



City of Leavenworth

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MEMORANDUM

TO: Carl Florea, Mayor, Ana Cortez, City Administrator, Members of the City Council, and Public

FROM: Lilith Vespier, Development Services Manager, with assistance of Thom Graafstra and Emily Guildner, of City Attorneys

TV/EG

DATE: January 14, 2021

RE: Question related to Stormwater- Leavenworth Haus Apartments and Zelt Strasse

THIS MEMORANDUM IS NOT PRIVILEGED AND IS AVAILABLE FOR PUBLIC DISTRIBUTION

The City Attorneys represented the City in the matter of the appeal concerning stormwater and the Leavenworth Haus Apartments, which was heard by the Hearing Examiner in May 23, 2019. A final order was entered on June 10, 2019. Because of that prior involvement the City Attorneys have been asked to assist with this Memorandum. The City Attorneys have not been involved in any permit or plan approval or in the oversight of those approvals.

Many questions have been posed recently concerning the Apartments, Zelt Strasse, stormwater and drainage. This Memorandum is organized under the following headings: (1) The Hearing Examiner's Proceedings and Decision (2) Subsequent permit/plan approvals, (3) Construction to date on the site and Zelt Strasse, (4) Certificates of Occupancy for Building A and for other Buildings, and (5) Going Forward - close out for the Apartments/Zelt Strasse and future docket issues.

(1) THE HEARING EXAMINER'S PROCEEDINGS AND DECISION

The Hearing Examiner presided over the appeal of the Leavenworth Haus grading permit. The City was represented by legal counsel. No City briefing addressed building occupancy. The grading permit itself contained a condition as follows:

9. Prior to any work within the City right-of-way, the Applicant shall obtain a permit from Public Works. 9.1. Completion of Zelt Strasse is not authorized under this decision. Final approval of plans and as-builts for Zelt Strasse, by the City, will be required prior to final occupancy of future buildings.

The Hearing Examiner found that the grading permit did not address, or need to address, stormwater planning for Zelt Strasse which would be associated with future development permits.

The Hearing Examiner's decision contained a finding of fact as follows:

23. The applicant did not submit application or plans for work within the City right-of-way. The applicant has indicated that this will be completed at a later date. The City is requiring this to be completed prior to final occupancy of a building permit for this site.

Staff interpreted the issuance of occupancy to be flexible because of the multiple building permits for this multi-building project. The hearing examiner did not require or specify, in staff's view, the first building and its permit would require completion of Zelt Strasse.

No permits associated with the Apartments require Hearing Examiner approval, and no later actions (for example construction plan approval) have been appealed.

Though an occupancy permit has been issued for Building A, after fire, building and planning review, final occupancy on all the buildings will not be provided until the stormwater issues are addressed to the satisfaction of the City Engineer (Gray and Osborne. G & O).

(2) SUBSEQUENT PERMIT/PLAN APPROVALS

Since the Hearing Examiner's decision on the grading permit, the City has issued 24 building permits/approvals for the Leavenworth Haus development. These include five building permits for the apartment buildings and various other permits/approvals associated with the project. All permits/approval requiring technical review received that review.

The first Leavenworth Haus building permit for building A included a review and approval of the on-site stormwater system. This approval is tied to all the apartment building permits. The typical method of large-scale development is to build in phases. Each phase is tied to associated parking, fire access, and other related items. Building A was Phase 1 and has now completed all associated parking, access, infrastructure connections (power, water, sewer and stormwater), design review and the mail kiosk, as noted herein. This completion was documented by the City.

The Leavenworth Haus stormwater system consists of three drywells and drain rock in the proposed parking lot on the north side of the site. The drainage generated on the Leavenworth Haus site is captured and routed into these drywells. The drywells are sized to infiltrate the 25-year storm event from the Leavenworth Haus site.

Any overflow from this system goes into an existing pipe on the east side of Zelt Strasse and flows north on the roadway. It should be noted that the Safeway Detention pond flows directly into the Leavenworth Haus Development system. The overflow from the Hampton Inn and Ward Strasse via infiltration pipe also flow into the Leavenworth Haus Development system in the event of an overflow of their respective systems. However, the Leavenworth Haus stormwater system is only sized for stormwater generated on-site, all other stormwater entering the site is considered pass-through. The Leavenworth Haus stormwater system can be modified to allow flows to pass through as needed.

In addition to the Leavenworth site building permits, the Leavenworth Haus developer was required to complete off-site improvements extending Zelt Strasse (curb, gutter, sidewalk, road pavement and all infrastructure) to River Bend Road (County road).

The Notice of Decision for Building A, contained a condition as follows:

23. Prior to issuance of the Certificate of Occupancy of Building A, the applicant shall complete and receive approval of all improvements to Zelt Strasse Road.

To complete this work, Development Services issued a Right-of-way Permit, on September 9, 2019 – after the associated County Right-of-way permit was issued. The right-of-way permit included placement of a stormwater system which was approved, prior to permit issuance, by the City Engineer (Pacific Engineers) on August 14, 2019. On September 27, 2019, the developer requested to change two drywells for two dual drains of stormwater storage chambers to address a drainage rock issue. Revised plans were received by the City on

September 28, 2019 and October 9, 2019. This revision was approved by the City Engineer (Pacific Engineers) on October 14, 2019.

The developer worked with the Department of Ecology to obtain associated State permits. State permits are not reviewed by the local jurisdiction (here the City). The City does not require a copy of State permits for the file but due to the location of the work in the public right-of-way copies of the permit will be provided, prior to the City accepting the improvements (through the Bill of Sale action with the City Council).

The developer requested inspection of the Zelt Strasse extension in September 2020. Public Works coordinated the inspection with the City Engineer (now Gray and Osborne) on October 12, 2020. At the time, the intersection of Zelt Strasse and River Bend Drive was flooded. The City Engineer (G&O) visited the site again on October 13, 2020. On October 15, 2020, the developer placed a 4-inch overflow between the infiltration system and the downstream system which drains to Chelan County.

On October 16, 2020, the City Engineer (G&O) issued its Inspection Report, which noted that the system was not functioning properly and required completion of several items including improving the overflow system, monitoring the system during rain events, testing the system's infiltration rates, and revisiting sizing and drainage calculations. The system was not approved at that time.

On October 22, 2020, the City (Development Services, City Engineer (G&O) and Public Works), Chelan County Public Works and the Developer (builder and Engineer) met via zoom to review the site conditions. At this meeting the Leavenworth Haus developer noted that their on-site stormwater system is not yet fully functioning due to a lack of paving and this may have contributed to water at Zelt Strasse and River Bend Drive. As noted above, all improvements required, including paving were completed for Building A. The discussion reviewed current conditions and options for modification and monitoring of the stormwater system for a future later approval.

Since that meeting, the developer completed an improved 12-inch overflow between the infiltration system and the downstream system which drains to Chelan County. This improvement was reviewed by the City Engineer and installed in late December 2020. The installation was determined adequate on a temporary basis and a permanent installation will be finalized after the system is tested.

An updated Stormwater Plan for Zelt Strasse will be required with final as-builts to address the various changes to the system prior to occupancy determinations on one or more of the remaining buildings (Building B-E).

(3) CONSTRUCTION TO DATE ON SITE AND ZELT STRASSE

The Leavenworth Haus development project includes 5 apartment buildings, and associated on and off-site improvements under various permits/approvals discussed above. All buildings are in stages of construction. Building A is complete, has completed all associated parking, access, infrastructure connections (power, water, sewer and stormwater), design review and the mail kiosk. As each apartment building within the project is finalized, all associated parking, sidewalk access and associated stormwater will be completed prior to occupancy.

Building B is nearing completion. The final inspection is the last remaining inspection from the Building Official. As a part of this final inspection, the fire protection system must receive final approval from Fire District #3, final approval of the Bavarian Alpine Theme, and approval by the City's Public Works Director.

Buildings C, D, and E are all in various earlier stages of the building process. Exterior cladding (stucco) has not yet been placed on buildings C and E. Insulation has not yet started on buildings C and E. Building D has completed insulation, and is in the process of completing drywall.

The garages are all complete, however final inspection from the Building Official has not yet occurred. The carports are all in the framing process and have not yet received framing or final inspection. Other miscellaneous permits, such as the mail kiosk, spa, refuse (garbage) enclosure and pavilion are in various stages of completion with only the mail kiosk finalized.

Regarding Zelt Strasse improvements, all work, including curb, gutter, sidewalk, and utility placements have been made consistent with the approved plans. The Zelt Strasse stormwater system consists of 2 infiltration chambers at the intersection of Zelt Strasse and River Bend Drive. This system is sized to infiltrate stormwater from the Zelt Strasse roadway extension, up to the 25-year storm event.

Public Works, at the direction of the City Engineer have completed the inspections and are requiring further testing of the stormwater system for Zelt Strasse.

(4) CERTIFICATES OF OCCUPANCY FOR BUILDING A AND OTHER BUILDINGS

Occupancy permits are issued by the Building Official once all building construction requirements have been met, the Fire District has signed off on all fire requirements, Design Review has signed off on all Bavarian Alpine Theme requirements and Public Works and Development Services sign off on infrastructure.

Some items, typically related to building, Bavarian Alpine Theme and infrastructure, can be deferred or bonded for at the discretion of the Building Official in consultation with other Directors/staff. This is done most often in the winter to provide use of the structure pending better construction conditions to complete non-life safety issues.

Related to the Leavenworth Haus building A, the occupancy permit was issued December 23, 2020 consistent with this normal practice. All onsite improvements met all building, fire, design and infrastructure requirements, for building A – including building A’s stormwater, and were complete. Off-site stormwater could not be signed off; however, it was sufficiently advanced and completed that it could be modified immediately to address present concerns, leaving additional testing and potential modifications for dry spring conditions. If that later testing and modifications proved problematic, the City retains the power to refuse occupancy certifications on later buildings B-E.

The testing in a dry part of the Spring of 2021 for the onsite system (and the overflow) will include the City Engineer and developer filling the stormwater system with hydrant or trucked in water and then monitoring the actual infiltration rate against the assumed infiltration rate. If the rate is not satisfactory, the City Engineer will require modification to the system and potentially retesting to achieve standard. Completion of the system to the satisfaction of the City Engineer (and Public Works) is required to complete the Leavenworth Haus development and dedicate the improvements to the City.

Once an Occupancy Permit is issued, it cannot be revoked absent material change in conditions such as a substantial public safety issue related to the structure. Examples include a failed fire system, mold issues, or substantial issues that create a life safety issue.

(5) GOING FORWARD –(A) CLOSE OUT FOR THE APARTMENT/ZELT STRASSE AND (B) FUTURE DOCKET ISSUES

(A) PROJECT CLOSE OUT

The next steps for Zelt Strasse stormwater include continued monitoring, testing during a dry part of the Spring of 2021, review of the findings by the City Engineer and Public Works, and if any deficiencies in the system are found, making appropriate modifications and revisions to the stormwater system. Once the system is approved by the City Engineer and Public Works, as built plans will be provided and other paperwork items, such as the Department of Ecology permit, will be provided to the City so that the final dedication process may occur. This includes Public Works and Development Services review and drafting the Bill of Sale for Council acceptance. Once the Council accepts the Bill of Sale, the improvements become part of the City's infrastructure and the road can be opened as a City Street, connecting to the County road.

The next steps for the Leavenworth Haus apartments will be to finalize additional apartment buildings, and associated permits. As each new apartment building is completed it will be reviewed by building, fire, public works, and design review. Development Services and Public Works will continue to monitor stormwater on-site and on Zelt Strasse. Pending any material change, it is expected that completion of the Zelt Strasse stormwater will be deferred until the last apartment building is ready for occupancy. If there continue to be unresolved stormwater issues, the City will consider bonding for required improvements. As noted above, it is standard practice for multiple building projects to open various buildings as they are completed and as associated infrastructure (like parking, on-site infrastructure, and access) are completed.

The Leavenworth Haus on-site stormwater system has been installed consistent with the approved plans but will not be used by the full facility until final paving is completed. At this time, the City Engineer is requesting testing of the on-site system, ideally at the same time as the Zelt Strasse system. This additional testing is not required but may help to further clarify the stormwater plans.

(B) FUTURE ISSUES

If the Council would like to review and allocate funding to update the 2017 Regional Stormwater/Wetland Master Plan update, that process would provide an opportunity for community input and involvement where they can make an impact.

CONCLUSION

It is hoped this report addresses the expressed concerns, provides all with the information desired, shows the status of this major project, identifies how the project will be completed, and provides suggestions about this part of project development.