

with a mobile home park and at one time had 23 mobile homes and one single family house along with paved roads, gravel roads and a community septic system. The State has purchased the property and is removing the mobile homes. Those mobile homes extended to the edge of the eroding steep banks of Latah Creek in several places. There is no public access to the shoreline or riparian area within this particular project area.

Surrounding Conditions: The site where the overpass will extend into the shoreline area is zoned Residential Single Family (RSF). The property to the north is zone Residential Agricultural (RA) and to the south across US 195, there is a commercial area which is zoned Neighborhood Residential-35 (NR-35) and Community Business-55 (CB-55). Much of the area to the east and south is vacant and owned by the City of Spokane as Conservation Open Space.

Project Description: The Washington State Department of Transportation (WSDOT) is proposing to construct a highway interchange at the intersection of Cheney-Spokane Road and US 195 to provide safety improvements at this high traffic conflict location. It includes a north bound on-ramp and northbound off-ramp on the east side of US 195, an elevated crossing of US 195 and on the west side of US 195 there is a connecting road to the existing Cheney-Spokane Road and a southbound on-ramp and southbound off-ramp. Pictures of the proposed interchange are in the record as Exhibit #2D. Portions of the on-ramps and off-ramps will intrude into the shoreline area. In addition, WSDOT proposes to do bank stabilization in Latah Creek which requires a shoreline conditional use permit.

The shoreline ecological functions in this area have been degraded over time and the riparian area is currently developed as a mobile home park. The project does partially fall within shoreline designations requiring fill to construct the northbound ramps, and therefore the proposal requires a Shoreline Conditional Use Permit. It does not extend to the ordinary high water mark of Latah Creek, nor does it disturb any existing native riparian vegetation or habitat, other than the area designated for shoreline stabilization. The planting plan extends beyond the footprint of the interchange, which will result in a net gain for the location of native vegetation. The analysis of the existing ecological conditions, the projects impacts and habitat enhancements are detailed in the Habitat Management Plan dated March 2011. The project includes fill landward of the ordinary high water mark, which is allowed with a conditional use permit as part of a permitted and approved use, pursuant to SMC 17E.060.680. As noted, the project also includes stream bank stabilization within the shoreline area. Certain conditions as set forth in SMC 17E.060.400 must be adhered to. The applicant has submitted a Shoreline Stabilization Report which provides the hydraulic engineering analysis to meet this requirement.

PROCEDURAL INFORMATION

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

Hearing Date: September 1, 2011

Notices: Mailed: February 18th and August 10, 2011
Posted: February 22nd and August 12, 2011

Site Visit: None made.

SEPA: A Determination of Nonsignificance (DNS) was issued by the WSDOT on March 30, 2010. An addendum to the DNS was issued on April 21, 2011.

Testimony:

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

Chad Simonson
Washington State Department of Transportation
2714 North Mayfair Street
Spokane, WA 99207

Lunell Haught
7802 South Cheney-Spokane Road
Spokane, WA 99224

Exhibits:

1. Planning Services Staff Reports
 - 1A Staff report dated 08-22-11
 - 1B Revised staff report dated 08-23-11
2. Application, including:
 - 2A General application
 - 2B Shoreline permit application
 - 2C Notification Map and an explanation
 - 2D Site Plans
 - 2E Shoreline stabilization report
 - 2F Shoreline and critical areas checklist
 - 2G Habitat Management plan
 - 2H Floodplain Analysis, revised
 - 2I Shoreline permit counter complete checklist
3. Pre-development Conference notes
4. Engineering Services comments
5. Design Review comments
6. Avista comments
7. Spokane Tribe of Indians comments
8. Northwest Pipeline comments
9. Department of Ecology comments
10. Washington State Department of Fish and Wildlife comments
11. Spokane Regional Clean Air Agency comments
12. Notice map with parcel listing
13. Notices
14. Affidavit of mailing 02-18 and 08-10-11
15. Affidavit of posting 02-22 and 08-12-11
16. Affidavit of sign removal 03-10-11
17. SEPA Determination of Nonsignificance (DNS) and Addendum
18. Environmental checklist

19. Alternatives Analysis report dated 03-2011, Including 1991 Route Development Plan and 1995 Update
20. Community Meeting sign in sheet with Open House Invitation
21. Hearing File Preparation Checklist
22. Letter dated 02-01-11 to Rebecca Smith from Tami Palmquist
re: traffic scoping and community meeting instructions
23. Letter dated 05-03-11 to Interested Parties from Tami Palmquist
re: requesting comments
24. Emails dated 05-16-11 to/from Rebecca Smith and Tami Palmquist
re: clarification of procedures
25. Emails dated 05-17-11 and 06-01-11 to/from Michael Maher and Tami Palmquist
re: comment extension, review, shoreline stabilization
26. Email dated 06-01-11 to Tami Palmquist from Chad Simonson
re: clarification
27. Letter dated 06-01-11 to Rebecca Smith from Tami Palmquist
re: notice of application instructions
28. Email dated 06-20-11 to Tami Palmquist from Rebecca Smith
re: revised FEMA flood map revision
29. Email dated 06-21 and 06-23-11 to Tami Palmquist from Rebecca Smith
re: notice of application
30. Letter dated 07-25-11 to Rebecca Smith from Tami Palmquist
re: notice of public meeting instructions
31. Public Comment letters:
 - a. Email dated 05-12-11 from Jeff Lambert – opposed
 - b. Letter dated 07-22-11 from Lunell Haught – opposed
 - c. Email dated 07-22-11 from John Pilcher – concerns regarding shoreline impacts
32. Letter dated 07-27-11 to John Pilcher from Chad Simonson
re: addressing Mr. Pilcher's email of 07-22-11
- A-1 Exhibits received at the hearing
Lunell Haught's written testimony

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.

In order to proceed with this project, the applicant must meet certain conditions found in the City's Shoreline Master Program. In SMC 17E.060.690 and .700 it states that new streets or street expansions shall not be allowed in the shoreline jurisdiction unless it can be demonstrated that no other feasible alternative is available. The applicant has done an alternative analysis report in order to demonstrate that alternatives to the current location have been evaluated and found to be not feasible.

Further under SMC 17E.020.050(B)(2)(h) there are certain requirements for riparian habitat areas along Latah Creek. Under that section of the ordinance, no improvements of any kind or vegetation removal would be allowed within 250 feet of the ordinary high water mark, the one hundred year floodplain or the channel migration zone unless for public health and safety. Staff states that this proposal is for public safety and the Hearing Examiner concurs.

Another part of this conditional use permit proposal is for stream bank stabilization. This area of Latah Creek was identified in the City of Spokane's Restoration Plan, which was completed as part of the Shoreline Master Program Inventory and Analysis Update in July of 2008. Therefore, the City, in adopting that plan recognized that this part of Latah Creek would need stream bank stabilization. The proposed design meets the requirements of SMC 17E.060.400. A Shoreline Stabilization Report dated March 2011, was submitted as part of the required materials with the shoreline permit. Therefore this is a use allowed by conditional use permit under the Shoreline Master Program.

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 #1B, pages 5, 6 & 7.

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

This application was circulated on March 25, 2010, to all City departments and outside agencies with jurisdiction over shoreline matters. There were no departments or agencies that reported that concurrency could not be achieved although certain conditions will be placed on this approval to insure concurrency is achieved. The Traffic Engineering Department requested additional analysis if in fact Inland Empire Way is closed at its intersection with US 195. 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.

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 #1B, page 8.

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.

WSDOT evaluated this proposal under the State Environmental Policy Act (SEPA) and a Determination of Nonsignificance (DNS) was issued on March 30, 2010, with an addendum being

9. 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 Hearing Examiner finds that this criteria has been met and in so doing hereby adopts the findings on this criteria as set forth in the Planning Services Staff Report Exhibit #1B, page 11.

10. 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 Criteria #5 and #7 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 new highway interchange on highway US 195 at its intersection with the Cheney-Spokane Road. The proposal which includes additional substantial plantings as well as bank stabilization in this area are to be accomplished substantially as set forth in the application which is Exhibit #2B, and the Shoreline Stabilization Report which is Exhibit #2E. In addition the proposal will be in compliance with the site plans which have been submitted and are in the record as Exhibit #2D. 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. The Shoreline Master Program, SMC 17E.060 and SMC 17E.020 requires no net loss of shoreline ecological functions as a result of the proposal. Pursuant to Section 17E.060.220 the applicant shall engage in the restoration, rehabilitation, or enhancement of the shoreline environment in order to offset the impacts resulting from this proposal. All activities shall be in compliance with these regulations

3. The applicant shall comply with the approved Habitat Management Plan for the purposes of vegetation replacement. The Habitat Management Plan must have final approval from the Department of Ecology and the Washington State Department of Fish and Wildlife and all conditions of that plan will be conditions of this approval. Conditions of other plans and studies prepared for this application, which have been reviewed and approved by staff or outside agencies with jurisdiction will also become part of this approval. That includes additional plantings below the ordinary high water mark as required by the Washington State Department of Fish and Wildlife in response to the Shoreline Stabilization Report.

4. The contractor is required to have a Construction Stormwater Pollution Prevention Plan (SWPPP) in place prior to and during construction in order to prevent sediment laden stormwater run-off or other pollutants from entering Latah Creek.

5. All SRCAA requirements must be met. SRCAA's comments are included in the record as Exhibit #11.
6. The applicant shall comply with the recommendations of the Design Review Board relating to motifs for columns and bridge barriers for the interchange and also relating to diversity in the size of plant material when it is installed.
7. The applicant shall submit to Engineering Services, engineering designs detailing construction and its potential impacts to existing City utilities in the area. All other engineering plans will be submitted to Developer Services for its review and approval.
8. The applicant shall comply with the regulations and requirements of Developer Services which are in the record as Exhibit #4. In that exhibit Developer Services addresses stormwater regulations, deviation from City standards, street cuts, capital programs and other issues. In addition there is a requirement from Traffic Engineering, in that same Exhibit #4, which will require additional traffic analysis for the closure of the south end of Inland Empire Way.
9. The Spokane Tribe has requested that all work comply with the Washington State Department of Transportation's Plan and Procedures for the Unanticipated Discovery of Cultural Resources and Human Skeletal Remains. This is a condition of this approval.
10. 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.
11. 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.
12. 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.

13. 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 19th 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 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.**