

CITY OF SPOKANE HEARING EXAMINER

RE: Change of Use Permit for an Historic)
Structure, from Single Family Home to Office,)
in the Residential Single Family Zone;)
Applicant: GVD Commercial Properties, Inc.)
_____)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

File No. Z2010-034-CUP3

I. SUMMARY OF DECISION

Hearing Matter: Application for a change of use permit for an historic structure, in the RSF zone; from single family home to office.

Summary of Decision: Approve application, subject to conditions.

I. FINDINGS OF FACT

1. The application seeks approval of a change of use permit for a historic structure, in the Residential Single-family (RSF) zone, to allow a single family home use to be changed to a private office use; pursuant to Chapter 17C.335 of the Spokane Municipal Code (SMC).
2. The site is located at 810 E. 28th Avenue, Spokane, Washington. The property is currently referenced as County Assessor's tax parcel no. 35294.1613, and is legally described in the application.
3. The applicant and site owner is GVD Commercial Properties, Inc.; which is addressed at c/o Gerald V. Dicker, 810 E. 28th Avenue, Spokane, Washington 99203. The applicant is a national property management company.
4. Between May of 2010 and June 18, 2010, the applicant completed the process of applying for a conditional use permit for the change of use. On June 10, 2010, a community meeting was held on the application.
5. On July 13, 2010, a combined Notice of Application and Notice of Public Hearing was posted on the site, and mailed to the owners of property located within 400 feet of the site.
6. The combined notice advised that it initiated a 15-day public comment period on the application (through July 28, 2010), a public hearing would be held on the application on July 29, 2010, any person may submit comments and appear at the public hearing on the proposed action, and written comments and oral testimony at the subsequent public hearing on the application would be made part of the record.
7. Between June 15, 2010 and July 28, 2010, the City Planning Division received numerous written comments from area residents and other persons in favor of, or in opposition to, the

application. Between June 2, 2010 and July 28, 2010, the City Planning Division logged in several telephone calls from persons having concerns or questions regarding the application.

8. On July 29, 2010, the Hearing Examiner conducted a public hearing on the application. The notice requirements for the public hearing were met. The Examiner conducted site visits on July 28, 2010 and August 15, 2010.

9. The Hearing Examiner heard the application on a pro tem basis, pursuant to an interlocal agreement executed between the City of Spokane and Spokane County.

10. The Hearing Examiner heard the proposal pursuant to SMC Chapters 17G.050, 17G.060 and 17C.335.

11. The following persons testified at the public hearing:

Dave Compton
City of Spokane Planning Services
808 W. Spokane Falls Boulevard
Spokane, WA 99201

Kristen Griffin
City/County Historic Preservation Office
808 W. Spokane Falls Boulevard
Spokane, WA 99201

Jim Kolva
115 S. Adams Street, Suite 1
Spokane, WA 99201

Gerald and Patty Dicker
1106 W. 9th Avenue
Spokane, WA 99204

John and Gail Prosser
714 E. 27th Avenue
Spokane, WA 99203

David Sackville-West
2809 S. Garfield
Spokane, WA 99203

John and Connie Shields
714 W. 26th Avenue
Spokane, WA 99203

Jan Gower
2651 S. Garfield Road
Spokane, WA 99203

Bryan Stone
2718 S. Rhyolite Road
Spokane, WA 99203

Mike Pontarolo
2403 S. Garfield
Spokane, WA 99203

Larry Klavano
741 E. 23rd Avenue
Spokane, WA 99203

12. The Hearing Examiner takes notice of the City of Spokane Comprehensive Plan, the Spokane Municipal Code, and applicable development regulations.

13. The record includes the following exhibits:

1. Emails dated 1-4-10, exchanged between Kathleen Lynch and Kristen Griffith re Moen House Management Agreement

2. Findings of Fact and Decision for Council Review, nominating Moen House to Spokane Register of Historic Places; Management Agreement for Moen House; and Notice of Management Agreement
3. Agenda sheet for 1-19-10 City Council meeting, approving listing of Moen House on Spokane Register of Historic Places, and Management Agreement
4. Enforcement order dated 4-9-10, re violation at 810 E. 29th Avenue
5. Emails dated between 12-18-09 and 4-12-10, from Kristen Griffin, Kathleen Lynch and Jerry Dicker; re Moen House Management Agreement
6. Enforcement order dated 4-15-10, re violation at 810 E. 29th Avenue
7. Notification map application
8. Notification district map
9. Letter dated 5-12-10 from City Planning Services to Jim Kolva, re Community Meeting Instructions
10. Names and addresses of property/residents for public notification process
11. Notice of community meeting on conditional use permit application
12. Agenda for Rockwood Neighborhood Council, dated 6-1-10
13. Agenda for discussion of conditional use permit at community meeting
14. Sign-in sheet for community meeting
15. Summary of community meeting held on 6-10-10
16. Site plans, on 11-inch by 17-inch paper and letter-sized paper
17. Conditional use permit application (analysis sheet), dated 6-15-10
18. General application for conditional use permit, and receipt for permit fees dated 6-18-10
19. Affidavits regarding notice of community meeting, including:
 - 19A. Affidavit of mailing, dated 6-15-10
 - 19B. Affidavit of posting, dated 6-15-10
 - 19C. Affidavit for removal of posted sign, dated 6-15-10
20. Request for comments from City Planning Services, regarding application
21. City Planning Services call log from 6-2-10 to 6-23-10
22. Email dated 6-24-10 from David Kokot of Spokane Fire Department
23. Letter dated 7-6-10 from City/County Historic Preservation Office to City Planning Services
24. Letter dated 7-8-10 from City Planning Services to Jim Kolva, re notice of hearing
25. Memo dated 7-9-10 from City Traffic Engineering to City Planning Services
26. Memo dated 7-13-10 from City Engineering Services to City Planning Services
27. Notice of application and public hearing for File No. Z2010-034-CUP3
28. Affidavits regarding notice of application and public hearing, including:
 - 28A. Affidavit of mailing, dated 7-12-10
 - 28B. Affidavit of posting, dated 7-13-10
 - 28C. Affidavit for removal of posted sign, dated 7-30-10
29. Call log of comments or questions received by City Planning Services between 6-2-10 and 7-28-10, except calls from applicant or agent
30. Public comments received by City Planning Services between 6-15-10 and public hearing held on 7-29-10 (37 total responses)
31. Hearing file preparation checklist, for City Planning Services
32. Staff report for File No. Z2010-034-CUP3, prepared by City Planning Services

33. Public hearing exhibits, including:
 - 33A. Power Pointe presentation by City Planning Services
 - 33B. Current photos and historical photos of Moen House and site (7 photos)
 - 33C. Written testimony of Jim Kolva
 - 33D. Fire Deaths and Injuries: Fact Sheet
 - 33E. Email dated 2-24-10 from Kathleen Lynch to Jim Colva, modified at public hearing by Gerald Dicker
 - 33F. Map showing location of residents opposed to or in favor of application
 - 32G. Letter from Julia Clarke
 - 33H. Covenants for Manito Park's Second Addition, submitted by John Shields
 - 33I. Sign-up sheet for public hearing in File No. Z2010-034-CUP3
34. Post-hearing comments admitted into record, and responses thereto; including:
 - 34A. Email dated 8-4-10 from Marla French to Hearing Examiner, attaching email and attachment received from Patrick Saad at 7-28-10 at 7:18 pm; and attaching letters received after hearing
 - 34B. Emails and attachments exchanged between 8-2-10 and 8-6-10; by Hearing Examiner, Larry Klavano and Kathleen Lynch; re letter to Hearing Examiner from Anna Shoemaker
 - 34C. Emails and attachments exchanged between 8-4-10 and 8-10-10; by Hearing Examiner, Patrick Saad and Kathleen Lynch; re email and attachment received from Patrick Saad at 7-28-10 at 7:18 p.m.

14. On July 28, 2010, at 7:18 p.m., Patrick Saad sent an email to Marla French of City Planning Services, which attached a letter from Saad in opposition to the application. Because the email was received after working hours, and French did not work on July 29, 2010, the email was not forwarded to the file in time for the hearing on July 29, 2010. On August 4, 2010, French forwarded the email and attachment from Saad to the Hearing Examiner. See Exhibit 34A.

15. On August 4, 2010, the Hearing Examiner forwarded the July 28, 2010 email from Patrick Saad to the applicant; and advised the applicant that the email and its attached letter were timely submitted and should be made part of the record, subject to allowing the applicant to submit a response to the letter that was brief and within the scope of the letter. See Exhibit 34C.

16. On August 2, 2010, the Hearing Examiner received an email from Larry Klavano, which attached a letter from Anna Shoemaker in opposition to the application. Shoemaker advised that she had been unable to attend the hearing, because she was in the hospital with stroke-like symptoms. See Exhibit 34B.

17. On August 2, 2010, the Hearing Examiner forwarded the letter from Anna Shoemaker to the applicant; and advised the applicant that the letter should be included in the record, subject to the applicant being allowed a limited response to the letter. See Exhibit 34B.

18. On August 5, 2010, the Hearing Examiner received an email from the applicant; which attached a letter from Gerald Dicker dated August 4, 2010, in response to the letter from Anna

Shoemaker; attached a detailed letter from Anumpam Narayan dated July 30, 2010, in support of the application; and requested that both letters be made part of the record. See Exhibit 34B.

19. On August 6, 2010, the Hearing Examiner advised the applicant and Patrick Saad by email that the letter dated August 4, 2010 from Gerald Dicker would be made part of the record; but the letter from Anumpam Narayan would be excluded from the record, because it was outside the scope of the permitted response and was untimely. See Exhibit 34C.

20. On August 9, 2010, the Hearing Examiner received an email from the applicant; which attached a letter dated August 9, 2010 from Gerald Dicker, in response to the letter from Patrick Saad; and also attached a letter dated 8-9-10 from Kathleen Lynch, on behalf of Dicker.

21. The letter dated August 8, 2010 from Kathleen Lynch, submitted on behalf of Gerald Dicker, objected to inclusion of the Saad and Shoemaker letters into the record; objected to the hearing process, in allowing the admission of letters, emails and records of calls submitted after the 2-week comment period allowed after the community meeting; and made certain other observations regarding the hearing process. See Exhibit 34C.

22. On August 10, 2010, the Hearing Examiner advised the applicant, Larry Klavano and Patrick Saad by email that the letter dated August 9, 2010 from Gerald Dicker would be made part of the record; everything in the letter dated August 8, 2010 from Kathleen Lynch would be excluded from the record, except for the objections to inclusion of the Saad and Shoemaker letters into the record; and the record was closed. See Exhibit 34C.

23. After the public hearing, City Planning Services received an email from Tony Danzig submitted on July 29, 2010 at 2:56 p.m., a letter dated July 30, 2010 from Dr. J.G. Sugg, a letter dated July 20, 2010 from Anupam Narayan, and an email dated August 3, 2010 from David Sackville-West. Such comments are excluded from the record, as untimely.

24. The record includes the testimony submitted at the public hearing; and the exhibits listed above, except those portions excluded from the record as stated above.

25. The site is approximately 19,012 square feet in size, irregular in shape, fronts along 28th Avenue and Scott Street/Garfield Street, and is improved with a residence that has been converted to an office use. The property is located approximately 400 feet from 29th Avenue.

26. The site is designated Residential 4-10, and in the Grand District Center, by the City Comprehensive Plan; is zoned Residential Single-family (RSF); and is located in the Rockwood National Historic District (RNHD).

27. The house (Moen House) on the site was constructed in 1938, is constructed of concrete with steel reinforcements, was designed by a well-known Spokane architect, and is one of five houses in the RNHD that exhibit classic elements of the Art Moderne style.

28. The house has a square footage of approximately 2,400 square feet; including approximately 1,400 square feet on the main floor, 700 square feet on the second floor, and a 350-square foot basement. The structure has a total of two bedrooms and two (2) baths.

29. The house was used as a single-family home before being purchased by the applicant in 2008. The house and property suffered from a lack of maintenance, and various attempts were made to sell the property; before its transfer to the applicant.

30. After acquiring the property, the applicant renovated it. Since the spring of 2008, the applicant has been using the residence as a corporate office for its business; and Gerald Dicker has been using it as an office for a charitable trust formed to promote the arts in the Spokane area.

31. Renovation of the site included interior and exterior work on the house, significant landscaping improvements, and walkway and driveway improvements. As renovated, the Moen House has five (5) office/work spaces and a reception area, which are currently used for office purposes. See Exhibit 33A, 33B and 33E.

32. Neighboring properties generally consist of well-maintained, single-family homes; on lots generally much smaller, and having much less street frontage, than the site. A small, triangular-shaped City park; without any buildings; is located directly north of the site across 28th Avenue. See Exhibit 33A.

33. The parcels of land located along the north side of 29th Avenue in the vicinity, between Hatch Street and Garfield Road, are zoned Center and Corridor Mixed Use Transition, and are designated Center and Corridor Transition by the Comprehensive Plan. The land located along the south side of 29th Avenue in the area, east of Grand Boulevard, is developed with a shopping mall.

34. On November 10, 2009, the Code Enforcement section of the City Office of Neighborhood Services ("City Code Enforcement") sent an enforcement order to Gerald Dicker, based on an inspection of the site on November 2, 2009. The order notified Dicker that a business was being operated from the residence located on the site, in violation of SMC 17C.340.

35. The enforcement order advised Gerald Dicker that he needed to have the property placed on the Spokane Register of Historic Places and the National Historic Registry, and obtain a conditional use permit under the SMC allowing conversion of the residence on the site to an office; in order to avoid civil infraction and/or criminal penalties.

36. On January 19, 2010, the Spokane City Council designated the residence, referenced by it as the "Moen House", on the Spokane Register of Historic Places; and authorized the approval of a management agreement with the applicant for the house to run as a covenant with the land. The management agreement was approved by the City on March 4, 2010.

37. On April 9, 2010, City Code Enforcement sent a revised enforcement order to Gerald Dicker. The order advised that a business license had recently been renewed for use of the site by the applicant, through March 31, 2011; a business was still being operated from the site in

violation of the SMC; and Dicker needed to get the property listed on the National Historic Register, and make progress toward obtaining a conditional use permit.

38. On April 15, 2010, City Code Enforcement sent a revised enforcement order to Gerald Dicker. The order advised that the property did not need to be listed on the National Historic Register, based on an interpretation by the Spokane City/County Historic Preservation Office and City Planning Services. The order established a June 1, 2010 deadline for Dicker to apply for a conditional use permit, obtain a temporary permit, or cease all business on the site.

39. The applicant described the design of the office, number of offices, number of employees, the number of vehicles on the site, typical hours of operation, and vehicle and parking usage on the site in an exhibit submitted at the public hearing. See Exhibit 33E.

40. The applicant, in the application materials, generally described the activities and impacts associated with the office use established on the site; and agreed to abide by various conditions in order to maintain the existing low level of office activity on the property, similar to the restrictions of the City Zoning Code on home occupations. This included reversion of the use of the house to residential and terminating the conditional use, if the residence on the site was sold. See Exhibit 17.

41. SMC 17C.335.010 states that the purpose of SMC Chapter 17C.335 is to establish standards for the use and reuse of historic structures. SMC 17C.335.100 places the burden of proof on the person requesting alteration or changing the use of any historic structure, to demonstrate compliance with the development standards set forth in SMC Chapter 17C.335.

42. SMC 17C.335.110(C) authorizes a change in use for an historic structure to a use that is not allowed in the base zoning district; subject to meeting the change of use criteria listed in SMC 17.335.110(C)(1-4), and subject to the issuance of a Type III permit from the Hearing Examiner.

43. City Planning Services incorrectly characterized the application as a request for a “conditional use permit”, for the change of use of an historic structure. SMC Chapter 17C.335 does not mention a “conditional use”, or reference the conditional use permit provisions in SMC Chapter 320.080. Further, SMC Chapter 320.080 does not mention a change of use permit for an historic structure, or SMC Chapter 17C.335.

44. Because the proposed change of use requires approval as a Type III permit from the Hearing Examiner, the application must comply with the decision criteria applicable to all Type III permits (including conditional use permits) listed in SMC 17G.060.170(C). Such criteria are set forth in the Staff Report, and include satisfying the special criteria for change of use of an historic structure set forth in SMC Chapter 17C.335.

45. SMC 17G.060.170(B) places the burden on the applicant for a Type III permit to present sufficient evidence related to the appropriate criteria in support of the application; and requires the Hearing Examiner to make affirmative findings of fact relative to each criterion, or deny the application.

46. SMC 17C.335.110(A) states that the development standards set forth in SMC 17C.335.110 apply only to those structures or properties listed in the “National Register of Historic Places”; and that all such structures and properties are subject to all of the use restrictions and development standards of the base zone as minimum standards, unless otherwise specifically provided by SMC 17C.335.110 or by an approved PUD.

47. SMC 17.335.110(C)(1), part of the specific criteria that must be met to change the use of an historic structure, requires that the historic structure be listed on the “Spokane Register or National Register of Historic Places”. This conflicts with the reference to “National Register of Historic Places” in SMC 17C.335.110(A).

48. City Planning Services, and the Spokane City/County Historic Preservation Office, construed the reference to the “National Register of Historic Places” in SMC 17C.335.110(A) as the “Spokane or National Register of Historic Places”. Deference is to be given to the interpretation of an ordinance by agencies responsible for its enforcement. The interpretation is a reasonable one.

49. The Spokane City/County Historic Preservation Office, in a letter to City Planning Services dated July 6, 2010, advised that the Moen House is not individually listed on the National Register of Historic Places; but because it is a “contributing structure” in the Rockwood Historic District, a National Register historic district, it is considered a National Register property, with all the benefits of individually listed properties.

50. SMC 17G.060.100 requires a notice of application for Type III permit applications. SMC 17G.060.130 specifies a public comment period of 15 days for a Type III application. SMC 17G.060.160 requires the public hearing conducted by the Hearing Examiner on a Type III application to occur within 40 days from the end of the public comment period initiated by the notice of application, unless otherwise agreed to by the applicant and staff in writing.

51. SMC 17G.060.150(A) requires that a notice of hearing for a Type III permit application be provided at least 15 days before the hearing. SMC 17G.060.100 authorizes the notice of application and the notice of hearing for a Type III permit application to be combined. SMC 17G.060.150(A) provides for the hearing date to be arranged after the close of the public comment period initiated by the notice of application, unless the notice of application is combined with the notice of hearing.

52. RCW 36.70B.110(2) requires the notice of application to specify a public comment period of 14 to 30 days following issuance of a notice of application, and authorizes the local government to accept public comments at any time prior to the closing of the record on an open record public hearing.

53. The 15-day comment period required for a notice of application under SMC 17G.060.130 is not intended to restrict public comment on a Type III permit application between the time the comment period ends and the public hearing is held on the application; or exclude from the record public comments submitted on the application before the comment period is initiated.

54. The combined notice of application and notice of hearing for the current application complies with the notice requirements set forth in SCC 17G.060.120.

55. Several neighboring property owners and residents expressed opposition to the application; based on the applicant converting the residence on the site to an office use without a required change of use permit, lack of showing that the residence needed to be converted to an office use to preserve its historic character, lack of showing that the benefits to the public arising out of preserving the historic residence are greater than the harm to the public resulting from allowing the office use of the residence, use of the site for a national commercial property management business instead of a local business use, potential expansion of the office on the site by the applicant over time, creating a precedent for the extension of other commercial uses into the neighborhood near 29th Avenue and Grand Boulevard, location of a commercial business on a neighborhood access street instead of an arterial, disruption to neighborhood character, no occupancy of the residence during the evening hours, lack of knowledge about the occupants of the offices on the site, potential increased crime, inconsistency of the modern landscaping improvements on the site with a 1930's style home or residential property, removal of the trees on the site, increased delivery traffic to the site, increased traffic from employees and visitors to the site, proximity of the office use to the local elementary school and high school bus stop, location of the office use on walking routes for elementary students, lack of historical significance of the residence on the site, impacts on property values, violation of the Manito Park 2nd Addition covenants use of a building for business purposes, lack of other business uses allowed in the RSF zone, obtaining building permits for renovation of the residence without disclosing the intended office use, and other concerns.

56. Several neighboring property owners and residents expressed support for the application; based on the high quality and extent of the restoration work done on the residence and exterior improvements, removal of a neighborhood "eyesore", meticulous restoration of a dilapidated residence with unique residential art-deco architecture, enhanced appearance and vitality of the neighborhood, increased property values, inability to sell the home as a primary residence, the presence of numerous home businesses in the neighborhood, continued residential appearance of the property, minimal impacts of the office use on the neighborhood, the adequacy of the conditions proposed by the applicant to mitigate adverse impacts to the neighborhood, consistency of the large rocks and waterfall feature on the site with the small park located across the street, increased employment in the vicinity, minimal off-site parking and traffic impacts from the office use, on-site parking provided on the back side of the residence for the office use, absence of retail activity from the office use, need for low-impact mixed uses in residential neighborhoods, use of the site for charitable non-profit purposes, and other neighborhood and public benefits.

57. Gerald and Patty Dicker indicated at the hearing that their long range plan is to house the applicant's corporate office on property (Bergens) that it is still renovating on Division Street, north of downtown Spokane; and to use the current property to house its charitable foundation for the arts as the foundation grows and matures.

58. The RSF zone is primarily intended for single-family homes at densities ranging from 4-10 dwelling units per acre. Office uses and virtually all commercial uses are not allowed.

59. The Moen House, due to its concrete and steel construction, needs more care and is more difficult to renovate than wood construction homes. The elderly residents who lived in the residence before the property had difficulty maintaining it, and the house and property became somewhat dilapidated over the years compared to the neighborhood. See testimony of Gerald and Patty Dicker.

60. The site was on the market for approximately 3.5 years before it was acquired by the Dickers in 2008, and also sat vacant for a period of time. Due to the relatively large size of the lot on which it is situated, the relatively small size of the house, and the housing prices in the neighborhood, a prospective buyer viewing the property for use as a single-family home would have a strong incentive to significantly enlarge the house; thereby jeopardizing its historic character. See testimony of Gerald and Patty Dicker, and Jim Kolva.

61. The applicant demonstrated that the change in use from a single-family home to a relatively low impact, private office use was, and is, necessary to ensure that the Moen House on the site is preserved as an historic structure; considering all the uses allowed in the RSF zone.

62. Since SMC Chapter 17C.335 was adopted in 2006, there have been very few applications, perhaps three (3), to change the use of an historic structure in the City. See testimony of Jim Kolva.

63. The site is unusual, considering its large lot size and frontage compared to neighboring lots. The site is located across the street from a small park, and is located only a few blocks north of mixed use zoning and commercial zoning along 29th Avenue. Due to the uniqueness of the Moen House and the site, approval of the application would not likely lead to a significant increase in change of use applications for historic structures in the neighborhood, on land zoned RSF, to an office or other commercial use.

64. The owners and/or residents of up to eight (8) homes located within 1-2 blocks of the site expressed support for the application. The owners and residents of up to 14 homes within 1-2 blocks of the site expressed opposition to the application.

65. The map submitted by the applicant at the hearing, illustrating the residence locations of supporters and opponents of the application, does not appear to include expressions of opposition by owners and/or residents of those homes located 1-2 blocks from the site at 720 E. 27th, 2651 S. Garfield, 2718 S. Rhyolite, 716 E. 25th Avenue and 714 E. 26th Avenue. Some of the comments made by such owners and/or residents were submitted after the map was prepared.

66. Expressions of support, and opposition, to the application respectively include the owners of homes located directly across the street from the site. The owners and/or residents of homes in the neighborhood located more than two (2) blocks from the site, and in other areas of the City, also expressed support for, or opposition to, the application.

67. Expressions of support for the project included a current member of the City Planning Commission (not in an official capacity), who has been active in planning for the neighborhood; and such person's spouse, who was instrumental in getting the City to develop and maintain the

small park located across the street from the site. Such persons live within one (1) block of the site. See testimony and letters submitted by Patty and John Prosser.

68. The Hearing Examiner and the City have no authority to enforce private covenants, even if enforceable by private parties. See copy of covenants that “may” be effective for lots in Manito Park Second Addition, submitted at public hearing.

69. City Engineering expressed no concern regarding the traffic or parking impacts of the application, as conditioned; and certified transportation concurrency for the application. The application, as conditioned, meets the concurrency requirements set forth in SMC Chapter 17D.010. Also see p. 4 of Exhibit 17.

70. The applicant requested a waiver of the condition recommended by the City Fire Department for an additional fire hydrant, to serve the office use developed on the site. See Exhibit 33 C. The condition is based on the Fire Department’s application of the International Fire Code, as adopted by reference by the City, to the office use developed on the site; as a new commercial use. See Exhibit 22.

71. The applicant did not provide competent evidence, from an expert on fire suppression, to rebut the position of the City Fire Department that an extra fire hydrant is needed for the office use.

72. All the changes to the Moen House made by the applicant were approved by the City landmarks commission as being compatible with the historical designation of the property, before or at the time when the property was listed as an historic structure on the Spokane Register. See Exhibits 2 and 3. The house and site have retained their residential appearance.

73. The benefits to the public arising out of preserving the Moen House on the site are greater than the harm to the public resulting from allowing the office use of the structure, considering the factors listed in SMC 17C.335.110(C) and similar factors. The public will significantly benefit from the remarkable restoration of the Moen House as an historic structure and the exterior property improvements made by the applicant; which would likely not have occurred without the change in use. The amounts of traffic, noise and other off-site impacts anticipated to be caused by the office use are minimal; and are substantially mitigated by the conditions of approval. The office use could potentially allow greater “public access” to the Moen House than the previous single-family use, is likely to generate some economic benefit in the neighborhood, and will help serve the office needs of the City.

74. Neighboring residents and property owners properly expressed concern regarding the applicant’s use of the residence on the site as a private office for approximately 2.5 years, in violation of the City Zoning Code; before a citizen complaint had to be filed, an enforcement action had to be commenced by City Code Enforcement, and the applicant submitted an application for the change of use and sought a historic designation for the Moen House.

75. The applicant’s unauthorized use of the site for an office does not, in itself, merit or command denial of the change of use application. The intent of the City’s enforcement action

was to try and bring the applicant into compliance, if the criteria for the change of use can be met.

76. The Staff Report submitted by City Planning Services found that the application, as conditioned, is consistent with the Comprehensive Plan designation, goals, objectives and policies for the property; as set forth on pages 2-4 of the “conditional use permit” application, except for correctly finding that Policy ED 3.7, relating to a “home occupation” is not relevant to the application. This includes policies directly relating to the preservation and rehabilitation of historic properties. The Hearing Examiner concurs with such analysis, and hereby adopts and incorporates the same herein by reference as affirmative findings of fact. See Exhibit 17.

77. The conditions of approval recommended in the Staff Report are based on conditions proposed by the applicant in the application; will preserve the residential appearance of the property; and ensure that the traffic, parking, lighting, etc. impacts from the proposed office use(s) on the neighborhood will not be significant. Such impacts will have a similar intensity to, but be displayed in somewhat different patterns than, those generated by a typical single-family home.

78. The application, as conditioned, meets the Type III permit requirements in SMC 176.060.170(4) and (5); as set forth on page 4 of the Staff Report, and pages 4 and 5 of the “conditional use permit” application. The Hearing Examiner concurs with such analysis, and hereby adopts and incorporates the same herein by reference as affirmative findings of fact. See Exhibit 17.

79. SMC 17C.335.120, adopted in 2006, provides that the decisions of the Hearing Examiner may be appealed to the City Council, as provided in SMC Chapter 17G.050.

80. SMC 17G.050.310, adopted in 2004, provides that the applicant, a person with standing, or a City department may appeal to the City Council any decision of the Hearing Examiner, except as provided in SMC 17G.060.210. SMC 17G.060.210(C), adopted in 2005, provides that the appeal of the Hearing Examiner’s decision on a Type III permit application is to Superior Court, except for certain listed types of applications that do not include a change of use to an historic structure; and is in conflict with SMC Chapter 17G.050.

Based on the above findings of fact, the Hearing Examiner enters the following:

II. CONCLUSIONS OF LAW

1. The application for a change of use of an historic structure, from a single-family residence use to an office use, is allowed under SMC Chapter 17C.335 and SMC Chapter 17G.060.
2. The application, as conditioned, is consistent with the Comprehensive Plan designation, goals, objectives and policies applicable to the property.
3. The application, as conditioned, complies with the goals, policies, and map designation of the Comprehensive Plan that apply to it and to the area in which it is proposed to be located.

4. The application, as conditioned, meets the concurrency requirements of SMC Chapter 17D.010.
5. Specific site plan approval by the Hearing Examiner is not required. The property is suitable for the proposed use 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 including the existence of natural, historic or cultural features.
6. The application is exempt from SEPA, and will not have a significant adverse impact on the environment or the surrounding properties. Necessary conditions have been placed on the application to avoid significant impacts, or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed office use.
7. The Moen House on the site is listed on the Spokane Register of Historic Places; and is a contributing structure in the Rockwood Historic District, a national historic district.
8. All proposed changes to the Moen House on the site have been approved by the Landmarks Commission as being compatible with the historical designation of the property, as part of the listing of the site on the Spokane Register of Historic Places.
9. The change in use to office is demonstrated as being necessary to ensure that the Moen House on the site will be preserved, considering all uses allowed in the applicable RSF zone.
10. The benefits to the public arising out of preserving the structure are greater than the harm to the public resulting from allowing the proposed use of the Moen House, considering such factors as listed in SMC 17C.335.110(C).
11. The applicant has met the burden of demonstrating compliance with the standards set forth in SMC 17.335.110(A) and (C), for the change in use of an historic structure.
12. The applicant has met the burden of demonstrating compliance with the decision criteria for a Type III permit application set forth in SMC 17G.060.170(C), for the change in use of an historic structure under SMC Chapter 17.335.
13. Since SMC 17C.335.120 was adopted after SMC Chapter 17G.050.310 and 17G.060.210(C), and more specifically relates to Hearing Examiner decisions on an application for the change of use of an historic structure, the appeal route for the current decision appears to be to the City Council, and not Superior Court.

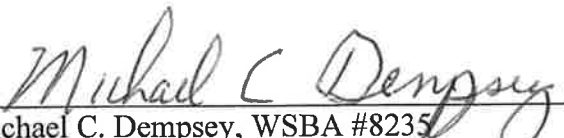
III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the application for a Type III permit for the change of use of an historic structure, i.e. the Moen House, from a single-family residence use to an office use, is hereby *approved*, subject to the following conditions:

1. City of Spokane Fire Department concurrency requirements must be met. At least one (1) fire hydrant is required for the change of use to office. See email dated 6-24-10 from David Kokot of Spokane Fire Department to Marla French.
2. The applicant shall comply with the performance and development standards recommended in the application file, or required, by agencies of the City of Spokane, Spokane County, the State of Washington, and federal government.
3. The applicant shall comply with the following requirements:
 - a. The use of commercial signage to designate the business is prohibited.
 - b. Commercial lighting is prohibited. Lighting shall be limited to the type and intensity used by a typical residential use.
 - c. Office spaces/work areas on the site are limited to the existing five (5) spaces in the Moen House.
 - d. On-site parking is limited to a maximum of five (5) employee vehicles at a time.
 - e. Retail sales and operations that include storage of for sale inventory or equipment are prohibited.
 - f. Businesses on the site are limited to office uses that require minimal public access.
 - g. The appearance of a single-family residence shall be maintained.
 - h. An alarm system to secure the house shall be provided and maintained.
 - i. The interior lighting shall maintain the appearance of a single-family residence.
4. If the property is sold, the Moen House shall revert to residential use, and the Type III permit for a change in use of an historic structure shall be terminated.

Failure to comply with the conditions of this approval may result in revocation of this approval by the Hearing Examiner.

DATED this 17th day of August, 2010


Michael C. Dempsey, WSBA #8235
City of Spokane Hearing Examiner Pro Tem

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner on an application for a change in use of an historical structure under SMC Chapter 17C.335 are governed by Spokane Municipal Code (SMC) 17C.335.120, SMC 17G.050 and SMC 17G.060.210; except to the extent SMC 17G.050.310(B) and SMC 17G.060.210 require such appeals to be made to Superior Court instead of the City Council.

This decision was signed by the Hearing Examiner, and mailed by regular mail to the applicant and all parties of record, on August 17, 2010.

Decisions by the Hearing Examiner regarding a Type III permit for a change in use of an historical structure are final. Such decisions may be appealed by any person with standing by filing a written appeal with the City Permit Application Department within fourteen (14) days of the date of the written decision of the Hearing Examiner. **SUCH APPEAL MUST BE FILED NO LATER THAN AUGUST 31, 2010.** The appellant must pay all appeal fees, and transcript deposit and preparation fees, for the appeal.

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

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GVD Properties, Inc.