

**Interpretation of the Director
Under Seattle Municipal Code Title 23**

Regarding the Use of the

Property at

6343 NE 65th Street

DPD Interpretation No. 10-002

(Project No. 3011558)

Background

This interpretation has been requested by Cheryl Paston of Seattle Public Utilities (SPU). It relates to a proposal to site a 2.05-million-gallon underground combined sewer overflow (“CSO”) tank, and associated improvements, on a parcel adjacent to Magnuson Park in Northeast Seattle. The facility is proposed in response to a mandate by the Washington State Department of Ecology to limit the number of CSO overflows into the bodies of water surrounding the city to one overflow or less per year per outfall. It is anticipated that other similar CSO facilities will be designed and constructed for this purpose throughout the City over the next several years. The question raised, subject to interpretation, is whether the proposed facility is properly regulated as a “utility service use” for purposes of Seattle’s Land Use Code, and what approval processes are required under the code.

Findings of Fact

1. The site of the proposed facility is a parcel on the south side of NE 65th Street, between 62nd and 65th Avenues NE. It is King County Assessor’s Parcel No. 240950-0021. It has an area of approximately 84,300 square feet, according to the Assessor’s estimate. The site is surrounded on the south and east sides by the University of Washington’s Radford Court apartments. The property is in an L3 (Lowrise-3 Multifamily Residential) zone. The UW property immediately to the south also is in the L3 zone. Property to the east is in an SF 7200 (Single-family Residential) zone, and the property to the west and north is in an SF 7200 zone and a Sand Point Park Overlay zone. The site is relatively flat, sloping slightly down towards the southwest corner. The City’s GIS map does not indicate that there are any designated environmentally critical areas on the property, although the properties to the west and north are in a peat settlement area.
2. The proposed improvements consist of a 2.05-million-gallon underground storage tank, an underground facility vault for odor control and other equipment, and underground diversion facility. In conjunction with this project, installation of 2500 lineal feet of 30-inch, 10-inch and 8-inch pipelines is proposed in the rights-of-way of Sand Point Way NE and NE 65th Street. Apart from minor features such as vent shafts and mechanical cabinets, the facility will be entirely underground. The proposed tank would be located on the west half of the parcel, and would be approximately 185’ x 125’ x 30’ deep.

3. "Utility" is defined at Seattle Municipal Code Section 23.84A.040 as follows:

"Utility" means a use in which power, water or other similar items are provided or transmitted; or sewage is treated, or solid waste is stored, transferred, recycled or incinerated. High-impact uses and utility lines shall not be considered utilities. Subject to the foregoing exclusions, utilities include but are not limited to the following uses:

1. "Communication utilities, major." See "communication devices and utilities."

2. "Communication utilities, minor." See "communication devices and utilities."

3. "Power plant" means a utility use in which power in the form of electricity is produced by wind, solar or water forces or the combustion of materials such as coal, oil, or gas and/or in which steam is produced by combustion or electricity. A nuclear power plant, solid waste incineration facility and the concurrent incidental production of electricity or useful heating or mechanical energy, or cogeneration, as well as the recovery of waste heat, shall not be considered a power plant. The production and use of electricity produced from solar energy or other sources of natural energy as an accessory use is not a power plant use, and the sale of excess energy so produced is not evidence of a power plant use.

4. "Recycling" means a utility use in which recyclable materials are collected, stored, and/or processed, by crushing, breaking, sorting and/or packaging, but not including the collection of recyclable materials accessory to another use or any use which is defined as a solid waste management use.

5. "Sewage treatment plant" means a utility use in which sanitary or combined sewage is received, treated, and discharged, but does not include:

Conveyance lines and associated underground storage facilities; pumping stations; or commercial or industrial facilities for "pretreatment" of sewage prior to discharge into the sewer system.

6. "Solid waste management" means a utility use in which solid waste other than recyclable materials is collected, stored, processed or incinerated. Solid waste management includes, but is not limited to, the following uses:

a. "Salvage yard" means a solid waste management use in which junk, waste, discarded or salvaged materials are bought, sold, exchanged, stored, baled, packed, disassembled, or handled, including automobile wrecking yards, house-wrecking yards, and places or yards for storage of salvaged house-wrecking and structural steel materials and equipment, but only when such activity is not conducted entirely within an enclosed building, and excluding the following: pawnshops and establishments for the sale, purchase, or storage of used furniture and household equipment, used cars in operable condition, used or salvaged machinery in operable condition or the processing of used, discarded or salvaged materials as a minor part of manufacturing operations.

b. "Solid waste incineration facilities" means a solid waste management use in which solid waste is reduced by mass burning, prepared fuel combustion, pyrolysis or any other means, regardless of whether or not the heat of combustion of solid waste is used to produce power. Heat-recovery incinerators and the incidental production of electricity or useful heating or mechanical energy, or cogeneration, shall not be considered a solid waste incineration facility.

c. "Solid waste landfills" means a solid waste management use in which solid waste is permanently placed in or on land, including sanitary landfills and compliance cell landfills.

d. "Solid waste transfer station" means a solid waste management use in which discarded materials are collected for transfer to another location for disposal by compaction, shredding or separating, but does not include processing that changes the chemical content of the material.

7. "Utility services use" means a utility use that provides the system for transferring or delivering power, water, sewage, storm water runoff, or other similar substances. Examples include electrical substations, pumping stations, and trolley transformers."

4. According to Table A for Section 23.45.504, Utility service uses and other similar public facilities are permitted outright in an L3 zone if they meet the development standards for institutions in Section 23.45.570. Those not meeting institutional development standards may be permitted as Type IV (quasi-judicial) or Type V (legislative) City Council decisions.

5. Section 23.45.570 provides specific standards for structure height, structure width, structure depth, setbacks, parking, odors, light and glare and dispersion for institutions in Lowrise zones. A copy of that section is appended to this interpretation.

6. Section 23.86.006 provides the general rule that structure height is measured at exterior walls of a building, from existing or finished grade level, whichever is lower. Structure width and depth limits and setback requirements are intended to regulate bulk impacts, and it has not been the Department's practice to apply these provisions to portions of structures that are fully underground. No above-grade structures or portions of structures are proposed in required setbacks, apart from a retaining wall near the south and west sides of the property, designed to support a cut in existing grade, which would be seven feet tall at the highest point.
7. Section 23.45.570.J provides, subject to a few exceptions, that "the lot line of any new or expanding institution locating within a legally established institution shall be located 600 feet or more from any lot line of any other institution in a residential zone..." This language was adopted in 2009 under Ordinance 123209, which moved the development standards for institutions in multifamily zones, formerly in Sections 23.45.090 et seq. The language of former Section 23.45.102, as last amended by Ordinance 114875, read in part: "The lot line of any new or expanding institution **other than child care centers** locating in legally established institutions shall be located 600 feet or more from any lot line of any other institution in a residential zone..." [Emphasis added.]
8. Pursuant to the State Environmental Policy Act (SEPA) SPU issued a Determination of Non-Significance (DNS) on August 16, 2010.

Conclusions

1. The proposed facility is a part of a system for transferring or delivering sewage, storm water runoff, or other similar substances. It clearly meets the definition of "utility service use" and is appropriately regulated as such.
2. Utility service uses are permitted outright in L3 zones if they meet all institutional development standards, and otherwise they require either Type IV or Type V Council approvals. A full review of the proposed development is beyond the scope of this interpretation, and will occur when complete plans are submitted.
3. Consistently with our general practice, bulk standards such as structure width and depth limits and setback requirements will not be applied to portions of the structure that are completely below both existing and finished grade on the property. A retaining wall supporting a cut in the existing grade may be located in a required setback.
4. The words "other than child care centers" apparently were inadvertently dropped from the dispersion requirement when institutional standards were moved under a recent amendment. The standard, as it now appears, technically only applies to an institution within an institution. However, even if we read the dropped words back into the code, the dispersion standards clearly were meant to ensure separation between institutional uses. A utility service use, while subject to the development standards such as structure height limits and setback requirements provided for institutions, is not itself an institutional use, and thus is not required to disperse from institutions.

5. A full zoning review of the proposed CSO facility is beyond the scope of this interpretation, and will be performed when complete plans have been submitted, however, based on preliminary information, it appears that it would meet applicable institutional development standards, and thus would be permitted outright in an L3 zone.

Decision

The proposed CSO tank and associated facilities are properly regulated as a utility service use for purposes of the Land Use Code. This use is permitted outright in the L3 zone, provided that all institutional development standards are met.

Entered this 4th day of November, 2010.

(signature on file)

Andrew S. McKim

Land Use Planner – Supervisor