

**SPECIAL MEETING NOTICE / AGENDA OF THE  
SPOKANE CITY COUNCIL**



**SPECIAL MEETING OF WEDNESDAY, JULY 2, 2025, 10:00 A.M.**

A special meeting of the Spokane City Council will be held at **10:00 a.m. on Wednesday, July 2, 2025**, in City Council Chambers - Lower Level, City Hall, 808 W. Spokane Falls Blvd., Spokane, Washington. The purpose of the special meeting is to hold the below referenced Victory Heights closed record preliminary appeal hearing. Also, see attached Notice of Appeal for more information.

The meeting is open to the public; however, only those parties of record who appealed the Hearing Examiner's decision to the City Council may present oral argument. No public testimony will be permitted.

A Final Hearing on the Appeal is scheduled to be held on Tuesday, July 8, 2025, at 12:00 p.m.

The City Council, acting as a quasi-judicial body relating to the quasi-judicial matter, may adjourn into closed session pursuant to RCW 42.30.140 (2).

**Roll Call**

**PRELIMINARY HEARING**

**RECOMMENDATION**

H1.	<b>Appeal on the record by Citizens Stefen Harvey and Steve Barrett of the Hearing Examiner's May 1, 2025, decision on Victory Heights Development (Z23-044PPUD).</b>	<b>Hold Hearing/ Continue Hearing To 7/8/2025</b>	<b>LGL 2025-0019</b>
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**AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION:** The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Human Resources at 509.625.6373, 808 W. Spokane Falls Blvd., Spokane, WA, 99201; or [ddecorde@spokanecity.org](mailto:ddecorde@spokanecity.org). Persons who are deaf or hard of hearing may contact Human Resources through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.

**CITY OF SPOKANE CITY COUNCIL**  
**CORRECTED NOTICE OF APPEAL**

**Subject:** Appeal on the record by Citizen Stefen Harvey and Steve Barrett of the Hearing Examiner's May 1, 2025, decision on Victory Heights Development (Z23-044PPUD).

**PRELIMINARY HEARING**

**Place:** Spokane City Council Chambers  
Lower Level, Spokane City Hall  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

**Date:** Wednesday, July 2, 2025

**Time:** 10:00 A.M.

**FINAL HEARING**

**Place:** Spokane City Council Chambers  
Lower Level, Spokane City Hall  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

**Date:** Tuesday, July 8, 2025

**Time:** 12:00 P.M.

**Rules Governing Closed Record Appeals**

The following rules have been established to allow a fair and orderly appeal:

**1. Preliminary Motions**

- a. The parties to the appeal may file preliminary motions regarding the appeal. Such motions must be filed with the City Clerk by **5:00 p.m., Friday, June 27, 2025.**
- b. Any rebuttals to motions must be filed with the City Clerk by **5:00 p.m., Monday, June 30, 2025.**
- c. Final hearing briefs for all parties must be filed with the City Clerk by **5:00 p.m., Thursday, July 3, 2025.**
- c. Neither preliminary motions, rebuttals to motions, or final hearing briefs may contain any new facts or evidence, or discuss matters outside the record. They are limited to stating why the record does or does not support the decision.

## **2. Oral Argument**

- a. Oral argument on appeals is limited to the parties. Only those parties of record who appealed the Hearing Examiner's decision to the Council may present oral argument.
- b. Oral argument on appeals is limited to thirty (30) minutes per side. If there is more than one appellant or more than one person wishing to present oral argument on appeal, the total time allowed to all such persons is thirty (30) minutes. Any portion of the thirty (30) minutes may be reserved for rebuttal or surrebuttal. Any time reserved for rebuttal or surrebuttal is deducted from the time allowed for opening argument. Time taken to respond to questions from the City Council is not deducted from the time allowed for argument.
- c. Argument is presented first by the appellant in support of the appeal, followed by the respondent in opposition to the appeal. For preliminary motions, the party who filed the motion shall present first followed by the opposing party.
- d. No new evidence may be presented during oral argument or in any written material. Matters found by the Hearing Examiner to be facts in the record are presumed to be true and accurate. Oral argument is limited to stating why the record does or does not support the decision.

## **3. Council Consideration of the Appeal**

- a. The City Council may not consider any new facts or evidence on appeal. The City Council's review of appeals is limited to the record prepared by the Hearing Examiner, including the verbatim transcript of the hearing, the written appeal, memoranda submitted and, if permitted, oral arguments presented in accordance with the aforementioned requirements. Closed record appeals before the City Council must be concluded within ninety (90) days of the date the appeal is filed unless all parties agree to a longer period.
- b. No person may communicate with any member of the City Council on any pending appeal outside of a Council meeting.

**All documents are available for review upon request to the City Clerk's Office during regular working hours, Monday-Friday, 8:00 a.m. to 5:00 p.m.**

RE: Appeal on the record by Citizen Stefen Harvey and Steve Barrett of the Hearing Examiner's May 1, 2025, decision on Victory Heights Development (Z23-044PUD)

Appeal packet material has previously been sent to City Council and parties to the appeal. The packet material is available for review upon request by any other interested individuals by contacting the Office of the City Clerk.

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**BEFORE THE COUNCIL FOR THE CITY OF SPOKANE**

IN RE:

Victory Heights Preliminary Long Plat  
Administrative Appeal by Stefen Harvey  
and Steve Barrett

**NO. Z23-044PPUD**

**APPLICANT VICTORY  
HEIGHTS INVESTMENT'S  
MOTION TO DISMISS**

Pursuant to City of Spokane Municipal Code, the Applicant Victory Heights Investment, LLC ("Victory Heights") hereby respectfully requests the Spokane City Council ("Council") dismiss the appeal filed by Stefen Harvey and Steve Barrett ("Appellants") for lack of jurisdiction and lack of standing under the State Environmental Policy Act ("SEPA"). This does not leave the Appellants without recourse - they and the general public will have ample opportunity to weigh in as the City decides its short and long term plans regarding Thorpe Road and its tunnels through future legislative review. That is the legally correct way for the Council to hear Appellants' concerns along with other public input.

It is Victory Heights' understanding that the City is also filing a motion to dismiss on similar legal grounds. Victory Heights hereby joins that motion and rests on both the Hearing Examiner's summary of the project and permitting history as well as that articulated in the City's motion.

1       A.     The Council Must Dismiss the Appeal as it Does Not Have Jurisdiction Under SEPA.

2             Spokane Code is clear and consistent with other cities across Washington State in  
3     limiting SEPA appeals to one administrative appeal before a hearing examiner: “Only one  
4     administrative appeal of a threshold determination or of the adequacy of an EIS is allowed;  
5     successive administrative appeals within the city are not allowed.” SMC 17E.050.210.D. In  
6     this matter, only the Washington State Department of Transportation (WSDOT) appealed the  
7     final Mitigated Determination of Nonsignificance. No one else filed a SEPA appeal. After  
8     much work between the parties, WSDOT, the City and the Applicant agreed upon stipulated  
9     actions that elaborate on and effectuate the adopted SEPA mitigation. As a result, WSDOT  
10    withdrew its SEPA appeal. This Council cannot now hold a second SEPA appeal hearing and  
11    cannot hear a new appeal by individuals who did not originally appeal the City’s SEPA  
12    determination when they had the opportunity.

13            The Council’s jurisdiction is also limited only to appeals of the Hearing Examiner’s  
14    decision to condition or deny the proposal under SEPA. SMC 17E.050.210.E. The Hearing  
15    Examiner did not either condition or deny the Victory Heights project under SEPA. *Decision*,  
16    page 15 (see analysis under Section 4.3.7). Instead, WSDOT withdrew its appeal and the  
17    Hearing Examiner accepted that withdrawal. In sum, the City’s process regarding SEPA  
18    appeals is complete and cannot be perpetuated by a further hearing before this Council.

19       B.     City Code and Washington Law Require that Council Dismiss the Appeal for Lack of  
20             Standing.

21            The Appellants, Messrs. Harvey and Barrett, lack standing to bring this appeal. SMC  
22    17G.061.H.2. Notably, the appellants fail to describe the harm they will incur from this  
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1 decision. While one might make an inference or assumption given the very public nature  
2 involved with major public works considerations such as the Thorpe tunnels, it is essential and  
3 a legal requirement for an appellant to describe the specific and perceptible harm that the  
4 individual will experience. There are many practical reasons for the legal standing requirement,  
5 as a result that requirement to articulate harm and to have standing is a gate-keeper issue.  
6 Without standing, the Council is likewise legally unable to hear the appeal.

7 To the extent that the appellants respond with alleging interests that are shared broadly  
8 amongst many, Washington courts have already considered this argument and concluded it is  
9 insufficient to show standing. For example, a group of property owners upstream from a site  
10 who alleged interest in the proper application of zoning did not have sufficient standing.  
11 *Chelan County v. Nykreim*, 146 Wn.2d 904, 52 P.3d 1 (2002). The Court concluded this interest  
12 was too abstract and the same as any other member of the general public in the larger area  
13 might express. *Nykreim*, 146 Wash.2d at 935, 52 P.3d 1. An appellant's standing must be "more  
14 than simply the abstract interest of the general public in having others comply with the law."  
15 *Nykreim*, 146 Wash.2d at 935, 52 P.3d 1. *See also, Thompson v. City of Mercer Island*, 193  
16 Wn. App. 653, 663, 375 P.3d 681, 686 (2016), *as amended on denial of reconsideration* (May  
17 4, 2016).

18 Here, public interest in the question of whether there will be any limitation on traffic  
19 traveling through the Thorpe tunnels is not isolated to a small group, but instead one of larger  
20 public interest. As a result, the Council would have to take other legislative action that would  
21 involve public input before taking any action to limit traffic flow.  
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1 Appellants allege the SEPA review process was flawed by failing to provide  
2 opportunity for public and agency comment. In this allegation, Appellants misunderstand the  
3 City's process. The SEPA stipulation terms provide that Victory Heights will build a  
4 roundabout that will include a barrier which the City could, at the City's discretion, use to route  
5 traffic. However, the City and WSDOT will determine *in the future* whether and when said  
6 barrier would be implemented. The stipulated terms by which WSDOT withdrew its appeal  
7 only provide for physical construction of the roundabout and barrier that could be utilized, but  
8 only based on future City action. As a result, even if the Council could hear the appeal, there  
9 is no error in process because nothing in the decision requires or automatically triggers any  
10 traffic restriction on eastbound traffic through the tunnels. Appellants have full opportunity for  
11 public comment regarding this consideration; they can continue to participate in this process  
12 as the City continues to evaluate the tunnels. However, the appellants have not expressed an  
13 interest that would substantiate legal standing to support their appeal of this particular project.

14 The appellants also failed to bring their appeal consistent with code procedures. SMC  
15 17G.061.H.5.

16 C. The Appellants' Remaining Claims Either Involve Policy Considerations Unrelated to  
17 the Victory Heights Project or Are Derivative SEPA Issues.

18 Appellants' remaining issues relate to long term planning policies or are derivative to  
19 the stipulated SEPA mitigation measures. Nonetheless, to the extent the Council wishes for  
20 comment in the context of this motion to dismiss, Victory Heights provides the following.

21 First, Appellants misinterpret the law in arguing about City policy regarding impact fee  
22 credits addressed in the SEPA mitigation measures. Again, the Council does not have  
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1 jurisdiction to consider this argument as it is SEPA-based. Appellants argue that the  
2 roundabout should not be seen as related to “system improvements” and that the roundabout  
3 does not serve the community at large. Yet the entire point of the SEPA mitigation is that the  
4 collective traffic using Thorpe warrants additional traffic improvements. The roundabout  
5 stands in place of other improvements to City and State traffic facilities and is directly required  
6 to address system improvements needed to serve “the community at large.” But for these  
7 revised SEPA mitigation measures, different traffic improvements would have been built  
8 which also would have been appropriate bases for impact fee credits.

9         Second, Appellants’ argument regarding Comprehensive Plan Policy CFU 1.2  
10 challenges the City’s potential future decisions regarding limiting traffic through the Thorpe  
11 tunnels, not the Hearing Examiner’s decision regarding the Victory Heights project. As a  
12 result, again, the Council lacks jurisdiction to hear this issue. The Victory Heights SEPA  
13 mitigation does not directly impose any traffic limitation on Thorpe. Instead, the SEPA  
14 mitigation imposes revised traffic improvements that the City and WSDOT found to be  
15 preferable over the improvements originally considered in the MDNS. The decision whether  
16 to regulate traffic through the Thorpe Tunnels by means of a barrier at the roundabout is not  
17 part of the SEPA mitigation, but instead is for this Council to decide in the future. The SEPA  
18 mitigation gives the City options but does not at all dictate whether to limit traffic, under what  
19 conditions, for what timeframe and for what longevity.

20         Third, regarding Appellants’ argument under Comprehensive Plan Policy CFU 2.2, the  
21 determination of what mitigation is appropriate and proportionate to a specific development  
22 project, here Victory Heights, is a SEPA determination. Again, this Council does not have  
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1 jurisdiction to consider appeal issues based on the SEPA determination. Additionally, Policy  
2 CFU 2.2 addresses long range, City-wide policy rather than site specific, SEPA mitigation or  
3 project conditions of approval: Comprehensive Plan Policies are not appropriately used to  
4 make project-specific land use decisions. *Timberlake Christian Fellowship v. King County*,  
5 114 Wash. App. 174, 183, 61 P.3d 332, 337 (2002); *Citizens for Mount Vernon v. City of Mount*  
6 *Vernon*, 133 Wash.2d 861, 873–74, 947 P.2d 1208 (1997); *Feil v. E. Washington Growth*  
7 *Mgmt. Hearings Bd.*, 153 Wash. App. 394, 409, 220 P.3d 1248, 1255 (2009), *affirmed*, 172  
8 Wash. 2d 367, 259 P.3d 227 (2011), *as corrected* (Sept. 29, 2011), *as corrected* (Jan. 10, 2012).

9 Whether to award credits is equally part of that SEPA determination. The question of  
10 mitigation as that relates to Thorpe Road and the tunnels is not a matter of concurrency or  
11 comprehensive planning, but SEPA. *See Decision*, pages 10-11. Finally, as argued above, it  
12 will be up to this Council through a different process to decide the larger policy question of  
13 whether and under what circumstances the City would limit traffic through the tunnels. This  
14 Victory Heights project does not automatically trigger any road use limitations or closures.  
15 Instead, Victory Heights provides physical infrastructure improvements that benefit the City  
16 in a flexible manner that also provides for improved safety and roadway capacity which opens  
17 up more options for improved vehicular use and capacity of Thorpe Road and the tunnels,  
18 directly consistent with the terms of Street Program Project STR-2024-1670.

19 Fourth and finally, Appellants appear to argue that the City’s project review was not  
20 consistent with the City’s concurrency system. Appellants do not make any substantive  
21 allegation regarding any particular LOS. Instead, it appears again that Appellants wish to use  
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1 concurrency to challenge the stipulated SEPA mitigation. As there is no failure of concurrency,  
2 again here the Council has no jurisdiction.

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4 Based on the foregoing argument, Victory Heights respectfully requests the Council  
5 dismiss the appeal for lack of jurisdiction. The Council will have the ability to address these  
6 and other concerns as part of any future legislative process regarding the Thorpe tunnels at its  
7 discretion independent of the Victory Heights project.

8 DATED this 27th day of June, 2025

9 VICTORY HEIGHTS INVESTMENT,  
10 LLC

11  
12 By:   
13 Duana Koloušková, WSBA #27532  
14 Attorney for Applicant Victory Heights  
Investment, LLC  
[Duana@bluefern.com](mailto:Duana@bluefern.com)  
15 Direct: (206) 200-8986

16 2025-06-27 Motion to Dismiss  
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CITY COUNCIL OF SPOKANE

STEFAN HARVEY and STEVE BARRETT,  
Appellants,

v.

CITY OF SPOKANE,  
Respondent.

File No. X23-044PPUD

RESPONDENT CITY OF  
SPOKANE'S MOTION AND  
MEMORANDUM TO DISMISS  
APPEAL

**I. INTRODUCTION**

Stefan Harvey and Steve Barrett (collectively, the "Appellants") appealed the Hearing Examiner's decision resulting from the joined Preliminary Plat and SEPA ("State Environmental Protection Act") hearing for Victory Heights ("Victory"), which was issued on May 1, 2025, and amended on May 15, 2025, to the Spokane City Council ("Council"). [Record, II-0001].<sup>1</sup> For the reasons set forth below, the Respondent, City of Spokane ("City") is requesting dismissal of the appeal due to non-appealability/lack of jurisdiction, under applicable City code and Washington law.

<sup>1</sup> All citations, other than to case law, code, statutes, or regulations, are to the Official Record, by section and page number.

## II. BACKGROUND

The land subject to this approved preliminary plat (the "Property") is located west of US-195, with Thorpe Road bordering the northern edge of the Property. Thorpe Road is the main access point to the property, from the west side of South 195, and which is approximately 1.5 miles south of the US-195/I-90 interchange. Portions of the Property were annexed into the city of Spokane in 1899. The remainder of the Property was annexed into the City in 1907. The City's first zoning codes placed the Property in residential zoning, which has been consistent since that time.

The Property is comprised of 18 parcels, totaling approximately 177.27 acres, with a PUD overlay. [II-0001]. The project is subject to phasing as part of the development process. *Id.* The Preliminary Plat hearing was held on March 19, 2025, and as part of that process the Appellants both supplied comment. [II-0002]. The SEPA hearing related to the Washington Department of Transportation's (WSDOT) appeal of the City's SEPA determination, was held on April 2<sup>nd</sup>. *Id.* At the hearing on April 2<sup>nd</sup>, WSDOT withdrew its appeal, after a stipulated agreement was reached between WSDOT, the City and the Applicant, and no further SEPA related activity is pending. [II-0012 to II-0013; III-0664 to III-0667]. The Appellants never appealed the SEPA decision.

On May 1<sup>st</sup>, the Hearing Examiner approved the Plat, with conditions. [II-0016 to II-0026]. Appellants thereafter appealed the Plat decision only on May 14, 2015 (the "Appeal"). [I-0001 to I-0010].

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### III. ARGUMENT

#### A. Council's Standard of Review and Dismissal for Lack of Appealability

The Council appeal process is set forth in SMC 17G.050.330 to .350. SMC 17G.050.310 provides that 17G.061.340 controls how Hearing Examiner decisions are appealed. SMC 17G.061.340 provides that appeals from rezones, PUDs, preliminary long plats, and skywalk permits are appealed to Spokane City Council. However, all other Hearing Examiner decisions, including those related to a Hearing Examiner's decision on a SEPA determination appeal, are only appealable to the Superior Court. [SMC 17G.061.340]. Also, SMC 17G.050.340(B) provides that the Council does not necessarily need to hold a hearing, if it is not necessary, and the Council has wide latitude to consider motions such as this one to dismiss an appeal on jurisdictional grounds.

The Appeal is almost entirely related to the SEPA decision making completed by the responsible official on February 21, 2025. [II-1854 to II-1857]. Or, in addition, the Appeal is so intertwined with the SEPA process that it is indistinguishable from an appeal of the City's SEPA decision. This results in a lack of appealability, as first, the Council is prohibited from considering SEPA issues under SMC 17G.061.340(C):

Appeal of a hearing examiner's decisions is to superior court, except rezones, PUDs, preliminary long plats, and skywalk permits are appealable to city council as a closed record appeal hearing and are subject to the procedures in chapter 17G.050 SMC.  
- SMC 17G.061.340(C).

1 Accordingly, under SMC 17G.061.340(H)(2) and (5), it is required that the Appeal should  
2 be rejected and dismissed due to improperly appealing SEPA determination to Council  
3 for consideration:

4 The appeal or request for reconsideration is **rejected** if:

- 5 1. it is filed by a person without standing as specified in chapter 17A.020  
6 SMC;
  - 7 2. an appeal decision is **being sought from a decision-maker not**  
8 **authorized by this chapter** to make such a decision;
  - 9 3. it is not timely filed;
  - 10 4. the appeal fees have not been paid; or
  - 11 5. it is **not filed in accordance with the procedures of this chapter.**
- 17G.061.340(H)(emphasis added).

12 The appeal should be rejected and dismissed for appealing non-appealable SEPA  
13 issues. Second, as explained below, even if for some reason the Council could adjudicate  
14 anything regarding or related to a SEPA determination, Appellants would still have no  
15 standing to challenge the SEPA decision.

#### 16 **B. Appellant's lack of standing**

17 In addition to the fact that the Appeal should be rejected for improperly appealing  
18 SEPA issues to the Council, the Appeal is further improper as Appellants have no  
19 standing to appeal any SEPA determinations. This is true regardless of whether venue  
20 is situated with the Council or Superior Court, as the Appellants did not properly appeal  
21 the SEPA determination by the Director of Planning.

22 Washington law requires that a threshold determination must be appealed within  
23 the proscribed timeline in order to preserve any person's right to later challenge the  
24 determination in later proceedings. In a case where a potentially aggrieved party failed  
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1 to initially appeal a threshold determination, the Washington Supreme Court determined  
2 the following:

3 We need not address this issue because appellant failed to exhaust  
4 administrative remedies. In general, an agency action cannot be  
5 challenged on review until all rights of administrative appeal have been  
6 exhausted. *Wright v. Woodard*, 83 Wash.2d 378, 381, 518 P.2d 718  
7 (1974). In the present case, the City's regulations gave appellant a right  
8 to appeal to the city manager. This right appellant did not exercise.  
9 There is no evidence in the record that it had no notice of the City's  
10 threshold determination nor that it had no opportunity to exercise its  
11 right to appeal. *Cf. Gardner v. Pierce Cy. Bd. of Comm'rs*, 27  
12 Wash.App. 241, 243-44, 617 P.2d 743 (1980) (lack of such notice or  
13 opportunity excuses failure to exhaust remedy). ***Appellant is  
14 therefore barred from challenging the validity of the City's  
15 negative threshold determination.***

- 16 - *Spokane Cnty. Fire Prot. Dist. No. 9 v. Spokane Cnty. Boundary Rev. Bd.*, 97  
17 Wn. 2d 922, 928-29, 652 P.2d 1356, 1359-60 (1982)(emphasis added).

18 See also, *CLEAN v. City of Spokane*, 133 Wash. 2d 455, 465, 947 P.2d 1169, 1174  
19 (1997), which held as follows:

20 A plaintiff alleging noncompliance with SEPA must exhaust  
21 administrative remedies before filing suit. *Citizens for Clean Air v. City  
22 of Spokane*, 114 Wash.2d 20, 26, 785 P.2d 447 (1990). Where an  
23 agency has an appeal procedure in place, an aggrieved person is  
24 required to seek redress under that procedure before seeking judicial  
25 review. RCW 43.21C.075(4).

26 The Director of Planning's threshold determination provided for a fifteen (15) day  
27 appeal period. Under the City's code such a determination may be administratively  
28 appealed to the City's Hearing Examiner. WSDOT was the only party which appealed  
his determination, thus successfully acquiring apparent standing to properly challenge it  
under the City's code. Given that the Appellants did not appeal the SEPA determination,

1 they failed to preserve any right to challenge the determination in a later administrative  
2 hearing or subsequent Superior Court proceeding.

3 **C. SEPA**

4 Even though Respondent asserts Appellants have no right to challenge any  
5 SEPA determination, whether in an attempted direct appeal, or an oblique challenge,  
6 an overview of normal SEPA appeal process is appropriate.  
7

8 Review of an administrative SEPA decision is governed by SMC 17G.050.320  
9 which states:

10 ***The original decision being appealed is presumptively correct.*** The  
11 burden of persuasion is upon the appellant to show that the original decision  
12 was in error and relief sought in the appeal should be granted.  
13

14 - SMC 17G.050.320(C)(emphasis added).

15 In addition, SEPA procedures provide as follows:

16 If an agency has a procedure for appeals of agency environmental  
17 determinations made under this chapter, such procedure:  
18

19 a) Shall allow ***no more than one agency appeal*** proceeding on each  
20 procedural determination (the adequacy of a determination of  
21 significance/nonsignificance or of a final environmental impact  
22 statement)...

23 - RCW 43.21C.075(3)(a)(emphasis added).  
24

25 In an action appealing a determination by a governmental agency relative to the  
26 requirement or the absence of the requirement, or the adequacy of a "detailed  
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statement", the decision of the governmental agency shall be accorded substantial weight. RCW 43.21C.090; *Brown v. City of Tacoma*, 30 Wn. App. 762, 764, 637 P.2d 1005 (1981); *Richland Homeowner's Preservation Association v. Young*, 18 Wn. App. 405, 568 P.2d 818 (1977). Spokane's MDNS determination derives substantial weight by any reviewing agency or court. RCW 43.21C.090. A party with standing is therefore only allowed on possible appeal, and that is by appealing the SEPA determination to the Hearing Examiner. After a Hearing Examiner decision, the only route is superior court.

SMC 17G.061.340(C) provides that the Council cannot conduct an administrative review of SEPA issues, and a corollary attack on the Plat decision by referring to SEPA decisions cannot stand. Accordingly, under 17G.061.340(H)(2) and (5), the appeal should be rejected and dismissed

#### **D. Appellant's Assignment's of Error on Appeal**

Respondent will directly address Appellants' Assignments of Error in order, and for ease of reference will utilize the same titles to the extent possible used by Appellants in their initial appeal filing. [I-0001 to I-0010].

##### **1. Assignment of Error 1 - Error in Procedure – [I-0007]**

###### **i. Alleged Error**

Assignment of Error 1 is directed towards the SEPA appeal hearing, and not the Plat hearing on March 19, 2025, and the resolution reached with WSDOT to resolve the appeal. The error cited is an alleged change to the SEPA MDNS determination, or

1 modification thereof, which Appellants state would therefore require re-noticing of the  
2 MDNS by the responsible official. *Id.*

3 ii. Analysis

4 Any appeal of determinations and settlements reached are not subject to review  
5 by the Council, due to lack of appealability and Council jurisdiction. Further, there has  
6 been no “change” in the “application”<sup>2</sup>. If the Applicant is referring to a change in the  
7 SEPA MDNS, the determination which was publicly issued already recognized that  
8 there will be a contemplated development agreement, as well as studies, as necessary  
9 in order to properly determine mitigation. [II-1854 to II-1857]. The WSDOT stipulation  
10 acknowledges the same, as well as the fact that multiple solutions are possible  
11 regarding the Assignment of Error. [III-0664 to III-0667]. Regardless, the stipulation  
12 involves a SEPA determination, nonappealable to the Council, and this Assignment of  
13 Error should be dismissed.  
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16 **2. Assignment of Error 2 - Misinterpretation of Law – [I-0007 to I-0008]**

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19 i. Alleged Error

20 Assignment of Error 2 alleges that the Stipulated Order resolving the WSDOT  
21 SEPA appeal, is a restriction for community residents, and not included in the Capital  
22 Facilities Plan.  
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26  
27 <sup>2</sup> Respondent will presume they are referring to a change in the SEPA MDNS. [I-0007].

1       ii.     Analysis

2           First, Appellants lack standing to contest any item related to a SEPA  
3 determination and proceedings they were not party to at that time, and such an issue  
4 may not be brought before the Council. Second, the Appellants misread the stipulation  
5 with WSDOT as stating that the lane eastbound to US-195 **shall** be closed, when it  
6 says nothing of the sort. The Stipulation provides that closure, if the document is read  
7 fully, is a possible solution that may be utilized in the future. Appellants also do not  
8 address that a development agreement is contemplated to achieve certain objectives,  
9 including further study, and the possibility of different solutions.  
10

11  
12           Any development agreement, as well as any decision to turn a portion of Thorpe  
13 Road into a one-way street, would be decided on separate future votes of council, as  
14 agreed in the Stipulation. At that time any aggrieved local residents may take action as  
15 they feel appropriate.  
16

17           **3. Assignment of Error 3 - Misinterpretation of Comprehensive Plan – [I-**  
18           **0008 to I-0010]**

19       i.     Alleged Error

20           The Appellants separate what is presumed to be Assignment of Error 3 into  
21 several subparts, all of which are references to alleged deviations from the City's  
22 Comprehensive Plan, namely the Capital Facilities and Utilities section (CFU 1.2; CFU  
23 2.2).  
24  
25  
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1           ii.     Analysis

2           At the outset the following regarding comprehensive plans is applicable, as a  
3 comprehensive plan's purpose and effect is often misunderstood:

4           [A] comprehensive plan is a guide and not a document designed for  
5 making specific land use decisions; conflicts concerning a proposed  
6 use are resolved in favor of the more specific regulations. *Citizens*  
7 *for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947  
8 P.2d 1208 (1997). Thus, to the extent the comprehensive plan  
prohibits a use that the zoning code permits, the use is permitted.

9           - *Lakeside Indus. v. Thurston Cnty.*, 119 Wn. App. 886, 894–95,  
10 83 P.3d 433, 437 (2004), *as amended* (Feb. 24, 2004).

11           Further, RCW 36.70.340 provides generally that a city's comprehensive plan  
12 serves as a guide to the later development and regulation of zoning controls. RCW  
13 36.70.340. Similarly, RCW 36.70.450 provides that a planning agency uses its  
14 comprehensive plan as a "basic source of reference and as a guide" with regard to  
15 proposed projects. RCW 36.70.450.

16           Assignment of Error 3 specifically alleges that turning part of Thorpe Road into  
17 a one-way street would violate the Comprehensive Plan sections CFU 1.2, and 2.2.  
18 This Assignment of Error directly relates to the SEPA determination regarding a  
19 Development Agreement providing for further traffic studies and mitigation measures.  
20 As stated above, any possible SEPA determinations lack appealability and jurisdiction  
21 before the Council, and Appellants failed to appeal the original SEPA determination.

22           Further, the one-way proposal is one of many solutions, and there is no  
23 requirement that it absolutely occur. Appellants contention that the one-way option is  
24

1 a final solution is an obvious error and a misreading of the stipulation with WSDOT.  
2 Regardless, any decision to turn a portion of Thorpe Road into a one-way street, and  
3 approval of any development agreement, would be decided by future votes of council,  
4 at which time residents can take all actions they deem prudent.  
5

#### 6 IV. CONCLUSION

7 For the reasons set forth above, the Appellants appealed SEPA decisions  
8 without standing, and to the wrong jurisdiction. Due to that fact, the Appeal lacks  
9 appealability, should be rejected and dismissed under SMC 17G.061.340(H)(2) and (5),  
10 and the Hearing Examiner's decision should be upheld.  
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15 Timothy R. Fischer, WSBA #40075  
16 Assistant City Attorney  
17 Office of the City Attorney  
18 Attorney for Respondent City of Spokane  
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DECLARATION OF SERVICE

I declare, under penalty of perjury, that on the 27th day of June, 2025, I caused a true and correct copy of the foregoing "RESPONDENT CITY OF SPOKANE'S MOTION AND MEMORANDUM TO DISMISS APPEAL" to be delivered to the parties below in via email delivery:

**Appellants:**

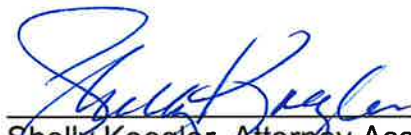
Stefen Harvey – [stefenharvey@yahoo.com](mailto:stefenharvey@yahoo.com)  
Steve Barrett – [stevebarrett51@gmail.com](mailto:stevebarrett51@gmail.com)

**Applicant:**

Duana Kolouskova – [duana@bluefern.com](mailto:duana@bluefern.com)

**Clerk:**

[tpfister@spokanecity.org](mailto:tpfister@spokanecity.org)



Shelly Koegler, Attorney Assistant  
City Attorney's Office  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201-3326  
Email: [SKoegler@spokanecity.org](mailto:SKoegler@spokanecity.org)



# REBUTTAL TO RESPONDENT CITY OF SPOKANE'S MOTION TO DISMISS APPEAL

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By Appellants Stefen Harvey and Steve Barrett  
File No. X23-044PPUD

## I. INTRODUCTION

Appellants Stefen Harvey and Steve Barrett respectfully submit this rebuttal to the City of Spokane's Motion to Dismiss their timely appeal of the Hearing Examiner's May 1, 2025 decision (as amended May 15, 2025) regarding the Victory Heights preliminary plat and related environmental review. The City's motion mischaracterizes the nature of the appeal and relies on a hypertechnical and overly narrow reading of Spokane Municipal Code (SMC) and Washington law. Contrary to the Respondent's claims, this appeal is properly before the Spokane City Council because:

1. The appeal contests aspects of the plat approval, not just SEPA issues.
2. Appellants have standing under both SMC and Washington law.
3. Even if SEPA-related, the issues raised are inextricably tied to plat approval conditions and are thus properly before Council as a closed record appeal.

Dismissal is not warranted.

## II. THE APPEAL IS PROPERLY BEFORE THE CITY COUNCIL UNDER SMC

### 17G.061.340

The City asserts that the appeal is non-jurisdictional because it is "really" a SEPA appeal. This is incorrect. The appeal is rooted in the plat approval process and challenges whether the Hearing Examiner erred by approving a plat that (1) conflicts with Spokane's Comprehensive Plan, (2) relies on vague or contingent mitigation measures, and (3) misinterprets traffic and infrastructure requirements—all of which are within the Council's review authority.

Under SMC 17G.061.340(C), preliminary plats are appealable to the City Council. The appellants did exactly that. The appeal appropriately identifies how the plat decision, and its dependencies (including stipulated mitigation conditions), violate planning principles and fail to adequately protect the public interest.

Respondent's attempt to characterize these concerns as SEPA-only is an artificial parsing meant to sidestep real and unresolved issues in the plat approval.

### **III. APPELLANTS HAVE STANDING UNDER SMC 17A.020 AND RCW**

#### **36.70C.060**

The City argues Appellants lack standing because they didn't appeal the original SEPA determination. But this misunderstands the dual-track nature of land use appeals: Standing to challenge the plat is not contingent on appealing the SEPA threshold determination.

Appellants are Spokane residents who submitted written comments and participated in hearings, satisfying the participation requirement under SMC 17A.020.040. The Washington State Court of Appeals has held that persons who participate in a land use hearing process and are adversely affected by the decision have standing. (*Trepanier v. City of Everett*, 64 Wn. App. 380, 382 (1992)).

Further, RCW 36.70C.060(2)(b) grants standing to those who can show the decision will "prejudice" them. As residents impacted by traffic, environmental degradation, and incomplete infrastructure planning, Appellants clearly meet this standard.

### **IV. THE APPEAL RAISES VALID NON-SEPA ISSUES APPROPRIATE FOR COUNCIL REVIEW**

The City dismisses the entire appeal as a veiled SEPA challenge. However, the Assignments of Error focus on how the plat approval improperly relied on unresolved or speculative mitigation plans, inconsistent with Spokane's Comprehensive Plan, particularly CFU 1.2 and 2.2.

Appellants are not challenging the adequacy of the SEPA threshold determination itself, but rather the fact that the plat was approved without firm commitments to infrastructure improvements or mitigation. That is squarely within the City Council's authority to review under SMC 17G.050.

For example:

- The decision to conditionally approve the plat despite significant unresolved traffic concerns and vague mitigation (e.g., future one-way street options) undermines the City's own land use goals.
- The Council retains discretion to reverse, remand, or revise the plat approval under SMC 17G.050.320, based on misapplication of policy or law.

## **V. THE SEPA/PLAT INTERDEPENDENCY DOES NOT BAR REVIEW**

Even if elements of the appeal intersect with SEPA, courts and hearing bodies have recognized that SEPA and land use decisions are often functionally intertwined. (See *Boehm v. City of Vancouver*, 111 Wn. App. 711, 717–18 (2002)).

Appellants are not seeking a new SEPA hearing, but rather arguing that the Hearing Examiner erred in relying on a contingent and unresolved SEPA settlement (with WSDOT) as a foundation for approving a major development. That is a challenge to the rationality and legality of the plat approval decision, not a prohibited appeal of SEPA under SMC 17G.061.340.

Moreover, the stipulation with WSDOT was not subject to public comment or input, further reinforcing the need for Council oversight to ensure that this plat approval serves the broader community—not just the developer and WSDOT.

## **VI. THE COMPREHENSIVE PLAN ALLEGATIONS ARE RELEVANT AND REVIEWABLE**

Respondent argues that the Comprehensive Plan is merely advisory. That may be true in general terms, but when a plat is alleged to conflict with stated policies—especially regarding capital facilities and utilities—it becomes a justiciable issue under land use law.

In *Citizens for Mount Vernon v. City of Mount Vernon*, the Court upheld that while zoning may override general policies, cities must still make findings consistent with the plan or explain deviations. (133 Wn.2d 861, 873 (1997)).

Appellants argue that:

- The approval violates CFU 1.2, requiring facilities to be concurrent with development.
- It violates CFU 2.2, which discourages approval of developments where capital facilities are not planned or funded.

The Hearing Examiner failed to address these policies with specificity or adequate findings, and the Council is the correct body to ensure compliance.

## **VII. CONCLUSION**

The City's motion seeks to evade meaningful public oversight by narrowly interpreting jurisdiction and standing. Appellants have properly challenged the plat decision, not the SEPA threshold determination directly. Their arguments rest on whether the conditions and infrastructure assumptions underpinning plat approval are lawful, feasible, and consistent with the Comprehensive Plan—all legitimate issues for Council review.

The City Council should deny the motion to dismiss, retain jurisdiction over the appeal, and

proceed with a review of the Hearing Examiner's decision.

Respectfully submitted,  
Stefen Harvey and Steve Barrett  
Appellants