

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by) FINDINGS, CONCLUSIONS,
the City of Spokane Engineering) AND DECISION
Services Department for property)
located at 2401 West Buckeye Avenue)
) FILE NO. Z2009-51-CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: A Conditional Use Permit application by the City of Spokane Engineering Services Department to construct a combined sewer overflow tank in Downriver Park.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: City of Spokane Engineering Department
c/o Steve Hansen and Cindy Kinzer
808 West Spokane Falls Boulevard
Spokane, WA 99201

Property Address: 2401 West Buckeye Avenue in the City of Spokane, Washington.

Property Location: The property is located on the west side of Nettleton at its intersection with Buckeye Avenue and York Avenue in the City of Spokane Washington.

Legal Description: Lots 1 – 12 of Block 1 of Abernethy's 5th Addition to the City of Spokane including the 16' alley right-of-way separating these lots. This being a portion of the N ½ Section 12, T25 N, R42 E. W. M. in the City and County of Spokane, Washington.

Zoning: The property is zoned RSF (Residential Single family).

Comprehensive Plan Map Designation: The property is designated Conservation Open Space in the City's 2001 Comprehensive Plan.

Site Description: The site is irregular in shape and contains approximately 2.5 acres in area. It is known as Downriver Park, an undeveloped City park. The park is vegetated with nonnative shrubs and grasses and various species of trees. The tank is to be buried in the east portion of the site which is relatively flat. The west portion of the site slopes down steeply towards T J Meenach Drive.

Surrounding Conditions: The surrounding properties are all zoned RSF like the subject site. There are single family homes and duplexes located to the east across Nettleton Street and three lots that contain duplexes extend on the west side of Nettleton Street just south of the subject site. Downriver Park itself extends to the north and to the west.

Project Description: The City's Engineering Services Department seeks to construct an underground combined sewer overflow tank regulator that will connect to the existing sanitary sewer system. The tank will be designed to store excess flow from the combined sewer system that is caused by storm runoff, reducing the number of combined sewage discharges into the Spokane River. The application states that the tank will be 210 feet long by 20 feet wide and 8 feet deep. At the hearing on this matter, the representative from Engineering Services stated that the current design is for a tank that is 165 feet long and 12 to 15 feet deep. Once the tank has been buried, the site will be re-vegetated with shrubs and grasses. In addition, a twelve foot wide gravel service road will be installed adjacent to the tank with a gate.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code Sections 17C.110, Table 17C.110-1, 17C.320.080, 17G.060 and 17G.060.170.

Hearing Date: February 11, 2010

Notices: Mailed: October 2, 2009, and January 15, 2010
Posted: October 9, 2009, and January 18, 2010

Site Visit: February 9, 2010

SEPA: A Determination of Nonsignificance was issued by the City's Engineering Services Director on July 30, 2009.

Testimony:

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

Cindy Kinzer
City of Spokane Engineering Services
808 West Spokane Falls Boulevard
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Reports
2. Application, including:
 - 2A General application

- 2B Conditional Use application
- 2C Notification Map application
- 2D Site Plan
- 3. Fire Department comments
- 4. Engineering Services comments
- 5. Traffic Engineering comments
- 6. Spokane Regional Clean Air Agency comments
- 7. Department of Ecology comments
- 8. Spokane Tribe of Indians comments
- 8A Cultural Resources Report
- 9. Northwest Pipeline comments
- 10. Notice map with parcel and address listing
- 11. Notices
- 12. Affidavit of mailing October 2, 2009 and January 15, 2010
- 13. Affidavit of posting October 9, 2009 and January 18, 2010
- 14. Affidavit of sign removal October 27, 2009
- 15. SEPA Determination of Nonsignificance
- 16. Environmental Checklist
- 17. Community Meeting sign in sheet
- 18. Hearing File Preparation Checklist
- 19. Letter dated 09-22-09 to Cindy Kinzer from Planning Department
re: community meeting instructions
- 20. Email dated 10-21-09 to Mr. Marr from Cindy Kinzer
re: response to question at community meeting regarding smell
- 21. Letter dated 12-16-09 to Interested Parties from Kathleen Weinand
re: requesting comments
- 22. Letter dated 01-11-09 to Steve Hansen from Planning Department
re: notice of application and public hearing instructions

FINDINGS AND CONCLUSIONS

To be approved, the proposed 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 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 code.

As staff notes, basic utilities which include a combined sewer overflow tank are permitted in the RSF zone with a conditional use permit from the Hearing Examiner. Therefore the proposal is allowed under the provisions of the land use codes.

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

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings set forth in the Planning Services Staff Report Exhibit #1, page 3.

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

Staff has circulated the application to all applicable City departments and agencies with jurisdiction over concurrency requirements. There were no adverse comments regarding concurrency and therefore the Hearing Examiner finds that concurrency can be achieved with this permit.

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 Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings set forth in the Planning Services Staff Report Exhibit #1, page 3 and 4.

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 of neighboring property or the surrounding area, considering the design and intensity of the proposed use.

As staff notes, the proposed tank will be buried underground so that while there may be some impacts during construction, once construction is complete the park will look similar to the way it looks now. There will be little traffic to and from the site and there should be no increase in noise or odor associated with the tank. The proposal should have minimum negative impacts and should have a positive affect on the environment by reducing the number of combined sewer discharges into the Spokane River.

6. The proposal meets the additional conditional use criteria listed in SMC 17C.320.080(F) for institutional uses in the RSF zone.

The Hearing Examiner finds that this criterion has been met and in so doing hereby adopts and incorporates the findings set forth in the Planning Services Staff Report Exhibit #1, page 4 and 5.

DECISION

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

1. Approval is for a conditional use permit to allow for the construction of an underground tank to be used as a combined sewer overflow tank by the City of Spokane Utilities Department. The tank will be constructed substantially as set forth in the application and on the site plan which is in the record as Exhibit #2D. Any proposed changes to the proposal are to be submitted to Planning Services for review. If Planning Services finds those proposed changes to be substantial, they will be forwarded to the Hearing Examiner for review and approval.
2. The applicant shall comply with the performance standards of SMC 17E.010 for underground storage tanks.
3. The applicant shall comply with the stormwater regulations set forth in SMC 17D.060. Compliance with those regulations and the proposed access road will be reviewed at the time of construction permitting.
4. The applicant shall comply with the recommendations of the Cultural Resources report which is in the record as Exhibit # 8A.
5. The applicant shall comply with the requirements of the Spokane Regional Clean Air Agency and the Washington State Department of Ecology as set forth in Exhibits # 6 and 7.
6. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code including the Uniform Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.
7. Spokane Municipal Code section 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.
8. Prior to the issuance of any building or occupancy 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

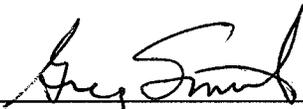
Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except

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.

9. 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 25th day of February 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 by the Hearing Examiner regarding conditional use permits are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE DECISION SET OUT ABOVE.** The date of the decision is the 25th day of February 2010. **THE DATE OF THE LAST DAY TO APPEAL IS THE 18th DAY OF MARCH 2010 AT 5:00 P.M.**

In addition to paying any Court costs to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.