

**BEFORE the HEARING EXAMINER for the
CITY of LYNNWOOD**

DECISION

FILE NUMBER: 2012RZN0002

APPLICANT: Northwest Pipeline GP ¹
22909 NE Redmond-Fall City Road
Redmond, WA 98053

TYPE OF CASE: Preliminary and Final Planned Unit Development for construction of a pipeline “pig trap” site

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: January 16, 2013

INTRODUCTION ²

Northwest Pipeline GP seeks Preliminary and Final Planned Unit Development (PUD) approval for construction of a pipeline “pig trap” site. (See Conclusion of Law 1, below, regarding the scope of the request and Finding of Fact 1, below, for an explanation of a “pig trap.”)

Northwest Pipeline GP filed the PUD application on August 9, 2012. (Exhibits 1.2 and 1.5 ³) The Lynnwood Community Development Department (CDD) deemed the application complete on August 30, 2012.

¹ Northwest Pipeline GP, a subsidiary of Williams Pipeline GP, is the name preferred by the applicant. Documents in the record also refer to the applicant variously as Williams Northwest Pipeline, Williams Northwest Pipeline GP, and Northwest Pipeline Corporation.

² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

³ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

The subject property is located at 18719 and 18727 36th Avenue W (occupying the northeast quadrant of the 36th Avenue W/188th Street SW intersection.

The Lynnwood Hearing Examiner (Examiner) viewed the subject property on January 10, 2013.

The Examiner held an open record hearing on January 10, 2013. CDD gave notice of the hearing as required by the Lynnwood Municipal Code (LMC). (Exhibits 1.22 – 1.25)

The following exhibits were entered into the hearing record during the hearing:

Exhibit 1.1: Departmental Staff Report with Attachments 1.2 – 1.25 as enumerated on page 2 of Exhibit 1.1

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

ISSUES

Does the application meet the criteria for Preliminary PUD approval as established within the LMC?

No testimony or evidence was entered into the record by the general public in opposition to the application. CDD received one inquiry by a nearby resident regarding the height of the inspection facility and the height and design of the fences. CDD provided fence specifications and color details to the resident. No other comments from the public were received. (Exhibit 1.1, p. 6)

FINDINGS OF FACT

1. Northwest Pipeline GP operates natural gas transmission pipelines. Its pipelines connect to distribution pipelines operated by vendors such as Puget Sound Energy (PSE). Federal regulations require pipeline operators to perform in-line inspection of their pipelines every five to seven years. The pipeline industry has developed automated in-line inspection devices, commonly known in the industry as "pigs," to perform the required inspections. A pig is inserted into the pipeline at a "launcher" site, pushed through the pipeline by the flow of natural gas, and retrieved at a "receiver" site. A launcher/receiver site is known as a pig "trap." A pig trap is essentially a section of the pipeline constructed above ground with hatches to allow the pig to be inserted and/or removed and bypass lines to allow gas to flow around the trap. (Exhibits 1.1, 1.6, and 1.12 and testimony)
2. Northwest Pipeline has two transmission lines which become PSE distribution lines beneath the Fisher Building parking lot in the southeast quadrant of the 36th Avenue W/188th Street SW

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intersection: The 16” North Seattle Loop Line and the 8” North Seattle Line. (Exhibit 1.13) Northwest Pipeline GP needs to establish a trap as close to that transition point as possible so that it can inspect the entirety of those two lines. (Testimony)

Northwest Pipeline GP’s parent company, Williams Pipeline GP, has acquired the vacant 0.45 acre parcel (the subject property) across 188th Street SW from the end of its pipelines. ⁴ Northwest Pipeline GP desires to construct a pig trap on that site. (Exhibits 1.2 and 1.6) The subject property contains no known environmentally sensitive areas; the site slopes slightly from the northwest to the southeast. The subject property is bordered by commercial development to the east and multi-family to the north. Across 36th Avenue W to the west is an assisted living facility. Across 188th Street SW to the south is the aforementioned parking lot for a commercial/office development. (Exhibits 1.1 and 1.19)

3. The subject property is designated Regional Commercial (RC) on the adopted Comprehensive Plan and zoned Limited Business (B-2). (Exhibits 1.1, 1.17, and 1.18) Public Utilities Facilities are not permitted in the B-2 zoning district. [LMC Table 21.46.12] Therefore, Northwest Pipeline GP has applied for the requested PUD approval. (Exhibits 1.2 *et al.*)
4. A PUD may be located in any zone. [LMC 21.30.600] A PUD may contain “any use not a direct contradiction to the objectives of the comprehensive plan” (subject to a limitation on the number of dwelling units in a residential PUD). [LMC 21.30.800]

PUD approval is a two-step process: Approval of a preliminary development plan establishes “the general intent and apportionment of land for buildings, stipulated use and circulation pattern, but shall not be construed to render inflexible the ultimate design, specific uses or final plan of the project.” [LMC 21.30.300, ¶ 1] Preliminary approval is valid for one year. Before the expiration of the one-year period, the applicant must submit a final plan for approval. [LMC 21.30.320] Once the final plan is approved, the PUD “shall be made a part of the zoning map”. [LMC 21.30.340]

5. The proposed pig trap will consist of a series of pipes a short distance above ground level, protected by bollards to prevent accidental damage by servicing trucks, covered by a low portable cover to screen visibility from off-site, and surrounded by a solid eight (8) foot tall fence located not closer than 15 feet to the perimeter lot lines. The west and south segments of the fence will be constructed of concrete masonry units (CMUs) having a stone/brick appearance; the north and east segments will be constructed of StoneLook™ which exhibits a simulated stone appearance. Gates in the west and south fences will allow service trucks to drive through the site, thus eliminating the need to back onto the adjacent streets. The gates will be slatted to prevent visibility into the site. The area outside

⁴ On March 7, 2007, the Examiner approved a variance application filed by Windermere Alderwood Real Estate for the subject property. (2006VAR0003) The variance reduced setbacks for a proposed partially underground garage. Pursuant to LMC 17.26.450 that variance expired 18 months after its approval. The Examiner knows of no other land use entitlements affecting the subject property.

the eight foot fence will be extensively landscaped. A six (6) foot cedar fence will be erected along the north property line. (Exhibits 1.1, 1.6, 1.7, 1.9, and 1.12)

Once completed, the pig trap will be visited only occasionally by a service technician; as noted previously, in-line inspections will be performed about every five to seven years. Inspections typically would consist of three to five runs spread out over three to five days. The only activity at the proposed trap site would be removal of the pigs. (Exhibits 1.11 and 1.13)

6. The Comprehensive Plan describes the “Regional Commercial” land use category as follows:

“Purpose: This Plan category is intended to provide the opportunity for the development of a wide range of commercial services at a high level of development intensity (more than Community Commercial but less than City Center intensity).

“Principal Use: Personal, professional, and public services and offices, retail sales of goods for the region, including the local community and surrounding communities, hotels, motels, and entertainment businesses.

“Locational Criteria: Commercial areas of this type must be located in areas having arterial street access and transit service.

“Site Design: Substantial landscaping shall be planted along street frontages and within parking areas. Landscaping shall also be planted at other property lines and near buildings (as part of an integrated design plan). Parking for customers and employees will generally be located in either open parking lots or well-designed parking garages. Shared parking between adjacent uses will be encouraged. The overall design of the site should closely follow the principles of good modern urban design.

“Building Design: Retail uses in this category will generally be low-rise structures, with other uses occupying multi-story structures.

“Performance Standards: On-site activities shall not significantly impact adjoining properties in a negative way.”

(Exhibit 1.1, p. 4) The following objectives and policies from the Comprehensive Plan are most relevant to this application:

- **Land Use Policy LU-1.7:** “Applications for planned unit developments, which may allow relaxation of City development regulations, shall be evaluated to ensure that the design and development of the development will further the goals, objectives and policies of this Comprehensive Plan.”

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- Land Use Policy LU-8.4: "Provide adequate setbacks, buffers, landscaping, visual screens, and appropriate building scale and architecture to make development compatible with nearby residential and other land uses."
- Land Use Policy LU-8.19: "Screening of elements such as recycling and waste collection areas, compactors and dumpsters, loading and service areas, and mechanical equipment shall be required so that these elements do not create a negative impact to the streetscape and nearby residential areas."
- Transportation Objective T-23: "Control the location and spacing of commercial driveways and the design of parking lots to avoid traffic and pedestrian conflicts and confusing circulation patterns."
- Transportation Policy T-23.1: "Driveways shall be located to provide adequate sight distance for all traffic movements and not interfere with traffic operations at intersections."
- Transportation Policy T-26.1: "Require the construction and operation of transportation facilities and services to meet the standards of the Americans with Disabilities Act (ADA)."
- Environmental Resources Policy ER-9.3: "Design and construct night lighting to minimize excessive glare. Night lighting should not spill over onto nearby properties."

(Exhibit 1.1, pp. 4 and 5)

7. Lynnwood's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for the proposed PUD on September 19, 2012. (Exhibit 1.13) The DNS was not appealed. (Exhibit 1.1)
8. Project Design Review (PDR) approval is required to be obtained before approval of "commercial, industrial, and multiple-family [PUDs] and PUDs within nonresidential development". [LMC 21.30.300, ¶ 2]

Northwest Pipeline GP filed a PDR application on August 9, 2012. That application was assigned file number 2012PDR0007. CDD issued PDR approval on December 10, 2012. (Exhibit 1.21) The PDR approval was not appealed. (Testimony)

9. CDD recommends approval of the requested PUD subject to conditions. (Exhibit 1.1) Northwest Pipeline GP accepts the recommended conditions. (Testimony)
10. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁵

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

Both Preliminary and Final PUDs are Process I applications which require an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [LMC 1.35.100, .168, and .175 and 21.30.300 and .320]

Review Criteria

The review criteria for PUDs are set forth at LMC 21.30.300, ¶ 1:

Before approval of any plan, the hearing examiner shall determine that such plans comply with the development policies of the comprehensive plan, the purpose of this title, and provisions of this chapter.

A “consistency determination” is also required for every project application. A consistency determination follows four steps set forth at LMC 1.35.070. Consistency criteria are:

1. Type of land use permitted at the site, including uses that may be allowed under certain circumstances if decision criteria are met;
2. Density of residential development (if applicable); and,
3. Availability and adequacy of public facilities (for those facilities identified in the Comprehensive Plan, if the Plan or the City’s development regulations provide for funding of these facilities).

[LMC 1.35.070(A)]

Vested Rights

This application is not subject to any statutory vested rights. The vested rights doctrine is not applicable either.

Washington does adhere to the minority rule that a landowner obtains a vested right to develop land when he or she makes a timely and complete building permit application that complies with the applicable zoning and building ordinances in effect on the date of the application. Our vested rights rule also has been applied to building permits, conditional use permits, a grading permit, and a [shoreline management] substantial development permit.

⁵ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

[*Norco Construction v. King County*, 97 Wn.2d 680, 684, 649 P.2d 103 (1982), citations omitted] The vested rights doctrine has not been applied to rezone applications.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof.

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. Neither the application (Exhibits 1.2 and 1.5) nor the CDD Staff Report (Exhibit 1.1) overtly indicate whether Northwest Pipeline GP seeks approval of only a Preliminary PUD or of both a Preliminary and Final PUD. Prior to the adoption of Ordinance No. 2957, effective September 29, 2012, Preliminary PUD approval was a Process IV action (City Council jurisdiction) and approval of a Final PUD was a Process I action (Examiner jurisdiction). Now that the code has been amended such that both are Process I, the potential exists to combine both into one action.

Public notice documents issued by CDD in this case simply indicate that approval of a PUD has been requested. No CDD-issued document limits the requested action to Preliminary PUD approval. In fact, Recommended Condition 2 implies approval of a Final PUD by requiring revision of the official City zoning map to reflect the PUD approval; the zoning map would not be revised until after Final PUD approval. And Recommended Condition 3 states that the plans are “the preliminary and final development plan for the Property”.

Given the unique nature of this particular proposal, the Examiner concludes that the intent is for combined Preliminary and Final PUD approval.⁶

2. The proposal does not directly fall within the list of principal uses contemplated by the Comprehensive Plan for properties designated Regional Commercial. However, the proposed use serves as an inspection site for an existing regional public utility (natural gas transmission). The evidence and testimony are compelling: The pig trap needs to be located at the end of Northwest Pipeline GP’s jurisdiction so that the entirety of its lines can be inspected. In addition, natural gas serves regional commercial services and housing located in the immediate vicinity. Therefore, the use is consistent, albeit indirectly, with the Comprehensive Plan.

⁶ Absolutely nothing would be gained by requiring another non-controversial hearing; further specificity in the plans is unnecessary.

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The Examiner agrees with CDD’s conclusion that the proposal complies with the one Comprehensive Plan objective and six Comprehensive Plan policies listed in Finding of Fact 5, above:

- Land Use Policy LU-1.7 is met because by siting the pig trap at the end of a lateral and loop line, it ensures that the entire lateral and loop can be assessed by in-line inspection tools. This would in turn benefit public health, safety, and welfare, which also furthers the goals, objectives, and policies of the Comprehensive Plan.
- LU-8.4 and LU-8.18 are met through compliance with zoning regulations and the Citywide Design Guidelines.
- LU-8.19 is met by the proposed 8-foot CMU fence and StoneLook™ fence which will screen all pipeline inspection equipment from public view. Also, a removable canopy will be constructed to screen the equipment from public view.
- T-23 and T-23.1 are met by providing only one entrance from each right-of-way, spaced far enough from the intersection as to not create conflicts or sight distance issues that would interfere with traffic. Additionally, the driveways will only be accessed by authorized vehicles during inspection periods, so these access points will be used infrequently.
- T-26.1 is met through requirements to make curb cuts ADA compliant and by compliance with any applicable building code ADA requirements during building permit review.
- ER-9.3 is met by requiring that lighting on the site, if proposed, meets the current recommended best practices as prepared by the Illuminating Engineering Society of North America. Northwest Pipeline GP should be allowed to provide security lighting.

Based on this analysis, the Examiner concludes that the proposed pig trap complies with the development policies of the Comprehensive Plan as required for approval of the PUD.

3. The proposal generally complies with the few zoning regulations that would apply to this unique use. CDD posits that the west and south fences do not comply with LMC 21.10.100(B)(2) because they are closer to the property line than the proposed removable canopy and the code requires fences on street frontages to be not closer to the street than the nearest “building” on site. (Exhibit 1.1, p. 7)

CDD indicates that the City’s Building Official has determined that the canopy meets the definition of a “structure.” (*Ibid.*) The LMC defines “structure” expansively: It includes edifices, buildings, and anything “composed of parts joined together in some definite manner” (except for nine listed exclusions). [LMC 21.02.743] Thus, all buildings are structures, but not all structures are buildings. The LMC does not define the simple term “building.” (It defines certain special types of buildings, but not the root term itself.) [LMC 21.02.125, .136, .155, and .171]

Since the fence requirement refers to “building” location, and since the Building Official has determined that the canopy is a “structure” rather than a “building,” one could argue that the restriction does not apply to this use and that the fence fully complies with applicable code requirements.

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The Examiner also agrees with CDD that the non-public nature of the site supports the proposed 8-foot fences surrounding the pig trap in order to keep the general public out and to create a visual barrier. The proposed location of the fences, which are set back 15 feet from all property lines, provides the necessary screening Northwest Pipeline GP desires as well as meets the minimum sight distance requirements at the intersection. In addition, the proposed fences are aesthetically pleasing and landscaping is proposed around the entire perimeter of the site to further screen the facility from public view, all of which comply with the City's design guidelines. The Fire Department is also requiring the west fence to be heavily reinforced for blast protection. (Specific plans will be submitted at building permit submittal for review and approval.)

Based on the above analysis, the Examiner concludes that the proposed pig trap complies with applicable development regulations of the LMC as required for approval of the PUD.

4. The proposal passes the "consistency" test: The use, while not allowed under the existing zoning, is allowed as a PUD because it does not conflict with the Comprehensive Plan; density is not relevant in a non-residential development; the pig trap requires no public utility services.
5. The recommended conditions of approval as set forth in Exhibit 1.1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Recommended Condition 3. Specific reference to the plans by exhibit number will be substituted for the less precise wording presented in this condition.
 - B. Recommended Condition 4. CDD stated that this recommended condition is essentially just a "place holder" in case the evidence supported imposition of additional conditions by the Examiner. The evidence does not; the place holder is unnecessary.
 - C. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1 - 3 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
6. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner’s site view, the Examiner **GRANTS** the requested Preliminary and Final Planned Unit Development **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued January 16, 2013.

\s\ John E. Galt (Signed original in official file)

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁷

Clay Gustaves

Todd Hall

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Community Development Department a written request for reconsideration within seven calendar days following the issuance of this Decision in accordance with the procedures of LMC 1.35.168. Any request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. See LMC 1.35.168 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record (See LMC 1.35.148.) with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of LMC 1.35.175. Any appeal must be filed within 21 days following the issuance of this Decision. See LMC 1.35.175 for additional information and requirements regarding judicial appeals.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

⁷ The official Parties of Record register is maintained by the City’s Hearing Clerk.

CONDITIONS OF APPROVAL
2012RZN0002
Northwest Pipeline GP North Seattle Pig Trap Site

This Preliminary/Final Planned Unit Development is subject to compliance with all applicable provisions, requirements, and standards of the Lynnwood Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. The Property described on Exhibit 1.3 (the “Property”) is hereby rezoned from Limited Business (B-2) to Planned Unit Development (PUD) in accordance with the provisions of Chapter 21.30 of the Lynnwood Municipal Code.
2. The official zoning map of the City of Lynnwood shall be revised and amended to show the rezone to Planned Unit Development as approved herein.
3. The site plans (Exhibits 1.6, 1.7, 1.9, and 1.10) are hereby adopted as the preliminary and final development plans for the Property; provided that the development plans are subject to minor adjustments as provided for in section 21.30.300 of the Lynnwood Municipal Code, subject to the following conditions:
 - a. In order to provide greater protection during inspection periods, a heavily reinforced CMU fence for blast protection is required along the western portion of the fence. Plans shall be submitted at building permit submittal for review and approval.
 - b. In order to detect the presence of natural gas, a fragrance shall be added prior to gas blow-off to avoid the acrid smell.
 - c. To ensure City of Lynnwood Fire Department has access to the site, a keybox shall be provided to the Department.
 - d. At least 24 hours before pigging operations begin, SNOCOM 911 Center, Lynnwood Fire Department, and Snohomish County Fire District 1 shall be provided written notice of the general scope and schedule of the work to be performed at the site.