

MAY 22 1989

BEFORE THE
CITY OF WINSLOW
HEARING EXAMINER

John

Mayor
C. Council
C. Attorney
L. U.
H. E.
Planning Agency
Park Board

In re Gideon Park,)	File No 02-09-89-3
Application for a)	
Conditional Use Permit,)	Findings of Fact,
Bainbridge Island Park and)	Conclusions of Law,
Recreation Department,)	and Order
Applicant)	

INTRODUCTION

On May 15, 1989, at 9:30 A.M., City of Winslow Hearing Examiner J. Robin Hunt, conducted a public hearing at Winslow City Hall, Winslow, Washington. The subject of the hearing was the Bainbridge Island Park and Recreation District's application for a Conditional Use Permit to develop a small neighborhood park at the northeast corner of Grow Avenue and Gideon Lane. Chuck Field, Director of the Bainbridge Island Park and Recreation District (Applicant, Park District), spoke on behalf of Applicant. Mike Regis, City Land Use Administrator, spoke on behalf of the City of Winslow (the City). Three other persons attended the hearing: Gary Parker and Judy Willott, neighbors of the proposed park, and Wilbur Nystrom, who offered a historical perspective of the Gideon's family intent for the park. Renee Hauge, City Hearing Examiner Administrative Assistant, monitored recording of the hearing.

Testimony, questions, and comments focused primarily upon ways to maintain a quiet, passive nature of the park, which is to be developed primarily for walk-in neighborhood use. The major obstacle is the Winslow Municipal Code, which does not include a public park as a permitted or conditional use in a single family residential zone. Therefore, the conditions recommended by the Hearing Examiner will be applicable only if the City Council amends WMC 18.28.030 to include community park and recreational facilities as a conditional use in a high density single family residential zone. Without such amendment, the application must be denied.

The City Land Use Department's Staff Report presents a comprehensive overview of the project. Exhibit 12b.

HISTORY

On June 25, 1987, Robert K.J. and Peggy M. Gideon gave 2.4 acres of land bounded by Grow Avenue on the west and Gideon Lane on the south, to Bainbridge Island Park and Recreational District for use as a public park. Several conditions were attached to this gift, some of which are as follows:

1. That the land be used exclusively as a public park.
2. That the park be named "Kenneth H. Gideon Park."
3. That the log cabin on the property be retained.
4. That the park be developed on the westerly portion, and that the easterly portion be left in a natural state.
5. That specific existing mature trees be retained, including a balm of Gilead, a yew, two large madrones, a pine tree, and large firs.

Wilbur Nystrom testified that the Gideons had traveled around the United States, visiting and enjoying small public parks. It was their intent that Gideon park reflect their love of such parks and provide similar enjoyment locally.

For approximately the past year and half the Bainbridge Island Park District has been working closely with the Gideon Lane and Grow Avenue neighborhoods in designing a mutually agreeable plan for development of Gideon Park.

Based upon the testimony at the public hearing, the exhibits in the file, and an inspection of the site, the Hearing Examiner now makes and enters the following:

FINDINGS OF FACT

I

On February 10, 1989, the Bainbridge Island Park and Recreation District filed an application with the City of Winslow for a Conditional Use Permit to develop a neighborhood park on

approximately 2.4 acres of land at the northeast corner of Grow Avenue and Gideon Lane in Winslow, Washington. Exhibit 4a.

II

A legal description, attached as "Exhibit A", to the quitclaim deed, is incorporated herein by reference. Exhibit 4a.

III

The property is zoned high density single family residential. It is bounded by single family residential zones and uses on the north, east, south, and west. Land east of the property is also used as a small farm. The Comprehensive Plan designation for the property is single family residential.

IV

The property currently contains a log cabin, which is used as a single family residence. Mature trees, scrub blackberries, and scotch broom also grow on the property, with a forest of tall firs on the eastern portion.

V

There is an unused fifteen-foot wide easement on the eastern edge of the property; its intended use is unclear. Schedule B of the title report says that the easement, recorded January 4, 1985 is for "ingress and egress." Exhibit 18.¹ The plan to retain the eastern one-third of the property as forest land with a crushed rock trail would not prevent such easement's utilization in the future. There is also a twenty-foot wide easement on the west side on the property to accommodate the City's long-range plan to widen Grow Avenue.

VI

Gideon Park is planned for quiet use and passive activities rather than noisy, active, or large group activities. In keeping with the Gideons' wishes, the eastern one-third would remain forested with walking trails throughout. The western two-thirds would be developed with curving, crushed rock walkways and landscaping;

¹ Neither Chuck Field nor Mike Regis are aware of any plan to connect this easement to a trail system. One of the neighbors pointed out that even if such trail were provided, it would not lead to anything as the park is surrounded by homes. Gary Parker testified that the neighbors understood this easement to be for access to land to the north and east if that land were developed. Mr. Parker also pointed out that this land could easily be accessed by a planned extension of Fir Acres Drive.

designated mature trees would remain. See Agreement, Exhibit 4a. Landscaping on the western two-thirds of the park is designed such that when viewed from Gideon Lane, people would see into the park but not through to the residences to the north. See Exhibit 4b. Grasses would be planted to provide color. Plant material has been chosen to be drought resistant to minimize water usage.

There would be a children's play area in the northwest portion of the property. Landscaping along the northern border of this area would be of medium height, screening the northerly residences from the park without blocking out the sunlight. A mixture of deciduous and evergreen trees has been planned to provide cover and food for birds as well as year-round screening for the neighbors.

An existing log cabin would be retained on the property for use as a live-in caretaker residence. In the future, restrooms would be installed, connecting to City water and sewer.

VII

A chain-link fence would be installed along the north and east boundaries of the park to provide security for the park and privacy for the surrounding neighbors. Low level, non-glare lighting would be provided for the foot-paths. The park would open at 7:00 A.M. and close at dusk. However, the park would not be physically closed off on the western or southern boundaries; thus people could stroll through the park in the evening. The Park District would collect litter daily. Because no lighted basketball or tennis court or similar active facilities are planned, and because there will be a live-in caretaker on-site, it is expected that there will be minimal, if any litter, noise, light, or other intrusions into the surrounding neighborhood.

VIII

The "passive" nature of the park is not one of the restrictions included in the quitclaim deed signed by the Gideons or the accompanying Agreement between the Gideons and the Park District. As Mr. Regis pointed out at the hearing, these documents merely restrict the use to a "public park." The Agreement closes with the following provision:

Both parties recognize that actual development of Gideon Park may depend upon the Park District's financial limitations and/or its obligation to provide a safe facility that will serve the park and recreation needs of the general public.

See Quitclaim Deed and Agreement attached to Exhibit 4a.

The neighbors present at the hearing and Mr. Regis asked that conditions be imposed so that the park's use could not become more active in the future without further public input.

IX

The intent is that neighbors would walk to the park and that few, if any, vehicles would drive and park there. A small gravel parking area would be located in the southeastern corner, providing space for up to five vehicles, including the caretaker's vehicle. Grow Avenue and Gideon Lane cannot provide overflow parking for Gideon Park. Mike Regis, City Land Use Administrator, requested that back-up plans be made in case a demand for additional parking arises in the future.

X

Calculations have not been presented showing what portion of the parking lot would be devoted to landscaping. There is no interior landscaping planned for this small parking area. However, it appears from the site plan (Exhibit 4b) that more than ten percent of the parking lot is in landscaping, if the areas between the parking lot and the property lines are included in that computation. The parking area is surrounded by landscaping, except for the driveway entrance onto Gideon Lane.

XI

The land does not slope substantially. No storm drainage has been provided for the parking area because stormwater should seep through the gravel and eliminate run-off. The vegetation of the surrounding area will also help to absorb stormwater. The only areas of the park which will be covered with impervious surfaces will be the future restroom and the existing cabin.

XII

The driveway for the parking area is near the eastern end of Gideon Lane, a graveled dead end road. The entrance would be across Gideon Lane from the boundary between residential lots 003-00 and 004-00. The driveway for lot 003-00 is on the westerly portion of that lot; the driveway for lot 004 is on the easterly portion of that lot. The Park District purposely placed the park driveway approximately midway between the two residential driveways to the south to minimize vehicular interference.

XIII

Currently there are no sidewalks along Grow Avenue; they are included in the City's future plans. Mike Regis testified that requiring sidewalks at this time along the Grow Avenue edge of the

park would not provide significant additional safety. Mr. Regis asked, however, that the Park District agree: 1) not to object to future formation of a L.I.D. for street widening, sidewalk and infrastructure installation, and 2) to pay its share of the costs whenever these improvements occur.

XIV

The property is currently served by City water. The log cabin is served by a septic tank. Future public restrooms would connect to City sewer. City water and sewer systems can accommodate the restrooms.

XV

To date there has been no SEPA Determination of Environmental Significance or Non-significance. Mr. Regis testified that it is for the Park District as "lead agency" to make such determination or to decline "lead agency status."²

XVI

On April 13, 1989, the Planning Agency recommended approval of the conditional use permit application for Kenneth H. Gideon Park. The Planning Agency and City Land Use Department felt that such use was included in the term "governmental," a conditional use under WMC 18.28.030 C. See Exhibit 10. George Simpson of the Planning Agency, however, had earlier pointed out that the term "governmental" did not include parks. He moved that the application not be forwarded to the Hearing Examiner until such time as the City Council amended the ordinance to allow parks as a conditional use in a single-family residential zone. See Exhibit 9. His motion failed. Consequently the conditional use application was forwarded to the Hearing Examiner prior to the City Council's action to amend the ordinance.

XVII

Notice of the public hearing was published in the Bainbridge Review on April 26, 1989, and May 3, 1989. Exhibit 15b. Notice was also mailed to the neighboring property owners and posted on the property. Exhibits 14 and 15c, respectively.

² It appears that the park proposal would have less of an environmental impact than would the addition of more single family dwellings. Further, the plan would retain natural vegetation to absorb water runoff and would provide nesting and feeding areas for birds.

CONCLUSIONS OF LAW

I

The matter is properly before the Hearing Examiner.

II

Notice of the public hearing exceeded legal requirements. In addition to notice by publication and posting, neighbors were given actual notice of the hearing as well as the opportunity to participate with the Park District in designing the park.

III

A public park is neither a conditional nor a permitted use in a single family residential zone in the City of Winslow. A park is not listed as a permitted use in WMC 18.28.020 or a conditional use in WMC 18.28.030. The Planning Agency and City Land Use Department stretched the "governmental" conditional use of WMC 18.28.030 C. to include parks; such stretching is legally incorrect.

WMC 18.28.030 C. describes one of several conditional uses allowed in a high density single family residential zone, as follows:

Educational, cultural, governmental, religious, or health care facilities.

(Emphasis added.)

Identical language is used to describe a permitted use in a high density multifamily residential zone. WMC 18.20.020 H. In contrast, a separate subsection specifically provides for "community, or public park and recreational facilities" as a conditional use in a high density multifamily residential zone. WMC 18.20.020 G. This additional "public park" provision immediately precedes the "governmental" use provision. The inclusion of a separate subsection for "parks," immediately preceding the subsection for "governmental" use, means that the term "governmental" does not include "parks."³ The absence of similar specific provision for "community or public park and recreational facilities" means that park uses were omitted

³ See also Planning Agency member George Simpson's similar conclusion described in Finding of Fact XVI.

from the single family residential zone.⁴

IV

Gideon Park is consistent with the City's Comprehensive Plan. One "character goal" for community and neighborhood vitality is described as follows:

To create additional humanizing elements and buffers, such as parks and green spaces.

Comprehensive Plan, Ordinance #87-29, page 20. A goal and objective of the City's park and recreational plan is that "parks should be convenient in each neighborhood." Comprehensive Plan, page 73. See also pages 31 and 57. The Park District also has been "responsive to neighborhood concerns." Comprehensive Plan, page 21. Further, Gideon Park meets the City's goals and objectives to include facilities to encourage walking. City's Comprehensive Plan pages 73 and 74. See the Staff Report, Exhibit 126, page 8.

V

WMC 18.100.040 directs Applicant to demonstrate at a hearing held to consider an application for a conditional use permit the following:

- A. The proposed conditional use is in harmony with the spirit and intent of this title;
- B. Development of the proposed use would not adversely affect health, welfare, safety, land and rights of other persons;
- C. The proposed conditional use meets all the criteria otherwise applicable to the zone in which it is to be developed.

The proposal meets requirements A and B, above. It is in harmony with the spirit and intent of title 18, especially WMC 18.04.010, mandating the adoption of the comprehensive plan, which encourages neighborhood parks. Development of the use as proposed would not adversely affect health, welfare, safety, land and rights

⁴ Ironically, the proposal is consistent with title 17 of the Winslow Municipal Code, providing for park and recreational facilities within subdivisions. WMC 17.08. The neighborhood surrounding proposed Gideon Park appears to have originated as a single family residential subdivision, especially the Fir Acres Drive area to the north. Apparently there was no provision for a neighborhood park. Approval of Gideon Park would thus be consistent with the City's plan to provide park and recreational areas for subdivisions.

of other persons. This conclusion is directly predicated upon the passive nature of the park proposal. If at some future time, however, a more active use were advocated, then another public hearing should be held to determine whether the health, welfare, safety, land and rights of others persons, especially the surrounding neighbors, would be adversely affected.

Until or unless the City Council amends the single family residential zone to include a park as a conditional use, the proposed park does not and will not meet "the criteria otherwise applicable to the zone which it is to be developed," requirement C, above. A public park is neither a permitted nor a conditional use in a high density single family residential zone. No matter how attractive the park plan may be, no matter how the Gideon Park proposal would further the aforementioned goals of the Comprehensive Plan, the park cannot legally be developed unless the code is amended.

If WMC 18.28.030 is amended to include parks as a conditional use, then Gideon Park would meet one "criteri[on] otherwise applicable to the zone in which it is to be developed," requirement C above. Applicant also needs to demonstrate by mathematical computation that at least ten percent of the parking area would be landscaped as defined by WMC 18.88.120. Further, the Bainbridge Island Park and Recreation District and the City Land Use Department need to decide immediately which has "lead agency" status for SEPA purposes; that agency should then immediately issue a Determination of (Environmental) Significance or Non-Significance.⁵

VI

Pursuant to WMC 18.100.050, the following conditions are "necessary to protect the health, safety, welfare and rights" of the neighbors of the Gideon Park proposal:

1. Gideon Park shall be developed essentially as described in Exhibit 4b, Site Plan revised November 8, 1988. Minor deviations will be allowed, but no major changes will be allowed without further public hearing and actual written notice to the neighbors.
2. If future need warrants, the park district shall develop additional vehicle parking. Such condition is necessary for the safety of the

⁵ WAC 197-11 sets forth the State Environmental Protection Act (SEPA) rules applicable to land use applications filed with the City of Winslow. WMC 16.04. The SEPA process is designed to pinpoint environmental problems as early as possible. See WAC 197-11-055. It is highly unusual for an application to reach the Hearing Examiner without a SEPA determination.

neighborhood and park users since there is not ample room for additional parking along the adjoining streets. If substantial vehicles were to park along the streets, emergency access and non-emergency traffic flow might be impeded.

3. Components of the plan which cannot be changed without further public hearing include, but are not limited to, the following:

- a) the landscaping buffer along the north edge of the property, which will provide a vegetated screen between the park and the neighbors to the north;

- b) the chain-link fence proposed for the north and east boundaries, to protect the security of the park and the privacy of the surrounding neighbors;

- c) low level, non-glare lighting, to preserve the privacy and tranquillity of the neighborhood; and

- d) passive, primarily neighborhood, use of park.

ORDER

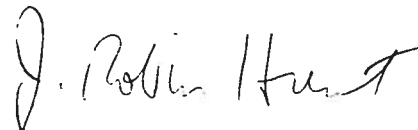
A conditional use permit to allow development of Gideon Park as proposed is granted on the following conditions:

1. That the City Council amend WMC 18.28.030 to include public parks as a conditional use in a high density single family residential zone;
2. That a SEPA determination of environmental significance or non-significance be made immediately; if a determination of significance is made, the issuance of the conditional use permit shall be delayed until environmental concerns are met;
3. That a chain link fence be installed along the northern and eastern borders of the park as proposed;
4. That medium height vegetation be planted along the western two-thirds of the northern border as proposed in Exhibit 4b, to screen the park from neighbors to the north while allowing sunlight into the park;

5. That the Bainbridge Island Park District demonstrate to the City Land Use Department by mathematical computation that the parking lot ten percent landscaping requirements of in WMC 18.88.120 are met;
6. That the park be developed and used for passive recreational use as proposed;
7. That the mature trees and cabin be retained as specified in the August 6, 1987, Agreement between the Gideons and the Park District. (Exhibit 4a); these trees include a balm of Gilead, a yew, two large madrones, a pine, and large firs near the cabin;
8. That the Bainbridge Island Park District support any future L.I.D. for the installation of sidewalks and infra-structures along Grow Avenue and pay its share of such improvements;
9. That the parking area be gravel, but that other storm water collection be provided if substantial storm water collects in the parking area;
10. That additional parking be provided if vehicles are parked frequently by park users along Grow Avenue or Gideon Lane; and
11. That if an active use is proposed for the park, then actual written notice shall be given to all the neighbors and a public hearing shall be conducted by the Hearing Examiner to determine whether or not such use would have an adverse affect on the health, welfare, safety and rights of others.

If the City Council chooses not to amend the ordinance as specified in Condition 1 above, then the conditional use permit is denied.

Dated this 22 day of May, 1989



J. Robin Hunt
Hearing Examiner