

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE HEARING EXAMINER FOR THE CITY OF LAKEWOOD

RE: H&W Automotive Sales Lot)	
)	FINDINGS OF FACT, CONCLUSIONS OF
Conditional Use)	LAW AND FINAL DECISION
)	
LU1800080)	
)	
)	

Summary

The Applicant has applied for a conditional use permit to utilize an existing building at 10321 Bridgeport Way SW as office and retail space for a new automotive sales lot. The application is approved subject to conditions, most notably that the lot shall be limited to 15 vehicles unless the Applicant submits a scaled site plan by July 30, 2018 justifying more vehicles. The business also may not operate (be open to the public) until the Applicant establishes adequate access rights as required by the Lakewood Public Works Department.

Testimony

Andrea Bell, City of Lakewood Associate Planner, summarized the staff report. In answer to Examiner questions, Ms. Bell responded that the proposal would not involve any amplified sound system.

Ali Bahron testified on behalf of the applicant. Mr. Bahron asserted that the lot wasn't small enough to justify a 15 vehicle limit. He stated that 15 vehicles would only take up 75% of the space available for storing the vehicles. In his experience in working on car lots for 40 years, the available space can accommodate 20-25 cars. In response to Examiner questions, Mr. Bahron responded there is no disagreement with staff over the size of the lot, that the disagreement is over the capacity

1 of the available space. Mr. Bahron believes that the lot can accommodate one car per 48 square
2 feet.

3 Ms. Bell noted that Public Works had reviewed the proposal and requested a title report to establish
4 adequate access rights to the project site from adjoining property. The documents submitted thus far
5 to the City do not establish proper access. In response to Examiner questions, Ms. Bell responded
6 that the City determines the space needed for each vehicle on the lot based upon the standards for a
7 parking stall, specifically 9x18 feet per vehicle as well as reserving space for safe circulation. Ms.
8 Bell also agreed that staff would be open to reviewing a scaled site plan from the Applicant to see if
9 additional vehicles could be accommodated. The Applicant agreed to submit a scaled site plan. The
10 Examiner also authorized the Applicant to supplement the scaled site plan with a photograph
11 showing how many vehicles could be accommodated on the lot. The Examiner emphasized that the
12 site plan had to be drawn to scale to be of use to Public Works and also emphasized that such a
13 photograph could be submitted **in addition to** the scale drawing. The Examiner also authorized
14 post-hearing submissions on vehicle access rights to the property.

11 **Exhibits**

12 The June 22, 2018 staff report along with attachments A-J were admitted during the public hearing as
13 Exhibit 1. Exhibit 2 was admitted as eight photographs submitted by the Applicant on June 27, 2018
14 depicting vehicles parked on the project site. Exhibit 3 is a July 2, 2018 email string from Andrea
15 Bell to the Examiner responding to the photograph.

15 **FINDINGS OF FACT**

17 **Procedural:**

- 18 1. Applicant. Wadhah Alshargabi.
- 19 2. Hearing. A hearing was held on the subject application on June 22, 2018 in the Lakewood
20 City Hall Council Chambers. The record was left open until June 25, 2018 for the Applicant to
21 submit a scaled site plan depicting proposed parking spaces to establish the number of vehicles that
22 could be stored at the facility. The Applicant and City were then given until July 2, 2018 to work out
23 a mutually agreeable number of vehicles to be stored on the property, or in the alternative if no
24 agreement could be reached, to provide written argument in support of the number each party
25 advocates. July 2, 2018 was also set as a deadline for the submission of title documents necessary to
26 support access to the property and any written argument necessary to support conflicting positions on
that issue. The Applicant submitted a photograph depicting 25 cars stored on the lot, but did not
submit a scaled site plan or any title documents by July 2, 2018.

26 **Substantive:**

1 3. Project Description. The Applicant has applied for a conditional use permit to utilize an
2 existing building at 10321 Bridgeport Way SW as office space for a new automotive sales lot. The
3 primary business operations onsite will consist of the sale of used vehicles. The existing 1,028 sq.
4 ft. building will accommodate the future sales office for the proposed automotive business. The
5 business will operate seven days a week from 10:00am to 6:00pm. There are no current proposals to
6 make site improvements or tenant improvements to the building. The project site is .27 acres in area.

7 4. Surrounding Area. Surrounding uses include religious assembly to the south, miscellaneous
8 office space to the west and north and single family residential to the east.

9 5. Adverse Impacts. There are no significant adverse impacts associated with the project.
10 Pertinent impacts are addressed as follows:

11 A. Critical Areas. There are no critical areas on-site. The staff report states there are no critical
12 areas on-site and the project site is fully developed with building space or impervious surface.

13 B. Traffic. From the testimony during the hearing, it is evident that at most the proposal will
14 accommodate 25 vehicles. As noted by the Applicant, the parking requirements for such a
15 proposal only require four parking spaces. Public works has reviewed the proposal and found
16 no need for off-site traffic mitigation. Given these circumstances, it is determined that off-site
17 traffic impacts are minimal and there is no need for off-site traffic mitigation.

18 On-site traffic impacts are another matter. As identified in the summary of testimony, there is a
19 difference of opinion between the Applicant and City over how many vehicles can be safely
20 accommodated on the project site, with the Applicant asserting 20-25 vehicles can be stored on
21 the site for sale and the City advocating a limit of 15 vehicles. At the hearing the Examiner
22 made it very clear to the Applicant that a to-scale site plan was necessary for Public Works to
23 apply its expertise in assessing whether more than 15 vehicles could be accommodated.
24 Without a site plan and opportunity for further evaluation, the Public Works opinion that the
25 site should be limited to 15 vehicles is the most compelling evidence in the record on what
26 space is necessary for safe circulation and consistency with City development standards. The
27 Applicant submitted a photograph, but without the required site plan Public Works had no
28 further obligation to provide additional review. Consequently, the most compelling evidence in
29 the record still remains the Public Works opinion that 15 spaces is the limit for on-site vehicle
30 for sale storage. The Applicant is given one final opportunity to provide the required site plan
31 in the conditions of approval by July 30, 2018. The authorization of any additional vehicles
32 shall be left to the Public Works Department. The failure of the Applicant to submit a site plan
33 by June 25, 2018 as agreed by the Applicant at the June 22, 2018 hearing forfeits¹ the right of

34 ¹ The one hearing rule of the Regulatory Reform Act, Chapter 36.70B RCW, prevents the Examiner from re-opening
35 the hearing to hear additional evidence on project impacts. Normally delegation of examiner decision making to
36 City staff is problematical. However, the condition of approval sets the maximum number of vehicles to be
37 authorized at 25 as up to this number it is determined that the impacts of the proposal are still not significant.
38 Further, Public Works decision making is narrowly limited to considerations of safety and consistency with City
39 development standards.

1 the Applicant to have the Public Works decision subject to approval of the Hearing Examiner.
2 Similarly, the business will not be allowed to operate until the Applicant establishes adequate
3 access rights to the property to the satisfaction of the Public Works Department as well.
4

5 C. Hazardous Conditions. No hazardous conditions are reasonably inferred from the record as
6 mitigated. The staff report notes there are no hazardous conditions associated with the proposal
7 and none are evident from a small car sales operation operated upon an existing fully developed
8 lot.

9 D. Compatibility. The proposal will not create any significant noise or other adverse impacts that
10 would affect surrounding properties. A proposed use is of minor intensity and surrounding uses
11 are composed of a mix of commercial and residential use.

12 E. Adequacy of Utilities. The proposal will be served by adequate utilities. According to the staff
13 report, the site is presently serviced by all wet and dry utilities and will not add to the burden of
14 the existing services infrastructure. The applicant will be required to obtain a Water Availability
15 Letter through Lakewood Water District to ensure adequate flow. There is power to the site
16 provided by PSE and Lakeview Light and Power, and public emergency services are available
17 as well. The use will not overburden or adversely affect any public facilities or services.

18 **Conclusions of Law**

19 1. Authority. LMC 18A.2.502 Table 3 classifies conditional use permits as a Process III
20 application subject to hearing examiner review.

21 2. Zoning Designations. Neighborhood Commercial 2 (NC2).

22 3. Review Criteria. LMC 18A.30.450(C)(9) requires a conditional use permit for Motor Vehicle
23 Sales and Rental- Level 1 in the NC2 district. LMC 18A.10.150 governs the criteria for conditional
24 use permit review. Applicable conditional use criteria are quoted below in italics and applied through
25 corresponding conclusions of law.

26 **LMC 18A.10.150(A)**: *The size and physical characteristics of the site are appropriate for the
proposed use including all facilities and amenities that are required by this title or desired by the
applicant.*

4. The criterion is met. As conditioned to a limit of 15 vehicles (with an opportunity to increase
that number with proper justification to Public Works), the project site is appropriate in size for its

1 intended use. Further, since the proposal will not require any physical modifications with its fully
2 developed impervious surfaces, it has the appropriate physical characteristics for its intended use.

3 **LMC 18A.10.150(B):** *The proposed use will not be detrimental to the public health, safety, and*
4 *general welfare of the community and will not introduce hazardous conditions at the site that cannot*
5 *be mitigated to protect adjacent properties and the vicinity.*

6 5. The criterion is met. As determined in Finding of Fact No. 5, no significant adverse impacts
7 will be created by the proposal, which includes any hazardous conditions. Since the proposal creates
8 no significant adverse impacts, it will not be detrimental to public health, safety and welfare.

9 **LMC 18A.10.150(C):** *The proposed use will not be injurious to, or adversely affect the uses,*
10 *property, or improvements adjacent to, or in the vicinity of, the site upon which the proposed use is to*
11 *be located. The proposed use will be compatible with adjacent land uses and consistent with the*
12 *character of the surrounding area.*

13 6. The criterion is met. As determined in Finding of Fact No. 5, no significant adverse impacts
14 will be created by the proposal and the proposal is compatible with surrounding uses. Consequently,
15 it will not be injurious or adversely affect surrounding uses.

16 **LMC 18A.10.150(D):** *The proposed use will be supported by adequate water, sewer, storm*
17 *drainage, schools, electrical, police, and fire protection facilities and services. The use will not*
18 *overburden or adversely affect said public facilities and services.*

19 7. The criterion is met. As determined in Finding of Fact No. 5(E), the proposal is served by
20 adequate public facilities and services.

21 **LMC 18A.10.150(E):** *The traffic generated by the proposed use will not unduly burden the traffic*
22 *circulation system in the vicinity.*

23 8. The criterion is met. As determined in Finding of Fact No. 5(B), the traffic generated by the
24 proposal is not significant and is adequately mitigated as determined by the City's public works staff.

25 **LMC 18A.10.150(F):** *An adequate site layout is proposed for on-site circulation and*
26 *transportation activities, considering the potential impacts of the proposed use on traffic flow and*
control, emergency vehicle movements and safety associated with the suitability of access points, on-
site drives, parking, loading and unloading areas, refuse collection and disposal points, sidewalks,
bike paths, or other transportation facilities required by this title or desired by the applicant. All
conditions necessary to lessen any impacts of the proposed use have been included in the project
design or will be required as conditions of approval pursuant to LMC 18A.10.160, Action of Hearing
Examiner. Buffering devices such as fencing, landscaping or topographic characteristics may be
required to adequately protect adjacent properties from adverse effects of the proposed use,
including adverse visual or auditory effects.

1
2 9. The criterion is met. As noted in Finding of Fact No. 5, the proposal is of very moderate
3 intensity and is fully compatible with surrounding mixed-use character without the need for any
4 additional buffering. On-site circulation involves a point of disagreement between City and
5 Applicant and has been resolved by the conditions of approval as outlined in Finding of Fact No.
6 5(B).

7 **LMC 18A.10.150(G):** *The proposed use will cause no unreasonably adverse effects to wetlands,*
8 *shorelands, wildlife habitat, and other sensitive areas.*

9 10. The criterion is met. As determined in Finding of Fact No. 5(A), the proposal will not
10 adversely affect critical areas since none or on the project site and no physical improvements are
11 proposed.

12 **LMC 18A.10.150(H):** *That the granting of the proposed conditional use is consistent and*
13 *compatible with the intent of the goals, objectives and policies of the comprehensive plan. For*
14 *essential public facilities, the Hearing Examiner shall balance the goals and policies of the*
15 *comprehensive plan, the intent of this code, and the public need for the proposed facility.*

16 11. The criterion is met for the reasons identified at pages 3-4 of the staff report.

17 **LMC 18A.10.150(I):** *The proposed use complies with the appropriate development and*
18 *performance standards and all other applicable provisions of the City of Lakewood Land Use and*
19 *Development Code.*

20 12. The criterion is met. As conditioned, as outlined in the staff report, staff have reviewed the
21 proposal for consistency with the City's development standards and found the project to be
22 consistent. There is nothing in the record to reasonably suggest otherwise.

23 **DECISION**

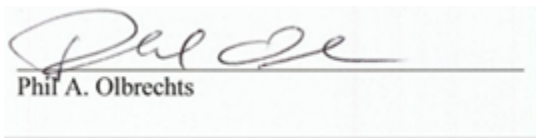
24 Conditional Use Permit Application No. LU1800080 satisfies all conditional use criteria as
25 determined in the Conclusions of Law of this decision and is therefore approved subject to the
26 following conditions:

- 27 1. The proposed use shall remain in substantial conformance with the proposed site plan (Exhibit
28 B). Minor modifications consistent with Lakewood's development standards may be reviewed
29 and approved by the Community and Economic Development Director. Major modifications
30 will require a new CUP.
- 31 2. Any future structural changes to the building will require a tenant improvement permit through
32 the City of Lakewood Building Department prior to construction activities.

CONDITIONAL USE

3. The project shall be consistent with comments provided from City of Lakewood Planning Department, and from the City of Lakewood Public Works Department, dated May 31, 2018. The business shall not be allowed to operate until proper access to the property is established per the May 31, 2018 Public Works comment letter (see Ex. 1(E)).
4. Pursuant to LMC 18A.50.675- the existing nonconforming roof sign shall be removed prior to issuance of business license.
5. No public right of way parking is allowed for display vehicles, customers or employees.
6. There shall be no storage of junk vehicles on the property. All vehicles located on the property must be operable.
7. Due to the size constraint of the site, the applicant shall not be allowed to have more than 15 vehicles for sale or display at any given time. The Applicant may store a larger number of vehicles if it provides a to-scale site plan depicting all vehicle parking spaces to the Public Works Department by July 30, 2018 (such deadline may be extended for cause by Public Works). Public Works may authorize more than 15 vehicles, up to 25 vehicles, if the Applicant establishes that the greater number will (1) be consistent with applicable development standards; and (2) provide for safe vehicle circulation.
8. A minimum of four (4) total parking spaces will be required for visitors and employees at all times. Vehicles for sale may not be parked in these spaces.
9. This CUP applies to the property at 10321 Bridgeport Way SW only. Motor Vehicle Service and Repair is not an allowed use on the subject property.

DATED this 16th day of July, 2017.



Phil A. Olbrechts

Pro Tem Hearing Examiner for Lakewood

Appeal Right and Valuation Notices

LMC 18A.02.502 Table 3 provides that the final decision of the Hearing Examiner is subject to appeal to superior court. Appeals of final land use decisions to superior court are governed by the Land Use Petition Act (“LUPA”), Chapter 36.70C RCW. LUPA imposes short appeal deadlines

1 with strict service requirements. Persons wishing to file LUPA appeals should consult with an
2 attorney to ensure that LUPA appeal requirements are correctly followed.

3 Affected property owners may request a change in valuation for property tax purposes
4 notwithstanding any program of revaluation.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26