5-1

21609570

Hearing Examiner's Report and Findings

DATE:	**July 15, 2016**
APPLICANT NAME:	**Northwest Pipeline, LLC**
MAILING ADDRESS:	**PO Box 58900, Salt Lake City UT 84108**
PROPERTY OWNER:	**Intermountain Gas Company**
MAILING ADDRESS:	**12584 W Tyhee Rd, Pocatello, ID 83202**
LOCATION OF REQUEST:	**Lot 3, Cheyenne Gate Subdivision**
LEGAL DESCRIPTION:	Lot 3, Cheyenne Gate Subdivision in SE 14 of Section 7, T & South, Range 35 East.

TYPE OF REQUEST: Conditional Use Permit to construct a sixteen (16) foot communications pier (tower) for the monitoring of natural gas flow.

CONCLUSIONS AND CONDITIONS:

Based on review of the Application for Conditional Use Permit and analysis of the staff report, applicants presentation, one site visit and the lack of any citizen comments and testimony in support of the conditional use permit, against the conditional use permit and neutral to the conditional use permit the Hearing Examiner finds that this request does meet the conditions for a Conditional Use Permit**. The Hearing Examiner approves request for a Conditional Use Permit** with the following conditions:

1. All Building and Fire Code requirements as deemed applicable by the Building Official shall be adhered to.

MUNICIPAL CODE PROVISIONS

Municipal Code 17.02.130 defines conditional use permits as: "Conditional uses are uses that are allowed within a zoning district provided that certain standards (or "conditions") are met that will enhance the compatibility of the proposed use with other surrounding uses. Often conditional uses are unique and their effect on the surrounding environment cannot be determined in advance of a specific proposal for a particular location. Application for a conditional use permit affords the City an opportunity to review the location, design, configuration, and potential impact of the proposed use on surrounding land uses."

Municipal Code Section 17.01.170(A)(3)(c) outlines the standards by which conditional use permits for expansion of legal non-conforming uses are to be reviewed.

ANALYSIS AND FINDINGS OF FACT:

1 On July 11, 2016 the hearing examiner visited the site, viewed the proposed antenna location from the Cheyenne street in the residential neighborhood.

5:2

21609570

The Hearing Examiner has had no "ex-parte contacts and has no conflict of interest.

2 Public Hearing

The applicant presented the request for conditional use permit. The staff gave their report and recommendations. There were no comments in favor of, neutral to or in opposition of the conditional use permit. No community members attended the public hearing. No questions were directed at staff.

The hearing was closed at approximately 5: 42 PM.

The Hearing Examiner stated that the report will be submitted by Tuesday July 19, 2016 at 5:00 pm. If anyone wishes to dispute the decision they have ten (10) days from that date in which to do so.

CONDITIONAL USE PERMIT ANALYSIS

MUNICIPAL CODE PROVISIONS

Municipal Code 17.02.130 defines conditional use permits as: "Conditional uses are uses that are allowed within a zoning district provided that certain standards (or "conditions") are met that will enhance the compatibility of the proposed use with other surrounding uses. Often conditional uses are unique and their effect on the surrounding environment cannot be determined in advance of a specific proposal for a particular location. Application for a conditional use permit affords the City an opportunity to review the location, design, configuration, and potential impact of the proposed use on surrounding land uses."

Municipal Code Section 17.01.170(A)(3)(c) outlines the standards by which conditional use permits for expansion of legal non-conforming uses are to be reviewed.

PUBLIC NOTICE

Notice of this application was published in the Idaho State Journal, sent to property owners within a 300 foot radius of the subject site, and a sign was posted on the property giving notice of the hearing. As of the date this staff report was completed (7/7/16), no comments either in support or in opposition have been received.

CONDITIONAL USE PERMIT ANALYSIS

Municipal Code 17.02.130(E), "Authority to Grant: The hearing body may approve, approve with conditions, or deny an application for a conditional use permit. The decision may be appealed by the applicant or other affected persons (according to the provisions of Idaho Code Section 67-6521) to the City Council, using the process outlined in (Municipal Code) Section 17.02.400, Appeals."

Municipal Code 17.02.130(D)(1) Criteria for Review. The hearing body shall review the facts and circumstances of each proposal in terms of the following standards and determine whether there is adequate evidence showing that the requested use at the proposed location:

1. **Is conditionally permitted within the subject land use district and complies with all of the applicable provisions of this code unless modified through the CUP process.**

5-3

Applicant's response: The 16-foot communication pier is ancillary to the new Cheyenne Gate natural gas metering station built to provide increased natural gas service to the area and it complies with the Zoning Ordinance.

Staff analysis: All other uses that will take place in this location are permitted by the Zoning Ordinance. The antenna is the only portion that requires a conditional use permit. It will comply with all of the applicable provisions of the code.

2. **Is consistent with the goals and polices of the comprehensive plan of the city.**

Applicant's response: The communications pier is consistent with the goals and policies of the Comprehensive Plan of the City.

Staff analysis: Assuming compliance with the recommended conditions of approval, Planning Division staff finds the proposal is consistent with the goals and policies of the Comprehensive Plan.

3. **Is compatible with existing and permitted land uses within the general area.**

Applicant's response: The communication pier is compatible with permitted land uses as the effect will be minimal.

Staff analysis: The antenna will be 16 feet tall. It is shorter than the power poles on Cheyenne and roughly the same height or shorter as the single family dwellings in the area. Therefore, it will be compatible with the general area.

4. **Could be adequately served by public facilities and services such as thoroughfares, transportation facilities, police and fire protection, drainage, refuse disposal, water/sewer and schools to ensure that the proposed use would not be detrimental to public health, safety and welfare.**

Applicant's response: The metering station and the communications antenna are adjacent to existing Cheyenne Avenue, therefore, the site is very accessible for any public services and emergency response agencies.

Staff analysis: The site is adjacent to Cheyenne Avenue and will be accessible for public services and emergency response units. Transportation facilities, refuse disposal, water/sewer and schools are not necessary for this use. Cheyenne Avenue is no longer a through street therefore it will not impede traffic.

5. **Would be harmonious in scale, mass, coverage, density and intensity with all adjacent permitted land uses.**

Applicant's response: The 16-foot communications pier is relatively short and needed to provide constant natural gas flow monitoring at the meter station. It will be shorter than existing wooden power poles on Cheyenne Avenue. It will be harmonious with the environment.

Staff analysis: The antenna is relatively short, 16 feet tall, and will be harmonious with adjacent permitted land uses.

5-4

21609570

6. **Would not adversely affect the environment to a greater degree than had a use permitted outright by the ordinance been established.**

Applicant's response: There would be no greater effect if the antenna is approved by a conditional use permit than if it was permitted outright. It is a component to the natural gas metering facility.

Staff analysis: The antenna will not generate noise. It is also located at least 250 feet from any residence so no adverse impact is anticipated. Planning staff finds the proposal shall be compatible with the surrounding uses and won't adversely affect the environment to a greater degree than a use that is permitted outright.

7. **Would not be detrimental to the public interests, health, safety, or welfare of the city in its proposed location, size, design, and operating characteristics.**

Applicant's response: The antenna will allow Northwest Pipeline to monitor the flow of natural gas at all times by connecting to Northwest's private microwave network. It will provide an extra measure of safety and reliability to the residents and businesses in the area. In no way will it be detrimental to the public interest, health, safety or welfare.

Staff analysis: The 16-foot antenna will not be detrimental to the public interests, health, safety or welfare of the City. The antenna will be shorter than the power poles along Cheyenne and shorter than some homes in the adjacent neighborhoods.

Hearing Examiners Findings:

CONCLUSION

Hearing Examiner finds the proposal meets the criteria for a conditional use permit.

APPLICANTS NOTICE:

Notice is hereby given that the applicant has the right to challenge this decision and request a regulatory taking analysis pursuant to Idaho Code Section 67-8003 within 10 days after the Decision.

Respectfully submitted this 18th day of July, 2016

Susan Lorenz

Susan Lorenz

Economic Development Director

Southeast Idaho Council of Governments

5-5

21609570

OFFICIAL RECORD BK# 1005
BANNOCK COUNTY IDAHO

RECORDED AT REQUEST OF
FEE ____ DEPUTY

STATE OF IDAHO)
ss:
County of Bannock)

CITY OF POCATELLO

21609570 2016 JUL 18 A 10: 19

On this 18 day of July, 2016, before me, the undersigned, a Notary Public in and for the State, personally appeared Susan Lorenz, known to me or proved to me to be the person whose name is subscribed to the foregoing instrument, and being duly sworn, acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

TERRI NEU
NOTARY PUBLIC
STATE OF IDAHO

Terri Neu

NOTARY PUBLIC FOR IDAHO
Residing in Pocatello, ID
My commission expires: 1/18/2019