

SPOKANE COUNTY CONSERVATION FUTURES TAX PROJECT
of Stephen K. Eugster
www.steveeugster.com/conservation_futures_taxes.htm

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Dear Ron and James:

I have read the [Highest and Best Use Analysis of: Former YMCA Facility](#)¹ which came out these past few days.

I also understand the Spokane City Council, sometime in the next few days or weeks, is going to take up consideration of an action to take up the offer of the Board of Commissioners for Spokane County to use Conservation Futures Tax Revenues for the purchase of the YMCA.

I have previously researched and written about the propriety of the use of Spokane County Conservation Futures Tax revenues for the purchase of the YMCA. See my article [Conservation Futures Tax Revenue Cannot Be Used for Purchase of Downtown Spokane YMCA](#) (January 7, 2009, Revised April 2, 2009).²

It seems that whether Conservation Futures Taxes can be used to purchase the YMCA depends upon whether the YMCA is “open space” as that term is defined by the law.

RCW 84.34.210 provides:

¹ <http://www.spokanerecord.com/pdf/YMCAHighestandBestUseAnalysis.pdf>.

² http://www.steveeugster.com/pdf/article_January_7_2009_revised.%20pdf.

Any county, city, town, metropolitan park district, metropolitan municipal corporation, nonprofit historic preservation corporation as defined in RCW 64.04.130, or nonprofit nature conservancy corporation or association, as such are defined in RCW 84.34.250, may acquire by purchase, gift, grant, bequest, devise, lease, or otherwise, except by eminent domain, the fee simple or any lesser interest, development right, easement, covenant, or other contractual right necessary to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve, selected open space land, farm and agricultural land, and timber land as such are defined in chapter 84.34 RCW for public use or enjoyment. [Emphasis added.]

RCW 84.34.020 defines “open space land” as follows:

(1) "Open space land" means

(a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or

(b) any land area, the preservation of which in its present use would

(I) conserve and enhance natural or scenic resources, or

(ii) protect streams or water supply, or

(iii) promote conservation of soils, wetlands, beaches or tidal marshes, or

(iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or

(v) enhance recreation opportunities, or

(vi) preserve historic sites, or

(vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or

(viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification,

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or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section.

The YMCA does not meet any one of the definitions of “open space.” First it does not meet the definition in RCW 84.34.020(a) because it is not a “land area” – it is a building – and even it could be said to be a “land area” it is not “so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly.” (Emphasis added).

Second, it does not meet the definition of “open space” under RCW 84.34.020(b). Again, the YMCA is not a “land area.” And, even if it is, it is not “land area, the preservation of which in its present use would” would meet any of the categories of RCW 84.34.020(b). This would be especially so because the YMCA is to be torn down. Indeed, that is why the Spokane Park Board bought the YMCA.

If I am wrong regarding my analysis please advise.

Also, since I am contemplating litigation regarding the matter please tell me if you think my argument and analysis would violate CR 11 or RCW 4.84.185 or in any other way expose me to a claim for reasonable attorneys’ fees should I lose the litigation. Please explain your reasons if you do.

Thank you for your considerations. I look forward to hearing from you.

Very truly yours,

/s/ Stephen K. Eugster

Stephen K. Eugster

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