

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BREMERTON**

In the Matter of the Application of)	NO. BP11-00033
)	
City of Bremerton Public Works)	
Department)	FINDINGS, CONCLUSIONS
)	AND DECISION
<u>For Approval of a Noise Variance</u>)	

SUMMARY OF DECISION

The request for a noise variance from BMC 6.32.040(b) and (c) to exceed maximum permissible noise levels between 10:00 PM to 4:00 AM, to upgrade Sewage Pump Station CE-1 at 1750 Park Avenue, Bremerton, Washington, is **GRANTED**. Conditions of approval are necessary to mitigate specific impacts of the proposed project.

SUMMARY OF RECORD

Request:

The City of Bremerton Public Works Department requests a noise variance from BMC 6.32.040(b) and (c) to exceed maximum permissible noise levels between 10:00 PM to 4:00 AM to construct an upgrade to Sewage Pump Station CE-1 at 1750 Park Avenue, Bremerton, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the matter on July 25, 2011.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Allison Daniels, City Planner
Ned Lever, Project Manager
George Brooking
Shirley Brooking

Mark Koontz, Attorney, represented the City.

Exhibits:

The following exhibits were admitted into the record:

1. Variance Application, dated June 30, 2011
2. Determination of Completeness, dated July 5, 2011

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3. Notice of Application & Notice of Public Hearing, dated July 7, 2011
 - a. Affidavit of Mailing, dated July 7, 2011, with mailing list
 - b. Affidavit of Posting, dated July 7, 2011, with photo of posted notice
 - c. Affidavit of Publication, dated July 11, 2011, with *Kitsap Sun* notice, published July 7, 2011
4. Email from Shirley Brooking, dated July 14, 2011
5. Chapter 6.32 BMC
6. Portion of zoning map, undated
7. Staff Analysis and Conclusions
8. Sewage Pump Station CE-1 upgrade Force Main Revision Plan (Sheet C1), dated June 28, 2011

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

1. The City of Bremerton Public Works Department (Applicant) requests a noise variance from BMC 6.32.040(b) and (c) to exceed maximum permissible noise levels between 10:00 PM to 4:00 AM to construct an upgrade to City Sewage Pump Station CE-1. The proposed project is located at 1750 Park Avenue, Bremerton, Washington.¹ *Exhibit 1; Exhibit 7, Staff Analysis, page 1; Exhibit 8.*
2. The City Department of Community Development (City) determined the application was complete on July 5, 2011. *Exhibit 1; Exhibit 2; Exhibit 7, Staff Analysis, page 3.* The City provided notice of the application and associated open record hearing on July 7, 2011, by mailing to property owners within 300 feet of the project and distributing the notice to federal and state agencies; posting notice on the property; and publishing notice in the *Kitsap Sun*.² *Exhibit 3; Exhibit 3.a –c; Exhibit 7, Staff Analysis, page 3.*
3. The City reviewed the proposal and determined that repair, remodeling, and maintenance activities are categorically exempt from environmental review under the State Environmental Policy Act, Ch. 43.21C RCW. *WAC 173-11-800(3); Exhibit 7, Staff Analysis, page 1.*

¹ The Assessor's Account No. for the property is 132401-2-013-2003. *Exhibit 1, page 1.*

² Mark Koontz, City Attorney, noted that the Public Notice referenced "nighttime work between the hours of 10 a.m. and 4 a.m." *Exhibit 3.* Mr. Koontz stated that this was a typographical error, as it should have read 10 p.m., not 10 a.m. Mr. Koontz argued that proper notice was given because the City had substantially complied. Mr. Koontz argued that the actual proposed nighttime work between 10 p.m. and 4 a.m. was much less than the time period set out in the notice. BMC 6.3.070(a) provides that "The Hearing Examiner shall enforce rules and regulations governing the application for and granting of variances, including hearing and notices." The Hearing Examiner finds that the City provided adequate notice.

4. The proposed project is located within the jurisdiction of the State Shoreline Management Act. The City granted a shoreline exemption on March 29, 2011. *Exhibit 7, Staff Analysis, page 1.*
5. The property is located in the City's Low Density Residential (R-10) zone. The pump station is surrounded by residential apartment complexes on three sides, with Port Washington Narrows to the north. The pump station lies to the east of Park Avenue. *Exhibit 7, Staff Analysis, page 1; Exhibit 8.*
6. The Applicant proposes to upgrade Sewage Pump Station CE-1 by installing a flow meter, isolation valves, and bypass piping. This work would require sewage flow to be bypassed around a section of a 24-inch wide sanitary sewer force main between 10:00 PM and 4:00 AM when the sewage flow is as low as possible during dry weather. *Exhibit 7, Staff Analysis, pages 1 and 2.* Ned Lever, City Project Manager, testified that sewage flows during the day are between 1,200-2,000 gallons per minute and between 3,000-5,000 gallons per minute during the evening. From 10:00 PM to 4:00 AM flow rates drop to 500-1,000 gallons per minute. *Testimony of Mr. Lever.*
7. Mr. Lever testified that removing a section of the force main requires two cuts, one of 12 feet and one of 20-25 feet. Cutting would begin as soon as possible once volume flow drops. This would require between two and four nights of work. *Exhibit 7, Staff Analysis, page 2; Exhibit 8; Testimony of Mr. Lever.*
8. The bypass work would require the use of dump trucks and loaders with diesel engines and back-up safety alarms and gas-powered circular saws for up to four nights of work. Together, noise generated by the trucks, loaders and saws would generate noise levels in excess of that allowed by City Code. *Exhibit 1; Exhibit 6; Exhibit 7, Staff Analysis, page 1.*
9. BMC 6.32.010 establishes Noise Control Districts within the City. City Sewage Pump Station CE-1 is located within District I. District I includes the R-10 zone. *BMC 6.32.010(c).* The maximum permissible noise levels received within District I is 55 decibels (dBA). *BMC 6.32.040(a).* Sounds from the repair of essential utility services and sounds from temporary construction from the proposed project are exempt from the maximum noise levels with the exception for District I between 10:00 PM and 7:00 AM. *BMC 6.32.040(d (1)(v) and)(3)(i).* *Exhibit 7, Staff Analysis, page 2.*
10. Between the hours of 10:00 PM and 7:00 AM, noise limitations shall be reduced by ten (10) dBA for receiving property within District I. *BMC 6.32.040(b).* Applicable noise limitations for any receiving property may only be exceeded by 5 dBA for a total of fifteen minutes, ten dBA for a total of five minutes or 15 dBA for 1.5 minutes in any one

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hour period. *BMC 6.32.040(c)*. The Applicant seeks a variance from the limitations imposed by *BMC 6.32.040(b)* and *(c)*. *Exhibit 1; Exhibit 7, Staff Analysis, page 1.*

11. In an email dated July 14, 2011, George R. and Shirley A. Brooking, residents at 1725 Park Avenue, A-3-4, objected to the issuance of a variance. The email expressed concern that the proposed work would cause disturbance during night hours. Mr. Brooking also testified at the hearing and raised concerns about access to parking. Allison Daniels, City Planner, proposed a condition of variance approval that would ensure parking access would be maintained for residents living along Park Avenue. Ms. Brooking requested clarification concerning the length of time to complete the project. Ms. Daniels responded that while there is a six month work window, the project would likely be completed within two months. Approximately four nights of work would be needed. The Applicant representative agreed that specific conditions to clarify the nature and extent of the project would be helpful and consistent with the goals of the project. *Exhibit 4; Testimony of Ms. Daniels; Testimony of Mr. Brooking; Testimony of Ms. Brooking; Testimony of Mr. Lever.*
12. The City staff concluded that the proposal is consistent with the City criteria for noise variance approval and is the minimum necessary for the work to be performed. *Exhibit 7, Staff Analysis, page 4.*

CONCLUSIONS

Jurisdiction

Under Bremerton Municipal Code (BMC) 2.13.070, BMC 6.32.070(a), and BMC 20.02.040(c), the Hearing Examiner has jurisdiction to hold open record hearings on noise variance applications and issue decisions on those applications.

Noise Variance Criteria

The variance shall not be granted under BMC 6.32.070 unless the Hearing Examiner has considered the relevant interests of the applicant, other owners of property likely to be affected, and the general public and finds that all the following facts and conditions exist:

- (1) That there are exceptional or extraordinary circumstances or conditions applying to the applicant's property, or intended use thereof, that do not apply generally to other properties in the same noise control district;
- (2) That such variance is necessary for the preservation and enjoyment of a substantial personal or property right of the applicants possessed by the owners of other properties in the same noise control district;
- (3) That the authorization of such variance does not endanger public health or safety in the same or adjacent noise control districts;

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- (4) That the granting of such variance will not adversely affect the general policy and purposes of this chapter.

BMC 6.32.070(b).

In authorizing a variance, conditions regarding noise level, duration, type and other considerations deemed necessary to carry out the policy and purpose of this chapter may be imposed. *BMC 6.32.070(c).*

Conclusion Based on Findings

- 1. There are exceptional or extraordinary circumstances or conditions applying to the applicant's property, or intended use thereof, that do not apply generally to other properties in the same noise control district.** The City Public Works Department has proposed an upgrade to Sewage Pump Station CE-1. This upgrade requires work to take place during lower sewage flow volumes. Volumes are lowest between 10:00 PM and 4:00 AM during dry weather. These are exceptional conditions that do not apply to surrounding residential properties. Public Works staff testified that while the overall project may take up to two months, the noise variance is to allow a limited amount of work to take place between 10:00 PM and 4:00 AM for up to four nights. Therefore, while the noise standards for District I would be exceeded, the variance would be for a limited duration. *Findings 1-10.*
- 2. The variance is necessary for the preservation and enjoyment of a substantial personal or property right of the applicants possessed by the owners of other properties in the same noise control district.** Public Works staff testified that the proposed project and requested variance is required to upgrade Sewage Pump Station CE-1. A portion of the proposed work must take place in late evening and early morning when sewage flow is lowest. *Findings 1-10.*
- 3. With conditions, the authorization of such variance does not endanger public health or safety in the same or adjacent noise control districts.** The proposed noise variance would allow the Applicant to exceed City noise standards for a limited amount of time. Conditions are required to ensure that the time required for force main cutting is held to a minimum and begins as soon as minimum flow volumes allow; that parking for residents along Park Avenue is not blocked; and that the Applicant give notice to area residents when work is scheduled between 10:00 PM and 4:00 AM. *Findings 1-12.*
- 4. With conditions, the granting of such variance will not adversely affect the general policy and purposes of this chapter.** The City's noise ordinance (Chapter 6.32 BMC) is designed to prohibit noise from intruding into the property of another that exceeds the maximum or permissible noise levels depending on the District of Sound Source and District Receiving Property. *BMC 6.32.040.* The noise ordinance provides a variance

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procedure. Here the Public Works Department requests a variance for a limited time, likely not to exceed four evenings, for work on Sewage Pump Station CE-1 that can only be performed between 10:00 PM and 4:00 AM. *Findings 1-10.*

5. **The Hearing Examiner has considered the relevant interests of the applicant, other owners of property likely to be affected, and the general public.** The public notice (Exhibit C.3) stated that the project would include nighttime work between the hours of "10:00 a.m. and 4:00 a.m." The Hearing Examiner concludes that adequate public notice was given because the actual variance request is for fewer hours than listed. The Hearing Examiner held an open record hearing and received testimony and exhibits from the City Department of Community Development, the Applicant, and two citizens. The Hearing Examiner has imposed conditions regarding the duration and other considerations as authorized by BMC 6.32.070(c). *Findings 1-12.*

DECISION

The request for a noise variance from BMC 6.32.040(b) and (c) to exceed maximum permissible noise levels between 10:00 PM to 4:00 AM to construct an upgrade to Sewage Pump Station CE-1 at 1750 Park Avenue, Bremerton, Washington, is **GRANTED**, subject to the following conditions:

1. In order to reduce the time needed for work that would exceed City noise limits between 10:00 PM and 4:00 AM, the Applicant shall utilize two cutters in order to work simultaneously to make the two cuts required in the force main. Cutting of the force main between 10:00 PM and 4:00 AM shall take place as soon as volume in the force main is reduced to a minimum and only during dry weather.
2. The Applicant shall provide notice to the neighborhood prior to beginning work between 10:00 PM and 4:00 AM. Notice shall be given as recommended by the Planning Department so that residents will be aware of the nature and extent of the project before work actually begins.
3. The Applicant shall not block access to parking areas for residents living along Park Avenue.

Decided this 3rd day of August 2011.



THEODORE PAUL HUNTER

Hearing Examiner

Sound Law Center

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