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CITY OF SPOKANE HEARING EXAMINER PRO TEM

SHORELINE CONDITIONAL USE PERMIT
APPLICATION BY BOUTEN
CONSTRUCTION FOR A CHILD
DEVELOPMENT CENTER AT 1016 N.
SUPERIOR STREET.

**FINDINGS,
CONCLUSIONS,
AND DECISION**

FILE NO. Z18-920SCUP

I. SUMMARY OF DECISION

Hearing Matter: The matter before the Hearing Examiner Pro Tem is an application for a shoreline conditional use permit for the construction of a 52,000 square foot child development center for the Spokane Guilds' School and Neuromuscular Center. The application proposes the removal of five of the six existing buildings located on the subject property. Because approximately half of the subject property and a portion of the proposed building is located in the 200-foot shoreline jurisdictional limit, a Shoreline Conditional Use Permit (SCUP) is required for development of the property.

Summary of Decision: Approved, subject to *revised* conditions.

II. FINDINGS AND CONCLUSIONS

A. Procedural Matters:

| | |
|--------------------------------|--|
| Agent/Applicant: | Bill Bouten Construction PO Box 3507 Spokane, WA 99220 |
| Property Owner: | Spokane Guild's School and Neuromuscular Center 2118 W. Garland Avenue Spokane, WA 99205 |
| Location of Property: | 1016 N. Superior Street – Parcel No.: 35171.0030 |
| Zoning: | Residential 15 – 30 |
| Comp. Plan Designation: | Residential 15 – 30 |

A Community Meeting was held on December 5, 2017 and another on September 4, 2018. The application was submitted on November 27, 2018. A notice of Request for

1 Comments was sent to various Departments and Agencies on December 13, 2018. On or
2 about December 28, 2018 the applicant was notified that the application was technically
3 complete. The 30-day public comment period began on January 16, 2019, by the mailing and
posting on the property of a combined Notice of Application and Public Hearing. The Public
Comment Period closed on February 15, 2019.

4 The Hearing Examiner Pro Tem conducted a site visit on February 19, 2019.

5 Pursuant to the Notice of Application and Public Hearing, the hearing was scheduled,
6 for and the Hearing Examiner Pro Tem commenced the hearing at 9:00 a.m. on February 20,
2019, in the Lower Level City Hall Council Briefing, 808 W Spokane Falls Boulevard,
Spokane, Washington. The hearing was conducted pursuant to the Spokane Hearing
7 Examiner Ordinance codified in **Spokane Municipal Code (SMC)** Section 02.005.040.

8 The following persons testified at the hearing before the Hearing Examiner Pro Tem:

| | |
|-------------------------------------|------------------------|
| 9 Donna deBit, Assistant Planner II | Richard Boysen |
| City of Spokane | Spokane Guilds' School |
| 808 W. Spokane Falls Boulevard | 2118 W. Garland Avenue |
| Spokane WA 99201 | Spokane WA 99205 |

11 Jeani Natwick
12 1203 W. Riverside
Spokane WA 99201

13 The following persons were present at the hearing, but did not testify:

14 For the Spokane Guilds' School
Teresa Conway
15 Korin Michieli

16 The following exhibits were admitted to the record during the hearing:

- 17 1. Planning Services Staff Reports
- 18 2. Application, including:
 - 19 2A General Application
 - 20 2B Shoreline Permit Application
 - 21 2C Shoreline Critical Areas checklist
 - 22 2D Notification Map Application
 - 23 2E Boundary and Topographic Survey dated 07-20-17
 - 24 2F Conceptual Site Plan
 - 2G Site plan
 - 2H Photos of existing structures
 - 2I Title Insurance Guarantee
3. Request for Comments letter dated 12-12-18
 - 3A Wastewater Management dated 12-20-18
 - 3B Spokane Tribe of Indians dated 12-20-18
 - 3C Department of Ecology dated 12-27-18

- 1 4. Determination of Nonsignificance (DNS) dated 01-31-19
- 2 5. Environmental Checklist dated 09-05-18
- 3 6. Notice Map
- 4 7. Parcel Listing
- 5 8. Notice of Community Meeting instructions dated 11-14-17
 - 6 8A First Meeting, Notice of Community Meeting
 - 7 8A-1 Affidavit of Mailings dated 11-21-17
 - 8 8A-2 Affidavit of Posting dated 11-21-17
 - 9 8B Second Meeting, Notice of Community meeting
 - 10 8B-1 Affidavit of Mailing dated 08-21-18
 - 11 8B-2 Affidavit of Posting dated 08-21-18
 - 12 8B-3 Affidavit of Removal of Public Sign dated 09-05-18
 - 13 8C Community Meeting Sign in Sheet and Notes
- 14 9. Notice of Application Instructions dated 01-09-19:
 - 15 9A Notice of Application & Public Hearing
 - 16 9B Affidavit of Mailings dated 01-15-19
 - 17 9C Affidavit of Posting dated 01-15-19
- 18 A. Exhibits received at the hearing:
 - 19 A-1 Hardcopy of Planning's PowerPoint presentation

20 The record includes the electronic recording of the public hearing, the documents in the application file at the time of the hearing, the sign-in sheet for the hearing, and the items taken notice of by the Hearing Examiner Pro Tem in this decision and at the hearing.

21 The Hearing Examiner Pro Tem takes notice of the Spokane Comprehensive Plan ("Comprehensive Plan"), the SMC, other applicable development regulations, and previous land use decisions for the site and area.

22 **B. Description of Site:**

23 The proposed site is the former home of St. Joseph Family Center at 1016 N. Superior Street, Parcel No. 35171.0030. The site is currently developed and landscaped with six single-story vacant buildings arranged across the majority of the property. Of the six existing buildings, five are expected to be demolished to accommodate the new development on the property. One building, the north east most building on the property is expected to remain at this time. See testimony of J. Natwick. The site is approximately 3.37 acres. The subject property slopes approximately 10 feet from west to east toward the Centennial Trail and the Spokane River. Exhibit No. 5, State Environmental Policy Act (SEPA) Checklist, p. 4. Due to the high water table and slope of the property, grading of the property to accommodate the development as proposed, will disturb most if not all of the site. The proposed structures will encroach into the 200-foot shoreline jurisdiction.

24 The surrounding properties, to the south and south west are developed in commercial and industrial businesses. Across the river to the east, properties are developed in commercial and industrial businesses as well. To the north is a retirement community

1 consisting of several two-story buildings. Properties to the northwest are developed as urban
2 single-family and multifamily residences. Further north and west is the Gonzaga University
Campus complex.

3 The subject property is located adjacent to the Spokane River. The Spokane River is
4 designated by the Shoreline Management Act as a shoreline of statewide significance and
5 therefore subject to the requirements of the City of Spokane Shoreline Master Program
(SMP). The City of Spokane Shoreline Master Program designates this area as Urban
Conservancy Environment with a 75-foot buffer from the Spokane River.

6 **C. Description of Proposed Project:**

7 The proposed project is described as commencing with the removal of the five and
8 possibly six existing structures on site (5 residential type buildings, 1 administrative
9 building), followed by the construction of a new 52,000 square foot child development center,
10 including site improvements. See Exhibit No. 2E, Boundary and Topographic Survey; and
11 2F, Conceptual Site Plan. Approximately 48,000 square feet of the building are currently
planned for construction, with the addition of the final 4,000 square feet upon available
funding. Efforts are underway to fund the entire 52,000 square foot structure as a single
project if possible. Testimony of Jeani Natwick.

12 **D. Land Use Designations and Surrounding Conditions for Site and Neighboring
Land:**

13 The surrounding zoning is Residential Multi-Family (RMF) is to the north and south,
14 Light Industrial (LI) to the east, and General Commercial (GC) to the west. Adjacent Land
15 Use to the north is designated as Residential 15-30, to the west is General Commercial, and
to the south and east is Conservation Open Space (Spokane River).

16 **E. Department Reports:**

17 Notice and request for comments were sent to the City departments and outside
18 agencies concerned with land development on December 13, 2018. Copies of reports from
19 those who responded to the notice and request for comments are a part of the file for
reference. See File Z18-920SCUP. Department and agency comments have been considered
by the Hearing Examiner Pro Tem in arriving at this decision and have been incorporated as
applicable in the conditions set forth below.

20 **F. Design Review Board:**

21 This project is subject to review and comment by City of Spokane Design Review
22 Board. A Collaborative Workshop for "The Spokane Guilds' School" was held on
23 November 14, 2018. A recommendation meeting had not been scheduled as of the date of the
24 hearing of this matter. The proposal will be conditioned upon completion of a
recommendation from the City of Spokane Design Review Board prior to issuance of any site
development permits.

1 **G. Public Comments:**

2 No written public comments were received prior to the hearing, and there was no
3 testimony from the public at the hearing.

4 **H. Consistency with Comprehensive Plan and Zoning:**

5 SMC 17G.060.170 Decision Criteria:

6 *C.1. Allowed under the provisions of land use codes.*

7 Schools, learning centers and associated uses are allowed outright in the RMF zone.
8 The proposal is located within the 200 foot Shoreline Jurisdiction, requiring it to be
9 processed as a Type III Application.

10 *C.2. Consistency with the Comprehensive Plan designation and goals, objectives, and policies
11 for the property.*

12 Several Comprehensive Plan goals, objectives, and policies are relevant to the
13 proposed project. Those include LU 5, LU 5.4, LU 5.5, SMP 1.3, SMP 5.4, SMP 10.2, SMP
14 11.28, and SMP 11.35.

15 Comprehensive Plan goals and policies are the basis of the land use regulations
16 adopted by the City of Spokane. Comprehensive Plan goal LU 5 suggests that development
17 within the city should be attractive, complimentary, and compatible with other allowed
18 and/or established uses within the vicinity of the proposed development. Policies LU 5.4 and
19 LU 5.5 direct that infill or redevelopment should be well designed and compatible with
20 surrounding uses and buildings, and that the development should protect the natural
21 features and wildlife habitat on and near the property.

22 The proposed development is redevelopment of a property that has six existing
23 structures. Reportedly, the structures that exist on the property have experienced basement
24 flooding in the past, due to the high water table on the property. The proposed development
will be designed without basements and with the water table in mind. Thus, special
attention will be given to the topography of the property and an awareness of the nearby
Spokane River. Testimony of Jeani Natwick. The proposed structure to be built on the site
will be partially a two story structure with a single-story section included in the design.
Testimony of Jeani Natwick. Landscaping will be required to include the restoration of
native vegetation to the site as much as is possible. Testimony of Donna deBit.

The proposed development will be consistent and compatible with the surrounding
development, which includes single- and two-story buildings. The resulting net fewer
structures on the property will provide a more open environment and will not impact wildlife
habitat at the site any more than the previous development and occupation of the site. As
proposed, there will be no impact to the access of the existing Centennial Trail located
adjacent to the Spokane River. The applicant will be required to provide a revegetation plan

1 that would address the replacement of disturbed vegetation in the shoreline jurisdiction (if
2 any).

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

4 The concurrency test (SMC 17D.010.020 C.) is intended to measure whether the
5 proposed development and use will result in a reduction of a level of service below the
6 minimum level of service standard. Relative to public water, public wastewater, solid waste
7 and recycling only available capacity is considered. For transportation, police protection, fire
8 protection, schools, parks and recreation, and libraries available and planned capacity is
9 considered.

10 The development application was circulated on December 13, 2018, among all City
11 departments and outside agencies with jurisdiction. The City received several comments
12 from agencies regarding the application; however, none of the responding departments or
13 agencies reported that concurrency could not be achieved. No public comment was received
14 prior to the hearing or at the time of the hearing. Staff and agency comments have been
15 reviewed and considered in drawing the conclusion that the concurrency requirements have
16 been met.

17 *C.4. Suitability for proposed use.*

18 A general overview of the proposed development indicates that the proposed
19 development will not alter the previous use of the property to any appreciable degree. By
20 reducing the number of structures on the property and including an activity yard for the use
21 of the students who are served by the Guild's School, the aesthetics of the site will be
22 improved by creating more open space and view opportunities across the site toward the
23 Spokane River.

24 As noted above, the high water table at the site and the fact of basement flooding of
the existing buildings has been noted and taken into consideration for the design of the new
building to be constructed on the site. Attention is also being given to the slope of the
property toward the Spokane River as it relates to leveling the site for building construction
and landscaping with stormwater runoff in mind. Testimony of Jeani Natwick.

In addition to meeting all land use requirements, the project will be required to meet
all applicable shoreline regulations (SMC 17E.060). The proposal is located in the Campus
and Upriver Districts of the Shoreline and shall meet the standards of SMC 17E.060.810.
Spokane Tribes recommends that during the construction there is close monitoring of all
ground disturbing activity in the instance that there are cultural resources being impacted.

As conditioned herein, the site is suitable for the proposed development per SMC
17G.060.170 C. 4.

1 *C.5. Absence of significant adverse environmental impact.*

2 A SEPA DNS was issued on January 31, 2019, by City of Spokane, Planning and
3 Development; Lead Agency. The DNS was not appealed. There were no expressed concerns
4 that the use being proposed would cause an interference to the use of neighboring properties,
5 including the Spokane River.

6 A geo technical subsurface soils report was prepared for the site, dated August 24,
7 2017, along with a Phase I Environmental Site Assessment Report, dated September 21,
8 2016. Exhibit No. 5, Environmental Checklist, p. 2. No adverse comments were received
9 regarding either of those reports. The checklist also indicates that a Good Faith Asbestos
10 Survey will be prepared prior to demolition of the existing buildings on the site. *Id.*

11 Stormwater control and treatment at the site will be accomplished by the use of
12 filtration galleries or conventional drywells and bio-infiltration swales designed and installed
13 pursuant to the Spokane Regional Stormwater Manual (SRSM). Exhibit No. 5,
14 Environmental Checklist, p. 3. As conditioned herein the proposed development will meet the
15 requirements of SMC 17G.060.170C.5.

16 SMC 17G.060.170 Decision Criteria for SCUPs:

17 *D.1. The proposed use is consistent with the policies of RCW 90.58.020 and the shoreline
18 master program.*

19 This site is located in the area designated by the SMP as Shoreline Urban
20 Conservancy Environment and the Campus/Upriver District. The proposed development will
21 be required to comply with all regulations relative to stormwater treatment and shoreline
22 development, including but not limited to SMC 17E.060. As conditioned herein, the proposal
23 is consistence with the maps, goals, and policies of the SMP.

24 *D.2. The proposed use will not unreasonably interfere with the normal public use of public
25 shorelines.*

26 Although the proposed development is adjacent to the Centennial Trail on the banks
27 of the Spokane River, the development is designed to occur landward of the Centennial Trail,
28 such as to not interfere with the trail or the public access to the shoreline. The current
29 accessibility to the shoreline from the site will remain the same. Any new pedestrian
30 pathways on site that are in the Shoreline Jurisdiction will be required to meet all
31 development standards described in SMC 17E.060 Shoreline Regulations.

32 *D.3. The cumulative impact of several additional conditional use permits on the shoreline in
33 the area will not preclude achieving the goals of the shoreline master program.*

34 Other Conditional Use Permits in the general vicinity, work together to improve the
35 Spokane River shoreline experience and implement the goals and policies outlined in the
36 SMP. The development in the area that is in the Shoreline Jurisdiction has been built out for

1 decades, the most recent of which is the Iron Bridge development (located across the river, to
2 the southeast).

3 *D.4. The proposed use of the site and design of the project is compatible with other authorized*
4 *uses within the area and with the uses planned for the area under the comprehensive plan*
5 *and the shoreline master program.*

6 The land use designation for the subject property is Residential 15-30. A majority of
7 the surrounding uses include residential and uses related to Gonzaga University. The
8 Institutional design standards will apply to the proposed development so as to maintain
9 compatibility to the neighboring residential properties. The proposal will also be required to
10 meet all design and development standards listed under Chapter 17E.060 Shoreline
11 Regulations of the SMC. Site design shall reflect nationally recognized Best Management
12 Practices with respect to paving, erosion control, infiltration and filtration, retention and
13 detention, and surface water quality (SMC 17E.060.810).

14 *D.5. The proposed use will cause no significant adverse effects to the shoreline environment in*
15 *which it is to be located, and the public interest in enjoying the physical and visual access*
16 *suffers no substantial detrimental effect.*

17 The proposed development does not change the public access to the Centennial Trail
18 or the Spokane River. The proposed new structure will also provide views of the Spokane
19 River, with open space adjacent to the trail. There shall be no net loss of vegetative cover
20 within the shoreline jurisdiction. The proposed use will not impede the public's physical and
21 visual access to the shoreline.

22 Any finding of fact above that is a conclusion of law is deemed a conclusion of law.
23 Any conclusion of law above that is a finding of fact is deemed a finding of fact.

24 III. DECISION

Based on the Findings and Conclusions above, the application for a SCUP to construct
a new 52,000 square foot child development center for the Spokane Guilds' School and
Neuromuscular Center partially located in the Shoreline Jurisdiction, is hereby approved,
subject to compliance with the conditions specified below.

Any conditions of approval of public agencies that have been added or significantly
altered by the Examiner are *italicized*. This approval does not waive the applicant's
obligation to comply with all other requirements of other public agencies with jurisdiction
over land development.

1 **I. Conditions of Approval:**

- 2 1. The proposed development shall comply with all applicable codes and requirements
3 including shoreline regulations, stormwater regulations, public access, building height,
4 bulk, setbacks, and site coverage.
- 5 2. The site shall be developed in substantial compliance with the plans submitted with the
6 application, SEPA, as well as comments received on the project from City Departments
7 and outside agencies.
- 8 3. *Pursuant to the Shoreline Master Program, SMC 17E.060 and SMC 17E.020, the
9 proposed development shall result in no net loss of shoreline ecological functions. Pursuant
10 to Section 17E.060.220 the applicant shall engage in the restoration, rehabilitation, or
11 enhancement of the shoreline environment in order to offset impacts resulting from the
12 proposed development.*
- 13 4. *The applicant shall hold a Recommendation Meeting with the Design Review Board
14 (DRB) and receive the written recommendation prior to submittal of any site development
15 permits.*
- 16 5. *Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric
17 archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a
18 permit from the Washington State Department of Archaeology & Historic Preservation
19 before excavating, removing or altering Native American human remains or
20 archaeological resources in Washington. Consistent with the request from the Spokane
21 Tribe of Indians, close monitoring of ground disturbance at the site of the proposed
22 development shall be made. If any artifacts or human remains are found upon excavation
23 the work in the immediate area shall cease, and the Spokane Tribe of Indians and the
24 Planning & Development Department shall be notified immediately.*
6. *The Applicant shall prepare and maintain an inadvertent discovery plan relative to any
historic or prehistoric archeological artifacts discovered at the site.*
7. *A Good Faith Asbestos Survey shall be prepared and provided to the Planning and
Development Department prior to application for demolition permits at the site.*
8. *A Stormwater Pollution Prevention Plan including erosion and sediment control measures
shall be prepared by a qualified individual or entity and shall be implemented prior to
any clearing, grading, or construction at the site.*
9. *If one acre or more of total land area will be disturbed at the site, and if there will be a
discharge of stormwater to a surface water or storm sewer, application must be made for*

1 *coverage under Department of Ecology's Baseline General Permit for Stormwater*
2 *Discharge Associated with Construction Activities must be made.*

- 3 10. The applicant shall adhere to any additional performance and development standards
4 documented in comments from agencies regarding this proposed development, or required
5 by City of Spokane, Spokane County, Washington State, and/or any Federal agency.
6 11. Prior to the issuance of any building permits or occupancy permits, the Applicant shall
7 submit evidence to the Planning & Development Department that the property owner has
8 signed and caused the following statement to be recorded with the Spokane County
9 Auditor's Office.

COVENANT

7 Development of this property is subject to certain conditions on file with the
8 City of Spokane Planning Department and the Office of the City of Spokane
9 Hearing Examiner. The property may not be developed except in
10 accordance with these conditions. A copy of these conditions is attached to
11 this Covenant.

11 This statement shall be identified as a Covenant running with the land. The owner's
12 signature shall be notarized.

- 12 12. This approval is subject to the above-stated conditions. Acceptance of this approval by
13 the Applicant indicates the Applicants acknowledgment that these conditions are
14 reasonable and the Applicant agrees to comply with them. The filing of the above
15 required covenant constitutes the Applicant's written agreement to comply with all
16 conditions of approval. The property may not be developed except in accordance with
17 these conditions and failure to comply with them may result in the revocation of this
18 approval.

17 DATED this 5th day of March, 2019

18 CITY OF SPOKANE HEARING EXAMINER
19 PRO TEM

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21 David W. Hubert, WSBA #16488

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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.

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.