

Land Use Permitting of Reuse Projects in Idaho Cities and Counties

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Planning and Zoning permitting of reuse facilities may often not be well understood. This Presentation will review:

- Cities' and Counties' legal authority to require Land Use Permits.
- The arm's length decisions a City or County must make when approving Land Use Permits for Reuse Facilities the City or County owns.
- The basics of zoning, permitted uses, and conditional (special) use permits.
- Potential land use conflicts between existing land uses and planned growth.

- Lessons learned from two case studies:

1. The Hayden Area Regional Sewer Board (H.A.R.S.B.) request for Special Use Permit (S.U.P.) in the City of Hayden in Kootenai County.

2. The Southside Water and Sewer District request for a Conditional Use Permit (C.U.P.) in Bonner County.

City and County Legal Authority to Require Land Use Permits

Local Planning Act

- Authority vested in counties and cities – since 1975.
- Site-specific permits require compliance with applicable laws.
 - Must meet objective standards (odor?).
 - Often subject to public hearings.
 - Always subject to public opinion.
- Applicable laws include zoning/subdivision.
- IDEQ and EPA regulations.

City and County Legal Authority to Require Land Use Permits

Choices for City or County

- How to treat wastewater facilities as a land use
 - Permitted use
 - Conditional (special) use
 - Performance standards
- Considerations
 - Must meet objective standards (odor?)
 - Often subject to public hearings
 - Always subject to public opinion

City and County Legal Authority to Require Land Use Permits

What Issues Matter?

- Odor, odor, odor – did I mention odor?
- Potential for noise – mechanical plants, lift stations.
- Aerosols – biological fears.
- Organic growers.
- Decision standards? Clear and objective?
- What about the comprehensive plan?
 - Not a regulatory document – not a proper criterion.

Conditional Use and Special Use Permits (Layman's Terms)

Q: What are "Conditional Use and Special Use Permits"?

A: A Conditional Use Permit (also known as a C.U.P.) and a Special Use Permit (also known as S.U.P.) refers to a land use that requires special review to ensure compatibility with existing, or planned uses in the area.

Q: Who needs to apply for Conditional Use or Special Use Permits?

A: Depending on the zoning, facilities such as schools, churches, animal kennels, day care facilities, cell towers, surface mines, mini-storage facilities, and feed lots require C.U.P. and S.U.P. approval.

Q: How do I know if I need a Conditional Use or Special Use Permit?

A: Each zoning classification within a County Zoning Ordinance lists the various land uses that may be permitted with the approval of a C.U.P. or S.U.P. If you are unsure as to whether or not you need a CUP please consult with the Planning Department.

Q: How long is my Conditional Use or Special Use Permit valid?

A: Depending of the type of project, the Zoning Ordinance and/or Order of Decision will stipulate a time period the C.U.P. or S.U.P. is valid. Some may be valid for a five-year period or may be valid for a shorter period of time depending on the nature of the land use. Some permits may be issued with no expiration of the approval.

Conditional Use and Special Use Permits (Continued)

Q: What is involved with this process?

A:

- Pre-application conference with a planner in order to discuss your project.
- Complete an application packet and submit it to the Planning Department in order to start the approval process. An application, site plan, site photos, description of the project, agency letters, topographic survey (if applicable) and application fee is required.
- A complete application has been received, a public hearing is scheduled. The Hearing Body will oversee the hearing proceedings and make a final decision or forward a recommendation to the Board/City Council based upon the staff report and testimony entered into record.
- The Board/Council deliberates over the Hearing Body/Planning Commission's recommendation and the facts presented, and approve (with or without conditions) or deny the request.
- In some instances the Board/Council will hold another public hearing before rendering a decision.
- The Board/Council decision can be appealed to Courts.

Conditional Use and Special Use Permits (Continued)

Q: What conditions may be imposed?

A: Each C.U.P. is subject to different conditions

- Hours of operation
- Size limitations
- Landscaping
- Lighting
- Street frontage improvements
- May not be considered a use that is transferable upon the sale of the property
- Agency conditions as specified

CASE STUDY NO. 1

Hayden Area Regional Sewer Board
(H.A.R.S.B.)

Kootenai County, Idaho

Special Use Permit for
Facility Expansion/Reconfiguration
And Land Application of Reclaimed
Water/Biosolids

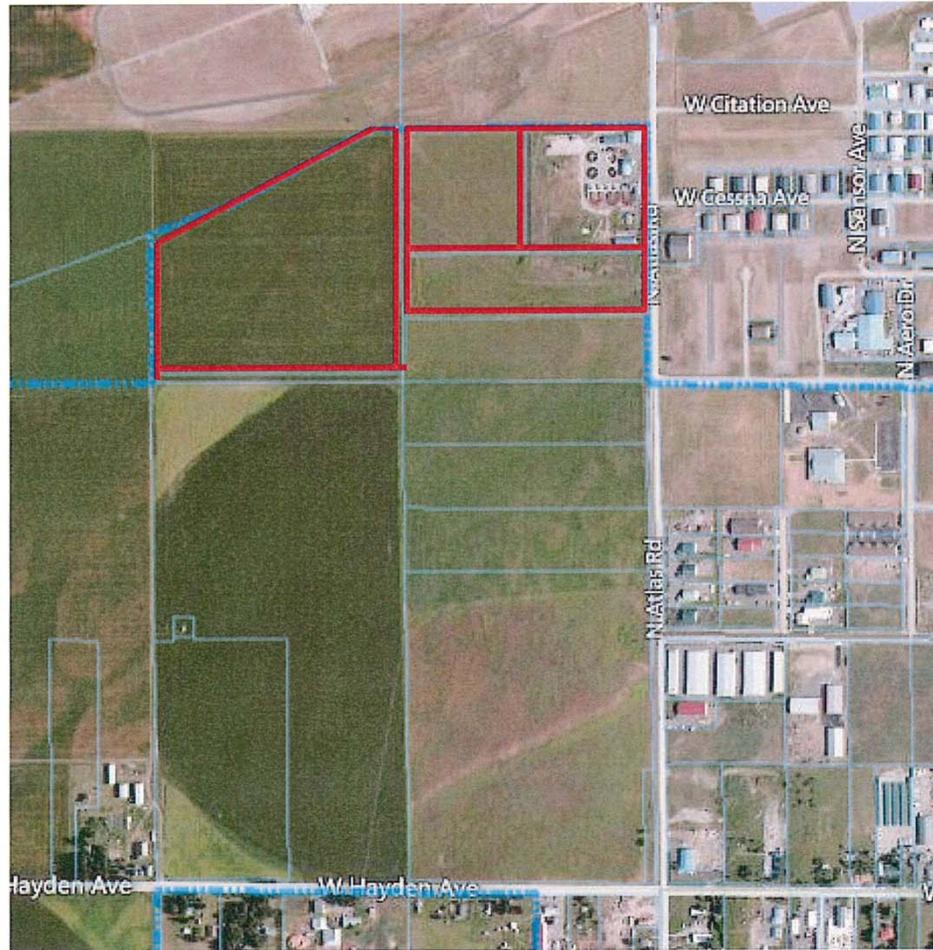
Hayden Area Regional Sewer Board – S.U.P.

- South/west of the Coeur d'Alene Airport.
- Existing facility on 10 acres.
- Improvements to meet National Pollutant Discharge Elimination System (N.P.D.E.S.) permit limits.
- Expansion/reconfiguration of facility with land application.
- Future 60 acre site (four parcels).
- Approximately 45 acres for land application.
- 15 acres of which may be repurposed for future expansion.
- Approximately 15 acres for facility and processes.
- Zoned Light Industrial.
- No proof of existing City of Hayden Special Use Permit (S.U.P.) (may have been an allowed use).
- Expansion required new Special Use Permit (S.U.P.) for plant and new reuse area.
- Adjacent owner had a large approved (not constructed) subdivision and was concerned about odor and real estate values.

Hayden Area Regional Sewer Board - S.U.P.

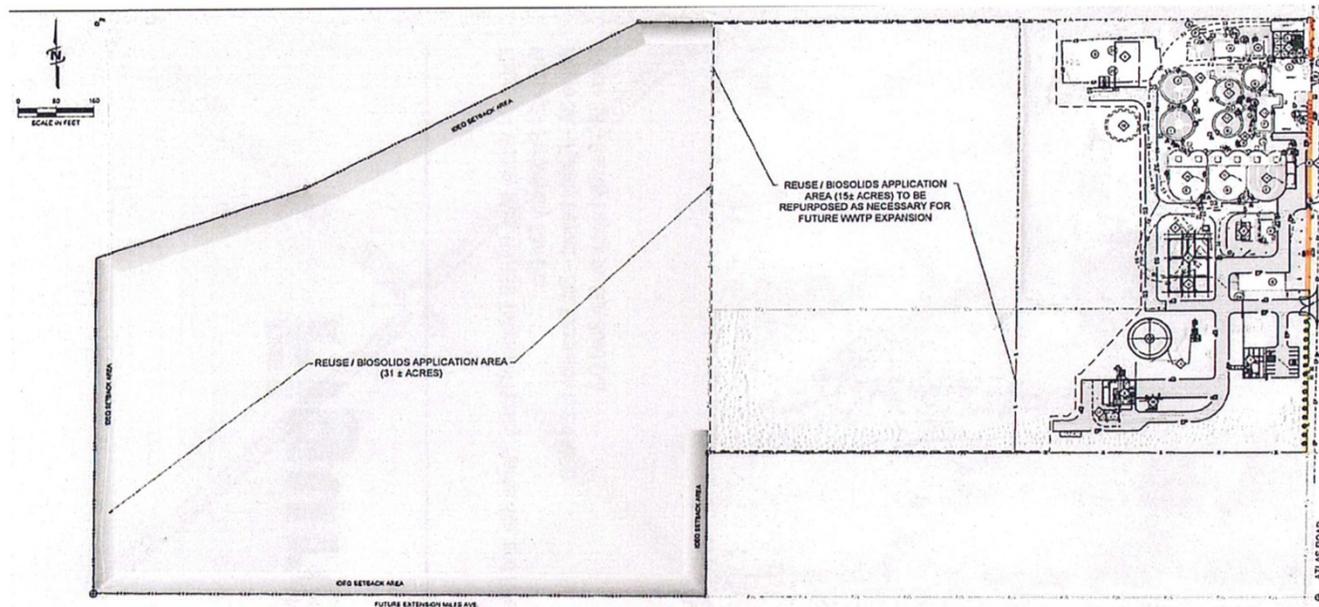


Hayden Area Regional Sewer Board - S.U.P.



Hayden Area Regional Sewer Board – S.U.P.

Figure 2



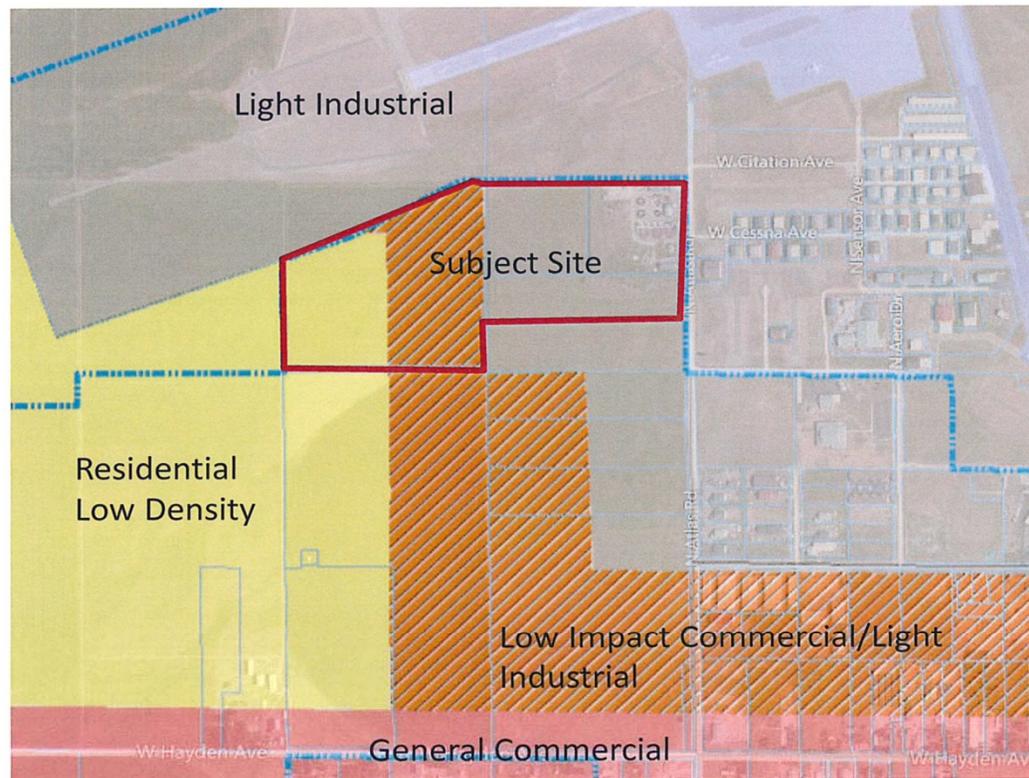
Hayden Area Regional Sewer Board – S.U.P.

Surrounding Zoning



Hayden Area Regional Sewer Board – S.U.P.

2008 Comprehensive Plan Update Future Land Use Map



Hayden Area Regional Sewer Board – S.U.P.

Special Use Permit (S.U.P.) Addressed

- Surrounding land use compatibility (residential development/airport)
- Landscape buffers (types and location)
- Landscaping
- Pavements and parking requirements
- Street frontage improvements (curb, gutter, infill paving)
- Lighting
- Outdoor storage

Hayden Area Regional Sewer Board – S.U.P.

Lessons Learned

- Research the existing Special Use Permit requirements and process early
- Budget for Special Use Permit
- Budget for frontage and landscape buffer requirements
- Account for Appeal of S.U.P. to Council and mediation
- Meet with neighbors early in the process (perception vs. reality)
- Have expert testimony by a professional engineer

CASE STUDY NO. 2

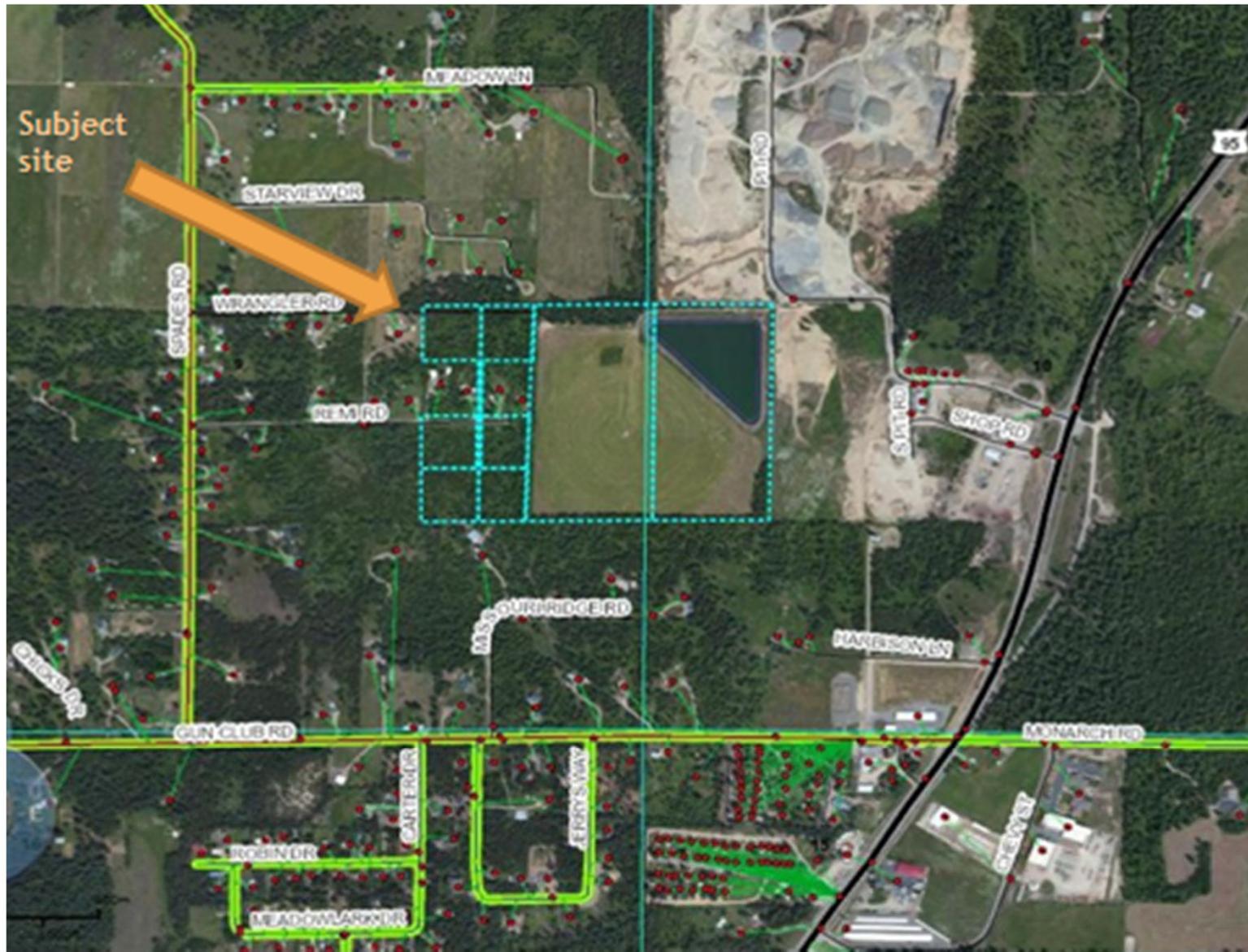
Southside Water and Sewer District Bonner County, Idaho

Conditional Use Permit for Facility
Expansion/Reconfiguration and Land Application
Of Reclaimed Water

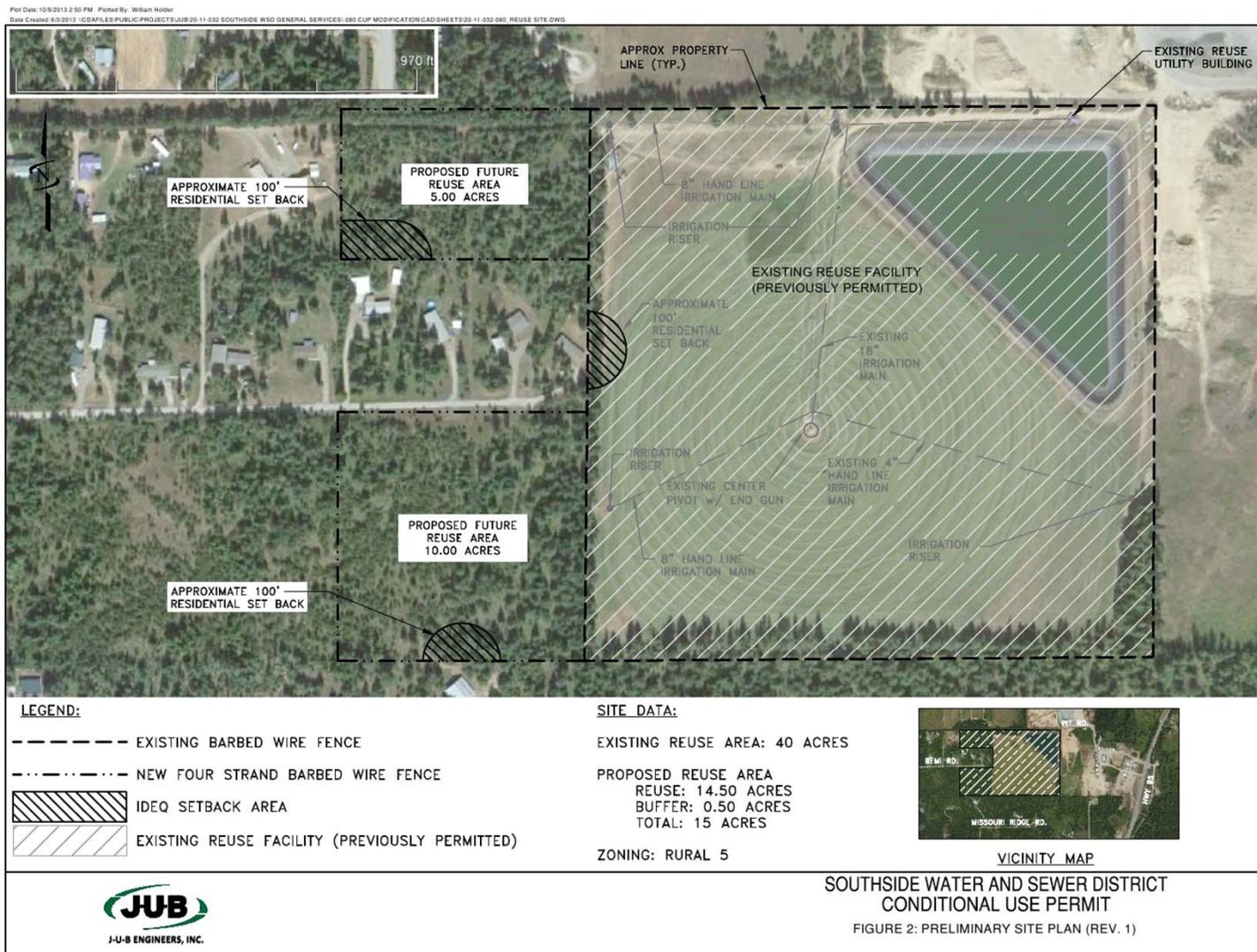
Southside Water and Sewer District – C.U.P.

- Subject Property zoned Rural 5 (R-5)
- Located in rural area of southern Bonner County
- Existing 40 acre site
- No proof of existing Conditional Use Permit (C.U.P.)
- The 15 acre expansion will be utilized for spray irrigation of reclaimed water
- Required a Conditional Use Permit (C.U.P.) approval for the expansion to an existing land application site of 15 acres

Southside Water and Sewer District – C.U.P.



Southside Water and Sewer District – C.U.P.



Southside Water and Sewer District – C.U.P.

C966-13, SOUTHSIDE WATER AND SEWER CONDITIONAL USE PERMIT

- Public Comment:
 - Adjacent Property Owner #1
 - Requested the depth of her well, as well as further information regarding the project
 - Adjacent Property Owner #2
 - Well depth and contamination
 - Tree removal and effected aesthetics
 - Existing odor
 - Property value/resale
 - Construction, logging, and road blockage

Southside Water and Sewer District – C.U.P.

Lessons Learned

- Research the existing Conditional Use Permit requirements and process early.
- Budget for Conditional Use Permit.
- Budget for landscape buffer.
- Meet with neighbors early in the process. Consider a public “meeting” prior to a public “hearing.”
- Have an expert testimony by a professional engineer.
- Be a good neighbor – operate your facilities with care to odor and overspray.
- Consider a newsletter to neighbors or annual invite to Board Meeting.

Arms-Length Decisions a Council or Board Must Make

An Arm's Length Process...

- If permitted use – must meet local permit requirements.
- If conditional use – on same footing as a developer.
 - Must not *ex parte* council or seek direction.
 - Bear burden of persuasion.
 - Don't take responsibilities for granted – neighbors won't.
- Performance standards must be met – assure compliance in initial design.
- Implement design faithfully.

Takeaways

- Review your files for existing City or County Conditional/Special Use Permits.
- Review the Conditions, are you in compliance?
- Discuss Conditional/Special Use Permits and conditions with City/County Planner, and staff, boards, etc.
- Consider seeking a City/Code Amendment allowing City/County uses as “permitted” uses.
- Consider City/County Land Use Permits in design and construction process, budget, and schedule.
- Understand the arms-length decisions a Council/Board must make when hearing a C.U.P/S.U.P. request for their own facility.
- Be a good neighbor, comply to the Conditions of Approval.

THANK YOU

QUESTIONS AND ANSWERS (Q & A)