

CITY OF SPOKANE HEARING EXAMINER

Re: Appeal by Ann Bergeman and Families of Manito, et al. of a decision by the Planning Director Approving an Administrative Conditional Use Permit for an expanded parking lot at St. Mark's Lutheran Church)))))))) FINDINGS, CONCLUSIONS AND DECISION) FILE NO. Z2010-022-AP(2) (Z2010-022-CUP2)
--	--

SUMMARY OF APPEAL AND DECISION

Summary of Appeal: The Planning Director issued an Administrative Conditional Use Permit to allow the expansion of a parking lot at St. Mark's Lutheran Church. That decision was appealed by the neighbors. The church also appealed the Planning Director's decision stating that it was not being allowed sufficient parking spaces in the expansion. Evidence was presented at the hearing that the Church and the City may have reached an agreement as to the allowed number of spaces.

Decision: The decision of the Planning Director is modified as set forth herein.

FINDINGS OF FACT
BACKGROUND INFORMATION

Appellant: Ann Bergeman and Friends of Manito
2604 South Lamonte Street
Spokane, WA 99203

Represented by: Stanley M Schwartz, Attorney at Law
Witherspoon Kelly
422 West Riverside Avenue, Ste. 1100
Spokane, WA 99201

Respondent: Dave Compton, Current Planning
City of Spokane, Planning Services Department
808 West Spokane Falls Boulevard
Spokane, WA 99201

Represented by: James Richman, Attorney at Law
City of Spokane, Legal Department
808 West Spokane Falls Boulevard
Spokane, WA 99201

Applicant: St. Mark's Lutheran Church
316 E 24th Avenue
Spokane, WA 99203

Represented by: Roger Chase, Attorney at Law
1225 West 19th Avenue
Spokane, WA 99203

Authorizing Ordinances: SMC 17C.110.110, Table 17C.110-1, 17C.230, Table 17C.230-2, 17C.230.140, 17C.320.080, 17G.050 and 17G.060.

Zoning: RSF (Residential Single Family)

Comprehensive Plan Land Use Designation: The property is designated as Residential 4-10 on the City's 2001 Comprehensive Plan.

Date of Decision being Appealed: June 21, 2010

Date of Appeal: Both appeals were filed on July 2, 2010

Hearing Date: The hearing was held on September 1, 2010, the matter was then continued until September 29, 2010. The parties were allowed to present final arguments in writing to the Hearing Examiner and the record remained open until October 13, 2010, for those submittals.

Testimony:

Dave Compton, Current Planning
City of Spokane
808 West Spokane Boulevard
Spokane, WA 99201

James Richman, Attorney at Law
City of Spokane, Legal Department
808 West Spokane Boulevard
Spokane, WA 99201

Kris Becker, Engineering Services
City of Spokane
808 West Spokane Boulevard
Spokane, WA 99201

Stanley Schwartz, Attorney at Law
Witherspoon Kelly
422 West Riverside Avenue, Ste. 1100
Spokane, WA 99201

Ann Bergeman
2604 South Lamonte Street
Spokane, WA 99203

Todd Stecher
2504 South Lamonte Street
Spokane, WA 99203

Sadie Lake
231 East 25th Avenue
Spokane, WA 99203

Kathy Chay
1011 E 39th Avenue
Spokane, WA 99203

Roger Chase, Attorney at Law
12258 West 19th Avenue
Spokane, WA 99203

Dick Thiel
4814 South Pender Lane
Spokane, WA 99224

Reverend Richard Finch
2303 West 1st Avenue
Spokane, WA 99201

Exhibits:

1. Staff Report (Approval of Type II Permit with conditions dated June 21, 2010)

2. Applications including:
 - 2A General application
 - 2B Notification Map application (missing)
 - 2C Site Plans
 3. Pre-Development Conference notes
 4. Fire Department comments
 5. Engineering Services comments
 - 5A Grading Plan
 - 5B Drainage Report
 - 5C Geotechnical Exploration Data Report
 - 5D UIC Forms
 6. Traffic Engineering comments
 7. Pacific Northwest Pipeline comments
 8. Department of Ecology comments
 9. Notice map with parcel listing
 10. Notices
 11. Affidavit of mailing May 21, 2010
 12. Affidavit of posting May 23, 2010
 13. Affidavit of sign removal June 17, 2010
 14. SEPA Determination of Nonsignificance
 15. Environmental checklist
 16. Boundary line adjustment
 17. Application for construction of the church site
 18. Hearing File Preparation Checklist
 19. Miscellaneous unidentified documents
 - 19A Church area calculation sheets
 - 19B Address listing spread sheet, received by Planning on 05-25-10
 20. Letter dated 04-12-10 to Interested Parties from Dave Compton
re: requesting comments
 21. Letter dated 05-14-10 to Dick Thiel from Dave Compton
re: notice of application instructions
 22. Letter dated 06-04-10 to Dave Compton from Stanley Schwartz
re: comments regarding St. Mark's Parking lot expansion
 23. Response to St. Mark's Parking Addition by Families of Manito
re: comments regarding St. Mark's Parking lot expansion received by the Planning Dept.
06-04-10
 24. Email dated 06-04-10 to Dave Compton from Dick Thiel
re: timeline for project
 25. Emails dated 06-28-10 to/from Dave Compton and Dick Thiel
re: questions regarding decision
 26. Email dated 07-07-10 to Dave Compton from Dennis Anderson
re: inquiry and response to appeal(s) being filed
 27. Public information requests from various parties
 28. Correspondence
 - 28A Ann Bergeman, City Departments and other correspondence
 - 28B Letters in opposition to project
 - 28C Letters supporting project
- Appeal by St. Mark's Church (Z2010-022-AP(1))**
29. Application for appeal and supporting documents

30. Correspondence related to setting the hearing date and hearing procedures
31. Applicant's submittals at hearing (B-1 through B-5)
32. St. Mark's Lutheran Church's closing arguments

Appeal by Ann Bergeman and Families of Manito (Z2010-022-AP(2))

33. Application for appeal and supporting documents
34. Correspondence related to setting the hearing date and hearing procedures
35. Briefs filed in support of the appeal
36. City's response to Appellant's briefs
37. Supplemental Memorandum
38. Ann Bergeman correspondence email files
39. Exhibits A-1 through A-28 entered at time of hearings
40. Flash drive copy of Ann Bergeman's PowerPoint presentation
41. City's submittal on Standing
42. Appellant's closing arguments
43. City's closing arguments

FINDINGS AND CONCLUSIONS

In a decision dated June 21, 2010, Dave Compton, City Planner (hereinafter "Decisionmaker") granted an Administrative Conditional Use Permit to St. Mark's Lutheran Church (hereinafter "the Church") for an expansion of their parking area. The expansion would take place on property located at 217 and 225 East 25th Avenue in Spokane, Washington. Two single family homes were removed to allow for the expansion. The Church stated that the expansion was necessary because of a growing membership and also for safety reasons. The Administrative Conditional Use Permit is a Type II permit which can be issued administratively by the Planning Department rather than by the Hearing Examiner after a public hearing. Religious uses and their accessory uses such as parking are allowed in the RSF Zone by such a conditional use permit.

After that decision was issued, two timely appeals were filed. One was by Ann Bergeman and a group called Families of Manito (hereinafter "Appellants"). The second appeal was filed by the Church. The Church alleged that the City had not given them the number of parking spaces they were due. After the appeals were filed the Church and the City apparently resolved their differences based upon a measurement of what the City determined to be the main assembly area of the Church. It was determined that a total of 101 spaces would be allowed. A hearing was held on both appeals on September 1, 2010, in the City Council Briefing Center, Lower Level of City Hall. At that time testimony was taken and exhibits were entered into the record. The hearing was not completed on that date, however, and was continued until September 29, 2010. The hearing was adjourned on that date and the Appellants, the Church and the City were allowed two weeks to submit a final written statement. Those statements were received on October 13, 2010, and are part of the record. Based upon the record, the testimony at the hearing and the appeal statements submitted by the Appellants, the Church and responses by the Church and the City, the Hearing Examiner by this decision makes the following findings and conclusions.

Review of an administrative decision by the Hearing Examiner is governed by SMC 17G.050.320. Subsections B and C of that section state:

"B. The Hearing Examiner may affirm, modify, remand or reverse the decision being appealed. In considering the appeal, the Examiner must act in a manner that is consistent with the criteria for the appropriate category of action being appealed.

C. The original decision being appealed is presumptively correct. The burden of persuasion is upon the appellant to show that the original decision was in error and relief sought in the appeal should be granted."

Standing

The City contends that this appeal should be dismissed because the Appellants lack standing to bring the appeal. The City has its own standing requirements for administrative appeals. In SMC 17G.050.310 it states that an administrative appeal can be filed with the Hearing Examiner by the applicant or a person with standing as defined in SMC 17A.020. Those standing requirements are set forth in 17A.020.010 and mirror the standing requirements for bringing an action under the Land Use Petition Act (LUPA), RCW 36.70C.060. In grappling with a definition of LUPA's standing requirements, the Courts have held that a petitioner who is aggrieved or adversely affected because they are prejudiced by a land use decision, essentially has to show that they have suffered an, "injury in fact", the same standard as the standard for filing an appeal under the State Environmental Policy Act (SEPA). *Thornton Creek Legal Fund vs. Seattle* 113 Wn.App.34, 52 P.3d 522 (2002). In defining, "injury in fact", the Court stated in that case that the plaintiffs must show that they personally "will be specifically and perceptively harmed" by the proposed action. The Court in that case went on to note that while they did not believe the plaintiff's showing met the standard, the Court would assume standing so that it could resolve the numerous issues raised in the litigation. *Thornton Creek Legal Fund*, supra, page 48.

In cases where the Court held that standing was shown, the "injury in fact" was apparent. In *Kucera vs. State Department of Transportation*, 140 Wn.2d 200, 995 P.2d 63 (2000), the property owners were found to have suffered an injury in fact because their shoreline property was being eroded by the large wake caused by new Washington State Ferries. Clearly their property was suffering an injury in fact in that case. In *Suquamish Indian Tribe v. Kitsap County*, 92 Wn. App. 816, 965 P.2d 636 (1998), the standing of a citizens' organization was challenged. The Court held that standing for a community organization can be established if members of the organization can show standing. In that case, the affidavit submitted showed that one person lived 150 feet from the project and that the project would result in the traffic on the street in front of his house increasing at least 48%. Another member's property was bordered on three sides by the project and would have similar increases in traffic on the road in front of his property. A third member also demonstrated large predicted increases in traffic on two roads that provided the primary access to his house. The Court held that standing was established in that case. The Court also usually finds that property owners adjacent to a project have standing even if their injury is speculative, e.g. *Leavitt vs. Jefferson County*, supra p. 679.

The City argues that the appeal should be dismissed because Ann Bergeman lacked standing to bring the appeal. She lives approximately 1 block from the parking lot expansion. While her testimony showed a concern for the preservation of the single family nature of the

neighborhood, she did not show "injury in fact". Therefore, the Hearing Examiner concludes that she lacks standing to bring this appeal. The appeal was also brought, however, on behalf of a community organization known as Families of Manito. As stated above the Court has held that standing for a community organization can be established if members of the organization can show standing. *Suquamish Indian Tribe vs. Kitsap County*, supra. In this case two people who testified at the hearing and who stated they were members of the Families of Manito gave testimony that could show standing. Both Todd Stetcher who lives across the street the parking lot extension and Sadie Lake who lives next door on the east side of the expansion testified as to impacts the new parking lot would have on their property. The Hearing Examiner finds that their testimony did establish standing for this particular administrative appeal.

SEPA

The Church submitted an Environmental Checklist to the City and the City issued a Determination of Nonsignificance (DNS) on June 9, 2010. The Appellants have raised certain issues regarding the checklist and the DNS. The City contends that those issues are irrelevant because this proposal should have been found to be exempt under SEPA. A listing of categorical exemptions under SEPA can be found in the SEPA rules at WAC 197-11-800 (1) Under that section, a parking lot with 20 car-parks is categorically exempt. It is also stated in that section that local jurisdictions can raise that number to 40 parking spaces. The City of Spokane has chosen to raise the categorical exemption to 40 parking spaces as set forth in SMC 17E.050.070 D. The fact that the Church submitted a Environmental Checklist and the Planning Department decided to issue a determination pursuant to that checklist, is irrelevant. The fact is that the proposal should have been found categorically exempt and the Hearing Examiner finds that issues raised pursuant to the checklist or the determination are not relevant to this decision.

Approval of Criteria

Appellants take issue with the Decisionmaker's findings on certain Conditional Use Permit criteria. One primary issue was the Decisionmaker's determination of what constitutes the main assembly area for the Church. A table showing maximum and minimum parking for all uses is set forth in the code at Table 17C.230-2. For religious institutions it states a minimum of 1 parking spot per 100 square feet of main assembly area and a maximum 1 per 60 square feet of main assembly area. The code doesn't define the term "main assembly area". The Appellants and the City disagree on the definition of that term.

The Decisionmaker found that the main assembly area consisted of the sanctuary of the church, the choir area which is at the front of the sanctuary and the Fellowship Hall which is across a hallway from the rear of the sanctuary. Appellants contend that the word "main" is defined as primary and that only the sanctuary and the choir area should therefore qualify. They argue that the Decisionmaker's interpretation is faulty.

At the hearing on this matter, the Appellants presented testimony from a former church member who testified that the Fellowship Hall and the sanctuary were not used at the same time. The Church, however, presented testimony from its pastor stating that the two spaces were used at the same time on different occasions. He testified that the youth choir uses the

Fellowship Hall during Sunday services and that certain events, because they attract a large number of attendees cannot be accommodated totally in the sanctuary and that the Fellowship Hall is used for spillover at these large events.

While the Hearing Examiner understands this to be a close question, the presumption in favor of the Decisionmaker's interpretation, and testimony that revealed that sometimes the two spaces are used simultaneously, convinces the Hearing Examiner that the main assembly area should not be limited to the sanctuary and choir area but should include the Fellowship Hall. It would be helpful, however, for the City to amend its code in order to better define "main assembly area" in order to clarify this issue.

Appellants also contend that the Decisionmaker was wrong in determining that the proposal is consistent with the City's Comprehensive Plan. Much of the testimony emphasized that the parking lot would be inconsistent with the surrounding single family neighborhood and that the comprehensive plan policies would never support an expansion of a parking lot between two single family homes. Appellants cite several policies including LU 1.3, 4.4, 5.3 and 5.5. Those relate to compatibility issues and LU 5.3 specifically addresses off-street parking and its affect on single family residential areas. This policy does not prohibit the siting of parking lots in this regard but states that measures should be taken to make them as unintrusive as possible in the single family areas. Certain transportation policies were also cited but, again, they do not prohibit the development of parking but seek to minimize the adverse effects.

The zoning code specifically allows this type of parking lot expansion. When there is a conflict between the comprehensive plan and the zoning regulations, the Courts of the State of Washington have found that the development regulations control. See Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn 2d. 861, 873, 947 P2d 1208 (1997). Since the development regulations allow church uses and accessory parking in single family residential areas, the City Council must have contemplated that these parking lots can be sited and mitigated without having significant adverse impacts on the adjacent residential areas.

This leads to the Appellants other main contention, which is that the Decisionmaker did not place appropriate conditions on the development of this parking lot in order to minimize its adverse impacts. Appellants argue that much more mitigation could be required in order to significantly reduce those impacts including additional landscaping, screening, control of lighting and access and possibility a gate that could be opened and closed in order to limit cut-through traffic. At the hearing, the Decisionmaker stated that his authority only went so far as to require the landscaping, screening and other mitigating measures that are set forth in the development regulations. The Hearing Examiner finds that conclusion to be in error and concludes that the Decisionmaker has the authority to require additional mitigation as conditions of approval of a Type II Conditional Use Permit.

The Church has submitted to the City several site plans for this new parking lot. Testimony from Appellants focused on one plan, but the Church submitted a new plan, at the continued hearing on this matter, which was held on September 29, 2010. The new plan showed the addition of some parking in this lot, but reconfigured the parking lot in such a way as to minimize impacts on the surrounding properties to the greatest extent possible. The new plan is in the record as Exhibit #31 B-3. The plan shows screening with the use of fences and landscaping on both the east and west sides of the site and also screening on the street side of

the site using arborvitae and other landscaping. It showed the site being configured in such a way as to require vehicles entering to make certain turns which would make cut-through traffic much more difficult and act as traffic calmer. The plan showed significantly more landscaping that would be required by the code and although lighting was not addressed, the Hearing Examiner, with this modification, will require the minimum amount of lighting to be used in this expanded lot and all lighting to be down shielded to prevent glare from going offsite. The new plan also showed only three parking spaces facing the house to the east, which is the house most impacted by the parking lot and those three spots are toward the rear of the parking lot located close to the Church's existing parking and near the rear lot line of that adjacent lot.

By this decision, the Hearing Examiner is requiring the Church to develop the lot substantially in accordance with the new site plan submitted at the September 29, 2010, hearing with the additional landscaping and the parking layout as shown thereon (Exhibit #31 B-3). In addition, lighting is to be kept to a minimum and down shielded.

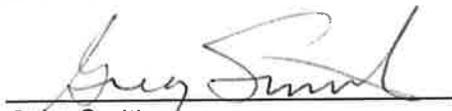
There was testimony presented by Appellants that the parking lot expansion could cause a loss in value for adjacent properties. Although no specific numbers were submitted to show any loss in value, one neighbor who is a real estate appraiser testified that she believed there would be some loss in value.

A loss in value to adjacent properties is not a criteria that can be considered except under the criteria that the proposal not have significant adverse impacts on surrounding properties. The Hearing Examiner cannot find in this case that given the testimony and evidence that the impacts on property values would be significant. Anytime a non-residential use is placed in a residential area, there may be some loss in value. The Church and its existing parking lot are already located on this block. As stated earlier the City Council must have considered a possible loss in some value when it enacted the regulations which allow certain non-residential uses to be placed in single family residential zones. There was insufficient evidence in this case to demonstrate to the Hearing Examiner that the loss in value would be significant.

DECISION

Based on the Findings and Conclusions above, it is the decision of the Hearing Examiner to modify the decision of the Planning Department approving the expansion of the parking lot for St. Mark's Lutheran Church. The modification is that the parking lot is to be developed substantially in accordance with the plans submitted by the Church on September 29, 2010, and in the record as Exhibit #31 B-3, with the additional condition that any lighting installed be the minimal amount necessary and that it be placed on site in a manner and be down shielded in a manner to prevent glare onto surrounding properties. All other conditions imposed by the Decisionmaker will also remain in effect.

DATED this 11th day of November 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 administrative appeals 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 11th day of November 2010. **THE DATE OF THE LAST DAY TO APPEAL IS THE 2nd DAY OF DECEMBER 2010.**

In addition to paying any Court costs to appeal the decision, you may be required to pay 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.