

CITY OF SPOKANE HEARING EXAMINER

Re: Shoreline Substantial Development) FINDINGS, CONCLUSIONS,
Conditional Use Permit Application by) AND DECISION
Avista Corporation for property located)
on the east end of Havermale Island in)
Riverfront Park.)
) FILE NO. Z1100006-SCUP

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant seeks a shoreline substantial development conditional use permit in order to allow the construction of a twenty-four foot by thirty-two foot retaining wall on the east end of Havermale Island adjacent to the Spokane River. The landing will be used by Avista to help maintain the Control Works Dam, which is adjacent and will also be used by the Parks Department as a public viewing area.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Robin Bekkedahl
Avista Corporation
P..O. Box 3727
Spokane, WA 99220-3727

Property Address: Not assigned.

Property Location: The site is in Riverfront Park on the east end of Havermale Island between west Spokane Falls Boulevard and Mallon Avenue in the City of Spokane, Washington. The proposal is adjacent to Avista's Control Works Dam at the site formerly known as the Boeing Amphitheater.

Legal Description: The legal description for this small portion of Havermale Island is not available.

Zoning: DTG-70 (Downtown General).

Comprehensive Plan Map Designation: Open Space in the City's Comprehensive Land Use Plan.

Site Description: The site is small and irregular in shape with the landing itself to be approximately 768 square feet. It is mostly flat except where it slopes down to the Spokane River on the east side. There is some vegetation on site but no structures.

Surrounding Conditions: The site is located in Riverfront Park in Spokane's Downtown District. The parcel and all surrounding parcels are zoned Downtown General (DTG). It is located on the east side of Havermale Island in an area formerly occupied by the Boeing Amphitheater. It is adjacent to Avista's Control Works Dam. To the south across one channel of the Spokane River is Spokane's INB Performing Arts Center and the Spokane Convention Center. To the north across the north channel of the Spokane River is the Red Lion Inn at the Park.

Project Description: The applicant seeks a Shoreline Conditional Use Permit to construct a twenty-four foot by thirty-two foot retaining wall on the east side of Havermale Island. Compacted earth and fill will be placed behind the wall and the fill will be capped with concrete. Approximately 40 to 60 cubic yards of material will be excavated for the placement of the footings for the retaining wall. Most of the excavation will include rubble, gravel and earthen fill. The fill placed behind the wall will consist of clean sand and gravel. The top of the wall will then be capped. The structure will be designed to be aesthetically compatible with the surrounding environment and will also serve as a public viewing platform for this part of Riverfront Park.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code Sections 17E.060, SMC , 17G.060, and 17G.060.170.

Hearing Date: May 19, 2011

Notices: Mailed: January 25th and April 1, 2011
Posted: January 26th and April 1, 2011

Site Visit: May 19, 2010.

SEPA: A Determination of Nonsignificance was issued by the City on May 3, 2011.

Testimony:

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

Robin Bekkedahl
Avista Corporation
P.O. Box 3727
Spokane, WA 99220-3727

John Hamill
Avista Corporation
P.O. Box 3727
Spokane, WA 99220-3727

Exhibits:

1. Planning Services Staff Reports
2. Application, including:
 - 2A General application
 - 2B Conditional use application
 - 2C Notification Map application
 - 2D Joint Aquatic Resources Permit application (JARPA) with minor modification request.
 - 2E Site Plan
 - 2F Planting Plan
 - 2G Site Analysis
 - 2H Retaining Wall details
 - 2I Critical Areas Assessment checklist
 - 2J Counter complete checklist
3. Engineering Services comments
4. Park Department comments
5. Design Review comments
6. Solid Waste Management comments
7. Spokane Tribe of Indians comments
8. Washington Department of Fish and Wildlife comments
9. Northwest Pipeline comments
10. Notice map with parcel listing
11. Notices
12. Affidavit of mailing 01-25 and 04-04-11
13. Affidavit of posting 01-26 and 04-01-11
14. Affidavit of sign removal 02-11-11
15. SEPA Determination of Nonsignificance
16. Environmental checklist
17. Community Meeting sign in sheet
18. Community Meeting proposal and presentation
19. Hearing File Preparation Checklist

20. Minutes of a 13-13-10 meeting between City and Land Expressions
re: regarding project
21. Letter dated 03-04-11 to Interested Parties from Tami Palmquist
re: requesting comments
22. Letter dated 03-29-11 to Robin Bekkedahl from Tami Palmquist
re: notice of application/public meeting instructions
- A. Material received at hearing from the applicant
 - A-1 Site plan
 - A-2 Preliminary drawing of the retaining wall

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 code.

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 3.

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

The applicant has listed several comprehensive plan goals, objectives and policies which relate to this type of facility in it's Conditional Use Permit Application which is Exhibit #2B. The Hearing Examiner has reviewed those policies and agrees that they are relevant and show consistency with the plan. There was no evidence presented to demonstrate that the application is not consistent with the comprehensive plan.

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

The proposal was circulated amongst all City departments and agencies with jurisdiction over land development. It is not the type of facility that requires a lot of public support. There will be very little traffic to the site and there will be no structures on site which would use the City's water, sewer or have to comply with Fire Codes. No adverse comments were received by any departments or agencies regarding inadequate services in the area.

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.

There is a site plan in the record as Exhibit #2E. The plan was circulated to departments and agencies and while the applicant will be required to substantially landscape the site, there were no comments to show that the site could not be developed with this particular structure. This area of the park will be enhanced because of the viewing area and there was nothing about the location, topography, soils, slope or drainage characteristics that would prohibit development.

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 project was evaluated under the State Environmental Policy Act (SEPA) and a Determination of Nonsignificance (DNS) was issued by the City on May 3, 2011. No significant impacts were noted in the environmental documents and no agencies with jurisdiction commented that significant impacts would in fact occur. Therefore, the Hearing Examiner finds this criteria has been met.

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

a. The proposed use is consistent with the policies of RCW 90.58.020 and the Shoreline Master Program;

No adverse comments were received by the Department of Ecology which administers the Shoreline Master Program and seeks compliance with RCW 90.58.020. Some conditions were recommended and will be incorporated into the final decision conditions of approval. No agencies responded that the use is inconsistent with the Shoreline Act.

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

Contrary to interfering with the public's use, this structure will be used as a viewing area and will enhance public viewing along this portion of the Spokane River.

c. 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;

Since the construction of this viewing area will enhance the public's ability to access the shoreline, more viewing areas would enhance that ability even more. There

were no comments, however, that having several viewing areas along the area such as this would preclude achieving the goals of the Shoreline Master Program.

d. The proposed use of the site and design of the project is compatible with other authorized uses within the area and with the uses planned for the area under the comprehensive plan and the Shoreline Master Program;

The site is located in Riverfront Park at the east end of Havermale Island. It will enhance the public's access at this point. The Park's Department is in favor of the development. The applicant went through the Design Review Process and was found to be visually compatible as long as certain conditions are met. They also have submitted an extensive landscape plan which has been reviewed by applicable agencies and departments and the provision of extensive landscaping will be a condition of this approval.

e. The proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located, and the public interest in enjoying the physical and visual access suffers no substantial detrimental effect.

See Criterion 5 and 6b above.

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 twenty-four foot by thirty-two foot retaining wall on the south side of the Spokane River on the east end of Havermale Island. The retaining wall will be constructed substantially in accordance with the application and the site plan on file as Exhibits # 2B and 2E. If changes are sought to this approval, the applicant shall submit those changes to Planning Services for review and approval. If Planning Services finds that the changes are substantial, then they shall be submitted to the Hearing Examiner for review and approval.
2. This project lies within the Riparian Habitat Zone 2 of The Spokane River as defined in Spokane Municipal Code, 17E.020.050. In compliance with Spokane Municipal Code 17E.020.050, Fish and Wildlife Conservation Areas – Regulated Activities, all activities shall be undertaken using best management practices; the applicant shall maintain records documenting compliance with best management practices. The Shoreline Master Program, SMC 17E.060 and SMC 17E.020 require the replacement of any lost habitat functions that result from the proposal.

3. The recommendations of the Design Review Board, dated January 24, 2011, shall be complied with. They are:

a. The applicant will replicate the look of the historic basalt walls to the best of its abilities, in order to blend the new wall into the existing landscape. They will also use the same fencing design, material and color that is currently on the Upper Falls Control Works Dam in order to have the appearance that this structure is part of the existing development in the area.

b. The applicant will re-establish native and drought tolerant trees and vegetation, and consider including ponderosa pine, throughout the site to help the project fit with the natural river environment and further the applicant's goal of designing an aesthetically compatible project. Please see Comprehensive Plan Policy NE 5.5.

The final landscape plan shall be reviewed with Design Review staff, Planning Services, the City's Parks Department and the State Department of Fish and Wildlife.

4. Public access to the Spokane River and river views shall be required as part of the Shoreline Masters Program and SMC 17E.060..

5. All SCAPCA requirements must be met.

6: Compliance to SMC 17D.060 "Storm-water Facilities" for storm-water will be reviewed when the stormwater report is submitted during the Construction Permit Review process. .

7. The Spokane Tribes of Indians made the following comments:

The Spokane Tribe would like to have interpretive signage for this sensitive area incorporated into the project. However, if any artifacts or human remains are found upon inadvertent discover, this office should be immediately notified and the work in the immediate area cease. Should additional information become available our assessment may be revised.

The applicant will contact the tribe in case any artifacts or human remains are found on site. The tribe shall meet with the applicant to help establish the text of interpretative signage to be placed in this area.

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 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.

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 24th day of May 2011.



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.**