No. 304175

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

FAMILIES OF MANITO, ANN BERGEMAN, TODD STECHER, and SADIE LAKE,

Respondents/Cross-Appellants,

v.

CITY OF SPOKANE and ST. MARK'S LUTHERAN CHURCH

Appellants/Cross-Respondents.

RESPONSE/OPENING CROSS-APPEAL BRIEF

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A. INTRODUCTION

This case involves the review of a decision of the Spokane County Superior Court finding that the City of Spokane failed to follow its own Municipal Code in the issuance of a Conditional Use Permit for the development of a new surface parking lot in the middle of a residential neighborhood on lots formerly occupied by homes.

In approving the proposal, the City staff and the City Hearing Examiner committed a number of procedural and substantive errors warranting reversal of this matter. First, the Hearing Examiner improperly allowed amendment of the proposal application, literally in the middle of the hearing in this matter. This denied the public an opportunity to comment on the changes. Second, the City staff and the Hearing Examiner relied upon an incorrect definition of the term "main assembly area," which, in turn, justified an increased number of parking spots. Third, the decision approving the application of the parking lot was made by City staff, rather than the planning director, as explicitly required by the Municipal Code. This afforded the proponent of the parking lot, St. Mark's Lutheran Church, assistance in developing the proposal and denied the public an opportunity to have the decision made in an impartial, quasi-judicial manner.

All these errors, individually or cumulatively, support the decision of the Superior Court reversing the City's decision approving the parking lot application. All these errors demonstrate the City's failure to seriously consider its responsibilities to the community to follow its own procedures set forth in the Municipal Code. Accordingly and for the reasons set forth below including the additional argument presented as a cross-appeal, Respondents/Cross-Appellants request that this Court affirm the decision reversing the City's action.

B. CROSS APPELLANTS' ASSIGNMENT OF ERROR

Respondents/Cross-Appellants adopt the Assignments of Error presented by the Appellants/Cross-Respondents in the opening briefs with one additional Assignment of Error.

The Superior Court erred in not reversing the determination of the City of Spokane Hearing Examiner in finding:

1. That it was proper for a City Planner, as opposed to the Planning Director, to make a decision in issuing a Type II land use permit in contradiction to the clear language of the City Code.

C. STATEMENT OF ISSUES

1. The Spokane Municipal Code explicitly requires the Planning Director to issue the decision for a Type II permit application, rather than City Planner, as occurred here.

D. STATEMENT OF THE FACTS

On April 5, 2010, Appellant/Cross-Respondent, St. Mark's Lutheran Church ("St. Mark's") submitted an application ("Application" or "CUP Application") to the City of Spokane for a Conditional Use Permit to construct a new parking area adjacent to the Applicant's existing parking area. AR[1] 179. The Application consists of developing new and relocating existing surface parking for St. Mark's onto two parcels (Nos. 35293.1111 and 35293.1112) which previously contained two single-family homes ("Subject Property"). AR 178-86. The original Application proposed the addition of eight[2] parking spaces to the existing St. Mark's parking lot capacity for a total of approximately 96 spaces. AR 77, 187.

Through a boundary line adjustment, the two single-family lots on 25th Avenue were incorporated into St Mark's previously existing and separate lot on 24th Avenue. AR 1207-09. The Subject Property is adjacent (and has been incorporated into) to the existing St. Mark's parking lot, which contains approximately 89 parking spaces. The Subject Properties are zoned residential single family ("RSF") and the surrounding sides of the proposal area are zoned either RSF or residential multi-family.

---

[1] "AR" refers to the Administrative Record in this matter.

[2] The Application also indicated the proposal was only for six additional parking spaces but this seems to be irrelevant in light of the new site plan submitted at the September 29, 2009, hearing. AR 190.

AR 179.

The City of Spokane, pursuant to the Spokane Municipal Code ("SMC" or "Municipal Code") Chapter 17G.060, reviewed the Application and on May 20, 2010, published and mailed notice of the same. AR 179, 272. On June 21, 2009, Dave Compton, City Planner, made a Type II permit decision ("Staff Decision") recommending approval of the Application with conditions. AR 178-186. No action was taken at any time by the Planning Director approving or reviewing this Application.

The Staff Decision provided, in summary, that St. Mark's for both the existing and new parking area would be limited to a total of 91 spaces based upon the square footage of the "main assembly area." AR 181, 185. The Staff Decision classified the "main assembly area" for this proposal as both the Sanctuary and Fellowship Hall of St. Mark's – two separate and unattached areas . AR 181, 390. Witnesses testified that the Fellowship Hall and Sanctuary are not used at the same time. *See, e.g.,* AR 30.

David B. Compton, City Planner, processed the Application and also made the Staff Decision, which was the subject of an open record appeal hearing before the City of Spokane Hearing Examiner. AR 75. Mr. Compton communicated with Mr. Thiel, St. Mark's agent, on numerous occasions to discuss the application. AR 72, 393-395.

Respondents/Cross-Appellants appealed the Staff Decision to the City of Spokane Hearing Examiner. AR 28. St. Mark's also appealed the Staff Decision to the Hearing Examiner and included a request that it be allowed to expand its parking to 102 total parking spaces. AR 28. After reaching a compromise on the measurement of the "main assembly area," the City determined that a total of 101 spaces would be allowed. AR 28.

The Hearing Examiner held a hearing on September 1, 2009, with the hearing continued on September 29, 2009. AR 28. At the hearing on September 29, 2009, a new site plan was introduced by St Mark's, which made substantial changes to the original site plan. AR 1181. The revised proposal was not a result of action or modification by the Hearing Examiner.

On November 11, 2010, the Hearing Examiner issued his decision ("Hearing Examiner Decision") affirming the decision of the City Planner. AR 25-33.

In part, the Hearing Examiner found that the "main assembly area" included the sanctuary and choir area as well as the Fellowship Hall. AR 31. Based on the testimony presented, since the Fellowship Hall and Sanctuary are occasionally used simultaneously, the Hearing Examiner determined it was proper to include the Fellowship Hall within the definition of "main assembly area." AR 31.

Ultimately, the Hearing Examiner allowed the expansion of the St. Mark's parking lot onto the Subject Property to include development of 102 parking spaces, and must be developed in accordance with the new site plan submitted at the appeal hearing on September 29, 2010. AR 32. Respondents/Cross-Appellants Families of Manito, Ann Bergeman, Todd Stecher, and Sadie Lake filed a timely appeal of the Hearing Examiner's Decision. CP 1-22.

After extensive briefing and oral argument, Spokane County Superior Court Judge Kathleen M. O'Connor reversed the Hearing Examiner Decision finding, in part, that the "Hearing Examiner engaged in unlawful procedure and/or failed to follow a prescribed process that was not harmless by modifying the decision being appealed during the pendency of the hearing" and that the "Hearing Examiner's decision that the Fellowship Hall … constituted part of the Church's main assembly area as provided for in … the Spokane Municipal Code was not supported by substantial evidence and was a clearly erroneous application of the law to the facts." CP 159. Judge O'Connor denied Respondents/Cross-Appellants' other grounds for reversal, including claims regarding improper decision-making process. *Id.* Appellants/Cross-Respondents' request for reconsideration was denied, CP 197-199, and appeals to this Court were filed.

E. ARGUMENT IN RESPONSE TO OPENING BRIEF

1. APPELLANTS/CROSS-RESPONDENTS MET THEIR BURDEN OF DEMONSTRATING THAT THE CITY'S ACTIONS WERE IMPROPER.

The Land Use Petition Act (LUPA), RCW 36.70C.130, sets forth the standard of review that this Court must apply in its review of the Staff Decision to approve the parking lot, based upon review of the administrative record created before the Hearing Examiner. *HJS Dev., Inc. v. Pierce County ex rel. Department of Planning and Land Services*, 148 Wn.2d 451, 467, 61 P.3d. 1141 (2003).

The City's decision must be reversed if:

> (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow prescribed process, unless the error was harmless;
>
> (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
>
> (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
>
> (d) The land use decision is a clearly erroneous application of the law to the facts; . . .

RCW 36.70C.130(1).

When the Court is reviewing a question of law, the standard is *de*

novo review. RCW 36.70C.130(1)(b). For example, the City's interpretation of provisions of the Municipal Code, being a question of law, would be reviewed under the *de novo* standard. *Milestone Homes, Inc. v. City of Bonney Lake*, 145 Wn. App. 118, 126, 186 P.3d 357 (2008). Appellants/Cross-Respondents argue that this Court must give deference to the City's interpretation of the Municipal Code, however courts grant "such deference as is due the construction of a law by a local jurisdiction with expertise," so long as that interpretation is not contrary to the code's plain language. RCW 36.70C.130(1)(b); *see Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 587, 90 P.3d 659 (2004). As discussed below, Appellants/Cross-Respondents urge an interpretation that is contrary to the plain language of the Municipal Code.

When the Court is reviewing an application of facts to the law, the "clearly erroneous" standard applies. RCW 36.70C.130(1)(c); *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006). Even if some evidence supports the City's decision, a decision is clearly erroneous when the reviewing Court is left with a definite and firm conviction that a mistake has been committed. *Norway Hill Preservation and Protection Association v. King County Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976). The "clearly erroneous" standard allows the Court broader discretion than the often used "arbitrary and capricious" standard.

Id. Review under the "clearly erroneous" standard also requires the Court to consider the public policy of the laws that authorize the decision. Thus, consideration of public policy is part of the review.

Where the Court considers the credibility of findings of fact only, the standard of review is "substantial evidence." RCW 36.70C.130(1)(c); *Thornton Creek Legal Defense Fund v. City of Seattle*, 113 Wn. App. 34, 61, 52 P.3d 522 (2002). "Substantial evidence" is a sufficient quantity of evidence to persuade a fair minded person of the truth or correctness of the determination of fact. *Id.*

As discussed below, the Superior Court correctly reversed the decision of the City. The record indicates that the City's decision was not supported by the record, was an erroneous interpretation of the law, and application of the law to the facts.

2. THE HEARINGS EXAMINER VIOLATED THE REQUIREMENTS OF THE MUNCIPAL CODE BY ALLOWING AMENDMENT OF THE APPLICATION DURING THE PENDENCY OF THE HEARING.

The Superior Court correctly found that the Hearing Examiner violated procedures set forth in the Municipal Code, SMC 17G.060, when he improperly allowed St. Mark's to amend its Application at the open record hearing with changes that constituted substantial modifications to the original application.

The Spokane Municipal Code governs the process for modification of an application, stating:

> A. Proposed modifications to an application, which the department has previously found to be complete, will be treated as follows:
>
> ...
>
> 2. *If the applicant proposes substantial modifications to an application, as determined by the department, the application may be considered a new application.* The new application shall conform to the requirements of all statutes and ordinances in effect at the time the new application is submitted. A substantial modification may include but is not limited to the following:
>
> a. Change in use,
> b. Increase in density,
> c. Increase in site area; or
> d. Changes that increase or significantly modify the traffic pattern for the proposed development.

SMC 17G.060.230 (emphasis added).

St. Mark's revised Application substantially modified the original by increasing the amount of parking spaces from 25 to 31, adding 6 additional parking spaces. AR 129. The revised Application reconfigured the placement of parking spaces as well, which placed three parking spaces five feet from the fence of one of the Respondents/Cross-Appellants. AR 124, 129. The revised Application also changed the path

of traffic within the parking lot; instead of a direct route to 25th Avenue through the parking lot, vehicles now take multiple turns within the parking lot before reaching the egress onto 25th Avenue. AR 124. Additionally, the revised Application changed the location of the drainage swales, altered the number of trees to be cut and proposed different landscaping. AR 124-25. Therefore, these changes significantly modify St. Mark's original Application and were correctly determined by the Superior Court to constitute a new Application. This failure to comply with the requirements of the Municipal Code denied the public notice and an opportunity to comment on the changed application in compliance with SMC Chapter 17G.060.

Appellants/Cross-Respondents argue that the Hearing Examiner can modify an Application, however, that is simply not what happened in this case. The difference is that the proposal was <u>developed by the St. Mark's prior to the completion of the Hearing</u> and was not the result of a decision of the Hearing Examiner modifying the proposal as contemplated by SMC. Testimony in the record from St. Mark's representatives supports this:

> <u>Chase:</u> In the initial request you were talking about placing eight parking spots on this new lot. **Why is St. Mark's now seeking to place more spaces on the new lot?**
>
> ...

> Chase: Is St. Mark's willing to redesign the parking lot along the lines you've described? And, if so, under what conditions?
>
> Thiel: Well, we are. We are willing to submit this **as a revised plan,** but we are not willing to go through additional study elements as we've described and a new application with a new public hearing, et cetera.
>
> ...
>
> Schwartz: Mr. Thiel, why did you decide all of a sudden that 31 spaces now should be developed down on this property as opposed to 25 and all the other numbers we saw on the applications?
>
> Thiel: Our application was based on a total of 93 spaces, which include 68 spaces in the restriped main lot and 25 new spaces in this area. The City now has allowed that we can have 101 total spaces, so in order to capture some of that additional allowance, and this new layout allows us to park more cars here, we can then approach the 101 allowed by the City under the Planning Director's decision.

AR 159-165 (emphasis added) (discussion of revised parking lot plan submitted at the hearing).

The code gives the Hearing Examiner authority to modify the "*decision* being appealed," not to allow modifications to the application during a hearing without giving parties notice and an opportunity to comment. To the contrary, SMC 17G.060.230 provides that substantial modifications to an application create a new application. The modifications made by St. Mark's during the open record hearing

constitute substantial modifications pursuant to SMC 17G.060.230.

Lastly, the Hearing Examiner's interpretation of the Municipal Code is not entitled to deference in this situation. Courts grant "such deference as is due the construction of a law by a local jurisdiction with expertise," so long as that interpretation is not contrary to the code's plain language. RCW 36.70C.130(1)(b); *see Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 587, 90 P.3d 659 (2004). Here, the Hearing Examiner's interpretation is contrary to the plain language of the Municipal Code The Superior Court's decision is well founded, consistent with the law, and should be affirmed.

3. THE CITY ERRED IN INCLUDING A SEPARATE FELLOWSHIP HALL AS PART OF ST. MARK'S MAIN ASSEMBLY AREA.

The Superior Court was also correct in determining that the Hearing Examiner Decision was a clearly erroneous application of the law to the facts and not supported by substantial evidence with respect to the inclusion of the St. Mark's Fellowship Hall within the definition of "main assembly areas." AR 30-31. By including the Fellowship Hall in the definition of "main assembly area," the Hearing Examiner erroneously concluded that the Church was entitled to 102 parking spaces. However, the Fellowship Hall is a separate room that is recognized by definition to be an area for social gathering, not worship. It is further not the "main"

area for assembly – clearly not meeting the requirements of the City code.

One criterion for a CUP Type II application, such as that at issue in this matter, is that the proposal be "allowed under the provisions of the land use codes." SMC 17G.060.170. The applicable standards for parking and loading states that the maximum allowable parking for religious institutions is "1 per 60 sq. ft of *main assembly area*." SMC Table 17C.230-2 (emphasis added). At issue in this case is what constitutes the "main assembly area."

Unfortunately, this term is not defined in the Municipal Code. In interpreting the Municipal Code, words are to be given their "common and ordinary meaning." SMC 01.02.010(A)(5). Moreover, when a statutory term is undefined, the words of a statute are given their ordinary meaning, and the court may look to a dictionary for such meaning. *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131 (2010). Because the Municipal Code does not define "main assembly hall" it is appropriate to refer to the dictionary.

Breaking the phrase down, Merriam-Webster defines "main" as "chief, principal."[3] Similarly, Dictionary.com defines "main" as "chief in size, extent, or importance; principal; leading."[4] Merriam-Webster defines

[3] *See* http: www.merriam-webster.com/dictionary/main.
[4] *See* http: dictionary.reference.com/browse/main.

"assembly" as "a company of persons gathered for … worship."[5]

Using these definitions, it is apparent that the Hearing Examiner erred in including the Fellowship Hall as within the "main assembly area." AR 30-31. The Hearing Examiner reasoned that the Fellowship Hall should be part of the parking calculation because "sometimes" it is used simultaneously with the sanctuary and choir area and therefore the Fellowship Hall should not be excluded from the "main assembly area." AR 31. The fact that the Fellowship Hall is only used "sometimes" at the same time as the sanctuary reflects that the Fellowship Hall is not the *main* assembly area.

Relevant to the above discussion is the definition of a "fellowship hall." A recognized internet resource "Wikipedia" defines fellowship hall as follows[6]:

> A fellowship hall is a large room in a church building where certain activities in a church building are done, such as certain dinners, breakfasts, meetings, workshops, etc. It gets its name from the fact that the people there at the church building are giving fellowship.
>
> Many fellowship halls are multipurpose rooms and contain recreational facilities such as a basketball court or indoor soccer field.
>
> These facilities are also used for wedding receptions, other family functions for church members and certain community events.

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[5] *See* http://www.merriam-webster.com/dictionary/assembly.
[6] *See* http://en.wikipedia.org/wiki/Fellowship_hall.

In order for the Fellowship Hall to be part of the main assembly area, it would have to be the leading area for assembly. It is not. A pastor at St. Mark's testified that the Fellowship Hall is used at times for the occasional overflow or for the youth choir. AR 151. However, if the Fellowship Hall was the main area for assembly, it would not be relegated as the overflow room. Even using the Fellowship Hall sometimes concurrently with the sanctuary still does not make it the main area. As the pastor stated, the main area for assembly is the sanctuary. AR 155. The sanctuary and choir area is used all the time and therefore it is the sole main assembly area.

Not only is the Fellowship Hall not the main assembly area, it is also not an "assembly" area. The record contains testimony of a former member of the church, who attended St. Mark's until November 2009, who stated that the activities in the Fellowship Hall were separate from those in the sanctuary. AR 68-69. She indicated that you cannot see the Sanctuary from inside the Fellowship Hall and that, during services, it is used as a practice area for the youth choir. *Id.* During her attendance at the Church, the Fellowship Hall was not used in conjunction with, or as part of, the worship services in the Sanctuary. *Id.*

The purpose of the Fellowship Hall continues to be for evening

events, Sunday school, adult classes, and social gatherings. AR 45, 48. People do not gather in the Fellowship Hall for the purposes of worship, they gather in the sanctuary and choir area.

A review of the Church itself indicates that there are a number of separations between the "main assembly area" being the sanctuary and the fellowship hall, including two sets of doors, a hallway, and an area identified as a library. AR 1179. Moreover, the Municipal Code does not contemplate a number of assembly areas (plural), but a single assembly area.

There is no doubt that there has been confusion between the City and St. Mark's on this term. For example, the predevelopment conference notes suggest the "main assembly areas of the Sanctuary and Fellowship Hall" should be considered (for the parking calculation).[7] AR 208. Second, the City wrote the following:

> The two areas at this point that can be counted are the Sanctuary and Fellowship Hall.

AR 1604. Likewise, City staff scrambled to answer a question as to what the definition of a "main assembly area" really was, AR 1627, deciding that a "googled Webster" definition would suffice. *Id.*

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[7] Note use of the plural with respect to the word "areas."

In support of the plain language construction, previous representations by St. Mark's are important. When the Fellowship Hall was built, it was intended for education and social gatherings, not for worship services. AR 350, 366. In 1986, St. Mark's added the Fellowship Hall. *See* AR 1639-1665. In the application for the Special Permit, Applicant represented the following:

> The addition will provide more Sunday school classroom space and a Fellowship Hall area for social gatherings.

AR 1640. In response to concerns raised by City Planning, the Church wrote:

> In response to your request for more information, we have listed below most of the main duties of the Church:
>
> ...
>
> Please note that the time for Sunday school and adult class is set to be between worship services.
>
> 3. The new Fellowship Hall will not be occupied when worship services are taking place.

AR 1647 (emphasis added). Following this application, the staff report confirmed the use of the Fellowship Hall "for social gatherings." AR 1651. Finally, the Spokane Hearing Examiner, in the Findings, Conclusions and Decisions, wrote:

> The proposed use will be adequate so long as the Church Sanctuary and Fellowship Hall are not used contemporaneously. The Applicant has indicated that they will not.

AR 1657 (emphasis added).

It is clear that the Fellowship Hall is a large room for various activities, but it is not the "main" area for assembly. By definition, the word "assembly" relates to an area of worship. Thus, the City definition of "main assembly area" should only refer to St. Mark's Sanctuary and Choir area. By calculating the square footages for these areas, it is clear that St. Mark's is not entitled to additional surface parking.

Recent actions of the City demonstrate its intent to limit the scope of the definition of "main assembly area," as opposed to the expansive definition urged by Appellants/Cross-Respondents. Recent amendments to the Municipal Code clarified the intent of the City Council to limit the scope of the definition of "main assembly area." The amendment, which became effective on June 3, 2011, defines the term as, "The principal room for persons gathering for religious services." SMC 17A.020.130(A).

Washington courts are clear that subsequent amendments to the law may aid in determining legislative intent. *In re Marriage of Blickenstaff*, 71 Wash.App. 489, 859 P.2d 646 (1993). In *Ravsten v. Department of Labor & Indus.*, 108 Wash.2d 143, 150-51, 736 P.2d 265

(1987), the court stated:

> An original act and an amendment should be read and construed as one law passed at the same time.... Where the statute has not been interpreted to mean something different and where the original enactment was ambiguous to the point that it generated dispute as to what the Legislature intended, a subsequent amendment can enlighten courts as to a statute's original meaning.

Lastly, Appellants/Cross-Respondents argue that the Hearing Examiner's determination is entitled to deference and the Court should not substitute its judgment. However, factual findings are reviewed to determine whether or not the "decision is ... supported by evidence that is substantial when viewed in light of the whole record before the court." RCW 36.70C.130(1)(c); *Biermann v. City of Spokane*, 90 Wn.App. 816, 821, 960 P.2d 434 (1998). Here, the facts indicate that the Fellowship Hall was only occasionally used and did not constitute the main assembly area.

Despite the past representation, past decisions, plain language definition of the term, and contrary to the record evidence, the City erred in determining that the Fellowship Hall should be included in the parking calculation. The record supports that the Fellowship Hall is not used for worship purposes and therefore does not constitute an "assembly" hall. Accordingly, the Superior Court's decision that the Hearing Examiner should be reversed is correct.

F. ARGUMENT SUPPORTING CROSS-APPEAL

1. THE CITY IGNORED THE UNAMBIGUOUS REQUIREMENTS OF THE MUNICIPAL CODE BY ALLOWING CITY STAFF RATHER THAN THE PLANNING DIRECTOR TO APPROVE THE APPLICATION.

Respondents/Cross-Appellants cross-appeal the decision of the Superior Court that the City was not improper in allowing a biased staff person, rather than the planning director to approve the Application for development of the parking lot. The City's action allowing the staff to make such a decision amounted to an erroneous interpretation of the law and a failure to lawfully follow procedures and process prescribed by the Municipal Code.

The Municipal Code specifically provides that a decision on a Type II application be made by the Planning Director. *See* Table 17G.060-3. Such a decision is "a quasi-judicial decision of a department director." SMC 17A.020.200"T" Definitions, Section K; AR 793 (City attorney indicated that Type II decision is made by Planning Director).

In this instance, the record indicates that the City appeared confused as to whom the decision would be made by, ultimately leaving the decision for staff, rather than the Planning Director, to make the decision in contradiction to the process and procedures set forth in the Municipal Code.

The Staff Decision begins with the statement, "Staff recommends approval of this application with conditions." AR 178. The record indicates that the staff recognized the quandary of its situation and the inconsistency of its action with the Municipal Code, recommending that that the language be amended, stating, "The Planning Director approves of this application with conditions." AR 1236-37. Ultimately, the decision was signed by David B. Compton, City Planner, and not the Planning Director, as required by the City's code. AR 186. In fact, there is no evidence in the record that the Planning Director ever reviewed the Application or indicated any level of approval.

The failure to follow proper procedures and process denied the fair and equal opportunity for Respondents/Cross-Appellants to participate in the permitting process. As recognized by the Municipal Code, this decision was required to be "a quasi-judicial decision of a department director." SMC 17A.020.200"T" Definitions, Section K A quasi-judicial decision is characterized by fairness, objectivity and neutrality with respect to the St. Mark's and interested parties, including the Respondents/Cross-Appellants in this matter. *Washington Med. Disciplinary Bd. v. Johnston*, 99 Wash.2d 466, 478, 663 P.2d 457 (1983).

Here, the record demonstrates that the staff decision maker, Mr. Compton, had extensive contact with St. Mark's, including numerous

private meetings, email, and other contacts which are part of the public record. This activity can hardly be characterized as a fair, neutral quasi-judicial decision. The record is clear that Mr. Compton provided extensive assistance to St. Mark's in the permitting process -- many emails in the record indicate that Mr. Compton provided such assistance, rather than acted as an impartial decision maker. *See, e.g.,* AR 395, 787-88, 797-801, 819-823, 826-828, 910-914. Information was freely exchanged between the City and St. Mark's. *Id.* Documents in the record indicate that meetings between St. Mark's and Mr. Compton occurred with the express purpose of discussing the project. *See, e.g.,* AR 393-94. Moreover, emails from Respondents/Cross-Appellants were forwarded to representatives of St. Mark's. *See, e.g.,* AR 1400-01, 1406-08.

To the contrary, Respondents/Cross-Appellants were not afforded returned calls and were informed to monitor the progress via the internet. AR 1423. Efforts to meet were met with questions and required attendance of the City attorney. AR 1398-99. Rather than sharing documents and information, Respondents/Cross-Appellants were required to file public records requests to obtain information. *See, e.g.,* AR 917, 919.

By failing to following the requirements of the Municipal Code requiring the planning director to make the decision on the Application,

Respondents/Cross-Appellants were not given an opportunity for fair and equal participation in the Type II permit process. The nature of the land use permitting process, such as that prescribed by the Municipal Code, requires confidence that the processes bringing about such regulation are fair and equitable. *Chrobuck v. Snohomish Cy.*, 78 Wash.2d 858, 480 P.2d 489 (1971); *Hayden v. Port Townsend*, 28 Wash.App. 192, 622 P.2d 1291 (1981). The remedy for an action adopted in violation of the appearance of fairness doctrine is to void the ordinance. *Swift v. Island Cy.*, 87 Wash.2d 348, 552 P.2d 175 (1976). The manner, in which the City made the decision, denied Respondents/Cross-Appellants of their opportunity to be heard before the quasi-judicial decision maker and should be deemed to be void.

In short, it is apparent that Mr. Compton was not acting in an impartial matter – he provided assistance to St. Mark's throughout the process in getting the permit adopted, had personal meetings, and freely shared information. While this confusion may have stemmed from the fact that the Planning Director ultimately did not make the decision, the result was that Mr. Compton was not acting in an unbiased or objective manner, warranting reversal of this decision.

G. CONCLUSION

For the reasons set forth above, Respondents/Cross-Appellants request that this Court affirm the decision of the Spokane County Superior Court finding that the City's actions amending the Application during the hearing and determination that the Fellowship Hall met the definition of a "main assembly area" was clearly erroneous and not supported by substantial evidence. Moreover, Respondents/Cross-Appellants request that this Court reverse the findings of the Superior Court and find that the failure of the City to follow its Municipal Code in allowing the Application to be approved by staff rather than the planning director amounted to an erroneous interpretation of the law and a failure to lawfully follow prescribed procedures and process.

DATED this 14th day of March, 2012.

Respectfully submitted,

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APPENDIX

Spokane Municipal Code Wednesday, March 14, 2012 - 12:52 PM

Title 01 General Provisions

Chapter 01.02 General Provisions

Section 01.02.010 Interpretation of Code

A. Subject to specific definitions and rules of construction as are variously provided in this code, words and phrases used in this code have meaning in accordance with the following rules:

1. Terms are defined so as to give effect to the obvious legislative intent.
2. Particular words are construed in context so as to give meaning to every word used and to achieve consistency within the entire context.
3. Technical terms and jargon have such special meanings as are generally understood by practitioners in the field from custom and usage.
4. Terms used in laws adopted by reference carry over their meanings in the laws adopted.
5. Words are given common and ordinary meaning.

B. The use of nouns and pronouns of the masculine gender is not intended to exclude corresponding words of the feminine gender. Gender, number, and tense are interchangeable.

Date Passed: Monday, January 22, 2007

Recodification ORD C33969 Section 1

Spokane Municipal Code Wednesday, March 14, 2012 - 12:53 PM

Title 17A Administration

Chapter 17A.020 Definitions

Section 17A.020.130 "M" Definitions

A. Main Assembly Area.
The principal room for persons gathering for religious services.

B. Maintenance.
Or "repair" means those usual activities required to prevent a decline, lapse, or cessation from a lawfully established condition or to restore the character, scope, size, and design of a serviceable area, structure, or land use to a state comparable to its previously authorized and undamaged condition. This does not include any activities that change the character, scope, or size of the original structure, facility, utility, or improved area beyond the original design.

C. Manufactured Home.

1. "Manufactured home" is a single-family dwelling unit constructed after June 15, 1976, built in accordance with department of housing and urban development Manufactured Home Construction and Safety Standards Act, which is a national, preemptive building code.
2. "Manufactured home accessory structure" is any attached or detached addition to a manufactured home, such as an awning, basement, carport, garage, porch, or storage structure, which is ordinarily appurtenant.

D. Manufactured Home Park.
Two or more manufactured homes or mobile homes used as dwelling units on a single parcel or lot.

E. Marquee Sign.
A sign incorporated into or attached to a marquee or permanent canopy.

F. Marsh.
A low, flat wetland area on which the vegetation consists mainly of herbaceous plants such as cattails, bulrushes, tules, sedges, skunk cabbage, or other hydrohytic plants. Shallow water usually stands on a marsh at least during part of the year.

G. Mean Annual Flow.
The average flow of a river or stream (measured in cubic feet per second) from measurements taken throughout the year. If available, flow data for the previous ten years should be used in determining mean annual flow.

H. Mining.
The extraction and removal of sand, gravel, minerals, or other naturally occurring material from the earth for economic use.

I. Minor Arterials.
A two- to four-lane facility which collects and distributes traffic from principal arterials to collector arterials and local access streets.

J. Mitigation – Mitigate.
An action which avoids a negative adverse impact and is reasonable and capable of being accomplished.

K. Mitigation – Mitigation Sequencing.
The use of any or all of the following actions listed in descending order of preference:

1. Avoiding the impact altogether by not taking a certain action or parts of an action.
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; or

6. Monitoring the impact and the compensation project and taking appropriate corrective measures.

Mitigation may include a combination of the above measures.

L. Mobile Home.
A factory-built dwelling built prior to June 15, 1976, to standards other than the housing and urban development code, and acceptable under applicable state codes in effect at the time of construction of introduction of the home into the state. Mobile homes have not been built since introduction of the housing and urban development Manufactured Home Construction and Safety Standards Act.

M. Mobile Home Park.
Any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

N. Modification to a Preliminary Plat, Short Plat, or Binding Site Plan.
A change, prior to recording, of an approved preliminary plat, preliminary short plat, or binding site plan that includes, but is not limited to, the addition of new lots or tracts, or a change of the boundaries or dimensions of lots or tracts.

O. Modular Home.
A single-family dwelling unit (which may be in the form of a factory-built or manufactured housing permit as well as a standard building permit) constructed in a factory in accordance with International Building Code and bearing the appropriate gold insignia indicating such compliance. The term includes "pre-fabricated," "panelized," and "factory-built" units.

P. Monitoring.
Periodic evaluation of a wetlands restoration, creation, or enhancement site or habitat management plan area to determine changes at the site, such as vegetation growth, hydrologic changes, soil development, and use of the site by birds and animals.

Q. Monument.
A physical survey monument as shown in the City's standard plans.

R. Monument Sign.
A freestanding sign where the base of the sign structure is on the ground or a maximum of twelve inches above the lowest point of the ground adjacent to the sign. The width of the top of the sign structure can be no more than one hundred twenty percent of the width of the base.

S. Multi-family Residential Building.
A common wall dwelling or apartment house that consists of three or more dwelling units.

T. Multiple Containment.
A means of spill or leak control involving a containment structure having one or more layers of material between the primary container and the environment.

1. Containment layers must be resistant to the material stored.

2. The volume within the containment system must be at least as large as the primary container.

3. Containment layers may be separated by an interstitial space.

U. Municipal Separate Storm Sewer System (MS4).
A conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of wastes, stormwater, or other wastes, including special districts under state law such as sewer district, flood control district, or drainage district, designated and approved management agency under section 208 of the Clean Water Act that discharges to water of the United States;

2. designed or used for collecting or conveying stormwater;

3. which is not a combined sewer; and

4. which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR (Code of Federal Regulation) 122.2.

V. MUTCD.
The U.S. department of transportation Manual on Uniform Traffic Control Devices.

Date Passed: Monday, April 25, 2011

ORD C34716 Section 10

Spokane Municipal Code Wednesday, March 14, 2012 - 12:54 PM

Title 17A Administration

Chapter 17A.020 Definitions

Section 17A.020.200 "T" Definitions

A. Temporary Erosion and Sediment Control Measures.
Erosion and sediment control devices used to provide temporary stabilization of a site, usually during construction or ground disturbing activities, before permanent devices are installed.

B. Temporary Sign.
A sign placed on a structure or the ground for a specifically limited period of time as provided in SMC 17C.240.240(G).

C. Temporary Structure.
A structure approved for location on a lot by the department for a period not to exceed six months with the intent to remove such structure after the time period expires.

D. Tenant Space.
Portion of a structure occupied by a single commercial lease holder with its own public entrance from the exterior of the building or through a shared lobby, atrium, mall, or hallway and separated from other tenant spaces by walls.

E. Through Pedestrian Zone.
The portion of a sidewalk that is intended for pedestrian travel and is entirely free of permanent and temporary objects.

F. Tideland.
Land on the shore of marine water bodies between the line of ordinary high tide and the line of extreme low tide.

G. Total Maximum Daily Load (TMDL).
A calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point and non point sources. The calculation shall include a margin of safety to ensure that the water body can be used for the purposes the state has designated. The calculation shall also account for seasonable variation in water quality. Water quality standards are set by states, territories, and tribes. They identify the uses for each water body, for example, drinking water supply, contact recreation (swimming), and aquatic life support (fishing), and the scientific criteria to support that use. The Clean Water Act, section 303, establishes the water quality standards and TMDL programs.

H. Tower (Wireless Communication Support Tower).
Any structure that is designed and constructed specifically to support a wireless communication antenna array. Towers include self-supporting towers, guyed towers, a single pole structure (monopole), lattice tower, and other similar structures.

I. Tower Compound.
The area containing support tower and ground equipment. The fence surrounding the equipment is the outer extent of the compound.

J. Tower Height.
The vertical distance measured from the base of the tower structure at grade to the highest point of the structure including the antenna.

K. Tracking.
The deposition of sediment onto paved surfaces from the wheels of vehicles.

L. Tract.
A piece of land created and designated as part of a land division that is not a lot, lot of record or a public right-of-way. Tracts are created and designated for a specific purpose. Land uses within a tract are restricted to those uses consistent with the stated purpose as described on the plat, in maintenance agreements, or through conditions, covenants and restrictions (CC&Rs).

M. Traveled Way.
The area of street which is intended to carry vehicular traffic, including any shoulders.

N. Type I Application.
An application for a project permit that is subject to an administrative approval and is not categorically exempt from environmental review under chapter 43.21C RCW (SEPA) and the City of Spokane Environmental Ordinance chapter 17E.050 SMC, and does not require a public hearing. Type I applications are identified in Table 17G.060-1 in chapter 17G.060 SMC. These applications may include, but are not limited to, building permits and grading permits.

O. Type II Application.
An application for a project permit that is subject to a quasi-judicial decision of a department director, that may or may not be categorically exempt from chapter 43.21C RCW (SEPA), but does not require a public hearing. The Type II applications are identified in Table 17G.060-1 in chapter 17G.060 SMC. These applications may include, but are not limited to, short plats, binding site plans, or shoreline substantial development permits.

P. Type III Application.
An application for a project permit that is subject to a quasi-judicial decision of the hearing examiner that may or may not be categorically exempt from chapter 43.21C RCW (SEPA) and the City of Spokane Environmental Ordinance chapter 17E.050 SMC and requires a public hearing. Type III applications are identified in Table 17G.060-1 in chapter 17G.060 SMC. These applications may include, but are not limited to, rezones, conditional use permits, preliminary long plats, or shoreline conditional use permits.

Date Passed: Monday, June 21, 2010

ORD C34604 Section 17

Spokane Municipal Code Wednesday, March 14, 2012 - 12:51 PM

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Title 17C Land Use Standards

Chapter 17C.230 Parking and Loading

Section 17C.230.130 CC and Downtown Zone Parking Exceptions

A. Any new building or building addition with a floor area less than three thousand square feet shall have no parking requirement.

B. If different developments share parking the director may allow the total number of required spaces to be reduced by twenty percent. Sufficient factual data must be provided to substantiate that such an efficiency of use is possible and the applicant assumes the burden of proof. The director may require a shared parking agreement for the sharing of a parking area.

C. If uses with opposite operating hours share parking (e.g., a church and an office building), the total number of required stalls is calculated based on the use requiring the greatest amount of parking.

D. The director may approve ratios that are higher than the maximum or lower than the minimum if sufficient factual data is provided to indicate that a different amount is appropriate. The applicant assumes the burden of proof. Approval of parking above the maximum shall be conditioned upon increasing the amount of required landscaping by thirty percent.

E. If property owners and businesses within a center or corridor establish a parking management program with shared parking agreements, the director may reduce or waive parking requirements.

F. Existing legal nonconforming buildings that do not have adequate parking to meet the standards of this section are not required to provide off-street parking when remodeling which increases the amount of required parking occurs within the existing structure.

TABLE 17C.230-2

PARKING SPACES BY USE

(Refer to Table 17C.230-1 for Standards for Different Zoning Categories)

CU = Conditional Use

Use Categories	Specific Uses	Minimum Parking	Maximum Parking
Residential Categories			
Group Living		1 per 4 residents	None
Residential Household Living		1 per unit plus 1 per bedroom after 3 bedrooms, 1 per ADU; SROs are exempt	None
Commercial Categories			
Adult Business		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Commercial Outdoor Recreation		20 per acre of site	30 per acre of site
Commercial Parking		Not applicable	None
Drive-through Facility		Not applicable	None
Major Event		1 per 8 seats or per	1 per 5 seats or per

Entertainment		CU review	CU review
Office	General Office	1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
	Medical / Dental Office	1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Quick Vehicle Servicing		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Retail Sales and Service	Retail, Personal Service, Repair-oriented	1 per 330 sq. ft. of floor area	1 per 200 sq. ft. of floor area
	Restaurants and Bars	1 per 250 sq. ft. of floor area	1 per 60 sq. ft. of floor area
	Health Clubs, Gyms, Lodges, Meeting Rooms, and similar Continuous Entertainment such as Arcades and Bowling Alleys	1 per 330 sq. ft. of floor area	1 per 180 sq. ft. of floor area
	Temporary Lodging	1 per rentable room; for associated uses such as restaurants, see above	1.5 per rentable room; for associated uses such as restaurants, see above
	Theaters	1 per 4 seats or 1 per 6 feet of bench area	1 per 2.7 seats or 1 per 4 feet of bench area
Mini-storage Facilities		Same as Warehouse and Freight Movement	Same as Warehouse and Freight Movement
Vehicle Repair		1 per 750 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Industrial Categories			
Industrial Services, Railroad Yards, Wholesale Sales		1 per 1,000 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Manufacturing and Production		1 per 1,000 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Warehouse and Freight Movement		1 per 1,000 sq. ft. of floor area for the first 3,000 sq. ft. of floor area and then 1 per 3,500 sq. ft. of floor area thereafter	1 per 200 sq. ft. of floor area
Waste-related		Per CU review	Per CU review
Institutional Categories			
Basic Utilities		None	None

Colleges		1 per 600 sq. ft. of floor area exclusive of dormitories, plus 1 per 4 dorm rooms	1 per 200 sq. ft. of floor area exclusive of dormitories, plus 1 per 2.6 dorm rooms
Community Service		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Daycare		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Medical Centers		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Parks and Open Areas		Per CU review for active areas	Per Cu review for active areas
Religious Institutions		1 per 100 sq. ft. of main assembly area; or per CU review	1 per 60 sq. ft. of main assembly area
Schools	Grade, Elementary, Junior High	1 per classroom	2.5 per classroom
	High School	7 per classroom	10.5 per classroom
Other Categories			
Agriculture		None, or per CU review	None, or per CU review
Aviation and Surface Passenger Terminals		Per CU review	Per CU review
Detention Facilities		Per CU review	Per CU review
Essential Public Facilities		Per CU review	Per CU review
Wireless Communication Facilities		None, or per CU review	None, or per CU review
Rail Lines and Utility Corridors		None	None

Date Passed: Monday, May 9, 2011

ORD C34714 Section 1

Spokane Municipal Code Wednesday, March 14, 2012 - 12:57 PM

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Title 17G Administration and Procedures

Chapter 17G.060 Land Use Application Procedures

Section 17G.060.120 Public Notice – Types of Notice

A. Individual notice is given in writing by regular U.S. mail or by personal service.

1. Notice is given to:

a. all owners and taxpayers of record, as shown by the most recent Spokane County assessor's record, and occupants of addresses of property located within a four-hundred-foot radius of any portion of the boundary of the subject property, including any property that is contiguous and under the same or common ownership and control (RCW 36.70B.040(2)). The department may expand the mailing to include areas adjacent to the access easements and areas on the opposite side of rights-of-way, rivers and other physical features;

b. any person who has made a written request to receive such notice, including any registered neighborhood organization as defined in chapter 17A.020 SMC representing the surrounding area;

c. any agency with jurisdiction identified by the director.

2. Individual and newspaper notices must contain the following information:

a. Type I, II, and III project permit applications:

i. Location of the property sufficient to clearly locate the site.

ii. Description of the proposed action and required permits.

iii. Name, address, and office telephone number of the City official from whom additional information may be obtained.

iv. Applicant name and telephone number.

v. Statement that any person may submit written comments and appear at the public hearing, if applicable.

vi. A statement that comments will be received on environmental issues, any environmental documents related to the proposed action, the SEPA status, and the appeal deadline for SEPA.

vii. A statement that written comments and oral testimony at a hearing will be made a part of the record, if applicable.

viii. A statement, in bold type, that only the applicant, persons submitting written comments, and persons testifying at a hearing may appeal the decision.

ix. Date and time by which any written comments must be received on the notice of application; and

x. Date of the application and date of the notice of complete application.

b. In addition, for Type III project permit application:

i. Notice of community meeting: Date, time, and place of the meeting.

ii. Notice of public hearing: Date, time, and place of a public hearing.

B. Sign
Posted notice is given by installation of a sign on the site of the proposal adjacent to the most heavily traveled public street and located so as to be readable by the public. The director may require more than one sign if the site fronts on more than one arterial or contains more than three hundred feet of frontage on any street.

1. The posted notice sign must meet the following specifications:

   a. It measures a minimum of four feet by four feet, but sign size may be increased in order to contain all of the required information.

   b. It is constructed of material of sufficient weight and strength to withstand normal weather conditions.

   c. It is white with red lettering.

2. Posted notices must contain the following information:

   a. The first line of text on the sign in four-inch letters reads: "NOTICE OF COMMUNITY MEETING" or the applicable notice type.

   b. The second line of text on the sign in three-inch letters reads: "PROPOSED CONDITIONAL USE PERMIT, File #Z------ -CUP" or some other appropriate description of the proposed action.

   c. The third line of text on the sign in three-inch letters reads: "COMMUNITY MEETING ON/PUBLIC HEARING ON/COMMENTS DUE BY (date, time, and location)."

   d. The remaining lines of text, in three-inch letters, read as follows depending on the proposal:

TABLE 17G.060-2
CONTENT OF PUBLIC NOTICE

Application	Proposed Use	Proposed Zone	Proposed Standard	Project Name	Acreage	# of Lots
Type I	X					
Type II	X			X	X[1]	X[1]
Type III	X	X[2]	X[3]	X	X[1]	X[1]

[1] Preliminary plat, BSP, PUD, short plat
[2] Rezone
[3] For applications which modify a development standard

   e. The applicant (or agent) name and phone number, the SEPA status, and the deadline for appeal of the SEPA determination.

   f. The last line of text on the sign in three-inch letters reads: "FOR INFORMATION: (City contact telephone number)."

   g. The following figure illustrates a posted notice sign:

Example "A"

NOTICE OF PUBLIC HEARING
PROPOSED ZONE CHANGE, FILE #Z2003-01-ZC
PUBLIC HEARING ON: 1/1/2004 AT 9:00 A.M.
LOCATED: COUNCIL BRIEFING RM., CITY HALL
Proposed Zone: C1
Proposed Use: Warehouse

Applicant/Agent: John Doe, Phone (509) 999-0001
SEPA: DNS, appeal deadline 12/24/03
FOR INFORMATION: (509) 625-6300

Example "B"

NOTICE OF SEPA/APPLICATION
BUILDING PERMIT, FILE #B0300001
PUBLIC COMMENT DUE: 1/1/2004 AT 9:00 A.M.
Proposed Use: Commercial
Applicant/Agent: John Doe, Phone (509) 999-0001
SEPA: DNS, appeal deadline 12/24/03
FOR INFORMATION: (509) 625-6300

C. Posting.
Posting of the notice as a letter, identical in form and content to individual written notice, shall be posted at "official public notice posting locations," including:

1. the main City public library and the branch library within or nearest to the area subject to the pending action;
2. the space in City Hall officially designated for posting notices; and
3. any other public building or space that the city council formally designates as an official public notice posting location, including electronic locations.

D. Newspaper notice is published in a legal newspaper of general circulation. The contents of the newspaper notice are as prescribed in subsection (A)(2) of this section. Newspaper notices are published on the same day of two consecutive weeks, the first no later than the number of days specified for the particular application type specified in this chapter.

E. Other Notification.
The hearing examiner, with respect to permit applications for non-site specific issues, such as essential public facilities, may require or provide for such alternative or additional notice as deemed necessary and appropriate to serve the public interest. A notification plan may be required of the applicant by the hearing examiner indicating the form and time of notice appropriate to the scope and complexity of the proposed project.

TABLE 17G.060-3
COMMUNITY MEETING, PUBLIC NOTICE, REVIEW OFFICIAL, AND EXPIRATION FOR LAND USE PERMITS

Permit	Type	Community Meeting	Notice of Application	Notice of Public Hearing	Review Official	Hearing Required	City Council Review	Expiration of Permit[1]
Building and Code Enforcement								
Building Permit	I	No	Legal / Individual	No	Building Official	No	No	180 days
Grading Permit	I	No	Legal / Individual	No	Building Official	No	No	180 days
			Legal /		Building			

Demolition Permit	I	No	Individual	No	Official	No[2]	No	180 days
Planning Services – Current								
Binding Site Plan	II	No	Posted / Individual	No	Planning Director	No	No	5 years
Certificate of Compliance (CC)	III	Posted / Individual	Posted / Individual	Posted / Individual	Hearing Examiner	Yes	No	None
CC	II	No	Posted / Individual	No	Planning Director	No	No	None
Conditional Use Permit (CUP)	III	Posted / Individual	Posted / Individual	Posted / Individual	Hearing Examiner	Yes	No	3 years
CUP	II	No	Posted / Individual	No	Planning Director	No	No	3 years
Floodplain with SEPA	I	No	Posted / Individual	No	Planning Director	No	No	180 days
Floodplain Variance	III	Posted / Individual	Posted / Individual	Posted / Individual	Hearing Examiner	Yes	No	3 Years
Long Plat	III	Posted / Individual	Posted / Individual	Newspaper / Posted / Individual	Hearing Examiner	Yes	No	5 years
Plans-in-lieu	III	Posted / Individual	Posted / Individual	Posted / Individual	Hearing Examiner	Yes	No	3 years
Plans-in-lieu	II	No	Posted / Individual	No	Planning Director	No	No	3 years
PUD	III	Posted / Individual	Posted / Individual	Posted / Individual	Hearing Examiner	Yes	Yes	5 years[3]
Rezone	III	Posted / Individual	Posted / Individual	Posted / Individual	Hearing Examiner	Yes	Yes	3 years
Shoreline SDP	II	No	Posted / Individual	No	Planning Director	No	No	Must comply with WAC 173-27-090
Shoreline CUP	III	Posted / Individual	Posted / Individual	Posted / Individual	Hearing Examiner	Yes	No	Must comply with WAC 173-27-090
Shoreline Variance	III	Posted / Individual	Posted / Individual	Posted / Individual	Hearing Examiner	Yes	No	Must comply with WAC 173-27-090
Short Plat	II	No	Posted / Individual	No	Planning Director	No	No	5 years
Skywalk	III	Posted / Individual	Posted / Individual	Posted / Individual	Hearing Examiner	Yes	Yes	2 years
Variance	III	Posted / Individual	Posted / Individual	Posted / Individual	Hearing Examiner	Yes	No	3 years

[1] NOTE: Approval expires after the specified time if no permit to develop the project is issued by the City of Spokane or building permit expires without completion of the improvements.

[2] NOTE: Public Hearing is required if the structure is on the National Historic Register.

[3] NOTE: If a planned unit development is approved together with a preliminary plat, the expiration date for the planned unit development shall be the same as the expiration date of the preliminary plat.

Date Passed: Monday, May 9, 2011

ORD C34719 Section 13

Spokane Municipal Code Wednesday, March 14, 2012 - 12:50 PM

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Title 17G Administration and Procedures

Chapter 17G.060 Land Use Application Procedures

Section 17G.060.170 Decision Criteria

A. The purpose of the following sections is to establish the decision criteria for all permit types regardless of whether the decision is made by the director, hearing examiner, or city council, as applicable.

B. The burden is upon the applicant to present sufficient evidence relevant to the appropriate criteria in support of the application. The decision-maker must make affirmative findings of fact relative to each criterion or the application must be denied.

C. The following decision criteria shall be used for Type II and III permit applications:

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

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

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

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.

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 effects or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use.

D. The following Type II and III applications have decision criteria listed in this subsection that are required to be met in addition to the provisions of subsection (C) of this section:

1. Shoreline Substantial Development Permit.

a. Consistency with the map, goals, and policies of the shoreline master program; and

b. Consistency with chapter 90.58 RCW (Shoreline Management Act) and chapter 173-27 WAC (Permits for Development on Shorelines of the State).

2. Shoreline Conditional Use Permit.
The purpose of a shoreline conditional use permit is to provide a system within the shoreline master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the shoreline master program.

a. Uses classified or set forth in these shoreline regulations in Table 17E.060-4 as conditional uses, as well as unlisted uses, may be authorized provided the applicant can demonstrate all of the following:

i. The proposed use is consistent with the policies of RCW 90.58.020 and the shoreline master program.

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

iii. 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.

iv. The proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and the shoreline master

program.

v. 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 physical and visual access suffers no substantial detrimental effect.

b. Consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were to be granted for other developments in the area where similar circumstances exist, the total of the conditional and shall not produce substantial adverse effects to the shoreline environment.

c. Other uses which are not classified or set forth in the shoreline master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the shoreline master program.

d. Uses which are specifically prohibited by the shoreline master program shall not be authorized by conditional use.

3. Shoreline Variance Permit.
The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in shoreline master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the shoreline master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

a. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of RCW 90.58.020. In all instances, the applicant must demonstrate that extraordinary circumstances exist and demonstrate that the public interest in enjoying physical and visual access to the shorelines shall suffer no substantial detrimental effect.

b. Variance permits for development and/or uses that will be located landward of the ordinary high-water mark, as defined in RCW 90.58.030(2)(b), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

i. That the strict application of the bulk, dimensional, or performance standards set forth in the shoreline master program regulations precludes, or significantly interferes with, reasonable use of the property.

ii. That the hardship described in (i) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the shoreline master program regulations, and not, for example, from deed restrictions or the applicant's own actions.

iii. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and SMP regulations and will not cause adverse impacts to the shoreline environment.

iv. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.

v. That the variance requested is the minimum necessary to afford relief.

vi. That the public interest in enjoying physical and visual access to the shorelines will suffer no substantial detrimental effect.

c. Variance permits for development and/or uses that will be located waterward of the ordinary high-water mark (OHWM), as defined in RCW 90.58.030(2)(b), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

i. That the strict application of the bulk, dimensional, or performance standards set forth in the shoreline master program precludes all reasonable use of the property.

ii. That the proposal is consistent with the criteria established under WAC 173-27-170(2)(b) through (f); and

iii. That the public rights of navigation and use of the shorelines will not be adversely affected.

d. In the granting of variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were to be granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

e. Variances from the use regulations of the shoreline master program are prohibited.

4. PUD and Plans-in-lieu.
All of the following criteria are met:

a. Compliance with All Applicable Standards.
The proposed development and uses comply with all applicable standards of the title, except where adjustments are being approved as part of the concept plan application, pursuant to the provisions of SMC 17G.070.200(F)(2).

b. Architectural and Site Design.
The proposed development has completed the design review process and the design review committee/staff has found that the project demonstrates the use of innovative, aesthetic, and energy-efficient architectural and site design.

c. Transportation System Capacity.
There is either sufficient capacity in the transportation system to safely support the development proposed in all future phases or there will be adequate capacity by the time each phase of development is completed.

d. Availability of Public Services.
There is either sufficient capacity within public services such as water supply, police and fire services, and sanitary waste and stormwater disposal to adequately serve the development proposed in all future phases, or there will be adequate capacity available by the time each phase of development is completed.

e. Protection of Designated Resources.
City-designated resources such as historic landmarks, view sheds, street trees, urban forests, critical areas, or agricultural lands are protected in compliance with the standards in this and other titles of the Spokane Municipal Code.

f. Compatibility with Adjacent Uses.
The concept plan contains design, landscaping, parking/traffic management and multi-modal transportation elements that limit conflicts between the planned unit development and adjacent uses. There shall be a demonstration that the reconfiguration of uses is compatible with surrounding uses by means of appropriate setbacks, design features, or other techniques.

g. Mitigation of Off-site Impacts.
All potential off-site impacts including litter, noise, shading, glare, and traffic will be identified and mitigated to the extent practicable.

5. Plat, Short Plat, and Binding Site Plan.
The proposed subdivision makes appropriate (in terms of capacity and concurrence) provisions for:

a. public health, safety and welfare;

b. open spaces;

c. drainage ways;

d. streets, roads, alleys, and other public ways;

e. transit stops;

f. potable water supplies;

g. sanitary wastes;

h. parks, recreation, and playgrounds;

i. schools and school grounds; and

j. sidewalks, pathways, and other features that assure safe walking conditions.

E. The following Type II and III applications are not subject to subsections (C) and (D) of this section; they shall comply with the following decision criteria:

1. Variance.

a. A variance or modification of the standard or requirement is not prohibited by the land use codes.

b. No other procedure is provided in this chapter to vary or modify the standard or requirement, or compliance with such other procedure would be unduly burdensome.

c. Strict application of the standard or requirement would create an unnecessary hardship due to one or more of the reasons listed below. Mere economic hardship or self-created hardship are not considered for the purposes of this section.

i. The property cannot be developed to the extent similarly zoned property in the area can be developed because the physical characteristics of the land, the improvements or uses located on the land do not allow such development; or

ii. Compliance with the requirement or standard would eliminate or substantially impair a natural, historic, or cultural feature of area-wide significance.

d. In addition, the following objectives shall be reasonably satisfied:

i. Surrounding properties will not suffer significant adverse effects.

ii. The appearance of the property or use will not be inconsistent with the development patterns of the surrounding property; and

iii. The ability to develop the property in compliance with other standards will not be adversely affected.

e. No variance may be granted to allow or establish a use that is not allowed in the underlying districts as a permitted use; or to modify or vary a standard or requirement of an overlay zone, unless specific provision allow a variance.

f. Floodplain variance is subject the additional criteria of SMC 17E.030.090 and SMC 17E.030.100.

2. Certificate of Compliance.

a. Written documentation establishes that all necessary permits were issued and inspections conducted, or the current owner of the property is not the same party responsible for the creation of the violation, but is an innocent purchaser for value.

b. Approval of the certificate of compliance is necessary to relieve the applicant of a substantial practical or economic hardship; and

c. Approval of the certificate of compliance will not adversely affect the neighboring property or the area.

3. Skywalk Permit and Air Rights Use Permit.

a. The proposed skywalk or air rights use is consistent with the comprehensive plan.

b. The proposed skywalk or air rights use conforms to the standards contained in SMC 12.02.0430 through SMC 12.02.0474, unless the design review board has approved design deviations.

c. The proposed skywalk or air rights use conforms to the standards contained in the development codes.

d. The City is compensated for the fair market value of public air space used for any activity other than public pedestrian circulation.

e. An agreement, satisfactory to the city attorney, indemnifies and holds the City harmless against all loss or liability, and the applicant obtained approved public liability insurance, naming the City as an additional named insured, with combined limits of five hundred thousand dollars.

Date Passed: Monday, June 21, 2010

ORD C34327 Section 6 / ORD C34606 Section 1

Spokane Municipal Code Wednesday, March 14, 2012 - 12:49 PM

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Title 17G Administration and Procedures

Chapter 17G.060 Land Use Application Procedures

Section 17G.060.230 Modification or Revision to Applications and Permits

A. Proposed modifications to an application, which the department has previously found to be complete, will be treated as follows:

1. Modifications proposed by the department to an application shall not be considered a new application.

2. If the applicant proposes substantial modifications to an application, as determined by the department, the application may be considered a new application. The new application shall conform to the requirements of all statues and ordinances in effect at the time the new application is submitted. A substantial modification may include but is not limited to the following:

a. Change in use.

b. Increase in density.

c. Increase in site area; or

d. Changes that increase or significantly modify the traffic pattern for the proposed development.

B. Modifications or Revisions to Shoreline Permits.

1. A permit revision is required whenever the applicant proposes substantive changes to the design, terms, or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the shoreline master program and/or the policies and provisions of chapter 90.58 RCW.

2. Changes which are not substantive in effect do not require approval of a revision. When an applicant seeks to revise a permit, the director shall request from the applicant detailed plans and text describing the proposed changes in the permit.

3. If the director determines that the proposed changes are within the scope and intent of the original permit as defined in WAC 173-27-100(2) and are consistent with the shoreline master program and the Shoreline Management Act, the director may approve a revision.

4. If the proposed changes are not within the scope and intent of the original permit, the applicant shall apply for a new permit in the manner provided for in this chapter.

5. Revisions to permits may be authorized after original permit authorization has expired under RCW 90.58.143. The purpose of such revisions shall be limited to authorization of changes which are consistent with WAC 173-27 and which would not require a permit for the development or change proposed under the terms of the Shoreline Management Act, this section and the shoreline master program. If the proposed change constitutes substantial development then a new permit is required. This shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.

6. If the sum of the revision and any previously approved revisions under former WAC 173-14-064 or WAC 173-27-100 violate the provisions that they are "within the scope and intent of the original permit," the director shall require that the applicant apply for a new permit.

7. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with the department of ecology. In addition, the director shall notify parties of record of their action.

8. If the revision to the original permit was a conditional use or variance, which was conditioned by the department of ecology, the director shall submit the revision to the department of ecology for its approval, approval with conditions, or denial, indicating that the revision is being submitted under the requirements of this section. Ecology shall render and transmit to the City and the applicant its final decision within fifteen days of the date of the department of

ecology's receipt of the submittal from the director. The director shall notify parties of record of the department of ecology's final decision.

9. The revised permit is effective immediately upon final decision by the director, or when reviewed by the department of ecology, pursuant to subsection (7), then upon final action by the department of ecology.

10. Appeals shall be in accordance with RCW 90.58.180 and shall be filed with the shorelines hearings board within twenty-one days from the date of receipt of the revision approved by the director, or when appropriate under subsection (7), the date ecology's final decision is transmitted to the City and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of subsection (2). Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

C. Limitations on Refiling of Application.

1. Applications for a land use permit pursuant to Title 17 SMC on a specific site shall not be accepted if a similar permit has been denied on the site within the twelve months prior to the date of submittal of the application. The date of denial shall be considered the date the decision was made on an appeal, if an appeal was filed or the date of the original decision if no appeal was filed.

2. The twelve-month time period may be waived or modified if the director finds that special circumstances warrant earlier reapplication. The director shall consider the following in determining whether an application for permit is similar to, or substantially the same as, a previously denied application:

a. An application for a permit shall be deemed similar if the proposed use of the property is the same, or substantially the same, as that which was considered and disallowed in the earlier decision.

b. An application for a permit shall be deemed similar if the proposed application form and site plan (i.e., building layout, lot configuration, dimensions) are the same, or substantially the same, as that which was considered and disallowed in the earlier decision; and

c. An application for a variance, exception, or waiver shall be deemed similar if the special circumstances which the applicant alleges as a basis for the request are the same, or substantially the same, as those considered and rejected in the earlier decision. In every instance, the burden of proving that an application is not similar shall be upon the applicant.

D. Modification to a Building Permit Subject to a Type II or III Approval.
In issuing building permits for construction under an approved site plan, the building official may, with concurrence of the planning director, permit minor adjustments of the location and/or dimensions of buildings, parking areas, and roadways as long as such adjustments do not change any points of ingress or egress to the site unless approved by the director of engineering services, change any perimeter setbacks, or exceed the density authorized in the permit. No modification of an approved application may be considered approved unless specifically provided in writing.

1. The planning director may, without public notice, modify an approved site plan, if all the following criteria are met:

a. The use will remain the same.

b. The total site coverage or total area covered by buildings will not increase.

c. The use will continue to comply with all conditions of approval imposed by the original decision.

d. The use will comply with all of the requirements of the land use regulations applicable to it and the property on which it is or will be located.

2. Any modification of an approved site plan not consistent with the standards of subsection (C)(1) of this section may be approved only pursuant to the procedures for granting the original Type II or III approval.

Date Passed: Monday, November 3, 2008

ORD C34327 Section 9