

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Substantial Development) FINDINGS, CONCLUSIONS,
Conditional Use Permit Application by) AND DECISION
the City of Spokane for the extension)
of Riverside Avenue)
) FILE NO. Z2009-03-SCUP

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant seeks a shoreline substantial development conditional use permit to allow for the extension of Riverside Avenue along the south side of the Spokane River between Division Street and Perry Street. The road will encroach into the shorelines setback area in two locations.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: City of Spokane, Engineering Services Department
c/o Dan Buller
808 West Spokane Falls Boulevard
Spokane, WA 99201

Property Address: There is no official address for this property.

Property Location: The Riverside extension is to extend westward from Division Street through property that is bounded by Sprague Avenue on the south, the Spokane River on the north and Perry Street on the east.

Legal Description: The proposed Riverside extension passes through several properties. Maps of the proposed routing can be found in Exhibit #2E.

Zoning: The properties adjacent to this extension are zoned CBD-3 (Central Business District, Category 3), GC-150 (General Commercial with a 150 foot height limit), and HI (Heavy Industrial).

Comprehensive Plan Map Designation: The Comprehensive Plan designates those properties as being in the Downtown, Commercial and Heavy Industrial categories. The Shoreline Master Program is also part of the Comprehensive Plan and it gives these properties a designation of Upriver Urban.

Site Description: The Hearing Examiner hereby adopts and incorporates the site description set forth in the Planning Services revised staff report which is in the record as Exhibit #1C, page 2.

Surrounding Conditions: The proposed Riverside Avenue extension will extend from Division Street eastward and connect with Trent Avenue at approximately Perry Street. It will pass through several sites with different ownerships. It will encroach upon the shoreline setback in two areas. The western site where the proposed road extension intersects the shoreline jurisdiction is located on the former Brown's Building Supply site. At this point, because of grade changes, cut and fill for the road would come within 42 feet of the Spokane River. The Hamilton Street Bridge and overpass is located to the east. The eastern site where the proposed road intersects the shoreline jurisdiction is bounded by vacant property and an auto repair facility owned by the Union Gospel Mission to the northwest; a Union Gospel distribution warehouse to the northeast; and to the southeast, across Front Avenue there is a warehouse and indoor go cart racing facility. According to the staff report, the proposed Riverside Avenue extension would connect with Division Street, Pine Street, Erie Street, Sprague Avenue, and Trent Avenue.

Project Description: The City of Spokane proposes to extend Riverside Avenue east from Division Street and connect it to Trent Avenue near Perry Street. The intent of the project is to reroute arterial traffic around the Washington State University (WSU) – Spokane campus and to alleviate traffic at the Trent/Hamilton intersection. The project is to be completed in three phases. Only phase two would cause impacts to the shoreline setback area. Approximately 1,200 lineal feet of the proposed roadway would be located within the shoreline jurisdiction. The closest the road itself would come to the river is 75 feet. However, cut and fill for the road would come within 42 feet from the river at the western site. The proposed right-of-way is to be approximately 76.5 feet wide for motorists, cyclists and pedestrians. An additional 30 feet is proposed for a possible future light rail line and additional right-of-way is proposed for cut and fill to address grade changes along the corridor. After the grade change has been completed, the right-of-way is proposed to be approximately 76.5 feet wide.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code Sections 11.15, 17E.020, 17G.060, 17G.060.170, and the Shoreline Master Program Regulations set forth in the 1982 Supplement, Chapter 13.19.

Hearing Date: September 24, 2009 (The record remained open until January 4, 2010 because of new information that was submitted at the hearing and required additional study by the applicant.)

Notices: Mailed: December 30, 2008 and August 17, 2009
Posted: December 31, 2008 and August 18, 2009

Site Visit: September 23, 2009

SEPA: A Determination of Nonsignificance was issued by the City on November 8, 2007.

Testimony:

Kathleen Weinand
City of Spokane, Current Planning
808 West Spokane Boulevard
Spokane, WA 99201

Don Buller
City of Spokane, Engineering Services
808 West Spokane Boulevard
Spokane, WA 99201

Gary Nelson
City of Spokane, Engineering Services
808 West Spokane Boulevard
Spokane, WA 99201

Eric Brown
2205 N Woodruff, Suite 1
Spokane Valley, WA 99206

Exhibits:

1. Planning Services Staff Reports
 - 1A Staff report dated 09-14-09
 - 1B Staff report dated 09-21-09
 - 1C Staff report dated 12-30-09
2. Application, including:
 - 2A General application
 - 2B Conditional Use Permit application
 - 2C Notification Map application
 - 2D Joint Aquatic Resources Permit application form (JARPA)
 - 2E Project overview maps
3. Fire Department comments
4. Engineering Services comments
5. Spokane City/County Historic Preservation comments
6. Design Review comments
7. Department of Ecology comments
8. Spokane Tribe of Indians comments
 - 8A Cultural Resources Survey
9. Northwest Pipeline comments
10. Notice map and parcel listing

11. Address listing
12. Notices
13. Affidavit of mailing 12-30-08 and 08-17-09
14. Affidavit of posting 12-31-08 and 08-18-09
15. Affidavit of publication 11-08-07
16. SEPA Determination of Nonsignificance
17. Environmental Checklist
18. Washington State Department of Transportation Environmental Classification Summary
19. Habitat Management Plan
19A Habitat Management Plan Addendum dated 12-01-09
20. Developer agreement with Brown Properties
21. Community meeting sign in sheet
22. Community meeting summary
23. Hearing File Preparation Checklist
24. Letter dated 09-04-08 to Dan Buller from Steve Haynes
re: community meeting instructions
25. Email dated 01-20-09 to Dave Compton from Dan Buller
re: Riverside costs
26. Letter dated 01-22-09 to Interested Parties from Dave Compton
re: requesting comments
27. Email dated 01-22-09 to Larry Hersey from Sandy Decker
re: payment of permit fees
28. Email dated 01-28-09 to Dave Compton from Terri Costello
re: request for comments and DNS
29. Email dated 01-29-09 to Dave Compton from Jim Kolva
re: pedestrian issues
30. Email dated 02-10-09 to Larry Hersey from Kimberly Orlob
re: permit payment
31. Emails to/from Planning staff and Dan Buller
re: Habitat Management Plan
32. Letter dated 07-29-09 to Dan Buller from Kathleen Weinand
re: notice of application and public hearing instructions
33. Emails to/from City Staff and Hearing Examiner
re: conditions of approval, setting date for closure of record
34. Emails to/from City Staff and State Agencies
Re: Habit Management Plan

FINDINGS AND CONCLUSIONS

To be approved, the proposed shoreline conditional use permit must comply with the criteria set forth in Spokane Municipal Code Section 17G.060.170. The Hearing

Examiner has reviewed the proposed conditional use permit application and the evidence of record with regard to this section and makes the following findings and conclusions:

1. The proposal is allowed under the provisions of the land use codes.

In the 1982 Shoreline Master Program Supplement, specifically Section 13.19.021, it states that transportation thoroughfares are allowed in all shoreline environments by conditional use permit under certain conditions. The conditions that must be satisfied are set forth in that section of the master program supplement. Staff has analyzed this proposals compliance with those requirements and has found that the proposal is consistent. The Hearing Examiner has reviewed staff's analysis and agrees with its findings. Therefore, the Hearing Examiner hereby adopts and incorporates the findings in the Planning Services Revised Staff report, Exhibit #1C, pages 4 through 8. No testimony was offered to challenge the staff's analysis.

2. The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property.

As staff notes, this extension of a roadway has been contemplated by the City for some time. It has been incorporated in the Comprehensive Plan and is shown as a minor arterial in the Plans Arterial Network Map and as a boulevard on the Boulevards, Parkways and Area Classification Map. Therefore the extension is consistent with the Comprehensive Plan.

3. The proposal meets the concurrency requirements of Chapter 17D.010.

The proposal was circulated to all applicable City departments and outside agencies that have jurisdiction over land use and shoreline proposals. No department or agency has made a determination that concurrency can't be achieved. As staff notes, the proposal is designed to provide additional transportation capacity to the City's street system, which will improve the ability of area property owners to meet the concurrency standards when developing in the future.

4. If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to: size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water, and the existence of natural, historic, or cultural features.

The City studied different alignments for the Riverside Avenue extension and found this proposed location to be the most suitable. Contaminated soils have been removed from the western portion of the site and other portions of the site have been capped. The grade change from Division Street down to the Spokane River side will require a substantial amount of cut and fill which places the overall structure of the roadway closer to the Spokane River than desired, but that cut and fill area will be landscaped and treated

so that it has a minimum impact on the Spokane River itself. There was nothing else in the topography, soils, slope or drainage characteristics which would preclude this alignment being used for this roadway and there was no evidence of the existence of natural, historic or cultural features on site which would preclude development. There was a cultural resources survey done and it is in the record. Its recommendations will become conditions of this approval.

5. The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary, conditions can be placed on the proposal to avoid significant effect or interference with the use or neighboring property or the surrounding area, considering the design and intensity of the proposed use.

The City issued a Determination of Nonsignificance (DNS) under the State Environmental Policy Act (SEPA) on November 8, 2007. That determination found that the proposal should not have significant adverse impacts on the environment. In addition, staff has recommended several conditions of approval many of which were recommended by studies that were done by the City in accordance with State and Federal law. The recommendations by staff and the recommendations of those various studies will become conditions of approval and those conditions should minimize any adverse impact on the environment.

6. For shoreline conditional use permits the following additional criteria apply:

a. The proposed use will not interfere with the normal public use of the shorelines;

There currently is very little public access to the shoreline in this area and the development of this roadway will increase public uses not only for drivers, pedestrians and bicyclers traveling along the roadway but also where the public right-of-way intersects the shoreline jurisdiction.

b. The cumulative impact of several additional conditional use permits on the shoreline in the area will not preclude achieving the goals of the Shoreline Master Program;

The Hearing Examiner has reviewed staff's analysis and agrees with its findings. Therefore, the Hearing Examiner hereby adopts and incorporates the findings in the Planning Services Revised Staff report, Exhibit #1C, page 9.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed shoreline conditional use permit, subject to the following conditions:

1. Approval is for a shoreline substantial development conditional use permit to allow the alignment of the Riverside Avenue extension as proposed by the applicant to intrude into the shoreline setback area. The proposal is to be constructed substantially as set forth on the plans which are in the record, as updated. Any changes in the alignment which staff finds to be substantial are to be submitted to the Hearing Examiner for review and approval.
2. The applicant must comply with the City's stormwater requirements which are set forth in SMC 17D.060 during grading and construction. In addition, the applicant must comply with the Washington State Department of Ecology's Water Quality Program and meet the requirements of the Department of Ecology as set forth in Exhibit #7.
3. A detailed landscaping plan for the proposal shall be submitted to Planning Services for review and approval prior to construction. The plan shall include the location of temporary fencing to be installed prior to construction to protect existing native vegetation. The plan will also incorporate suggestions from the Washington State Department of Fish and Wildlife. Those requirements suggest a flatter slope than proposed but if that is not possible then they suggest including biodegradable matting (jute, etc) in the planting plan to help reduce erosion while the groundcover, trees and shrubs are establishing roots and cover. The other landscaping recommendations of the Revised Habitat Management Plan prepared for this project shall be adhered to.
4. Any disturbance of areas that were remediated through the removal of contaminated soils or capping of the site must be coordinated with the Washington State Department of Ecology.
5. The recommendations of the Design Review Committee, as set forth in Exhibit #6 shall be followed.
6. The applicant shall comply with the recommendations of the submitted Cultural Survey and the comments of the Tribal Historic Preservation officer of the Spokane Tribe of Indians. Those documents are in the record as Exhibit #8 and 8A.
7. All conditions of any other permit or plan required for this project shall become conditions of this approval and must be complied with.
8. This approval does not waive the applicant's obligation to comply with all other requirements of the Spokane Municipal Code as well as requirements of City Departments and outside agencies with jurisdiction over land development.
9. Spokane Municipal Code 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.

10. Prior to the issuance of any grading permits, the applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office:

COVENANT

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

11. This approval is subject to the above-stated conditions. By accepting this approval the applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above required covenant constitutes the applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

DATED this 6th day of January 2010



Greg Smith
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions of the Hearing Examiner regarding shoreline conditional use permits are reviewed by the Washington State Department of Ecology. After review, they may be appealed to the Washington State Shoreline Hearings Board. **All appeals must be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date of the Ecology decision.**