

Received
Planning Division
03/20/2023



Beaverton
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CITY OF BEAVERTON

Community Development
Department
Planning Division
12725 SW Millikan Way
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Beaverton, OR. 97076
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| OFFICE USE ONLY | |
|-----------------|---------------------------------|
| FILE #: | APP2023-0001 |
| FILE NAME: | Appeal of Organic Milk Exchange |
| TYPE: | Type 2 |
| FEE PAID: | |
| SUBMITTED: | 03/20/2023 |
| RECEIVED BY: | SO |
| CHECK/CASH: | |
| NAC: | Denny Whitford/ Raleigh West |

APPEAL OF A LAND USE DECISION

PLEASE SELECT THE SPECIFIC TYPE OF APPEAL FROM THE FOLLOWING LIST:

APPEAL OF A TYPE 1 DECISION APPEAL OF A TYPE 3 DECISION

APPEAL OF A TYPE 2 DECISION OTHER

APPELLANT NAME(S): Peter Grimm

SIGNATURE(S): (Original Signature(s) Required)

DocuSigned by:
Peter Grimm
3E55C231453D4D4...

EACH APPELLANT MUST HAVE PROVIDED EVIDENCE TO THE DECISION MAKING AUTHORITY THAT WAS CONTRARY TO THE DECISION.

APPELLANT REPRESENTATIVE: All pre-hearing contact will be made solely to this person.
IF MORE THAN ONE APPELLANT, APPELLANTS MUST DESIGNATE A SINGLE APPELLANT REPRESENTATIVE.

NAME: Peter Grimm COMPANY: Scott Edwards Architecture, LLP

ADDRESS: 2525 East Burnside Street

CITY, STATE, ZIP: Portland, OR 97214

PHONE: 503-226-3617 FAX: 503-226-3715

SIGNATURE: *Peter Grimm* (Original Signature Required)
3E55C231453D4D4...

REQUIRED INFORMATION

SITE ADDRESS: 5051 SW Western Avenue **CASE FILE NO. UNDER APPEAL:** DR 2022-0098 et al

SPECIFIC APPROVAL CRITERIA / CONDITION BEING APPEALED:
Staff Report dated March 9, 2023 Condition of Approval B 24

SPECIFIC REASON(S) WHY A FINDING / CONDITION IS IN ERROR AS A MATTER OF FACT, LAW OR BOTH:
See attached Exhibits A and B.
(Attach additional sheets if necessary)

SPECIFIC EVIDENCE RELIED ON TO ALLEGE ERROR:
See attached Exhibits A and B.
(Attach additional sheets if necessary)

HOW DID THE APPELLANT(S) PROVIDE EVIDENCE TO THE DECISION-MAKING AUTHORITY? WHERE IN THE OFFICIAL RECORD IS SUCH EVIDENCE?:
See attached Exhibits A and B.
(Attach additional sheets if necessary)

Electronic submission is preferred whenever possible. Applicants should submit forms reports, plans, and other supporting documents electronically rather than printing and delivering multiple paper copies. [Please click here for instructions on how to submit electronically.](#)

LAND USE REVIEW
Type II Design Review



EXHIBIT A

March 20, 2023

DR2022-0098: Land Use Decision Appeal

Applicant: Scott Edwards Architecture, LLP
2525 East Burnside St
Portland, OR 97214
Attn: Peter Grimm
Ph: 503-226-3617
Email: peter@seallp.com

Owner Representative: Bacchus Investors
2 Centerpointe Drive #500
Lake Oswego, OR 97035
Attn: Todd Collins
Ph: 503-320-9825
Email: todd@macadamforbes.com

Address: 5051 SW Western Ave., Beaverton, OR 97005

Tax Lots: Map 1S114CB / Tax Lot 200
Map 1S114CB / Tax Lot 300

Summary Narrative/Approval Criteria:

Applicant applied for and received approval for 3 concurrent Land Use Reviews for the above referenced property. The primary review was a Type II Design Review **DR2022-0098**. In addition, **PD2022-0003** and **SDM2022-0004** were reviewed and approved. The Staff Report recommended approval of all 3 land use reviews with Conditions of Approval as noted in the report.

Applicant is appealing one of those Conditions of Approval, **Item #B-24** which states:

B. Prior to building permit issuance, the applicant shall:

- 24. Submit a complete site development permit and obtain the issuance of site development permit revision from the Site Development Division.*

Rationale/Evidence to allege error:

Prior to the issuance of the Staff Report, applicant participated in a zoom call with Site Development staff to review the draft report that was circulated for coordination purposes. On this call, applicant requested some revisions to the report, one of which was to remove the requirement to open a new site development permit to address COAs, and instead keep the existing site development open and amend

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Land Use Review: Appeal
5051 SW Western Ave
Page 2 of 2



it as needed via revision. The other major process related request was to also move Item B-24 to Category C which includes items that *"...shall be completed prior to final inspection and final occupancy"*. The idea here was to decouple these two permit review processes and allow them to be reviewed independent of one another. The history of this site is complex, but in short there has been an open site development permit on the property since 2019 that will require significant modifications to address all COAs (perhaps 6-8 weeks). Concurrently, there is also an open building permit that has already been reviewed by most City bureaus already and will be ready to issue upon planning's re-review for compliance with design review requirements (perhaps 2 weeks). The intent of our request to decouple these two permits is thus aimed at reducing the bottleneck between the two plan review timelines.

The applicant reviewed the above rationale on the call, and Site Development staff agreed to make those two changes in response to the informal request. Since there would still be an open site development permit for the property, there was no reason these two items needed to be tied together sequentially. Applicant then conveyed the substance of that call to planning staff who added their support in principle, and indicated they would make both changes and that this would be reflected in the final staff report issued for public comment. The actual final staff report did address the first item requested to allow the site development permit to remain open, but the second item remained in the report to require the site dev revisions be completed prior to building permit issuance.

We believe the above was simply an internal communication gap between City bureaus and does not reflect the intent or good will of either the applicant or staff. Please also see attached **Exhibit B** for email string in support of this request.

On this basis we are requesting the staff report to be modified to move Item B-24 to Category C as agreed upon earlier in the process. Applicant would agree to complete all remaining required conditions of approval as noted elsewhere in the report.

Thank you,

A handwritten signature in black ink, appearing to read "Peter Grimm". The signature is written in a cursive, somewhat stylized script.

SCOTT EDWARDS ARCHITECTURE, LLP
Peter Grimm Principal

EXHIBIT B

From: Aaron Harris <aharris@beavertonoregon.gov>
Sent: Wednesday, March 15, 2023 11:29 AM
To: Peter Grimm <Peter@seallp.com>
Cc: Jana Fox <jfox@beavertonoregon.gov>
Subject: RE: Organic Milk Exchange (5th and Western): Process Question

Greetings Peter,

Staff has met with our attorney and the most expeditious and least expensive way to modify the condition is to appeal the decision. Once appealed, staff will take it to PC and treat it like a friendly appeal where we agree on the outcome. The other option is to wait for the decision to become final and do a modification of a decision and go back through the full process. I have attached the appeal form for your use. The form must be completed and the fee paid prior to the appeal period ending for the appeal to be valid. You can submit your email summarizing the staff/applicant meeting that said the building permits could be uncoupled from SD permits as evidence to support the appeal requirements.

Best,

Aaron Harris, AICP
Senior Planner | Current Planning | Community Development
City of Beaverton | PO Box 4755 | Beaverton, OR 97076-4755
www.beavertonoregon.gov

COVID-19 Update: Please note: I am working remotely/in office at this time. My work hours are: **8-5pm M-F**. The best number to reach me is **503-616-8453**. Response times may be longer than normal as we adapt to remote work.

From: Peter Grimm <Peter@seallp.com>
Sent: Monday, March 13, 2023 11:12 AM
To: Jana Fox <jfox@beavertonoregon.gov>
Cc: Aaron Harris <aharris@beavertonoregon.gov>
Subject: [EXTERNAL] RE: Organic Milk Exchange (5th and Western): Process Question

CAUTION: This email originated from outside the City of Beaverton. Exercise caution when opening attachments or clicking links from unknown senders.

Jana:

Understood, disregard the email I just sent you. It's covered here.

It's unfortunate this didn't get captured in the original report but do let us know what method is most time efficient. I wonder if it could be handled as an internal directive rather than having to send out any new public documents. After all, it doesn't change the conditions of approval, just the order of operations. All COAs in the report will be addressed prior to final occupancy so the public interest is served.

My 2 cents.

Exhibit APP 1.1

Thanks,
Peter

From: Jana Fox <jfox@beavertonoregon.gov>
Sent: Monday, March 13, 2023 10:19 AM
To: Peter Grimm <Peter@seallp.com>
Cc: Aaron Harris <aharris@beavertonoregon.gov>
Subject: RE: Organic Milk Exchange (5th and Western): Process Question

Peter,

The staff report has been issued so changing conditions is not a simple task. We are working with our attorney on options to modify the condition, once we figure out what the options are we will communicate them to you.

Thanks,

Jana Fox

Pronouns: she/her/hers
Current Planning Manager | Community Development
City of Beaverton | PO Box 4755 | Beaverton, OR 97076
E: jfox@beavertonoregon.gov
www.BeavertonOregon.gov



I am working remotely Monday, Thursday and Friday. My work hours are 8:00 am – 5:00 Monday – Friday. You may reach me at jfox@beavertonoregon.gov or 503.523.8530.

From: Peter Grimm <Peter@seallp.com>
Sent: Friday, March 10, 2023 4:47 PM
To: Jana Fox <jfox@beavertonoregon.gov>
Subject: [EXTERNAL] RE: Organic Milk Exchange (5th and Western): Process Question

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Jana:

I just talked with Khoi, and he is onboard with moving COA Item #24 to Category C, to be completed prior to final occupancy rather than Building Permit issuance.

Let me know if you have any questions on this. My apologies for any gaps in communication on our part, I think this is a great solution for all involved.

Thank you,
Peter

Exhibit APP 1.1

From: Jana Fox <jfox@beavertonoregon.gov>
Sent: Friday, March 10, 2023 3:37 PM
To: Peter Grimm <Peter@seallp.com>
Subject: RE: Organic Milk Exchange (5th and Western): Process Question

Peter,

Khoi's cell phone is 971-303-1540

I will try to chat with Khoi about this and see what I can figure out. I know the technical staff are discussing. My conversations with site development were specifically about making sure that a SD revision was possible instead of a full new SD permit.

Thanks,
Jana

From: Peter Grimm <Peter@seallp.com>
Sent: Friday, March 10, 2023 3:14 PM
To: Jana Fox <jfox@beavertonoregon.gov>
Subject: [EXTERNAL] FW: Organic Milk Exchange (5th and Western): Process Question

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Jana:

We've got a disconnect on our permit sequencing here. On our last coordination call with Khoi, he agreed that the SD and Building permits do not have to be tied together sequentially, as we are leaving the current SD permit open (to be modified via revision).

I am trying to get hold of Khoi but do not have his direct line. Can you provide that? Also, is it possible for you two to connect directly to sort this out? This is a potential big impact to the development schedule for what seems to all parties like a clerical error.

Thanks,
Peter

From: Jana Fox <jfox@beavertonoregon.gov>
Sent: Thursday, February 16, 2023 9:06 AM
To: Peter Grimm <Peter@seallp.com>
Cc: Aaron Harris <aharris@beavertonoregon.gov>; Chris DesLauriers <CDesLauriers@tmrippey.com>; Andrew Kraus <andrew@seallp.com>
Subject: RE: Organic Milk Exchange (5th and Western): Process Question

Peter,

Great to hear about the outcomes from Site, that was my hope for outcomes so planning is supportive of SD's stance on those issues. Please submit your materials ASAP, Aaron will need to review them in finishing up the staff report. Your staff report will come out around the 22nd, given there are new materials it may be a few days later. Planning can sign off on the building permit (assuming everything is

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in order) once the 12-day appeal period ends (with no appeals). We can review during that time and provide comments just not release the permit.

Sounds like things are in a good place, which is great news!

Thanks,
Jana

From: Peter Grimm <Peter@seallp.com>
Sent: Thursday, February 16, 2023 8:43 AM
To: Jana Fox <jfox@beavertonoregon.gov>
Cc: Aaron Harris <aharris@beavertonoregon.gov>; Chris DesLauriers <CDesLauriers@tmrippey.com>; Andrew Kraus <andrew@seallp.com>
Subject: [EXTERNAL] RE: Organic Milk Exchange (5th and Western): Process Question

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Jana:

Thank you. We had a very productive call with Khoi Le and Kyler Jacobo yesterday. Our takeaway was as follows:

1. They were both in support of keeping the existing Site Dev (SD) permit open. DR COAs can be addressed via an SD permit revision rather than opening a new permit app.
2. As the SD permit remains open, they didn't see any reason from a process standpoint why the Building Shell permit (currently under review) couldn't be issued upon DR approval and planning bureau sign off.
3. We discussed the COAs listed below in detail. Many of them can either move to Category C (final acceptance prior to final occupancy), modified, or in a few cases removed. I believe they will issue a new Site Dev COA document in the coming days.

Let me know your thoughts on items #1 and #2 above. We have all plan review comments addressed and ready for re-review, except for planning. As we understand it, the Staff Report will come out next week on the 22nd, after which time Aaron can review the Shell permit for DR compliance which should be the final review needed to clear the permit.

Final thought- I am submitting the "perfection set" tomorrow, which will pick up some of the minor comments Aaron requested within the last week and a half. Hopefully that will be everything needed for planning approval.

Let me know if that all makes sense, and your thoughts on the process strategy outlined above.

Regards,

Peter Grimm

Principal | Architect AIA

[he/him/his]

Exhibit APP 1.1



Scott Edwards Architecture LLP

2525 E Burnside St. Portland, OR 97214

D 503.896.5305 O 503.226.3617 ? seallp.com

From: Jana Fox <jfox@beavertonoregon.gov>

Sent: Thursday, February 16, 2023 8:20 AM

To: Peter Grimm <Peter@seallp.com>

Cc: Aaron Harris <aharris@beavertonoregon.gov>; Chris DesLauriers <CDesLauriers@tmrippey.com>;

Andrew Kraus <andrew@seallp.com>

Subject: RE: Organic Milk Exchange (5th and Western): Process Question

Peter,

My apologies I found my 'received and will review with Aaron when he's back' email stuck in my outbox.

Thank you for sending this detailed information, if we have any questions we will let you know and Aaron and I will discuss next week.

Thank you!

Jana

From: Peter Grimm <Peter@seallp.com>

Sent: Tuesday, February 14, 2023 11:56 AM

To: Jana Fox <jfox@beavertonoregon.gov>

Cc: Aaron Harris <aharris@beavertonoregon.gov>; Chris DesLauriers <CDesLauriers@tmrippey.com>;

Andrew Kraus <andrew@seallp.com>

Subject: [EXTERNAL] RE: Organic Milk Exchange (5th and Western): Process Question

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Jana:

Thank you for taking time to review this. In general, yes the option to keep the existing SD permit open is far and away the most pressing question for all the reasons we've outlined over the last several days. All of the installed utilities were designed under the code in force at the time of original approval, and opening a new permit is just a massive can of worms that doesn't have any net benefit for the project or the City in the long run.

Second, if we can continue to run the SD and Building permit reviews concurrently rather than sequentially, that would allow the building permit to be issued immediately following DR approval, followed by the SD revision. This would save many weeks or perhaps months, and does not impact our ability to comply with all COAs prior to final acceptance and occupancy for the site.

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The final request is to allow some of the potentially time intensive or overlapping COAs to either be modified, moved to **Category C**, or removed for specific reasons enumerated below. The specific conditions that this applies to are as follows:

Conditions of Approval:

A. Prior to issuance of the site development permit, the applicant shall:

2. *The applicant shall dedicate sufficient right-of-way along SW 5th Street to accommodate the standard 3-lane collector street cross section. (Planning Div. /AH)*
3. *The applicant shall dedicate sufficient right-of-way along SW Western Avenue to accommodate the standard 5-lane arterial street cross section. (Planning Div. /AH)*
11. *Submit public water easement and dedication of right of way, executed and ready for recording when required, to the City. City will require approval of legal description and form prior to execution. (Site Development Div. / KJ)*

Request: Applicant is requesting to move these COAs related to property line recorded dedications to **Category C**, to be completed prior to final acceptance and occupancy.

10. *Have the applicant for the subject property guarantee all City-owned and maintained public improvements, grading, storm water management facilities, and driveway paving by submittal of a City-approved security. The security approval by the City consists of a review by the City Attorney for form and the City Engineer for amount, equivalent to 100 percent or more of estimated construction costs. (Site Development Div. / KJ)*

Request: Applicant requests a bond rider rather than new bonding requirement.

12. *Submit to the City a copy of issued permits or other approvals needed from the Oregon Department of Transportation Rail Division for work within 500 feet of the rail crossing area. (Site Development Div. / KJ)*

Request: No work other than utility connections are proposed in the Western Ave ROW, so ODOT Railroad approvals are not applicable. Applicant requests that this COA be removed.

16. *Provide construction plans and a drainage report demonstrating compliance with City surface water management requirements per City 2019 Engineering Design Manual, Resolution 4542, Section 530; and with CWS Resolution and Order 2019-22 for quantity control for conveyance capacity, hydromodification and quality treatment. Fee-in-lieu can be requested if development meets criteria set forth in City EDM Sections 190, table 530.1, and 530.1.A.4 and CWS Design & Construction Standards Section 4.03.7.a and 4.04.2.a. (Site Development Div. / KJ)*

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17. *Provide a drainage analysis of the subject site prepared by a professional engineer meeting the standards set by the City. The analysis shall identify all contributing drainage areas and plumbing systems for this project with the site development permit application. The analysis shall also delineate all areas for this project that are inundated during a 100-year storm event, including the safe overflow conveyance from proposed constructed stormwater management facilities. In addition, the analysis shall delineate any mapped FEMA floodplains and flood ways. (Site Development Div. / KJ)*

Request: Applicant requests that original SD permit to remain open per our original understanding. 90% of the site utilities have already been installed and vested under the code in effect at the time of submittal and approval of SD permit, closing the original SD permit is not practical or economically feasible.

18. *The site plans shall clearly show the 100-year flood limits on each plan that contains elevation information. The flood conveyance and storage of the project area at each 1-foot contour must be preserved or enhanced with cut/fill balance and a zero-rise certification by a registered professional engineer. (Site Development Div. / KJ)*
19. *Provide an engineering analysis of the grading and construction work proposed within the 100-year floodplain as necessary to allow for a public notice to be published in a local newspaper by the City for the proposed floodplain modifications. The applicant's engineer shall certify in writing that the project as designed will meet the requirements of City Code and Clean Water Services Design & Construction standards as they refer to the 100-year floodplain, prior to this notice being sent. The public notice and a 10- day appeal period shall occur after final approval of the site development permit plans by the City. (Site Development Div. / KJ)*
20. *Submit a grading plan showing building pad elevation and minimum finished floor elevation (FFE). Pad elevation shall be at least one foot higher and FFE shall be at least three feet higher than the 100 year/emergency overflow of the storm water management facility. (Site Development Div. / KJ)*

Request: Applicant requests that some of the language in these COAs related to floodplain requirements be modified. Applicant to discuss with engineering staff on Wednesday's call.

B. Prior to building permit issuance, the applicant shall:

26. *Submit a complete site development permit and obtain the issuance of site development permit revision from the Site Development Division. (Site Development Div. / KJ)*

Request: See paragraph #2 above. Applicant is requesting to continue to run the SD and Building permits concurrently and thus remove this COA.

27. *Have a professional architect, engineer, or surveyor submit plans and specifications to the City Engineer and City Building Official verifying that all at-*

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risk elements of the new construction (in particular gate controllers, mechanisms, and electrical system) are either elevated or floodproofed as appropriate per City Code, FEMA requirements, IBC Appendix G (Flood-resistant Construction), and ASCE/SEI 24-05, and as determined by the City Floodplain Administrator and City Building Official. As the floodplain elevations change throughout the site, individual floodplain elevations will be identified on plans. (Site Development Div. / KJ)

Request: Applicant is not familiar with this requirement and has not seen this on past projects. Applicant requests that this COA either be modified or removed. Applicant to discuss with engineering staff on Wednesday's call.

Thank you for your consideration of our requests, we look forward to completing a successful project for our Client and for the City.

Regards,

Peter Grimm

Principal | Architect AIA

[he/him/his]



Scott Edwards Architecture LLP

2525 E Burnside St. Portland, OR 97214

D 503.896.5305 O 503.226.3617 ? seallp.com

From: Jana Fox <jfox@beavertonoregon.gov>

Sent: Tuesday, February 14, 2023 9:52 AM

To: Peter Grimm <Peter@seallp.com>

Cc: Aaron Harris <aharris@beavertonoregon.gov>

Subject: RE: Organic Milk Exchange (5th and Western): Process Question

Peter,

Thank you for reaching out. As you know Aaron is out this week. We want to keep your project moving along and as you noted there are lots of moving parts on this unconventional one (in terms of process). If you have specific condition requests would you be able to enumerate and send those over so that we can discuss them. Realistically it will be early next week when Aaron is back when we may have more detailed answers for you on specific conditions but we can get a jump start on coordination while he is out.

My understanding was that the main concern whether a new SD permit would be required or just a revision to the existing permit but it sounds like from this email there may be additional items you would like us to look at.

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Just a heads up that I will be out this afternoon.

Thanks,
Jana

From: Peter Grimm <Peter@seallp.com>
Sent: Tuesday, February 14, 2023 8:34 AM
To: Jana Fox <jfox@beavertonoregon.gov>
Cc: Aaron Harris <aharris@beavertonoregon.gov>
Subject: [EXTERNAL] Organic Milk Exchange (5th and Western): Process Question

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Jana:

Hello from SEA, thank you for all of your efforts to date to keep our unconventional inherited project moving forward and organized. It is appreciated! I wondered if I could get an update on process and timing expectations. I understand from Bill Berg that there was an internal discussion yesterday regarding our request to keep the existing active Site Development permit open and decoupled from the Building Shell permit approval.

We're hoping with the pending land use review approval forthcoming that the building shell can be released to begin construction while the site related elements are being updated and ultimately resubmitted for a permit revision. This was our understanding with staff from day one and we built the project schedule around it with that understanding. We fully understand that the site related conditions of approval all need to be satisfied at some point in the process and we see a path forward to do so, it's more a sequencing question as some of these may take many weeks or months to finalize and the contractor could potentially be idled in the meantime. We have asked that those time intensive conditions be allowed to be completed prior to final acceptance and certificate of occupancy rather than prior to permit revision issuance, again in an attempt to keep this very unconventional process on track in an efficient manner. This feels like it benefits all parties including the City.

I realize there are a lot of moving parts on this one. Please feel free to reach out- I'm happy to jump on a call to discuss anytime if that's easier.

Thank you,

Peter Grimm

Principal | Architect AIA

[he/him/his]



Scott Edwards Architecture LLP

2525 E Burnside St. Portland, OR 97214

D 503.896.5305 O 503.226.3617 ? seallp.com