

**CITY OF SPOKANE HEARING EXAMINER**

Re: Conditional Use Permit Application ) FINDINGS, CONCLUSIONS AND  
School District #81 for a relocated ) DECISION  
Jefferson Elementary School )  
) FILE NO. Z1100059-CUP3

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** School District #81 seeks a Conditional Use Permit in order to allow the relocation of Jefferson Elementary School. The school, which is currently located at the corner of 37<sup>th</sup> Avenue and Grand Boulevard will be moved to the west and be relocated on school district property at 37<sup>th</sup> Avenue and Manito Boulevard.

**Decision:** Approval, subject to conditions.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

**Applicant:** Greg Brown, representing  
School District #81  
200 North Bernard Street  
Spokane, WA 99201

**Agent:** Walt Huffman  
Madsen, Mtchell, Evenson & Conrad, Architects  
216 North Howard, Skywalk Level  
Spokane, WA 99201

**Represented by:** Stanley Schwartz, Attorney at Law  
Witherspoon, Kelley, Davenport & Toole  
422 W Riverside Avenue  
Spokane, WA 99201

**Property Address:** 123 East 37<sup>th</sup> Avenue, Spokane, Washington

**Property Location:** The new site is located at the northeast corner of 37<sup>th</sup> Avenue and Manito Boulevard in the City of Spokane, Washington.

**Legal Description:** A full legal description is in the record attached to Exhibit #2C.

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

**Comprehensive Plan Map Designation:** The property is identified as "Institutional" in the City's 2001 Comprehensive Plan.

**Site Description:** The site is rectangular in shape with one rounded corner in the northwest corner of the site. The application states that it measures 562 feet from north to south and 619 feet from the west curb line to the east boundary with Hart Field. It contains 6.5 acres in area. The site is relatively flat with only about a 6 foot grade change from the high point at the southeast corner to the low point in the north central portion of the site. There are existing stands of Ponderosa Pines on the north and south ends of the parcel and the School District intends to retain as many of those trees as possible.

**Surrounding Conditions:** The property is surrounded by Single Family Residential zoning and single family residences. To the east is Hart Field. To the east of Hart Field, along Grand Boulevard, there are Residential Multifamily zones and Office-35 zones. The existing Jefferson Elementary School is located approximately one-third mile to the east at 37<sup>th</sup> Avenue and Grand Boulevard. Properties to the south of the existing elementary school are zoned CC1-DC (Type 1, Center/Corridor – District Center). The site is bordered on the south by 37<sup>th</sup> Avenue which is designated as a Minor Arterial in the City's Arterial Street Plan. It is also bordered on the west and north by Manito Boulevard which is a local access street.

**Project Description:** School District #81 seeks to relocate Jefferson Elementary School from the northwest corner of 37<sup>th</sup> Avenue and Grand Boulevard to a vacant site approximately one-third mile to the west. It is to be located on 6.5 acres at the northeast corner of 37<sup>th</sup> Avenue and Manito Boulevard adjacent to Hart Field. Hart Field is to be reconfigured after the project has been completed. The school is to be a one-story building with approximately 60,000 square feet of area. The new school will be reconstructed while the existing school is still utilized for classes. The district proposes combined parking areas of approximately 59 stalls with one parking lot of approximately 38 stalls on the south side of the site and an additional 21 stalls in a lot just north of the new school building. Also, in the north lot there will be a bus loading/drop off area accessed off of Manito Boulevard. The south parking lot will have a parent loading/drop off area which accesses 37<sup>th</sup> Avenue. Various ball fields and play areas will exist around the site, primarily on the west side and the existing Ponderosa Pines in the northwest and southwest corners of the site are to remain and act as park-like open space. Sidewalks will surround the site and pathways will lead to four entrances in the school. The design of the site along with elevations and other analysis are set forth in the record as exhibits under Exhibit #2D. The Applicants also seeks certain design departures from the Institutional Design Standards of the zoning code. Those designs standards will be discussed further on in this decision and they were evaluated through the design review process. In appearing before the Design Review Board, the applicant submitted alternative designs of the project which would in fact comply with all design standards. Those alternative designs are set forth attached to the Design Review Project Summary which is in the record as Exhibit #8B.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code Sections 17C.110, Table 17C.110-1, 17C.110.500, 17C.320.080, 17G.030, 17G.060 and 17G.060.170.

**Hearing Date:** February 2, 2012

**Notices:** Mailed: October 24, 2011 and January 4, 2012  
Posted: October 21, 2011, and January 4, 2012

**Site Visit:** None made.

**SEPA:** A Determination of Nonsignificance was issued by School District #81 on August 15, 2011.

**Testimony:**

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

Stanley Schwartz, Attorney at Law  
Witherspoon, Kelley, Davenport & Toole  
422 W Riverside Avenue  
Spokane, WA 99201

Greg Brown  
Spokane School District #81  
2815 East Garland Avenue  
Spokane, WA 99207

Craig Conrad  
Madsen Mitchell Evenson & Conrad  
216 North Howard, Skywalk Level  
Spokane, WA 99201

Bill White  
Intermountain Transportation Solutions, LLC  
1636 West 1<sup>st</sup> Avenue  
Spokane, WA 99201

Mary Dean Wooley  
7134 North Pamela  
Spokane, WA 99208

Becky Marshall  
41 West 37<sup>th</sup> Avenue  
Spokane WA 99203

Michelle Heacox  
116 West 36<sup>th</sup> Avenue  
Spokane, WA 99203

Carol Faw  
107 West 36<sup>th</sup> Avenue  
Spokane, WA 99203

Becky Heacox  
116 West 36<sup>th</sup> Avenue  
Spokane, WA 99203

Sally Fullmer  
3705 South Manito Boulevard  
Spokane, WA 99203

Mick Heacox  
116 West 36<sup>th</sup> Avenue  
Spokane, WA 99203

Greg Forsyth  
7211 West Kendrick Road  
Nine Mile Falls, WA 99026

Greg Plummer  
21 West 33<sup>rd</sup> Avenue  
Spokane, WA 99203

Kris Jeske  
1019 East 36<sup>th</sup> Avenue  
Spokane, WA 99203

Greg Thomas  
506 West 33<sup>rd</sup> Avenue  
Spokane, WA 99203

Ronald Kinley  
129 West 34<sup>th</sup> Avenue  
Spokane, WA 99203

Jon Galow  
3204 South Division Street  
Spokane, WA 99203

John Stoltz  
3119 South Bernard Street  
Spokane, WA 99203

Jennifer Morris  
417 West Jefferson Court  
Spokane, WA 99203

Nikki Lockwood  
2804 South Manito Boulevard  
Spokane, WA 99203

Mike Livingston  
3259 South Jefferson Street  
Spokane, WA 99203

**Exhibits:**

1. Planning Services Staff Report
2. Application, including:
  - 2A General application
  - 2B CUP application
    - 2Ba Supplemental application for Conditional Use Permit, dated 11-17-11
  - 2C Notification Map application
  - 2D Site Plans
  - 2E Conditional Use Permit counter complete checklist
3. Pre-Development conference notes
4. Fire Department comments
5. Developer Services comments
  - 5A Property line noise study by SSA dated 09-30-11
  - 5B Signage, Outdoor Message Center by Daktronics
6. Traffic Engineering comments
  - 6A Traffic Impact and Design Analysis by ITS (Intermountain Transportation Solutions) dated August 2010
  - 6B Access study by ITS dated 04-25-11
  - 6C SEPA discussions/comments by ITS dated 09-06-11
7. Neighborhood Services comments
8. Design Review comments
  - 8A Written Project Summary by Madsen, Mitchell Evenson & Conrad, PLLC dated 06-28-11
  - 8B Design Review step 2, written project Summary by Madsen, Mitchell Evenson & Conrad, PLLC dated 09-21-11
9. Spokane Regional Clean Air Agency comments
10. Spokane Tribe of Indians comments
11. Avista comments
12. Notice map with parcel listing
13. Notices
14. Affidavit of mailing 10-24-11, and 01-04-12
15. Affidavit of posting 10-21-11 and 01-04-12
16. Affidavit of removal of a public sign 11-17-11 and 02-03-12
17. SEPA Determination of Nonsignificance
18. Environmental Checklist
19. Community Meeting sign in sheet
20. Community Meeting summary
21. Hearing File Preparation Checklist
22. Letter dated 10-07-11 to Mike Keenan from Tami Palmquist

- re: community meeting instructions
- 23. Email dated 10-07-11 to Mike Keenan from Tami Palmquist
  - re: community meeting traffic summary
- 24. Letter dated 11-29-11 to Interested Parties from Tami Palmquist
  - re: requesting comments
- 25. Letter dated 12-20-11 to Greg Brown from Tami Palmquist
  - re: notice of technically complete
- 26. Letter dated 12-21-11 to Greg Brown from Tami Palmquist
  - re: notice of application/public hearing instructions
- 27. Emails dated 12-22-11 through 01-13-12 to/from Tami Palmquist and Mike Keenan
  - re: technically complete signage
- 28. Letter dated 12-21-11 to Greg Brown from Tami Palmquist
  - re: notice of application and public hearing instructions
- 29. Public comments received at the community meeting
- 30. Public comments received during the comment period.
- A Exhibits received at hearing;
  - Submittals by Applicant:
    - A-1 Correspondence regarding the SEPA determination
    - A-2 Community Meeting Minutes
    - A-3 Copy of presentation
    - A-4 Resume of William (Bill) White
  - Submittals by the following:
    - A-5 Michelle Heacox, comments on the project
    - A-6 Sally Fullmer, CD of Jefferson documents
    - A-7 Sally Fullmer, comments on the project
    - A-8 Petition supporting the project

### **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.

In Table 17C.110-1, of the Spokane Municipal Code, relating to Residential Zone categories, it is stated under the Institutional Category that schools are allowed in the RFS Zone as a conditional use. See also SMC 17C.110.100C. In order to be approved as a conditional use schools must meet certain other criteria as set forth in other sections of the code. Those criteria will be analyzed later in this decision. The code also states that new school buildings are to be processed as a Type II application, but by agreement, School District #81 submitted this conditional use application as a Type III application. Therefore the Hearing Examiner had a public hearing on the conditional use application. The Hearing Examiner finds, therefore, that the use is listed as allowed under the provisions of the land use codes as long as it meets the conditions of the code.

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

The site is designated as Institutional in the Comprehensive Plan and schools are considered an institutional use. Under Land Use Goal #1, the policies state that a readily accessible elementary school should be available for neighborhood children. The District intends to move Jefferson School because it does not believe that the site at 37<sup>th</sup> Avenue and Grand Boulevard, which is a busy, congested intersection, is suitable or acceptable for the safety of neighborhood children.

Several other land use goals relate to schools and school locations. Those include LU 6.3, school locations, LU 6.4 which encourages pedestrian safety and a quiet environment conducive to learning when the City makes land use decisions, LU 6.5 which encourages the location of elementary schools centrally in their service area to allow children to walk safely to school and LU 6.8 which encourages school officials to retaining existing neighborhood school sites and structures to maintain a strong healthy neighborhood. All of these land use goals promote the significance of locating elementary schools in residential neighborhoods which are easily accessible to children by walking or biking. The Hearing Examiner has reviewed these policies and finds that the proposal is consistent with these policies in the comprehensive plan. In addition, the Hearing Examiner hereby adopts and incorporates the discussion of the project's compliance with the Land Use Plan set forth in the Applicant's November 17, 2011, submittal which is a supplemental application for condition use permit and is in the record as Exhibit #2Ba. Therefore, this criterion has been met.

There was testimony at the public hearing from neighbors who did not want the school to be relocated to the new location and one argument was that the relocation did not comply with the comprehensive plan. Their argument, which they supported with an exhibit and school population figures was that more children live east of Grand Boulevard and therefore the school district was actually making the school less central to the neighborhood rather than more central by moving it to the west. While it may be true that more children who attend Jefferson currently live east of Grand Boulevard, that could change as the population of elementary aged school children attending Jefferson changes. In addition, it would be impossible for the district, in every situation, to locate a school in the exact center of a neighborhood. There are too many constraints, not the least of which would be the acquisition of land, which would make this an unreasonable requirement. The district testified that they wanted to move the school to make it more student friendly because of the congested nature of the corner of 37<sup>th</sup> Avenue and Grand Boulevard. The district believes that the children can more safely access the new site than the old site. The Hearing Examiner agrees with the district and agrees that the school is essentially located in the central part of the neighborhood.

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

Staff has circulated the application to all applicable City departments and agencies with jurisdiction over concurrency requirements. There were no adverse comments regarding concurrency and therefore the Hearing Examiner finds that concurrency can be achieved with the approval of this permit.

The main objection to the proposal from some neighborhood residents was that traffic

would significantly increase on adjacent streets. The Applicant has submitted a traffic study from Intermountain Transportation Solutions which concludes that the level of service will remain within the standard levels after the project has been completed. The City's transportation engineer has reviewed the study and agrees with its findings. Therefore the Transportation Department has certified concurrency for the proposed school. Also, the level of service at 37<sup>th</sup> Avenue and Grand Boulevard which is currently substandard should improve as the City and the district are working on the installation of a traffic signal.

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.

Several site plans showing how the Applicant intends to develop the site are in the record as Exhibit #2D. Those plans show the proposed layout of the site as well as artist renderings and elevations for the school. The plans show access, parking, drainage facilities, playfields and play areas as well as the one-story school building itself. There are several stands of Ponderosa Pines in the northwest and southwest portions of the site which the School District intends to maintain. The School District has requested certain design departures under SMC 17C.110.515 and .535 and those will be considered later in this decision. Those design departures are requested based on the design of the building on site and not necessarily because of the site characteristics. The site characteristics are analyzed by the Applicant in its supplemental application for conditional use permit which is Exhibit #2Ba, and that analysis demonstrates that the site is suitable for the use. The main limitation is the drainage characteristics and it appears that stormwater disposal by the use of drywells is not available for this site, so other types of groundwater disposal methods will have to be used. This does not, however, place any severe limitations on school development.

Some public testimony regarding the site plan objected to using this site for a new school because it could have an adverse effect on Hart Field. The School District, however, testified that Hart Field will be reconfigured and will have adequate playfields to service Lewis and Clark High School with recreational facilities. Therefore, the Hearing Examiner finds that the site is suitable for the proposed use.

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.

School District #81 issued a Determination of Nonsignificance (DNS) under the State Environmental Policy Act (SEPA) on August 15, 2011. That determination, while questioned by some, was not appealed and therefore is presumed valid. That determination found that there will be no significant adverse environmental impacts based on the relocation of the school. In addition to the environmental checklist, the school commissioned additional studies which included a traffic study, a geotechnical analysis, a noise analysis study and a property valuation analysis. Those studies show that with some mitigating measures the new school should have minimal impacts on the surrounding area. In addition, the School District has agreed to provide financial assistance to the City in constructing a traffic signal at the corner of 37<sup>th</sup> Avenue and

Grand Boulevard adjacent to the old school building. The traffic study showed that intersection is congested and operates at a level of service "F" which is substandard. The addition of the traffic signal will provide a much improved level of service to that intersection.

The primary concerns regarding the school relocation from the neighborhood related to traffic. The Applicant's traffic study which is in the record as Exhibit #6, 6A and 6B, and which was reviewed by the Traffic Engineering department found that the streets and intersections surrounding the school will still operate at acceptable levels of service after the school has been constructed and is fully occupied. While there were some objections to the study, there was no expert testimony presented to challenge either the study or the City's findings on that issue. Therefore, this criterion has been met.

6. The proposal meets the additional conditional use criteria listed in SMC 17C.320.080(F) for institutional uses in the RSF zone.

Institutional uses in the RSF zone must meet additional conditional use criteria as set forth in SMC 17C.320.080(F). Some of those criteria, particularly the ones under F(3) and F(4) are duplicative of the criteria set forth above and have been adequately addressed. The other two, F(1) and F(2) deal with the proportion of residential household living uses in the neighborhood and the physical compatibility of the proposed use with surrounding residential uses. Staff has analyzed all four of those criteria in its staff report and has found that the proposal satisfies those criteria. The Hearing Examiner agrees and hereby adopts and incorporates the staff analysis in this decision. That analysis is set forth in Exhibit #1, pages 4, 5, and 6. In addition, the Hearing Examiner adopts and incorporates the discussion of these criteria set forth in the Applicant's original conditional use permit application, which is in the record as Exhibit #2B.

7. The Applicant also seeks departures from two of the Institutional Use Design Standards set forth in SMC 17C.110.500, 17C.110.515 and 17C.110.535. The design standards are listed in three categories. They are in the form of requirements (R), presumptions (P), and considerations (C). The standards which the applicant seeks to deviate from are given the presumption (P) designation. The process for seeking a departure from design standards with a (P) suffix is set forth in SMC 17G.030.040. It is stated in SMC 17G.030.030 that for Type III applications the Design Review Board will review a proposal in the light of the criteria in SMC 17G.030.040 and make a recommendation to the Hearing Examiner regarding the proposed design departures.

The Applicant submitted its rationale for the two design departures to the Design Review Board on September 21, 2011. See Exhibit #8B. Its report addresses the concerns and recommendations of the Design Review Board from a previous meeting on July 27, 2011. The Design Review Board held a second hearing on the proposed design departures on November 9, 2011 and recommended to the Hearing Examiner that the requested departures be accepted and that the drawings be approved.

The Applicant had prepared drawings showing site development in compliance with the design standards in order to demonstrate why its preferred design was superior to one using the strict design standards. Those drawings are in the record also. The Applicant convinced the Design Review Board that because of the primary goal of providing a safe environment for

students, especially for those who walk and bike to school, that the original plan was superior and should be accepted with the design departures. The Hearing Examiner has reviewed the record before the Design Review Board and accepts their recommendation and hereby approves those design departures as set forth therein.

### **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 construction of a new Jefferson Elementary School on the northeast corner of 37<sup>th</sup> Avenue and Manito Boulevard. The site is to be developed in accordance with the various site plans which are in the record as Exhibit 2B. All aspects of development are to be substantially as depicted on those plans. This includes the location of the building, the design of the building, the location of pathways and sidewalks, play areas and open space, parking and landscaping. The applicant will also retain as many of the existing Ponderosa Pine trees on site as is possible. Any proposed changes to the proposal are to be submitted to Planning Services for review. If Planning Services finds those proposed changes to be substantial they will be forwarded to the Hearing Examiner for review and approval.
2. Design departures for the development of this site are hereby approved for two design departures. The first is regulated by Section 17C.110.515 relating to buildings along the street and the second is regulated by Section 17C.110.535 which prohibits curb cuts that allow vehicle access into an adjoining residential zone. All other recommendations of the Design Review Board as well as all other institutional design standards shall be adhered to.
3. All sewer improvements necessary to serve the proposal shall be designed and constructed to City standards. A detailed utility plan shall be included with the building permit submittal. Plan review, general facilities charges and permit fees will apply. The applicant will be responsible for all costs associated with constructing sewer improvements necessary to serve the proposed school.
4. The above conditions also apply to the public water system improvements necessary to serve the proposal. Water systems necessary to serve the proposed school shall be designed and constructed to City Standards.
5. The streets which serve the site, 37<sup>th</sup> Avenue, which is a collector arterial and Manito Boulevard, which is a local access street shall be improved adjacent to the site to City standards. All City standards shall be complied with including the planting of street trees, the construction of sidewalks, the construction of wheelchair ramps and all street identification and traffic control signs as required. The applicant shall be responsible for all costs associated with constructing street improvements necessary to serve the site.
6. All stormwater and surface drainage generated on site shall be disposed of on site in accordance with SMC 17D.060. Pre-development flow of any off-site runoff passing through the proposed project shall not be increased (rate or volume) or concentrated due to development of the project based on a 50-year design storm. An escape route for a 100-year design storm

event shall be provided. A final drainage plan and report including supporting geotechnical information shall be included with the building permit submittal.

7. Construction plans for public streets/access, sewer, stormwater and water systems must be designed by a professional engineer, licensed in the State of Washington, and submitted to Engineering Services – Developer Services for review and acceptance prior to construction.

8. The proposal must adhere to the 2009 International Fire Code with State and Local amendments. The applicant shall comply with the requirements of the Fire Department as they pertain to access, fire sprinklers, fire alarms and all other requirements of the Fire Code.

9. A Notice Of Construction And Application For Approval must be submitted to the Spokane Regional Clean Air Agency prior to construction.

10. Screening of all garbage collection areas and recycling bins must be completed in compliance with SMC 17C.200, Landscaping and Screening.

11. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians must be immediately notified and the work in the immediate area stopped.

12. 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.

13. 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.

14. 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.

15. 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 February 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 21st day of February 2012. **THE DATE OF THE LAST DAY TO APPEAL IS THE 13<sup>th</sup> DAY OF MARCH 2012 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.