

**BEFORE the HEARING EXAMINER of the  
CITY of LAKE FOREST PARK**

**RECOMMENDATION**

FILE NUMBER: CU00-09

APPLICANT: City of Lake Forest Park Department of Public Works

TYPE OF CASE: Conditional Use Permit for development of "Animal Acres" Park

SUMMARY OF RECOMMENDATION: APPROVE subject to conditions

DATE OF RECOMMENDATION: July 20, 2000

**INTRODUCTION**

The City of Lake Forest Park (City) Department of Public Works (Public Works) seeks a Conditional Use Permit (CUP) for development of "Animal Acres" Park. Although approval is sought for full park development, only Phase I improvements will be installed in the near future.

Public Works filed the CUP application on June 13, 2000. (Exhibit 1) The Lake Forest Park Planning Department (Planning) deemed the application to be complete when filed.

The subject property is located in the southwest quadrant of the Brookside Boulevard NE/NE 178<sup>th</sup> Street intersection.<sup>1</sup>

The Lake Forest Park Hearing Examiner (Examiner) viewed the subject property on July 13, 2000.

The Examiner held an open record hearing on July 13, 2000. Planning gave notice of the hearing as required by the Lake Forest Park Municipal Code (LFPMC). (Exhibit 8)

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<sup>1</sup> The streets at that intersection do not run true north-south and east-west. For simplicity, Brookside Boulevard NE will be assumed to run north-south and NE 178<sup>th</sup> Street will be assumed to run east-west. All directional references in this Recommendation will be based on those assumptions.

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 CUP approval as established within the LFPMC? No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application. A representative of the City Parks Commission testified in support of the CUP.

### FINDINGS OF FACT

1. Public Works proposes to develop the City-owned 3.9 acre "Animal Acres" Park as a passive recreation facility for the City's residents. Development will occur in phases; only Phase I development will occur in the near future. (Exhibits 1 and 7 and testimony)
2. The site is an irregularly shaped parcel located in the southwest quadrant of the Brookside Boulevard NE/NE 178<sup>th</sup> Street intersection. The property has approximately 200 feet of frontage on NE 178<sup>th</sup> Street and 320 feet of frontage on Brookside Boulevard NE. McAleer Creek meanders from north to south through the western portion of the site. (Exhibit 4)
3. The site exhibits three distinctly different physical regimes: An upland meadow, a forested slope, and the Creek corridor. The upland meadow is dominated by grasses with scattered mature conifers. The grasses are regularly mown. The slope ranges up to 60% and is vegetated with a mix of coniferous and deciduous trees. The Creek corridor is densely wooded, deciduous species dominating. Wetlands exist along the course of the Creek. The transition between the three regimes is marked by an abrupt change in topography: The nearly flat meadow ends at the top of the steep slope down to the Creek and its associated wetlands. (Exhibits 1, 3, 7, and 9)
4. Although "Animal Acres" Park is located in a single family residential neighborhood, the site has several non-residential neighbors. A large Presbyterian Church occupies the southeast quadrant of the Brookside Boulevard NE/NE 178<sup>th</sup> Street intersection. A small "pocket park" ("Eagle Scout Park") occupies a small triangular parcel between NE 178<sup>th</sup> and NE 180<sup>th</sup> Streets opposite the site. Brookside Elementary School is located a short block to the west. The residences to the west are separated from the park by the west side of the McAleer Creek ravine/corridor. (Exhibits 7 and 8 and site inspection)
5. The site is designated Single Family Residential Moderate on the City's adopted Comprehensive Plan. Development of the site as a park furthers several goals and policies within the Comprehensive Plan. (Exhibit 9)

6. The site is zoned RS-15,000. (Exhibit 9) Public parks are a listed Conditional Use in the RS-15,000 zone. [LFPMC 18.18.020 and 18.54.048] Buildings and structures must maintain a 25 foot minimum setback from adjacent RS and RM zoned property; the park must have access to a public thoroughfare. [LFPMC 18.54.048(A)]
7. The City purchased the site in 1997 expressly for development as a passive park. The City completed a Master Plan for park development in November, 1997, which was adopted by the Council in 1998. (Exhibits 7 and 9 and testimony)
8. Phase I park improvements will consist of a loop trail around the meadow, a post and rail fence along the street perimeter, revised parking along Brookside Boulevard NE, creation of a "Children's Garden" along NE 178<sup>th</sup> Street, and replanting of the meadow with a mix of meadow grasses and wild flowers. No development within the McAleer Creek corridor itself will occur in Phase I. (Exhibits 4 and 5 and testimony) Phase II improvements will add a small covered shelter within the meadow and stream viewing platforms within the McAleer Creek corridor. (Testimony)
9. Any development within the site's regulatory Sensitive Areas (the Creek corridor) will be subject to regulation under Chapter 16.18 LFPMC. (Exhibit 9)
10. The City Parks Commission has reviewed the Phase I plans and supports approval of the CUP. (Testimony)
11. Section 12.08.150 LFPMC provides that public parks are available for use during hours as posted at each park. All City parks are presently posted for use from dawn to dusk. "Animal Acres" Park will be similarly posted. (Exhibit 10) The City has a process in place to address problems, if any, related to hours of operation. (Testimony)
12. Planning issued a Determination of Nonsignificance under the State Environmental Policy Act (SEPA) on June 21, 2000.<sup>2</sup> That determination was not appealed.
13. Planning recommends approval of the requested CUP. Planning does not recommend imposition of any conditions. (Exhibit 9)

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2 The document is entitled "Mitigated Determination of Nonsignificance". (Exhibit 6) Planning testified that no mitigation measures were deemed necessary. Therefore, the adjective "Mitigated" is unnecessary.

## PRINCIPLES OF LAW

### Authority

A CUP is a Type I application, normally subject to an open record hearing before the Board of Adjustment which makes a final decision on the application, subject to the right of appeal to Superior Court. [LFPMC 16.26.030(A)(1), .100, and .110] A special review process exists, however, for CUPs for which the City itself is the applicant: The Examiner holds the open record hearing and makes a recommendation to the City Council which has final authority for the City. [Chapter 16.30 LFPMC]

A Type I application that complies with the applicable decision criteria shall be approved; provided, that the [decision making body] may modify or condition a proposal to ensure conformity with the relevant decision criteria.

[LFPMC 16.26.110(A)]

### Review Criteria

Section 16.30.030(A) LFPMC provides that the Examiner shall base his recommendation on a CUP application for which the City is the applicant "upon the criteria of LFPMC 2.26.010(C)." That code section contains three criteria to be used by the Board of Adjustment in the review of CUP applications. Section 18.54.030 LFPMC, a more recently enacted code provision, contains a more extensive set of review criteria which include the three criteria contained in LFPMC 2.26.010(C):

A conditional use may be authorized upon a finding that the proposal conforms to specific development criteria established for that use, if any, and that it meets the following minimum criteria:

- A. The proposed use is consistent with the policies and goals of the comprehensive plan;
- B. The proposed use is not materially detrimental to other property in the neighborhood;
- C. The proposed use will supply goods or services that will satisfy a need of the community;
- D. The proposed use is designed in a manner which is compatible with the character and appearance with the existing or proposed development in the vicinity of the subject property;
- E. The proposed use is designed in a manner that is compatible with the physical characteristics of the subject property;
- F. Any requested modifications to the standards of the underlying zone shall require a variance and be subject to mitigation to minimize or remove any impacts from the modification;
- G. The proposed use is not in conflict with the health and safety of the community;

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H. The proposed use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;

I. The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities;

J. The applicant's past performance regarding compliance with permit requirements and conditions of any previously issued land use permit including building permits, conditional uses or variances, shall be considered before approving any new permit.

The newer, more extensive set of criteria within LFPMC 18.54.030 will be applied in this case.

The Local Project Review Act [Chapter 36.70B RCW] establishes a mandatory "consistency" review for "project permits", a term defined by the Act to include "building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan". [RCW 36.70B.020(4)]

(1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

- (a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
- (b) Density of residential development in urban growth areas; and
- (c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the Growth Management Act].

[RCW 36.70B.030]

Vested Rights

The vested rights doctrine applies to CUP applications:

"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."

[*Norco Construction v. King County*, 97 Wn.2d 680, 684, 649 P.2d 103 (1982), citations omitted]

Therefore, this CUP application is vested to the regulations as they existed on June 13, 2000.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [LFPMC 16.26.100(C)]

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**

1. Development of "Animal Acres" will fulfill Comprehensive Plan policies addressing provision of recreational opportunities for the citizens of Lake Forest Park.
2. A passive park as proposed should have no adverse impact upon the surrounding neighborhood. The adjacent church is likely more heavily used than will be the park. Topography and a fence separates the residences to the west from the "active" part of the park, the meadow area.
3. Lake Forest Park residents have indicated a desire for additional parks. Development of "Animal Acres" will help fulfill that desire.
4. The extremely low profile nature of the proposed improvements will easily blend into the surrounding area.
5. The Master Plan respects the sensitive areas of the site. Phase I includes no development within those areas. Phase II will provide opportunities to visually enjoy that part of the site without harming it.
6. Public Works seeks no modification to any City standards applicable to park development.

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7. No evidence exists of any conflict with or harm to the community's safety and welfare.
8. The parking and pathway plans separate pedestrian and automotive travel. Sufficient parking will be available along Brookside Boulevard NE.
9. "Animal Acres" Park will require minimal public services. No evidence exists that the proposed park would tax public services.
10. No evidence exists of City non-compliance with past permits.
11. The preceding ten Conclusions demonstrate compliance with the ten criteria contained within LFPMC 18.54.030. The required criteria having been met, the requested permit should issue.
12. A CUP is issued for a specific use on a specific site. The nature and extent of the use is reflected by the site development plans submitted by the applicant. Those plans form the basis for staff, public, and Examiner review of the application. A CUP should, therefore, be granted for the specific proposal presented by the applicant (unless testimony and evidence indicates that alterations to the proposal are necessary in order to comply with the criteria for approval). The best way to accomplish that objective is to impose a condition specifically citing the plans which are being approved. Those plans thus become an integral part of the permit: Failure to comply with the approved plans would be as significant a permit violation as would failure to comply with a textual condition.
13. Since the application seeks a CUP for full park development, the proper plans to approve are those contained in the park Master Plan. (Exhibit 7) An appropriate condition will be recommended.
14. Approved CUP plans should not be treated as if they were detailed construction drawings. It is entirely reasonable that the permittee have flexibility to make minor changes as a project moves from planning into the engineering/construction stages. So long as such changes do not affect the overall design, off-site impacts, intensity of use, etc., they should not require further review through the public hearing process. Staff review and approval of minor changes is sufficient. A condition allowing such minor changes will also be recommended.
15. The proposal is "consistent" as that term is used in Chapter 36.70B RCW. The use is allowed as a conditional use by the applicable zoning, the intensity of the use is not in conflict with applicable zoning regulations, and the few public services needed by this passive park are adequate.

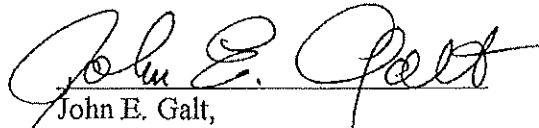
### RECOMMENDATION

Based upon the preceding Findings of Fact and Conclusions, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **RECOMMENDS APPROVAL** of a Conditional Use Permit for "Animal Acres" Park **SUBJECT TO THE FOLLOWING CONDITIONS:**

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- A. The Plans in Exhibit 7 shall constitute the official site development plans for this Conditional Use Permit. Phase I of the Park's development is represented by Exhibit 5.
- B. The Lake Forest Park Planning Department may administratively approve minor revisions to the approved Conditional Use Permit official site development plans. Minor changes include those which neither materially alter the overall character of the use as approved, materially increase the intensity of the use as approved, nor materially increase the impact of the use on adjacent properties. Any changes in points of vehicular access must be reviewed and approved by the Department of Public Works. Administratively approved minor changes to approved plans shall be documented in writing and retained in the City's file for this Conditional Use Permit.

Recommendation issued July 20, 2000.

  
John E. Galt,  
Hearing Examiner

This Recommendation will be considered by the Lake Forest Park City Council in accordance with the procedures of Chapter 16.30 LFPMP. Please contact the Planning Department for information regarding the scheduling of Council consideration of this Recommendation. Please have the applicant's name and City file number available when you contact the city.

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."