

**CITY OF ELLENSBURG
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	DECISION AND CONDITION
P 20-009)	OF APPROVAL
Kittitas County Solid Waste)	

THIS MATTER having come on for hearing in front of the City of Ellensburg Hearing Examiner on November 30, 2020. The Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, and Decision and Condition of Approval as follows:

I. FINDINGS OF FACT

1. The applicant is requesting a variance for relief from the 35 foot (35') height maximum in the Light Industrial (I-L) zone. The applicant is requesting to increase the total height of the building up to 50 feet which will require a 15 foot (15') variance in the building height in order to construct a viable solid waste transfer facility structure.
2. The applicant/owner is Kittitas County Solid Waste, 925 S. Industrial Way, Ellensburg, WA, 98926.
3. The existing 50.58-acre parcel located in the northwestern portion of the City of Ellensburg, in Kittitas County, Washington, is shown on Tax Map No. 18-18-28030-008 as Assessor's tax parcel ID# 611033 owned by Kittitas County Solid Waste. The parcel site to the west is bounded by State Highway 97 (US 97), to the north by the Burlington Northern Railroad and Old Highway 10, and to the east and south by private, undeveloped properties. The west and north boundaries of the parcel form the boundary of the existing city limits.
4. Preliminary Plat approval has been granted for this property. Once the short plat has been finalized and recorded, the southern lot proposed for the location of the transfer station (Lot B) will be approximately 38.84 acres in size.
5. Site History: On December 5, 2013, the Planning Commission recommended approval of a rezone for this property in order to change the zoning from Residential Suburban (R-S) to I-L. Subsequently, City Council gave final approval for the rezone on February 3, 2014, thereby adopting Ordinance No. 4668.
6. Kittitas County selected the Transfer Station location by performing an extensive site screening and selection process. The comprehensive regional site selection process evaluated over 60 sites using initial siting criteria of parcels greater than 25 acres located within 2 miles of the City of Ellensburg or the town of Kittitas and other screening criteria.
7. The initial 60+ potential sites were narrowed to 11 sites using a list of secondary siting criteria. An extensive public involvement program was used to obtain valuable citizen input on the location and features of the new facility. The 11 shortlisted sites were reviewed by representatives from the City of Ellensburg (City) and the County. Using updated City/County zoning, land use discussions, and urban growth area information, the list was further refined to three potential sites for community input. The chosen site was identified as Site 33, US 97/Old Highway 10, or simply Highway 97.

8. The County's Solid Waste Advisory Committee (SWAC), consisting of representatives of cities and towns within the County, the waste management industry, local elected officials, and citizens of Kittitas County, participated in the site selection process and agreed with the final selected site. The Board of County Commissioners approved the site at their September 4, 2018, meeting. The County purchased Parcel 611033 and entered the permitting and master planning process.
9. The County initiated site predevelopment discussions with the City in September 2018. The first application was submitted on December 14, 2018. On September 10, 2019, the first application was modified to include a new Public Works Department Maintenance Facility on the future northern lot (proposed Lot A).
10. Following an August 27, 2020 recommendation of approval from the Ellensburg Planning Commission, on October 19, 2020, City Council conducted an open record hearing and adopted Resolution 2020-25 approving the siting of an Essential Public Facility for the location of the new Kittitas County Solid Waste Transfer Station with the following condition:
 - 10.1 The applicant shall adhere to any requirements related to any future development approvals, including meeting all requirements of utility providers, City departments, and affected districts, as outlined in adopted City Codes and other regulatory documents.
11. The Transfer Building is a major component at the Transfer Station. It currently receives approximately 27,000 tons of material per year (or 80 tons per day) and is anticipated to receive 105 tons per day by the end of its 30-year design life. The Transfer Building will need a height variance because the Light Industrial (I-L) zoning district use table in Ellensburg City Code (ECC) 15.320.040 "Building setback and intensity standards table – Nonresidential zones," indicates the maximum building height in the I-L zone is 35 feet. The proposed Transfer Station will be approximately 40 to 50 feet high above finished grade.
12. Zoning of Surrounding Properties: A zoning map of the parcel and surrounding properties is attached as Exhibit 3. The property is zoned as Industrial Light (I-L). A "solid waste handling facility" falls within the category of "public agency or utility," a use which is permitted in the Light Industrial (I-L) zone. The zoning of the surrounding properties is stated below.
 - 12.1 North: Property to the north, on the opposite side of Old Highway 10, is located within County Jurisdiction and is zoned Agriculture – 5.
 - 12.2 South: The south extent of the property borders a large parcel of undeveloped land within the City limits, and is zoned Commercial Highway (C-H).
 - 12.3 East: Property directly to the east is undeveloped land within City limits, and is zoned Commercial Tourist (C-T).
 - 12.4 West: To the west, the property borders the City Limit boundary, and across Highway 97 the land is County Jurisdiction and is zoned General Industrial.
13. Site Characteristics: The site topography is relatively flat, generally sloping from north to south toward the southeastern corner. Elevation ranges from 1,554 feet above mean sea level in the northernmost corner of the site to approximately 1,540 feet in the southeastern corner. The site is bisected by multiple interconnecting excavated ditches or ditch segments. Water rights associated with the property were purchased by the County.

14. Access: Transfer Station residential and commercial (truck) traffic will exit off US 97 on a new Minor Collector to be constructed along the southern boundary of the property. The entrance into the Transfer Station Facility will be located off the new Minor Collector near the southeastern corner of the property. Vehicle traffic flows are segregated after the scalehouse for efficiency and safety.
15. The new Minor Collector was added to the project to address the 2017 City of Ellensburg Comprehensive Plan Transportation Section that recommends a minor collector be provided from Highway 97 to University Way and onto Dolarway Road. The City requested that the County provide a segment of this Minor Collector along the southern border of its property.
16. Zoning and Development Standards, ECC Title 15 - Land Uses: ECC 15.310.040 – The Transfer Station falls into the category of Governmental Uses. Both public agency offices and public utility yards are both considered Permitted Uses in the Light Industrial zone as identified in Table 15.310.40, as depicted below: Special Uses.

Use	R-S	R-L	R-M	R-H	R-O	C-N	C-T	C-H	C-C	C-C II	I-L	I-HP-R
GOVERNMENTAL												
Public agency or utility office*						P	P	P	P	P	P	P/A
Public agency or utility yard	P ⁴	P ⁴	P ⁴	P ⁴	P ⁴	P		P	C ⁴	P	P	P/A

17. Development Standards: ECC 15.320.040: The height limit in the Light Industrial (I-L) zone is 35 feet.
18. Comprehensive Plan - The future land use designation for this parcel is Industrial Light, as shown in Exhibit 4. The Transfer Station is considered an essential public facility according to WAC 365-196-550 and Revised Code of Washington RCW 36.70A.200 (cited in ECC 15.250.110). The Ellensburg Land Use Code does not explicitly identify “solid waste handling facility” as an I-L use, but the P19-106 Pre-Application Report concluded I-L allows for the full range of uses including public utility agencies and their associated utility yards. Furthermore, as per RCW 36.70A.200 (5) “No local comprehensive plan or development regulation may preclude the siting of essential public facilities”.
19. Environmental Review - The applicant submitted the required SEPA checklist for review, which was processed as follows:

SEPA Checklist Submitted:	02/13/20
Determination of Completeness:	04/10/20
Notice to Property owners:	04/13/20
SEPA Threshold Determination	07/06/20

20. Agency/Department Comments: The Public Works and Utilities Departments and the Fire Marshall commented during the overall project pre-application and SEPA reviews. They had no specific comments pertaining to this height variance application.
21. Public Comments: Notice of the variance application was mailed to property owners within 300 feet of the proposed site on Friday, November 6, 2020. Notice of the Public Hearing was also published in the legal section of the Daily Record on Saturday, November 7, 2020, and the site was posted with a land use action sign on November 9, 2020. No written comments from the public were received.
22. In review of this proposal, it is important to consider the goals and policies of the comprehensive plan, applicable City Code, as well as public and agency comments. Before approving the variance, the Hearings Examiner must find that the application is in compliance with decision criteria in ECC 15.250.050. The applicant has submitted an application with a narrative addressing the following variance criteria:
 - 22.1 The variance is necessary because of the unique size, shape, topography, or location of the subject property:
 - 22.1.1 Applicant narrative and supporting application materials: A variance is necessary to allow for efficient and safe Transfer Station operations. The collection vehicles unload their contents onto a concrete floor. The minimum clearance within the Transfer Building must be 30 feet to allow unloading of collection vehicles and to prevent damage to the roof structure. An additional 10 to 20 feet is needed for the roof support structure and the roof pitch to promote stormwater and snow runoff. Therefore, the overall height of the Transfer Building will be approximately 40 to 50 feet above finished grade.13.1.1. The preliminary subdivision conforms to all applicable zoning standards of the city as set forth in the LDC, including the form and intensity standards in Chapter 15.320 ECC, the streetscape design standards in Chapter 15.410 ECC, the subdivision design standards in Chapter 15.420 ECC, the project design standards in Division V, and the public works development standards.
 - 22.1.2 The Hearing Examiner agrees with the applicant that the additional height variance is necessary to allow for efficient and safe Transfer Station operations to accommodate solid waste collection vehicles, and provide adequate roof pitch to promote stormwater and snow runoff.
 - 22.2 The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner.
 - 22.2.1 Applicant narrative and supporting application materials: Strict enforcement would create an unnecessary hardship because the property could not be used for a transfer station without a transfer building designed for moving waste from haul vehicles to transfer trailers that in turn are hauled to an approved disposal site. The City has no land zoned for essential public facilities. The uses described in the I-L zone generally cover the activities proposed at the Transfer Station.
 - 22.2.2 The Hearing Examiner agrees with the applicant that a height limit of 35 feet would unnecessarily deprive the owners of the ability to maximize the use of their property to build a viable, efficient solid waste transfer station within

the constraints of the zoning code. The strict enforcement of the height code for the I-L zone would limit the building to 35 feet.

- 22.3 The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone, however, the existence of similar nonconforming uses of neighboring lands, structures, or buildings in the same zone shall not be considered grounds for the issuance of a variance.
 - 22.3.1 Applicant narrative and supporting application materials: There are no similar nonconforming uses on neighboring lands. The applicant is unaware of other instances of height variances issued to other buildings in I-L zones.
 - 22.3.2 The Hearing Examiner agrees with the applicant that there are no similar nonconforming uses on neighboring lands, and finds that the unique requirements for the essential public facility being sited on the subject property is unnecessarily deprived by the provisions of this title of the full and efficient use of the land that is permitted in the Light Industrial Zone by the height limit.
- 22.4 The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property.
 - 22.4.1 Applicant narrative and supporting application materials: There were no deliberate actions taken by the applicant/property owner resulting in the need for the variance. The need for a height variance is based on the functionality of a transfer station, which provides a necessary public service to the community.
 - 22.4.2 No deliberate action by the property owner or past property owners necessitated the need for this variance. The owner seeks to use the property in a way that is permitted in the zoning ordinance and is consistent with the Comprehensive Plan.
- 22.5 The variance is compatible with the comprehensive plan.
 - 22.5.1 Applicant narrative and supporting application materials: The variance is compatible with the City of Ellensburg Comprehensive Plan (Comprehensive Plan) because the future land use map indicates the site is to remain zoned for I-L. The site is not within a historic district that would be affected by a tall structure. The Comprehensive Plan indicates the City should plan for essential public facilities but does not indicate where that should occur. A solid waste transfer station fits within the definition of an essential public facility as per Revised Code of Washington (RCW) 36.70A.200.
 - 22.5.2 The Hearing Examiner agrees with the applicant that the request is compatible with the City's comprehensive plan and further finds that Ellensburg is a full-service municipality. The Transfer Station is a replacement and upgrade of an existing facility that is necessary to accomplish the level of service (LOS) standard of weekly curbside refuse collection and fulfill Capital Facilities and Utilities Goals of the Comprehensive Plan, including:

- 22.5.2.1 Goal CFU-1: Ensure that system services are delivered in a safe and reliable manner and are in compliance with regulatory requirements.
 - 22.5.2.2 Policy C: Continue to follow and enforce existing city standards for public facilities and services.
 - 22.5.2.3 Program 3: Continue to coordinate affordable and reliable collection of solid waste and recycling collection services that meets the needs of city residents.
- 22.6 The proposed new Transfer Station is an essential facility that allows the County and the City to provide affordable solid waste service because it enables commercial and self-haulers to transport materials a much shorter distance than direct hauling solid waste over 70 miles to the Wenatchee landfill. The new Transfer Station will provide efficient and cost-effective unloading, processing, and transfer of solid waste and other material. The new facility will be reliable because it will not be prone to downtime associated with seasonal flooding. The Transfer Station will meet all regulatory requirements, including the Minimum Functional Standards for Solid Waste Handling WAC 173-304, and specifically WAC 173-304-410 for Transfer Stations.
- 22.7 Furthermore, as described in the Comprehensive Plan and the 2010 Kittitas County Solid Waste and Moderate Risk Waste Management Plan Update, demand for capital facilities will grow in the next 20 years and the demand must be accommodated and anticipated through new capacity and improved management. To meet the LOS standard for solid waste management that the community adopted, the City needs to relocate and improve the Transfer Station where collection trucks can transfer to long-haul vehicles. The new Transfer Station will provide sufficient areas for public and private customers to transfer material into long-haul vehicles for efficient transportation to the Wenatchee Landfill.
- 22.8 The variance does not create a health or safety hazard.
- 22.8.1 Applicant narrative and supporting application materials: The height variance does not create a health or safety hazard because it does not trigger a Federal Aviation Administration (FAA) aviation hazard.
 - 22.8.2 A transfer station provides for the health and safety of the public by supplying a healthy and safe means to manage solid waste generated in the community, which is a responsibility of the County and City under RCW 70.95.010: (b) It is the responsibility of state, county, and city governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound.
 - 22.8.3 The County will be required to meet public health requirements set forth by the state, which are designed to prevent health and safety standards. In addition, the proposed height of the transfer station building does not create a condition that would exceed the capabilities of local fire and rescue services.
- 22.9 The granting of the variance will not be materially detrimental to the public welfare or injurious to:

- 22.9.1 The property or improvements in the vicinity, or
- 22.9.2 The zone in which the subject property is located;

- 22.9.3 Applicant narrative and supporting application materials: The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity because it does not deprive adjacent property owners of the full use of their land. A meeting was convened with adjacent property owners on June 28, 2019. Although the purpose of the meeting was to discuss the accommodation of the future Minor Collector as described in the Comprehensive Plan, there was no objection to the layout or scale of any Transfer Station facilities. As per the P19-106 Pre-Application Report, the Transfer Station operations fit zoning requirements of an I-L zone, the current zone designation.

- 22.9.4 The Hearing Examiner agrees with the applicant in that the granting of the height variance will not be materially detrimental to the general public welfare, nor result in the deleterious obstruction of any views from surrounding properties. The County has done an excellent job of providing transparency throughout their rigorous public participation process. Staff finds that the new facility on the proposed site serves the interest of the citizens and property owners of the City by providing an environmentally safe solid waste handling location offering long-term use for the community in accordance with RCW 70.95.010.

- 22.10 The variance does not relieve an applicant from:
 - 22.10.1 Any of the procedural or administrative provisions of this title, or
 - 22.10.2 Any standard or provision that specifically states that no variance from such standard or provision is permitted, or
 - 22.10.3 Use or building restrictions, or
 - 22.10.4 Any provisions of the critical areas development standards except as provided in Division VI;
 - 22.10.5 Applicant narrative and supporting application materials: The applicant will comply with any procedural or administrative provision of ECC 15.250.050, building restrictions, or critical areas development standards.
 - 22.10.6 The Hearing Examiner agrees with the applicant that the granting of a height variance for this new solid waste transfer station facility will not relieve the applicant from complying with the remainder of Ellensburg City Code requirements because the proposal has completed the required overall project formal pre-application review by all City Departments, prior to submitting this variance application. Furthermore, the project will undergo all necessary building permits, Public Works, and Utilities permit reviews, and will be required to comply with all adopted codes and standards. This combined extensive review process will ensure all necessary requirements and improvements identified will be made a part of the relevant permits issued for the project.

- 22.11 The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;
 - 22.11.1 Applicant narrative and supporting application materials: A height variance will not interfere with the railroad's use of their adjacent property nor will the height of the Transfer Building interfere with the easement established for the new Minor Collector road.
 - 22.11.2 The Hearing Examiner agrees with the applicant that the height variance does not infringe on, or interfere with, any setback, easement, covenant, or responsibility that encumbers the property.
- 22.12 The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located;
 - 22.12.1 Applicant narrative and supporting application materials: The height variance will not establish a use that is not otherwise permitted in the I-L zone. Height variances can be approved but only when the variance meets all City regulations and requirements.
 - 22.12.2 The proposed use is permitted in the I-L zone. The Hearing Examiner would also refer to the applicant's narrative information pertaining to efficient building construction, noting that the granting of this variance will in fact allow for a more viable and practicable use as a transfer station facility.
- 22.13 The variance is the minimum necessary to grant relief to the applicant.
 - 22.13.1 Applicant narrative and supporting application materials: The applicant is requesting a height variance of 40 to 50 feet above finished grade, to allow the final height of the structure. The final structure height is based on Transfer Station functionality requirements. The applicant is not requesting an additional height variance for future buildings on the property.
 - 22.13.2 The Hearing Examiner agrees with the applicant that the height enforcement of the 35-foot maximum would limit the building by not allowing the additional height capacity needed for the waste hauling trucks; therefore, the height variance requested is the minimum that will increase building construction efficiency and allow for a more viable transfer station facility.
- 23. The City of Ellensburg Department of Community Development recommended approval of the requested variance subject to the conditions of approval.
- 24. An open record public hearing after due legal notice was held November 30, 2020, via Zoom video conference.
- 25. The following exhibits were admitted into the record:
 - 25.1 Ex. 1: Location Map;
 - 25.2 Ex. 2: Draft Preliminary Short Plat Survey;
 - 25.3 Ex. 3: Current Zoning Map;
 - 25.4 Ex. 4: Comprehensive Plan Land Use Designation Map;

- 25.5 Ex. 5: Notice of Application, Area Notification Map, & 300-Foot Buffer Notification List;
- 25.6 Ex. 6: Affidavit of Publication - Legal Notice of Open Record Public Hearing;
- 25.7 Ex. 7: Photo Notice of Land Use Action Sign Posted on Property;
- 25.8 Ex. 8: Resolution Approving the Siting of an Essential Public Facility;
- 25.9 Ex. 9: SEPA MDNS Issued 7/6/20;
- 25.10 Ex. 10: P20-009 Variance Application Materials Including:
 - Ex. 10.1 Variance Request Permit Application Form
 - Ex. 10.2 Applicant's Project Narrative
 - Ex. 10.3 Project Site Location Map
 - Ex. 10.4 Transfer Station Site Development Plan
 - Ex. 10.5 Transfer Station Building Elevations
 - Ex. 10.6 Federal Aviation Administration Criteria Results;
- 25.11 Ex. 13 Staff Report.

- 26. Appearing and testifying on behalf of the applicant was Patti Johnson. Ms. Johnson testified that she is the agent of the property owner and applicant. Ms. Johnson indicated that the proposed Condition of Approval was acceptable.
- 27. Also appearing and testifying on behalf of the applicant was Kimberly Wetzel. Ms. Wetzel testified that she was an agent authorized to appear and speak on behalf of the property owner and applicant. Ms. Wetzel testified that dump trucks cannot be raised to their maximum height without raising the height of the roof, which is why a variance is required.
- 28. Also testifying of the applicant was Tom Parker. Mr. Parker also testified that he was an agent authorized to appear and speak on behalf of the property owner and applicant. He is the project manager employed by Jacob's Engineering. Mr. Parker testified regarding the accepted design for transfer stations, which is to accommodate the highest truck bed while the truck is dumping. Generally speaking, the roof needs to be a minimum of 28 ft., but also must add an additional 7 ft. for snow and drainage concerns. In this particular case, there is also 15 ft. of soil that needs to be brought in. That raises the ultimate height of the building to 50 ft.
- 29. No member of the public testified at the hearing.
- 30. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

- 1. The Hearing Examiner has been granted authority to render this Recommended Decision.
- 2. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the City of Ellensburg Municipal Code and Comprehensive Plan.
- 3. As conditioned, the proposal will conform to the standards specified in City of Ellensburg.
- 4. As conditioned, the use will comply with all required performance standards as specified in City of Ellensburg Municipal Code.
- 5. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of either the City of Ellensburg Municipal Code or the Comprehensive Plan.

6. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

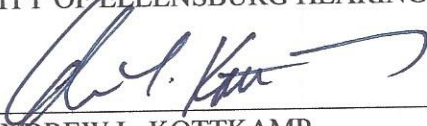
Based on the above Findings of Fact and Conclusions of Law, the application for P20-009 is hereby **APPROVED** subject to the following Condition of Approval.

IV. CONDITION OF APPROVAL

1. The applicant shall adhere to any requirements related to any future development approvals, including meeting all requirements of utility providers, City departments, and affected districts, as outlined in adopted City Codes and other regulatory documents

Dated this 1st day of December, 2020.

CITY OF ELLENSBURG HEARING EXAMINER



ANDREW L. KOTTKAMP

ANYONE AGGRIEVED BY THIS DECISION MAY FILE AN APPEAL WITH THE ELLENSBURG CITY COUNCIL AS PROVIDED FOR IN THE ELLENSBURG CITY CODE.