



Corps of Engineers Approves Retail Development in Wetlands Area, Addresses Wichita Neighborhood Flooding

Using an innovative public-private partnership and strong advocacy before the Army Corps of Engineers, Spencer Fane's environmental lawyers helped our client develop his property in a wetlands area while preserving wetlands and badly needed flood controls for the City of Wichita.

A comprehensive drainage study found the City of Wichita needed additional storm water detention capacity on a particular 80-acre parcel of land immediately upstream of several residential communities in order to prevent flooding. The upstream property was privately owned, and the owner, Spencer Fane's client, preferred to sell the property to a private developer. Obtaining the property by eminent domain would have been lengthy and costly for the City.

The upstream property owner faced his own problems. A significant portion of his property consisted of wetlands, and federal law prohibits any commercial development in wetlands without first obtaining a permit from the Army Corps of Engineers. Before the Corps will issue a wetlands permit, it requires the landowner to show that his development will avoid the wetlands as much as possible, the owner will mitigate any unavoidable impacts to the wetlands, and that no other course of action other than development is practicable. The potential cost and delays associated with these regulatory requirements posed a significant obstacle to the landowner's desire to develop his land.

Spencer Fane's environmental legal team developed a comprehensive solution that not only allowed our client to develop his land, but also provided the City with the additional detention capacity it needed and the Corps with the assurances that the majority of the wetlands would be protected. Spencer Fane's solution was economically viable and was a true "win-win" for all parties.

Our solution was to create a public-private partnership between the City and the developers to fund and implement the project. This partnership took the form of a drainage improvement district, which under Kansas law allows for cost sharing between the City

and private developers to construct certain public projects. This project had two components. The first was constructing a series of storm water detention basins and a wetland preserve. These provided the City the necessary detention capacity and also protected the wetlands. The second component was commercial development, including retail buildings, entertainment, and restaurant establishments.

Still, to secure the required wetlands permit Spencer Fane had to convince the Corps that legally and practically these two components were inseparable even though they were located on two separate property parcels. We tackled this challenge using our knowledge of the intricacies of the Corps' wetlands permitting regulations and guidance. We obtained meetings with key Corps officials and, in time, demonstrated to them that the commercial development was financially necessary to the project. Initially, it provided a significant portion of the funding to construct the detention basins and wetland preserve through special assessment financing. It also generated tax revenue to fund the operation and maintenance of the wetland mitigation sites and the detention basins. Finally, it eliminated the requirement for the City to pay for the property because the landowner donated land to the City for the detention basins and wetland preserve. Ultimately, this saved the City millions of dollars and the landowner was able to benefit from the commercial development of his property.



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