

**Graves, Natalie (Consultant)**

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**From:** Jesse Halsted [jhalsted@parametrix.com]  
**Sent:** Thursday, June 07, 2007 10:42 AM  
**To:** Halsted, Jesse (Consultant)  
**Subject:** Fwd: Re: FW: staging outside of the ROW for the Bent 93/94 project and potential need for a land use permi

>>> Jesse Halsted 6/1/2007 10:38 AM >>>

First I disagree that the trigger for the MUP is "*Type I Master Use Permit under SMC 23.76.006A* [Actually the code citation should be 23.76.006.B.1] - *determination that a proposal complies with development standards.*" That sentence is so broad that I have no idea what it is trying to do but I do know that it is not what we would be using. We know that the staging does not comply with development standards (assuming it is a prohibited use) so we are not asking for a determination that it does comply. The proper trigger is the temporary use language in 23.76.006.B.2 (Type I) or 23.76.006.C.2.a (Type II).

Next I disagree with this;

*"Unfortunately, the underlying zoning for the Bent 93/94 project (Pioneer Square Mixed or PSM) does not provide for staging as an outright use. In addition, outdoor storage (as defined in SMC 23.84A.036 \* which could be interpreted by DPD as a similar use to staging and possibly allowed) is specially prohibited in the PSM (See SMC 23.66.120A & SMC 23.66.122A)."*

She says that staging is not allowed as an outright use but the code never mentions staging. All uses are permitted outright in the PSM unless they are specifically prohibited (23.66.120A). The list of prohibited uses (23.66.122) does not contain "staging" although it does prohibit outdoor storage. If "staging" and "outdoor storage" are not the same thing, which Sandy seems to suggest, then the question is what "use" is staging. This goes back to that land use process memo and flowchart I did, the first step has to be to identify which "use" the activity is. If staging is not "outdoor storage" (I thought the city was saying that it was) or any of the other prohibited uses on the list than you have to assume that it is either a) not a "use," my position, or b) another use that is not prohibited and therefore allowed. But given looking through all the uses in the definitions section of the code I don't know what other use it would be.

The rest of her stuff about the temporary use process is accurate.

>>> "Fendt, Kathy (Consultant)" <FendtK@WSDOT.WA.GOV> 6/1/2007 9:13 AM >>>  
 Don't think I forwarded this to you yet. Please take a look and let me know if you find any holes in the logic. Thanks.

Kathy Fendt  
 Alaskan Way Viaduct and Seawall Replacement Project  
 Permitting Team  
 (206) 267-3833

-----Original Message-----

9/22/2009

From: Sandra Gurkewitz [<mailto:Sandra.Gurkewitz@Seattle.Gov>]  
Sent: Thursday, May 31, 2007 10:27 AM  
To: Fendt, Kathy (Consultant)  
Cc: Kling, Joyce  
Subject: Re: staging outside of the ROW for the Bent 93/94 project  
and potential need for a land use permit

Hi Kathy,

I think I misspoke yesterday afternoon so let me clarify and run through the logic train.

As you know, activities occurring on private property (or 'development') are regulated under the Land Use Code (SMC Title 23). The trigger for the a land use permit on the Bent 93/94 project the proposed use of parking spots as part of a larger staging area, which lie outside City ROW and on private property. This proposed use of private property triggers the need for a Type I Master Use Permit under SMC 23.76.006A - determination that a proposal complies with development standards.

Unfortunately, the underlying zoning for the Bent 93/94 project (Pioneer Square Mixed or PSM) does not provide for staging as an outright use. In addition, outdoor storage (as defined in SMC 23.84A.036 \* which could be interpreted by DPD as a similar use to staging and possibly allowed) is specially prohibited in the PSM (See SMC 23.66.120A & SMC 23.66.122A). Therefore, the proposed use of private property for staging does not comply with development standards in the PSM and is not allowed.

DPD however, has authority to allow intermittent and temporary uses under SMC 23.42.040 - the Director of DPD can deny or condition applications for certain intermittent or temporary uses not otherwise permitted or not meeting development standards in the zone. The portion of the staging area on private property would be permitted as a temporary use. (Of course the portion of the staging area within City ROW would be permitted through a street use permit).

DPD issues two types of permits for temporary use- depending on the length of time of the use of the private property. Temporary uses for up to four weeks require a Type I MUP. These MUPs are not appealable whereas Temporary Uses for Up to Six (6) Months require a Type II MUP and are subject to appeal to the Hearing Examiner (SMC 23.76.006). Depending on where the proposed fence is positioned and its duration, the work could require a Type I or Type II MUP.

Hope that explains the triggers.

Sandy

PS - SMC 23.76.004 describes the different types of MUPs issued by DPD.

Sandy Gurkewitz

9/22/2009

Strategic Advisor  
SDOT - Major Projects Division

>>> "Fendt, Kathy (Consultant)" <FendtK@WSDOT.WA.GOV> 5/30/2007 2:39 PM  
>>> >>>

As we discussed at lunch today, please take a look at this message and let me know which section of city code we're failing to take into account here. Thank you!

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Sandy - I wonder if you can help us out with something. It is our understanding that the Seattle Department of Planning and Development may have concluded that a land use permit (Master Use Permit) would be required for staging activities outside of the ROW for construction associated with the Bent 93/94 project. If we have understood correctly, the need for the permit is apparently triggered by a temporary change of land use. We have reviewed the codes that we believe are pertinent and cannot find a basis for that decision. In fact, the information that we have reviewed seems to indicate that staging was never intended to be addressed by this code. I'm wondering if you can help us confirm whether we have missed a section of code that applies. The information presented below provides an analysis of the code sections that we believe apply on this issue.

Analysis: For a MUP to be required the staging would have to result in a "change of use" triggering either a type I MUP under SMC 23.76.006.B.2 or a type II MUP under SMC 23.76.006.C.2.a. Therefore, it our understanding that the critical question becomes whether staging is a "use" and, if so, which one.

"Staging" is not a term specifically defined by the land use code. For the Bent 93/94 project, staging is a term intended to mean temporary storage of construction materials and equipment associated with an active construction site. Based on the definitions of the land use code, the two uses that most closely match the concept of staging are "Outdoor Storage" and "Construction Services."

From SMC 23.84A.036:

..."Storage" means a use in which goods or products are stored more than (72) hours. Storage uses include but are not limited to the following uses:

2. "Storage, outdoor" means a storage use in which an outdoor area is

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used for retention of materials, containers and/or equipment. Outdoor storage does not include sale, repair, incineration, recycling or discarding of materials or equipment. Outdoor storage areas are not accessible to the public unless an agent of the business is present. Outdoor parking areas for two (2) or more fleet vehicles of more than ten thousand (10,000) pounds gross vehicle weight shall also be considered outdoor storage. Temporary outdoor storage of construction equipment and materials associated with an active permit to demolish or erect a structure and vehicle sales areas where motorized vehicles are stored for the purpose of direct sale to the ultimate consumer shall not be considered outdoor storage....

"Construction services" means a heavy commercial service use in which construction contracting services, including the final processing of building materials such as but not limited to the mixing of concrete or the heating of asphalt, are provided; or in which construction equipment is stored, either in conjunction with an office or as a separate use, but not including a construction site.

As the highlighted sections show, "outdoor storage" does not include "temporary outdoor storage of construction equipment and materials associated with an active permit to demolish or erect a structure" and "construction services" do not include storage of construction equipment at a "construction site."

"Project permit" is defined to include "any land use or environmental permit or license required from a local government for a project action..." and therefore could include a street use permit authorizing construction in the right-of-way. "Structure" includes "anything constructed or erected on the ground or any improvement built up or composed of parts joined together in some definite manner..." and could include street improvements including the Alaskan Way Viaduct.

Because both outdoor storage and construction services exclude staging activities associated with construction activities and no other defined uses include staging activities, we have concluded that staging is not a use as defined by the land use code. A MUP should not be required for staging because it is not a change of use, but rather is a necessary activity to construct a separate use or right-of-way improvement.

If the issue regarding staging is one of contractor parking, if the area were to be used by the contractor for that purpose, that would seem to be the same use as is currently occurring. Designation of who could use that parking (business customers or contractor) would appear to be a matter of the building owner's discretion and not subject to land use permitting as a change of use.

We are wondering if the issue of temporary use came up in the context of the full AWW project, where staging might be occurring on private property for extended periods of time, perhaps begging the question of whether a change in use had actually occurred. For the Bent 93/94 project or any other short term project, that would not seem to be an issue.

Thanks for any help you can lend here, Sandy, in clearing up the confusion on this issue and please let us know if there is a code section that we have not considered or if we have missed something here.

Kathy Fendt  
Alaskan Way Viaduct and Seawall Replacement Project Permitting Team  
(206) 267-3833

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From: Fendt, Kathy (Consultant)  
Sent: Tuesday, May 29, 2007 2:40 PM  
To: Halsted, Jesse (Consultant)  
Subject: FW:  
Importance: High

Kathy Fendt  
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Permitting Team  
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From: Fendt, Kathy (Consultant)  
Sent: Tuesday, May 29, 2007 2:13 PM  
To: Halsted, Jesse (Consultant)  
Subject: FW:  
Importance: High

Take a look at proposed changes for final use in an Email or WSDOT memo and two questions in green highlights for you...

Kathy Fendt  
Alaskan Way Viaduct and Seawall Replacement Project  
Permitting Team

(206) 267-3833

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From: Halsted, Jesse (Consultant)  
Sent: Tuesday, May 29, 2007 1:45 PM  
To: Fendt, Kathy (Consultant); Kassebaum, Carl  
Subject:

My two cents on the land use issue. This is pretty much a straight code interpretation exercise, I didn't include any sky is falling real world what ifs but it could be added.

Jesse Halsted  
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Permit Team  
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