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DEVELOPMENT SERVICES

CITY OF TUMWATER

OFFICE OF THE HEARING EXAMINER

REPORT AND DECISION

FILE NO: SMA #4-06

APPLICANT: City of Tumwater Public Works Department

SUMMARY OF REQUEST:

A request for approval of a Shoreline Substantial Development Permit in order to install sidewalks, bike lanes, and related improvements along the easterly and westerly sides of Deschutes Parkway which would connect existing improvements at the Boston Street Bridge to those near the I-5 on-ramp to the north.

LOCATION:

The project is located at Deschutes Parkway between Boston Street Bridge and Grant Street. The project is located in the public rights-of-way in Tumwater within the east half of Section 26, Township 18 N, Range 2 WWM.

DECISION OF THE EXAMINER:

The request is approved, subject to conditions imposed in Conclusion 5.

PUBLIC HEARING:

After reviewing the City of Tumwater Staff report and viewing the site, the Examiner conducted a public hearing on the application on November 14, 2007.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The City of Tumwater Department of Public Works (hereinafter "applicant") is requesting approval of a Shoreline Substantial Development Permit (hereinafter "SDP") in order to install sidewalks, bike lanes, and related improvements along the easterly and westerly sides of Deschutes Parkway which would connect existing improvements at the Boston Street Bridge to those near the I-5 on-ramp to the north.

2. The proposed project would consist of a 5-foot wide bike lane and a 6-foot wide pedestrian sidewalk section along the easterly side of Deschutes Parkway. Also, a bike lane is proposed adjacent to the west-driving lane and a bike rack is proposed under the Custer Way Bridge. A 7-foot wide parking lane is proposed along some sections of the Deschutes Parkway between the Boston Street Bridge and Grant Street. All improvements will be constructed within the existing right-of-way of Deschutes Parkway. Currently, the shoulder of Deschutes Parkway is heavily used by cyclists and pedestrians and shoulder parking is commonly used in the area immediately north of the Boston Street Bridge.

3. The project area is on the west side of Deschutes River and extends between Boston Street Bridge and Grant Street.

4. Deschutes Parkway at this location is a main connector street between Custer Way and northbound I-5. Adjacent land uses consist of commercial, residential, public recreation, and industrial.

5. The City's Comprehensive Plan designates the area in which the project is situated as the "New Market Historic District."

6. The proposed street improvements are consistent with the City's Transportation Plan and are specifically identified in the City's current Capital Facilities Plan.

7. Zoning in the area of the project is Historical Commercial (HC) and an Aquifer Protection (AQP) Overlay with support facilities (such as streets) being permitted within the HC zone and not considered a restricted use in the AQP Overlay zone.

8. The Deschutes River and adjacent areas are subject to the City's Fish and Wildlife Habitat Protection Ordinance. *Tumwater Municipal Code (TMC)*16.32. Thus, the proposed street improvement project must provide a

Habitat Protection Plan in accordance with the ordinance. Such a plan, including specific mitigating measures, has been prepared and submitted by the applicant.

9. The proposed project for shoreline management purposes is governed by the Deschutes River Special Area Management (DRSAMP), which is a part of the City's *Shoreline Management Plan (SMP).* The proposed project is situated within the north region of the DRSAMP. The uncontested evidence presented in these proceedings establishes that the proposed street improvement project conforms to the policies and regulations, not only of DRSAMP, but also the general policies and regulations of the *SMP,* provided conditions are imposed as recommended. Exhibit 1 at 3 through 6.

10. The proposed project has been reviewed by a number of governmental agencies and none object to its approval; however, conditions have been recommended. Exhibit 1 at 8 and Attachments Y through AA.

11. The applicant concurs in the conditions recommended and agrees to comply with the same.

12. No one appeared at hearing in opposition to the proposal.

13. In accordance with the *State Environmental Policy Act (SEPA)* of 1971, as amended, and Chapter 16.04 of the *TMC*, the Development Services Department reviewed an Environmental Checklist, together with other available information. The Development Services Department determined that the proposal does not have a probable significant adverse impact on the environment. Accordingly, the responsible official prepared a Determination of Non-significance (DNS). The DNS was issued on September 5, 2007, with a 14-day comment period, which ended on September 19, 2007, and a 6-day appeal period, which ended on September 25, 2007. No appeal of the SEPA determination was filed.

14. The report of the Development Services Department, designated as Exhibit 1, to the extent that it sets forth the issues, general findings of fact, applicable policies and provisions and departmental recommendations of this matter, is incorporated herein by reference as though fully set forth.

15. A Notice of Application for the project was issued on July 26, 2007 and distributed to property owners within 300 feet of the project with a 30-day comment period that ended on August 27, 2007. The Notice of Public Hearing was posted on site and distributed to surrounding property owners within 300 feet of the project on November 2, 2007. A Public Hearing Notice was published in the *Olympian* newspaper on November 4, 2007.

16. Any conclusion hereinafter stated which may be deemed to be a finding herein is hereby adopted as such.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction in the matter. *TMC* 2.58.090.5.

2. Requests for SDP's are reviewed for consistency with Tumwater's *SMP,* including applicable provisions of the DRSAMP.

3. The applicant bears the burden of establishing by a preponderance of the evidence that its request is consistent with the applicable legal standards for approval of the same.

4. Findings entered herein and based on substantial and unrebutted evidence in the hearing record, support a conclusion that the request satisfies all legal standards, provided the conditions set forth herein are imposed and complied with by the applicant.

5. Accordingly, the requested SDP is approved, subject to the conditions set forth below:

   a. Mitigation measures as specified in the approved Habitat Protection Plan shall be implemented prior to the completion of the project. The Plan shall be included in the contract between the City and the selected contractor.

   b. The project shall comply with the applicable regulations identified in Section 3.XVII.C of the *SMP* for Thurston Region.

6. Any finding hereinbefore stated which may be deemed a conclusion herein is hereby adopted as such.

From these Conclusions is made the following:

DECISION:

The request is hereby approved, subject to the conditions set forth in Conclusion 5 above.

DATED this 28th day of November 2007.

RODNEY M. KERSLAKE
Hearing Examiner

POST-DECISION PROCEDURES

Reconsideration: A party may request reconsideration by filing a written request with the Department of Development Services within five working days of the Examiner's written decision. The request must state the grounds therefore. The Examiner has ten working days to render a final decision. TMC 2.58.135.

Appeals: The Examiner's decision will become final and conclusive in fourteen days unless appealed to the Tumwater City Council. The appeal must be in writing and contain all grounds on which error is claimed. TMC 2.58.150. TMC 2.58.150 provides in part:

> In cases where the examiner's jurisdictional authority is to render a decision (following an open record pre-decision hearing), the decision of the examiner shall be final and conclusive unless within fourteen days following rendering of such decision an appeal there from is filed with the Director of Development Services by the applicant, a department of the city, county, or other agency or a party of record defined in Section 2.58.140. Person not in attendance at the hearing but who submit written information prior to the hearing that becomes a part of the record of the hearing shall also have appeal rights. Such appeal shall be in writing, shall contain all grounds on which error is assigned to the examiner's decision and shall be accompanied by a fee as established by resolution of the city council; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant.

The Examiner's decision that is timely appealed comes before the City Council within thirty days after the final day upon which an appeal may be filed. TMC 2.58.160 and 2.58.180 describe the time limits for appeals.