

Site Description: The property area is located along the south side of the Spokane River between the river and South Riverton Avenue. It runs from 300 feet west of Magnolia to Regal Street for a distance of approximately .85 miles and a width ranging from 40 feet to 80 feet. The property is made up of vacant land owned by the City of Spokane Parks and Recreation Department as well as City right-of-way.

Surrounding Conditions: The zoning on all sides of the subject property is RMF (Residential Multifamily). The Spokane River is on the north side of the site and South Riverton is on the south side. A mix of residential and recreational uses are the predominate adjacent land uses. South Riverton in this area is designated in the City's Arterial Street plan as a Neighborhood collector arterial.

Project Description: The City of Spokane Department of Engineering Services request a Shoreline Conditional Use permit for a combined sewer overflow project. The proposal is to construct various below ground concrete sewage/stormwater basins with associated overflow and cleaning devices. Approximately 4,300 feet of connecting sewer pipe will also be installed. The project is intended to reduce the amount of overflow into the Spokane River by regulating the flow with the use of these basins. The project site is located within the Shoreline Master Program Upriver Urban designation, Zone 1 Riparian Habitat Area (RHA) and the 100-year FEMA Flood Zone. In addition, the applicant will be required to restore the site pursuant to a modified Habitat Management Plan.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code Sections 11.15, Chapter 17C.110, 17G.060.170, and the Shoreline Master Program Regulations set forth in the 1982 Supplement, Chapters 13.05, 13.14 and 13.14.022

Hearing Date: July 8, 2010

Notices: Mailed: November 23, 2009 and May 12, 2010
Posted: November 20, 2009 and May 17, 2010

Site Visit: The Hearing Examiner has visited this site on numerous occasions, but not related to this particular proposal.

SEPA: A Determination of Nonsignificance was issued by the City on November 18, 2009.

Testimony:

Tami Palmquist
City of Spokane, Current Planning
808 West Spokane Boulevard
Spokane, WA 99201

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

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application
 - 2B Conditional use application
 - 2C Notification Map application
 - 2D Critical Areas Assessment checklist
 - 2E Site Plans
 - 2F Counter complete checklist
3. Engineering Services comments
4. Traffic Engineering comments
5. Urban Planning comments
6. Parks and Recreation comments
7. Spokane Tribe of Indians comments
 - 7A Historical Research Associates, Inc., report
 - 7B Correspondence related to above
8. Spokane Regional Clean Air Agency comments
9. Notice map with address listing
10. Notices
11. Affidavit of mailing November 23, 2009, and May 12, 2010
12. Affidavit of posting November 20, 2009, and May 17, 2010
13. Affidavit of sign removal December 7, 2009
14. SEPA Determination of Nonsignificance
15. Habitat Management Plan
16. Community Meeting sign in sheet
17. Community Meeting minutes
18. Hearing File Preparation Checklist
19. Email dated 10-27-09 to/from Engineering and Planning
re: GIS maps
20. Letter dated 11-03-09 to Patricia Nagy from Planning
re: Traffic scoping and community meeting instructions
21. Email dated 11-02-09 to Ken Pelton from Tirrell Black
re: visit to site
22. Email dated 11-03-09 to Ken Pelton from Tirrell Black
re: permit type needed

23. Letter dated 04-14-10 to Interested Parties from Tami Palmquist
re: requesting comments
24. Undated PowerPoint presentation of site/project.

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.

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

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 as set forth in the Planning Services Staff report Exhibit #1, Pages 4 and 5.

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

After construction is complete, there will be little or no impact on City services. In addition, the proposal will expand the capacity of the City's wastewater treatment system which will help insure concurrency requirements can be met in the future for other projects.

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 as set forth in the Planning Services Staff report Exhibit #1, Page 5.

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

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;

The site currently contains an informal public trail called "Tuffy's Trail". There will be interference with "Tuffy's Trail" during construction but it will be reestablished after construction is complete, and therefore insure normal public use of the shorelines. Staff has also recommended that a detour route for "Tuffy's Trail" be established during construction and that recommendation will become a condition of this permit.

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;

There are no known additional conditional use permits in the general vicinity of this project and the applicant will be required to restore the shoreline after construction is complete. In addition, if other conditional use permits for utilities such as this are granted, it will continue to improve the capacity of the City's Sewer Treatment plant and improve the overall water quality of the Spokane River.

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 construction of a combined sewer overflow project for Basins 38, 39 and 40. This involves construction of below ground concrete sewage/stormwater basins and associated overflow. It also involves the construction of approximately 4,300 feet of connecting sewer pipe. The project shall be constructed substantially in accordance with the application and site plans on file with the Hearing Examiner. Any proposed changes to the plans are to be submitted to Planning Services for review and approval, if Planning Services determines that those proposed changes are substantial they are to be forwarded to the Hearing Examiner for review and approval.

2. The applicant shall comply with the requirements of the Spokane clean air agency, the Washington State Department of Ecology and also comply with SMC 17D.060 relating to stormwater facilities.
3. Before obstructing site access or blocking any public right-of-way or fire hydrants, the applicant shall seek approval of the City's Fire Department.
4. A detour route for "Tuffy's Trail" shall be established to accommodate bicyclist and pedestrians during construction until the trail can be restored adjacent to and over the combined sewer overflow sites. The applicant shall also locate and reestablish the rock and plaque dedicating the trail.
5. The applicant shall coordinate compliance with restoration of the shoreline with the Washington State Department of Ecology, the City's Design Review Board, and the City's Parks Department. Restoration of the shoreline will be substantially as advocated by those departments. Further, the applicant shall enter into a maintenance agreement with appropriate agencies to insure survivability of plants and grasses as well as weed removal.
6. Due to habitation practices of the Spokane Tribes, and resource use patterns of Tribal ancestors, these areas have a probability of producing artifacts and possible human remains. The Spokane Tribe of Indians will require that this project proceed cautiously with a qualified archaeologist monitoring excavation areas and that the Tribe's office be notified and work cease immediately if any artifact or human remains are found.
7. 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.
8. 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.
9. 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.

10. 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 21st day of July 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.**