

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by the) FINDINGS, CONCLUSIONS,
City of Spokane Engineering Services) AND DECISION
Department to allow the construction of a)
stormwater control devise and other)
amenities on property located south of)
Ferris High School.) FILE NO. Z1100035-CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: The City of Spokane Engineering Services Department seeks a conditional use permit in order to allow the construction of stormwater control devices, detention and filtration ponds, and enhancements to an existing wetland, which includes pedestrian paths and additional maintenance access to these facilities.

Decision: Approval, subject to conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: City of Spokane Engineering Services Department
Attn: Patricia Nagy and Marcia Davis
808 West Spokane Falls Boulevard
Spokane, WA 99201

Property Address: Unassigned

Property Location: The project is in an area between Regal Street and Carillion Place and also between 42nd Avenue and Thurston Avenue in the City of Spokane, Washington.

Legal Description: A full legal description is in the record on page 1, of the General Application, which is Exhibit #2A.

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

Comprehensive Plan Map Designation: The property is designated as Residential 4-10 in the City's 2001 Comprehensive Plan.

Site Description: The site is irregular in shape and contains approximately 20-acres in area. Historically it was used as a farmstead and had a farmhouse and other outbuildings most of which have been removed. There's currently only one building left on site. Hazel's Creek runs west to east through this site beginning in the southwest corner and exiting on the east border. There are also wetlands on site and some ponding. The site has some mature trees as well as weeds and grasses.

Surrounding Conditions: The area surrounding is predominately zoned Residential Single-family with some Community Business (CB-55) to the southwest and some Multi-family and Office to the west. North of the site is the Ferris High School Campus which is on the south side of 37th Avenue. There are single-family homes to the east and south and vacant property to the southwest. To the west, along Regal Street is the facility which houses KREM-2 News. Access to the site is either from 42nd Avenue or there is currently an alleyway to the site from Regal Street.

Project Description: The Hazel's Creek Stormwater Drainage Facility & Low Impact Development (LID) Demonstration Project is intended to increase the capacity for stormwater infiltration and storage for the Moran Prairie and the adjacent neighborhoods. The City of Spokane is proposing to improve and expand the site's existing trail system and simultaneously offer public education in LID and stormwater management.

The proposed design intends to balance the acceptance and detention of additional neighborhood stormwater with protecting sensitive site features, enhancing site environmental functions, improving access and user safety, and educate the public through site interpretation. Stormwater retention is accomplished through the preservation and enhancement of existing wetlands, proposed LID Best Management Practices (BMPs), and the construction of a ponding area. A proposed berm following the east fence line ties back into the natural grade to the north and south and is oriented to retain significant trees. A trail is proposed atop the berm, linking the southern and northern portions of site, coupled with plantings along the fence line to discourage trespassing upon the adjacent residential properties. Tree plantings near the edge of the proposed ponding area are specified to increase stormwater uptake.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code Sections 17C.110, Table 17C.110-1, 17C.320, 17E.070 and 17G.060.170.

Hearing Date: September 15, 2011

Notices: Mailed: June 8th and August 18, 2011
Posted: June 10th and August 18, 2011

Site Visit: None made.

SEPA: A Determination of Nonsignificance was issued by the City of Spokane on August 5, 2010.

Testimony:

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

Marcia Davis
City of Spokane Engineering Services
808 West Spokane Falls Boulevard
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application
 - 2B Conditional Use Permit application
 - 2C Notification Map application
 - 2D Site Layout
 - 2E Shoreline/Critical Areas Assessment checklist
 - 2F Habitat Management Plan
 - 2G Counter complete checklist
3. Engineering Services comments
4. Design Review comments
5. Spokane Tribe of Indians comments
6. Notice map with parcel listing
7. Notices
8. Affidavit of mailing 06-08 and 08-18-11
9. Affidavit of posting 06-10 and 08-18-11
10. Affidavit of sign removal 06-22-11
11. SEPA Determination of Nonsignificance
12. Environmental checklists
13. Community Meeting sign in sheet
14. Letter dated 06-01-11 to Patricia Nagy from Tami Palmquist
re: notice of community meeting instructions
15. Memo dated 06-29-11 to Patricia Nagy from Tami Palmquist
re: goals that Hazel's Creek Facility support
16. Letter dated 07-08-11 to Interested Parties from Tami Palmquist
re: requesting comments
17. Letter dated 08-04-11 to Interested Parties from Tami Palmquist
re: requesting comments
18. Letter dated 08-04-11 to Patricia Nagy from Tami Palmquist
re: notice of application/public hearing instructions

FINDINGS AND CONCLUSIONS

To be approved, the proposed conditional use permit must comply with the criteria set forth in Spokane Municipal Code Section 17G.060.170. The Hearing Examiner has reviewed the proposed conditional use permit and the evidence of record with regard to this section and makes the following findings and conclusions:

1. The proposal is allowed under the provisions of the land use codes.

This type of use is not addressed specifically in the code under the Residential Zoning categories. As staff notes it comes closest to Parks and Open Space Areas which are permitted outright. However, with the creek and wetlands on site, it must also meet the Wetland Protection Standards of 17E.070. While SMC 17E.070.120(A)(3) allows stormwater facilities in wetland areas as long as the City's Stormwater Regulations are complied with, staff notes that 17E.070.040 requires certain regulated activities in wetland areas to obtain a conditional use

permit. Several of the regulated activities found in that code section are activities which the City will have to do in order to complete this project including excavation, grading and dredging, draining or flooding, disturbing of the water level or water table, construction and maintenance of previous trails, and also the removal of certain vegetation. Therefore this use is listed as needing a conditional use permit in the code.

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

Planning staff has accepted the applicant's contention that the proposal complies with the City's Comprehensive Plan. Staff has set forth that narrative from the application in its staff report, Exhibit #1, page 4. The Hearing Examiner agrees and hereby adopts those findings and also finds that this criterion has been met.

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

The application was circulated to all applicable City departments and agencies with jurisdiction over land development and no departments commented that concurrency could not be achieved. This is not the type of use that needs the support of substantial public services and it will improve storm drainage disposal in this particular area. Therefore this criterion has been met.

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.

A site layout is in the record as Exhibit # 2D. It shows the location of various elements of the proposal including the creek, ponds, pathways and wetland areas. It is currently open space with a creek and wetland features so it appears suitable for the proposed use. There was no testimony or concerns that the site is not suitable for this particular use. In addition it is adjacent to the Ferris High School Campus and has educational value for those students.

5. The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use.

The City issued a Determination of Nonsignificance under the State Environmental Policy Act (SEPA) on August 5, 2011. There was no testimony that adverse impacts are anticipated and the circulation of the SEPA checklist amongst City departments and outside agencies with jurisdiction brought forth no concerns regarding any adverse impacts from this proposal.

DECISION

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

1. Approval is for a conditional use permit to allow the City of Spokane Engineering Services Department to develop this site in a manner consistent with the site layout which is in the record as Exhibit #2D, the Habitat Management Plan, the Application with attached documents and the Wetland Delineation submitted for this proposal. If changes are sought to that plan, they shall be submitted to Planning Services for review and approval. If Planning Services finds that the changes are substantial, than they shall be forwarded to the Hearing Examiner for review and approval.
2. The project shall comply with the City's Stormwater regulations as set forth in SMC 17D.060.
3. This facility should provide accessible features to the maximum extent possible. The color Master Plan sheet 2 of 3 identifies "improve ADA accessibility". The proposed trail system construction should reasonably remove all barriers that it can.

The City defines accessible routes of travel surfaces in the building codes as firm, stable, smooth, and slip resistant. We have in past practice further defined this as asphalt or concrete paving. Future upgrades to the facility should make provision for that paving.

4. The Design Review Board made three recommendations after a meeting on September 6, 2011. The second and third recommendations which relate to the introduction of plant species and the maintenance of plant species are hereby incorporated as conditions of this approval. The first recommendation requires more study and negotiations by the applicant and Design Review. If a final solution is arrived at, it will also become a condition of this approval.
5. Should the applicant discover any archaeological resources during construction, the Spokane Tribe of Indians shall be notified immediately and construction stopped.
6. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code including the Uniform Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.
7. Spokane Municipal Code section 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.
8. Prior to the issuance of any building or occupancy permits, the applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office.

COVENANT

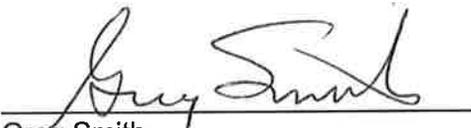
Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these

conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

9. This approval is subject to the above-stated conditions. By accepting this approval the applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above required covenant constitutes the applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

DATED this 22nd day of September 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 by the Hearing Examiner regarding conditional use permits are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE DECISION SET OUT ABOVE.** The date of the decision is the 22nd day of September 2011. **THE DATE OF THE LAST DAY TO APPEAL IS THE 13th DAY OF OCTOBER 2011 AT 5:00 P.M.**

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

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