Exhibit 25; Exhibit 28; Exhibit 29; Exhibit 30; Exhibit 31.*
3. The City received comments during the Notice of Application and Notice of SEPA MDNS Decision public comment periods for the subject project. In response to its notice material, the City received responses from the following two entities. The Stillaguamish Tribe of Indians requested notification prior to ground disturbance for the project. The City responded to the Tribe to let them know that the City would add a condition to the permit requiring the Applicant to provide notification prior to ground disturbance for the project. The notification for ground disturbance and the requirement of an inadvertent discovery plan are conditions of the permit. And the Department of Archaeology and Historic Preservation provided comments concurring with the results and recommendations in the cultural resources survey report and recommend that the project move forward following an inadvertent discovery plan. The City responded to the Department of Archaeology and Historic Preservation to let them know that the City would add a condition to the permit requiring the Applicant to proceed with construction on the site by following the cultural resources survey report and inadvertent discovery plan. *Exhibit 1, Staff Report, page 30; Exhibit 26; Exhibit 27.*

State Environmental Policy Act

4. The City of Arlington acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), chapter 43.21C Revised Code of Washington (RCW). The City reviewed the Applicant's Environmental

Checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Mitigated Determination of Nonsignificance (MDNS) for the proposal on June 15, 2021. The MDNS was not appealed. *Exhibit 1, Staff Report, pages 17 and 30; Exhibit 14; Exhibit 29.*

Comprehensive Plan and Zoning

5. City staff determined that the proposal would be consistent with the following policies of the City Comprehensive Plan:
 - Ensure City Goals and Policies are consistent with the Growth Management Act. [GO – 1]
 - Work towards promoting and maintaining an urban environment within the City that enhances livability for its residents. [GO – 3]
 - Building architecture in residential and commercial developments should be human scaled and conducive to social interaction. [PO-6.1]
 - Land-use developments should be conducive to social interaction. [PO-6.4]
 - Public and private civic spaces should be included in both commercial and residential neighborhoods to ensure adequate gathering places. [PO-6.5]
 - Design standards should be enforced to ensure that all new developments are in harmony with the desired character of each subarea. [PO-6.6]
 - Multi-family housing should be located close to commercial centers. [PH-2.1]
 - Utilize mixed-use mechanisms to incentivize housing within close proximity to commercial uses. [PH-2.3]
 - Based upon the monitoring and evaluation results from Policy 4.B.1, the City should evaluate the effectiveness of its zoning regulations to produce housing developments that meet the diverse housing needs identified in the Housing Characteristics and Needs Report for the community. [PH-8.5.]
 - Higher density residential uses should be located around commercial areas. [PL-7.2]
 - Vertical and Mixed-Use developments with a residential component should be permissible in designated zones within the City. [PL-7.3]
 - Where commercial and residential areas abut, new development should include the design and construction of walkways, sidewalks, or other non-motorized features to integrate and link commercial activities to neighborhoods. [PL-9.1]
 - Require developers to construct those streets directly serving new development and pay a fair-share fee for specific off-site improvements necessary to mitigate any adverse impacts. [PT-1.9]
 - Improving the appearance of existing corridors should be a primary objective in designing and maintaining the street system in Arlington. Appropriate design standards, including landscape standards for the construction of new streets shall be maintained. [PT-4.1]

- All developments in all zoning districts shall provide sufficient parking spaces to accommodate the number of vehicles that are likely to be attracted to the development. [PT-4.8]
- Require new construction to construct sidewalks, bicycle storage/parking facilities, and access to mass transit where possible and in proportion to the proposal. [PT-4.10]
- All public streets shall be constructed with curb, gutter, sidewalk, landscape strips and street trees. [PT-4.13]
- Provide ramps and curb cuts that comply with the Americans with Disabilities Act. [PT-5.6]
- Provide street lighting along sidewalks to encourage nighttime use and for safety. [PT-5.7]

Exhibit 1, Staff Report, pages 5 and 6.

6. The proposed development is in the Commercial Corridor zone and is subject to the City of Arlington’s Mixed-Use Development Regulations, which allows commercially zoned properties to site retail, commercial, professional, and certain manufacturing uses along the street frontages of the property while allowing for a higher density residential use to occur upon the remainder of the property. As such, the buildings and site will be reviewed utilizing chapter 20.110 AMC (Mixed Use Development Regulations). This will ensure that the building form, position, and site configuration are designed to integrate the elements of “Form Based Code” to ensure a predictable outcome in both current and future development. *Exhibit 1, Staff Report, page 2; Exhibit 34.*
7. The Mixed-Use Development standards utilize a “Form Based Code” approach, which focuses more on the form of the building and not necessarily on the traditional zoning approach where residences are in single- or multi-family zones, commercial uses are restricted to neighborhood or other commercial zones, and so on. Form Based Codes allow a mixing of uses with design standards being imposed to blend their function and appearance. Different “Place Types” are defined based on the type of neighborhood environment desired. These areas are more intensely developed near town centers, less intensely toward the community edges. *Exhibit 1, Staff Report, page 2.*
8. Areas (“transects”) are defined by 6 zones with T-1 being least intense, a “Natural Zone” to T-6 being the most intense, “Urban Core Zone.” Arlington primarily consists of T-3, T-4, and T-5 uses, and the Development Standards are predicated upon those three transects and four place types. The allowed uses and building types are described visibly on the Regulating Plan maps and in detail, in the Use Tables for each Place Type. The Wisemark Commons project is in the *Mixed-Use Village Center Place Type and Transect 4 Mainstreet (T4-MS)*. This allows for a mix of uses to provide an appropriate transition from a neighborhood main street environment into the residential areas, and to provide

flexible buildings in a residential form that can allow a mix of residential and walkable local serving commercial and service uses. *Exhibit 1, Staff Report, page 2.*

Existing Site and Proposed Development

9. The project site consists of a vacant 4.91-acre parcel that is primarily flat and zoned Commercial Corridor (CC). The development is proposing a Binding Site Plan under PLN #1139 that splits the property into 3 lots and 1 Tract (to be dedicated as right-of-way to the City of Arlington). The subject properties will be developed under the City's Mixed Use Development Regulations with a mix of residential and commercial uses, with existing commercial, industrial, and residential uses surrounding the subject site to the north, east, south, and west. The property is situated on a corner lot, with 204th Street NE to the north and 67th Avenue NE (Centennial Trail) to the west. Surrounding properties of the subject parcel are zoned Commercial Corridor to the north, east, and south; General Industrial to the east and south; and Public/Semi-Public to the west. The property abuts 204th Street NE and 67th Avenue NE. A restaurant is located on the north side of 204th Street NE; the Burlington Northern Santa Fe Railroad tracks are located to the east, with industrial uses east of the railroad tracks; a commercial contractor business and an industrial storage building are located to the south; and the Arlington Municipal Cemetery is located on the west side of 67th Avenue NE. The project will be served by City of Arlington utilities. *Exhibit 1, Staff Report, pages 2 and 44; Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 11.*

10. As noted above, the Applicant seeks approval of a CUP and BSP to allow construction of a multi-family housing and commercial mixed-use development. The Wisemark Commons development is a mixed-use project. The project improvements include 309 parking stalls (302 standard stalls, 7 ADA stalls, with 28 EV stalls), pickleball court, dog run, playground equipment, patios, benches, planters, water feature, fire pit, sidewalks, open space, tables and chairs, bicycle racks, public art, and landscaping. Frontage improvements along 67th Avenue include a median, drive aisle, 25 back-in angled parking spaces, bus stop and crossing, curb, gutter, sidewalk, and street trees. Stormwater runoff from the proposed development will be conveyed and managed on-site through detention facilities located under the parking and drive aisle areas. *Exhibit 1, Staff Report, pages 2 and 5; Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 17.*

Stormwater

11. The proposed project is subject to meeting the required stormwater regulations of chapter 13.28 AMC. The project has received conceptual approval for the stormwater design. A Civil Permit shall be required for all site improvements. The approval of the land use permit is required to have a conceptually approved stormwater system. All stormwater systems shall comply with the City of Arlington Public Works Standards and Specifications and the most recent Department of Ecology Stormwater Manual for Western Washington. Stormwater runoff from the proposed development will be

conveyed and managed on-site through detention facilities located under the parking and drive aisle areas. The development is proposing to use detention facilities under the paved parking areas on the site to manage the stormwater, which is conceptually feasible. All stormwater is required to meet the 2019 DOE Stormwater Management Manual for Western Washington and the City of Arlington Public Works Standards and Specifications. The final drainage reports and plans shall be approved with the Civil Permit. *Exhibit 1, Staff Report, pages 2, 25, and 29; Exhibit 20.*

Parking, Access, and Traffic

12. The proposed project provides vehicular, pedestrian, and bicycle access to the property from the public streets of 67th Avenue NE and 204th Street NE to internal private drive aisles that provide driveway access to each building lot. The Applicant submitted a Complete Streets Checklist. The checklist was reviewed, and City staff agrees that the intent of the complete streets policy has been met. The proposed development includes access to and from the Centennial Trail that abuts the property to the west. The project site plan shows the layout of the accessible parking spaces and paving throughout all drive aisles and parking spaces on the site, with all parking spaces striped. The proposed spaces provide 8-foot stalls with 8 feet of adjacent striped area, along with appropriate striping and signage. The Applicant is dedicating an improved right-of-way along 204th Street NE. This area would serve vehicles, pedestrians, bicycles through a shared lane, and would have a new updated bus stop with a dedicated crosswalk from the development. There are sidewalks, crosswalks, private drives, and bicycle racks located throughout the entire site. The Applicant has met the intent of the complete streets policy. The development will add additional vehicular trips to the local roads, and the Applicant is subject to applicable traffic mitigation fees. Pedestrian and bicycle access will be provided to the site from 67th Avenue NE (Centennial Trail) and 204th Street NE for non-motorized travel options. Minor light pollution may be visible from adjacent properties. *Exhibit 1, Staff Report, pages 5, 13, 14, and 16; Exhibit 15; Exhibit 16; Exhibit 17.*

Landscaping and Open Spaces

13. The project has provided more than 16 percent shading in the parking lot area. The total area of the surface parking and drive aisles is 71,900 square feet. The required 16 percent of the parking area is 11,504 square feet. The total area of shading is 14,380 square feet, which is 20 percent shading. The project provides the required 1 tree per 4 parking stalls. The landscape plans show that 32 trees are provided within the parking area. The landscape plans show all required landscaping components have been met. The property did require some trees to be removed from the property, but the Applicant preserved as many trees as he could on the east property line. The interior shade trees between the buildings are proposed to be one-half inch caliper between the buildings. The street frontage trees are proposed to be 2-inch caliper and be spaced every 30 feet on center. All trees will be planted with root barrier per the City of Arlington Standard R-260 along

the public rights-of-way. All parking lot landscaping is proposed to be contained within planting beds with a minimum of 6-inch curbing that provides stormwater breaks. The project has proposed a 6-foot solid privacy fence constructed of vinyl that resembles a wood fence, along the south and a portion of the east property lines. A 6-foot black vinyl chain link fence is proposed to be installed around the pickleball court and dog park area. All fencing shall be shown on the civil plans. *Exhibit 1, Staff Report, page 24; Exhibit 6.*

Utilities and Services

14. The City would provide water and sewer services to the property. The City provided the Applicant with a water and sewer availability letter on July 9, 2023, indicating that that the City has sufficient water and sanitary sewer to service the project. Waste Management NW would provide garbage service, Xfinity/Comcast would provide telephone service, Cascade Natural Gas would provide gas service, and Snohomish County PUD would provide electricity service. The property would be served by the Arlington School District, and the Applicant would be required to pay school impact fees, currently calculated at \$83,808, under AMC 20.90.230. Compliance with requirements for utility service infrastructure, fire hydrants, and fire protection would be reviewed upon submission of site civil construction drawings. *Exhibit 1, Staff Report, pages 4 and 17; Exhibit 11.*

Conditional Use Permit

15. Mixed-use, multi-family developments with 50 or more residential dwelling units are allowed in the CC zone with a conditional use permit. *Chapter 20.40 AMC.* As noted above, the Applicant requests a CUP to allow construction of a mixed-use development on 4.91 acres, with ten buildings on the site consisting of a mixed-use building with up to 8 commercial spaces on the first floor, 52 multi-family residential units on the second and third floors, a restaurant building, seven multi-family residential buildings with 98 residential units, and a facility club house, utilizing the City's mixed-use development regulations under AMC 20.40 Permissible Uses and AMC 20.110.014(c)(4). City staff reviewed the application materials and determined that, with conditions, the criteria for a CUP would be satisfied, noting:
 - The proposed project is in the Village Center place type established by the Mixed-Use Development Regulations.
 - The proposed project is in the T4-MS Transect of the Village Center Mixed-Use Development Regulations. The project provides a medium footprint 1-story restaurant building, a wall plane with a 3-story mixed-use building along 204th Street NE, seven 3-story residential-only buildings, and a 1-story club house building in the center of the site. The project provides a walkable neighborhood for future tenants with commercial uses within the building and provides access to nearby commercial areas and employment opportunities.
 - The proposed mixed-use development project complies with all required sections of Title 20 AMC, per the staff analysis.

- The requested Conditional Use Permit, as conditioned, is consistent with all Title 20 AMC requirements: permit processing procedures, and all other applicable plans, regulations, and policies.
- The proposed development will not materially endanger the public health or safety of the City of Arlington. The proposed development has met the intent of the zoning and the mixed-use development regulations
- The proposed development, as mitigated and conditioned, will not materially harm adjoining or abutting property.
- In terms of the site design/layout, building design, and proposed commercial/retail and residential use, the proposed development will be compatible with the surrounding land uses in the area in which it is located.

Exhibit 1, Staff Report, pages 4, 18, and 30–31.

Testimony

16. Amy Rusko, City Planning Manager, testified about the project’s surroundings. To the north is a restaurant, Nutty’s Bar and Grill, and a coffee stand. To the south is a commercial plumbing business and an industrial building, part of the Gateway Business Park. To the west is the Arlington municipal cemetery. To the northwest is a small strip mall and a mixed-use building under construction. To the east is railroad tracks, and across that, industrial uses. Farther to the east is another mixed-use development. The properties along 204th are zoned Commercial Corridor.

Ms. Rusko testified that the subject property is vacant. Formerly, it was developed with one single-family house but was not, to the best of Ms. Rusko’s knowledge, used for agriculture. The house has been demolished.

Ms. Rusko did not perceive any environmental or habitat issues with the project. A few existing trees will be removed, but the nearest stream is separated from the subject property by streets. The property lies well outside any possible stream buffers.

The Stillaguamish Tribe had requested a cultural resources survey, which the Applicant submitted. Both the Tribe and the Washington State Department of Archaeology and Historic Preservation pronounced themselves satisfied by the Applicant’s efforts.

Ms. Rusko discussed the application of the rules of mixed-use development in the T4-MS transect, AMC 20.110.012.E. That section generally requires “primarily” ground-floor commercial uses, with a mix of commercial and residential uses on the floor above. Here, Ms. Rusko acknowledged, the Applicant proposes 10 buildings. One has ground-floor commercial with residential above, two are standalone, commercial-only buildings, and seven have only residential uses. Ms. Rusko felt this arrangement still met the T4-MS rules, because the Applicant was using “horizontal mixed-use.” She cited previous projects that had done horizontal mixed-use, with a commercial-only building on the

front, and residential-only behind, taking a site-wide approach, rather than a building-by-building approach. From the City’s perspective, it is more desirable to have commercial frontage along 204th, which is the commercial corridor for which the zone is named. It is less important to have commercial frontage along the sides of the site, along 67th. She pointed out, for example, that vehicle access is not possible along 67th, because there is no parking. The residential-only buildings are accessed only by the internal roads of the project. By contrast, along 204th, the Applicant was putting in back-in parking to allow direct access off 204th. Ms. Rusko offered to provide a post-hearing analysis of the application of the T4-MS rules and the open space calculations. *Testimony of Amy Rusko.*

17. Michael Weinstein, Applicant Representative, testified that he agreed with the City’s guidance and analysis of the project. He agreed with all of the City’s proposed conditions of approval. Mr. Weinstein said 67th is not suitable for commercial frontage. It is not possible to provide parking, and that is why the commercial development has been moved to the standalone restaurant on the corner with 204th, but no other commercial development has been provided along 67th. The trail corridor along 67th makes further frontage improvements impossible, precluding commercial use. *Testimony of Michael Weinstein.*

Staff Recommendation

18. Ms. Rusko testified that the City recommends approval of the project, with the conditions set forth in the staff report. Mr. Weinstein did not object to any of these conditions. *Testimony of Amy Rusko; testimony of Michael Weinstein.*

Post-Hearing Materials

19. Following the hearing, the City provided a memo analyzing the application of the T4-MS zoning rules and the open space requirements. The City argued that, although a strict reading of AMC 20.110.012.E might seem to require ground-floor commercial along 67th, that would not be appropriate here:

[T]he city determined that it would not be viable to have commercial uses and frontage buildings along 67th Avenue due to the proximity to the 67th Avenue and 204th Street intersection and the Centennial Trail. With the primary street frontage along 204th Street the residential only buildings utilizing horizontal mixed-use from the proposed restaurant and mixed-use building. [Sic.] The access is located on the southwest corner of the property and the city did not allow for an access any closer to the intersection. The internal private roads of the development serve as the “alley” to these residential units.

...

The primary street established for this project is 204th Street NE as the main commercial corridor from 67th Avenue NE to State Route 9. The city allowed the residential only buildings (Building D and Building E) to be located along the 67th Avenue street frontage because it is not the main (primary) street frontage for the project. This provides for decreasing intensity from the primary street to the south.

Exhibit 35.

20. The City also provided a justification for its recommendation to deduct the dedicated parking spaces along 204th (Tract A of the site plans) from the total site area when calculating the provision of open space:

Tract A of Wisemark Commons is to be dedicated to the City of Arlington as public infrastructure. The maintenance and repair of this area, once dedicated, is the responsibility of the city. The parking spaces within this area along 204th Street will be public and will not only serve the subject property and development, but rather the surrounding area. This area was subtracted from the total area of the parcel because it will not be inclusive to the development and used as protected private property, therefore [it] is not part of the private developable area.

For instance, the city does not require parallel parking along the street frontage of roadways to be counted towards the total developable area of a project. This is considered public street frontage parking. The mixed-use code and the city's street requirements are different in the Commercial Corridor areas, requiring back in parking instead of the standard parallel parking along streets. The city treats these the same and does not punish the property owner for improving and dedicating the requested street frontage by including this property in the overall total parcel acreage for development.

In addition, the City cited a recent Hearing Examiner decision in which the Hearing Examiner had deducted the back-in parking dedication from the total project area for purposes of calculating the amount of open space required. *Exhibit 35.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted the authority to hear and decide the applications for a conditional use permit and a binding site plan. *Revised Code of Washington (RCW) 36.70.970; AMC 20.12.210; AMC 20.12.230; AMC 20.16.170; AMC 20.16.352; AMC 20.16.353.*

Criteria for Review

Conditional Use Permit

*Findings, Conclusions, and Decision
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Wisemark Commons CUP and BSP
Nos. PLN#1139 and PLN#1140*

In considering whether to approve an application for a conditional use permit, the hearing examiner shall proceed according to the following format:

- (1) The hearing examiner shall consider whether the application is complete. If no evidence is presented that the application is incomplete (specifying either the particular type of information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the hearing examiner that the application is complete.
- (2) The hearing examiner shall consider whether the application complies with all of the applicable requirements of this title. If a finding to this effect can be made, the hearing examiner need not make further findings concerning such requirements. If such a finding cannot be made then a finding shall be made that the application be found not in compliance with one or more of the requirements of this title. Such a finding shall specify the particular requirements the application fails to meet. Separate findings may be made with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the hearing examiner to be unsatisfied through this process.
- (3) If the hearing examiner concludes that the application fails to comply with one or more requirements of this title, the application shall be denied. If the hearing examiner concludes that all such requirements are met, he shall issue the permit unless he denies the application for one or more of the reasons set forth in Section 20.16.140 (Special Use Permits and Conditional Use Permits). Specific findings for such a denial must be made, based upon the evidence submitted, justifying such a conclusion.

AMC 20.16.170(e).

Subject to Subsection (d) [of AMC 20.16.140], the designated decision-maker shall issue the requested permit unless it concludes, based upon the information submitted at a hearing if there is a hearing or by signed letter if there is not, that:

- (1) The requested permit is not within its jurisdiction according to the table of permissible uses, or
- (2) The application is incomplete, or
- (3) If completed as proposed in the application, the development will not comply with one or more requirements of this title (not including those the Applicant is not required to comply with under the circumstances specified in Chapter 20.32, Nonconforming Situations), or
- (4) The proposed project has not complied with SEPA, or
- (5) The proposed project is not in conformance with the comprehensive plan, transportation plan, or other adopted plans, regulations, or policies.

AMC 20.16.140(c).

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Even if the permit-issuing authority finds that the application complies with all other provisions of this title, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- (1) Will materially endanger the public health or safety, or
- (2) Will materially harm adjoining or abutting property,
- (3) In terms of design and use will not be compatible with the area in which it is located.

AMC 20.16.140(d).

Binding Site Plan

The Revised Code of Washington provides for an alternative method of land division – binding site plans:

A City, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4); (2) divisions of property for lease as provided for in RCW 58.17.040(5); and (3) divisions of property as provided for in RCW 58.17.040(7). Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

RCW 58.17.035.

Binding site plans are subject to the following standards:

- (a) The binding site plan shall ensure that the collective lots continue to function as one site with respect to, but not limited to, lot access, interior circulation, open space, landscaping, drainage facilities, facility maintenance and parking
- (b) The binding site plan shall:
 - (1) Identify the areas and locations of all streets, roads, improvements, utilities, open spaces, sensitive areas, parking areas, landscaped areas, surveyed topography (by a Washington State registered land surveyor) for preliminary map, water bodies and drainage features and building envelopes;
 - (2) Contain inscriptions or attachments setting forth such limitations and conditions for the use of the land as are established by the community development director or the hearing examiner;
 - (3) Contain provisions requiring any development or division of land to be conformance with the approved site plan;
 - (4) Contain requirements for street right-of-way realignment, dedication or widening either required by the City or by voluntary agreement; and

- (5) Adhere to all applicable provisions set forth in the land use code;
- (c) Both the design and development shall preserve the trees and vegetation, natural drainage, existing top soil, and wetlands/critical areas to the fullest extent that is reasonably possible.
- (d) Conditions of use, maintenance and restrictions on redevelopment of required open space, parking, access and other improvements shall be identified and enforced by covenants, easements, dedications or other similar mechanisms.

AMC 20.16.352.

“Binding site plans follow the standard subdivision, review, resubmittal, final approval process and recording requirements as that of the standard subdivision per Chapter 58.17 RCW.” *AMC 20.16.353.*

Additionally, RCW 58.17.110(2) requires that a proposed subdivision shall not be approved unless the Hearing Examiner finds that:

- (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
- (b) the public use and interest will be served by the platting of such subdivision and dedication.

The criteria for review adopted by the Arlington City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

With conditions, the proposal would satisfy the requirements for approval of a conditional use permit and a binding site plan. The City provided reasonable notice of the application and received comments from the Stillaguamish Tribe. The Applicant responded to the Tribe by providing a cultural resources survey, which the Tribe and the Department of Archaeology and Historic Preservation approved. The City Department of Community and Economic Development acted as lead agency, reviewing the proposal under SEPA, and determined that, with mitigation measures, the proposal would not have any probable significant adverse environmental impacts. The MDNS was not appealed. The MDNS would require the Applicant to implement best management practices to prevent erosion, address stormwater runoff, and protect groundwater; implement dust control measures to reduce fugitive dust emissions; provide

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tree replacement at a three-to-one ratio; comply with noise restrictions during construction; obtain design review approval; install light fixtures to prevent glare; construct frontage improvements and dedicate right-of-way; connect to City water and wastewater systems; and pay applicable traffic, school, park impact fees.

The Applicant's Traffic Impact Analysis determined that all studied intersections would continue to operate at acceptable level of service during AM and PM peak hours. The City determined the project would produce 113 new PM peak-hour-trips, and required appropriate traffic impact fees. The proposed development would provide adequate roads and sidewalks for vehicular and pedestrian access in compliance with City code requirements and would add repaving, parking, and other frontage improvements to 204th, which are a public benefit.

The City confirmed that it has capacity to provide water and sanitary sewer service to the property. The City would also provide police and fire emergency services to the property. Cascade Natural Gas would provide natural gas service, Snohomish County PUD would provide electricity service, Waste Management NW would provide garbage service, and Comcast would provide telecommunications services. Utility services, fire hydrants, and fire protection would be reviewed when civil construction drawings are submitted.

Mixed-use binding site plans are allowed as a conditional use in the Commercial Corridor zone. The Hearing Examiner agrees with City staff's analysis that the proposal would meet the requirements of the zone. In addition to the Commercial Corridor zone, the subject property also falls under the Transect 4 Mainstreet (T4-MS) zoning rules. In relevant part, the T4-MS rules provide as follows:

General Use

Primarily ground floor commercial uses with a mix of commercial and residential uses on the floor above.

...

All Mixed-Use projects require the first floor of all street frontage buildings to be comprised of commercial/retail uses. Except where horizontal mixed-use is used and the residential only buildings are accessed from an alley or other type of roadway.

AMC 20.110.012(C) and (E).

As noted above, only one of the 10 proposed buildings consists of ground-floor commercial with residential above. Two of the buildings are standalone commercial. The other seven have no commercial use at all but are strictly residential. The Hearing Examiner accepts Ms. Rusko's argument that this project is using "horizontal" mixed-use, in which uses are mixed among individual buildings on a site-wide basis, as opposed to the more traditional mixed-use, in which each individual building consists of mixed uses.

However, accepting that this project is using horizontal mixed use, raises an issue with AMC 20.110.012(E), which requires the first floor “of all street frontage buildings” to be commercial, “except where horizontal mixed-use is used and the residential only buildings are accessed from an alley or other type of roadway.” Here, two of the seven residential-only building front 67th Avenue. Unless these buildings “are accessed from an alley or other type of roadway,” they would be required, under AMC 20.110.012(E), to have commercial space on their ground floors, which they do not.

The Hearing Examiner acknowledges that 67th is not suitable for commercial access due to a lack of street parking. Unlike 204th, where the Applicant is providing street parking, 67th is encumbered by an existing trail, such that there is no room to provide street parking. Besides this practical consideration, the site is also designed such that the internal roads of the project provide the main access to the two residential-only buildings on 67th. Indeed, the site plans show the two buildings are set back from 67th a distance of greater than 10 feet in some places, and are separated from 67th by the Centennial Trail. A person seeking access to the two buildings would naturally follow the interior road into the site rather than crossing the trail and the 10-foot setback. The Hearing Examiner accepts City staff’s argument that the internal roads are the “alley or other roadway” that provide access in this case, not 67th.

The Hearing Examiner also accepts staff’s argument that the parking spaces to be dedicated should be subtracted from the site’s overall area for purposes of calculating required open space. Once dedicated, the parking spaces will no longer belong to the Applicant. They will be the property of the City, not part of the Applicant’s site.

The Hearing Examiner agrees that the proposed development would not have any adverse impacts on its surroundings. On the contrary, it would complement its surroundings. Several other properties in the vicinity are developed in a similar fashion, and all are zoned for similar development. The project is consistent with the zoning code, with the Comprehensive Plan vision, goals, and policies, and with the neighborhood character. *Findings 1–20.*

DECISION

Based upon the preceding findings and conclusions, the request for a conditional use permit and binding site plan to allow construction of a mixed-use development, known as “Wisemark Commons,” on 4.91 acres, with ten buildings on the site consisting of a mixed-use building with up to eight commercial spaces on the first floor, 52 multi-family residential units on the second and third floors, a restaurant building, seven multi-family residential buildings with 98 residential units, and a facility club house, located at 6804 204th Street NE, is **APPROVED** subject to the following conditions:¹

Land Use Approval

¹ Conditions include those required to reduce project impacts as well as those required to meet City codes.

1. All development shall be in substantial conformance with the Site Plan, Landscape Plans, and Architectural Plans received on February 23, 2024, subject to any conditions or modifications that may be required as part of the permit and construction plan review.
2. The Binding Site Plan shall be in substantial conformance with the plans received on February 23, 2024. The Applicant is required to provide the City with a signed binding site plan prior to City signatures and recording with the Snohomish County Auditor's Office.
3. The approved Conditional Use Permit shall expire two years after the date of the Notice of Decision per AMC §20.16.220.
4. The development shall meet all Title 20 AMC regulation requirements.
5. The developer shall meet all local, state, or federal code requirements. Attached as Attachment A is a list of code requirements that are specifically called to the developer's attention. It is in no way intended to be a complete list of code requirements, but a general checklist of major steps and issues.
6. The developer shall clear any outstanding Planning Division permit-processing accounts with the City within 60 days of issuance of this permit.
7. No permits and/or construction pursuant to the Conditional Use Permit shall begin or be authorized until 21 days from the date of the decision.
8. The property owner is responsible for managing all parking for residents and commercial uses on the site with the proposed number of parking stalls. The City may require the property owner to establish a parking permit system for tenants to show who is allowed to park in the private parking lot and to track compliance with parking. If parking issues arise, it is the responsibility of the property owner to limit the number of cars a tenant can have on the site. Parking is not allowed off-site unless a parking agreement is reviewed and approved by the City and recorded with the Snohomish County Auditor's Office.

SEPA MDNS Conditions

The developer shall comply with all conditions of the SEPA MDNS issued on February 8, 2024.

9. **(B)(1) Earth:** In order to mitigate potential earth impacts, the Applicant shall implement Best Management Practices per Department of Ecology for Stormwater Pollution Prevention and TESC Controls to prevent erosion during and after construction.
10. **(B)(2) Air:** In order to mitigate potential air impacts, the Applicant shall implement dust control measures to reduce fugitive dust emissions during construction. A Construction Management Plan shall be submitted to the City prior to commencement of construction to

ensure these measures. Construction equipment emissions shall comply with all State and Federal regulations for emissions.

11. **(B)(3)(b) Ground Water:** In order to mitigate potential impacts to ground water the Applicant shall employ best design practices meeting the current Department of Ecology's Stormwater Management Manual for Western Washington.
12. **(B)(3)(c) Water Runoff:** In order to mitigate potential impacts to water runoff the Applicant shall follow the current edition of the Department of Ecology's Stormwater Management Manual for Western Washington and Best Management Practices used to protect groundwater.
13. **(B)(4)(b) Plants:** To mitigate for the removal of significant trees on the site the Applicant shall replant at a ratio of 3:1 for every significant tree removed. The development proposes to remove 17 significant trees and the landscape plan shows that 55 native trees and an additional 142 trees are to be planted on the site.
14. **(B)(7)(A) Environmental Health:** Applicant shall comply with current codes to reduce or control environmental health hazards. A spill prevention plan shall be in place according to local, State and Federal policies.
15. **(B)(7)(b)(2) Noise:** City of Arlington noise standards found in AMC 9.20.060 shall be complied with. Specifically, in AMC 9.20.060(8), noises resulting from any construction or development activity or the operation of heavy equipment from 7:00pm to 7:00am Monday through Saturday shall be prohibited. The project will generate short term noise associated with construction activities. Construction hours will conform to City requirements. Noise from light vehicle traffic will be generated during business hours at project completion.
16. **(B)(8) Land and Shoreline Use:** The property is located within Subdistrict C and shall comply with the Federal Aviation Regulations (FAR) Part 77 and complete a Federal Aviation Administration form 7460. An Avigation Easement over the subject parcels shall be placed on the face of the associated Binding Site Plan, PLN #1139 prior to recording with the Snohomish County Auditor.
17. **(B)(10) Aesthetics:** The proposal is required to meet the City of Arlington Development Design Standards of AMC 20.110, as part of this submittal.
18. **(B)(11)(a) Light and Glare:** To mitigate for potential light pollution, the Applicant will be required to install light fixtures that are down shielded. The property is located within the Arlington Airport Protection District – Subdistrict C – that is comprised of the Federal Aviation Regulations (FAR) Part 77 “imaginary surfaces.” Street lighting is required to be

installed along 204th Street and 67th Avenue. The Applicant shall follow the Street Lighting Guide of the Complete Streets Program for approved roadway lighting luminaire fixture and poles.

19. **(B)(12)(c) Recreation:** The proposed development has provided and met the mini-park requirements through a variety of amenities on the site. The proposed 150 multi-family residential units shall pay Community Park Impact Fees in the amount of \$224,550.00 (\$1,497 x 150). The Applicant shall pay all community park impact fees prior to building permit issuance.
20. **(B)(13) Historic and Cultural Preservation:** The Applicant submitted a Cultural Resources Assessment for the project site and shall follow all recommendations of the report. The Applicant submitted an inadvertent discovery plan and, if during construction, historical, cultural, or archaeological sites or artifacts are discovered in the process of development, work on that portion of the site shall be stopped immediately, the site secured, and the find reported as soon as possible to the planning director. The property owner also shall notify the Washington State Department of Archaeology and Historic Preservation and affected tribes. The Applicant shall notify the Stillaguamish Tribe prior to ground disturbance and allow for on-monitoring if requested.
21. **(B)(14)(d) Transportation:** The proposal is required to construct frontage improvements along 204th Street NE. These improvements include repaving ½ of the street and dedication of right-of-way shown as Tract A on the site plans. The Applicant shall work with the City on the suggested restriping of the center turn lane on 67th Avenue NE per the Traffic Impact Analysis.
22. **(B)(14)(f) Transportation:** Trip generation for the proposed development has been calculated by Heath & Associates Consultants through a Traffic Impact Analysis. The report references land use code 220 for low rise multi-family, 822 for Strip Retail, and 932 for High-Turnover (Sit-Down) Restaurant per the ITE Trip Generation Manual, 11th Edition. The project proposes 150 multi-family units, approximately 12,000 square feet of commercial retail space, and 3,400 square feet of restaurant space, which results in 113 PM Peak Hour Trips (1287 Average Daily Trips). The Applicant is required to pay the following Traffic Impact Fees as proposed in the Traffic Impact Analysis:
 - City of Arlington Traffic Impact Fees = \$379,115 (\$3,355/trip x 113 PMPHT)
 - WSDOT Traffic Impact Fees = \$46,404 (\$36/trip x 1287 ADT)The Applicant shall pay all traffic impact fees prior to building permit issuance.
23. **(B)(15) Public Services:** The proposal is within the Arlington School District and is required to pay \$2,328 for every two/+ bedroom multi-family dwelling unit. The proposed development consists of 36 two-bedroom units, for a total of \$83,808.00 in school

mitigation fees. The Applicant shall provide the City a copy of payment/receipt to Arlington School District prior to building permit issuance.

24. **(B)(16)(a) Utilities:** The Applicant shall receive approval and connect to the City of Arlington water and wastewater systems, extend utility lines as necessary, and pay water and sewer connection fees. All improvements shall be installed during the Civil Construction phase of the project. All utilities shall be installed underground.

Civil Construction:

25. Prior to any construction activities, the Applicant shall file and receive approval of civil construction plans which comply with all requirements of the Land Use Code, International Building Code, International Fire Code, and Public Works Construction Standards and Specifications. Said plans shall address all site improvements, either required or voluntarily provided.
26. All stormwater is required to meet the 2019 Department of Ecology Stormwater Management Manual for Western Washington. The final drainage plan shall be approved with the Civil permit.
27. The Applicant is required to obtain utility permits from the City of Arlington for water and sanitary sewer connections.
28. The Applicant is required to provide an automatic irrigation system on the site. The proposed irrigation plan shall be submitted with the Civil Permit.
29. The Applicant shall construct all existing, extended, and new electrical power lines (not to include transformers or enclosures containing electrical equipment including but not limited to, switches, meters, or capacitors which may be pad mounted), telephone, gas distribution, cable television, and other communication and utility lines in or adjacent to any land use or building permit approved after the effective date of this chapter shall be placed underground in accordance with the specifications and policies of the respective utility service providers and located in accordance with the administrative guideline entitled "Public Works Construction Standards and Specification." Even in the event the distribution line originates from a point opposite any public roadway from the new construction, the service lines shall be placed beneath said roadway by means of boring or surface excavation across said roadway.
30. The placement of Snohomish County PUD transformer cases shall be reviewed and approved by the City. All cases that abut public right-of-way are required to be decoratively wrapped.

Building:

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31. Prior to issuance of the building permit, the Applicant shall complete all required or voluntary improvements unless otherwise secured and authorized by the City Engineer.
32. The Applicant shall submit building plans meeting the architectural standards of AMC 20.110, as approved with this permit.
33. Business Licenses for all contractors working on the site shall be required to obtain a City of Arlington Business License.
34. Building signage is required to be permitted through a sign permit application. All signage requires City approval prior to installation. The signage shall meet all code requirements and blend in with the overall building design.

DECIDED this 10th day of April 2024.



ALEX SIDLES
Hearing Examiner