

CITY OF SPOKANE HEARING EXAMINER

Re: Application for Modification of Final) FINDINGS, CONCLUSIONS,
Plat by Quail Ridge Homeowners') AND DECISION
Association)
) FILE NO. Z1300065-PPUD

SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant is proposing to create a new, single-family lot within the Quail Ridge subdivision by dedicating a portion of a common area for such use.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant: Quail Ridge Homeowners' Association
5400 Quail Ridge Circle
Spokane, WA 99223

Owner: Same as Applicant.

Agent: Taylor Engineering, Inc.
106 W. Mission Avenue
Spokane, WA 98223

Property Location: The subject property is located within the existing Quail Ridge Plat/PUD development located in southwest Spokane, WA.

Legal Description: The abbreviated legal description of the property is provided in Exhibit 2A. The tax parcel number of the project site 34051.1302.

Zoning: The property is zoned RSF (Residential Single Family).

Comprehensive Plan Map Designation: The property is designated as R 4-10 (Residential 4-10 units per acre).

Site Description: The existing Quail Ridge Plat/PUD consists of approximately 17.7 acres and is predominantly flat with a slight slope of 2-3% from east to west. The parcel to be created is located in the northwest section of the plat and is one portion of a designated common area (Block 5). The portion of common area proposed to be re-purposed as a single-family residential lot is currently improved with tennis courts and a community building. The common area (Block 5) consists of approximately 60,135 square feet of the total 4.02 acres of designated common area within the plat. The properties within the plat are served by a private road which connects to Hatch Road, a public road. The properties are also served by private sewer and water lines,

which are connected to the City's sewer and water lines in Hatch Road. The soil types and other physical characteristics of the existing plat/PUD can be found in the SEPA Environmental Checklist performed for the preliminary plat/PUD application.

Surrounding Zoning and Uses: The subject property is surrounded by RSF (Single Family Residential) zoning on all perimeters. The surrounding area consists of similarly sized developed lots both in the existing development and the PUD adjacent to the north.

Project Description: The applicant is proposing to create one residential building lot of approximately 24,600 square feet from a portion of a previously designated common area. Lot sizes in the existing plat vary in size from roughly 6,700 square feet to 24,620 square feet according to the site plan submitted in support of this application. The new parcel will have frontage on both Quail Ridge Court and Quail Ridge Circle. The rear property line will border the existing Manito Place PUD on the north side and retain common area located on both side property lines. The new parcel will be served by the private roads, sewer and water that currently exist in the subdivision.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code ("SMC") 17C.110, Residential Zones; SMC 17G.080, Subdivisions; and SMC 17G.060.170, Decision Criteria.

Notice of Application/Public Hearing: Mailed: December 17, 2013
Posted: December 18, 2013

Community Meeting: N/A

Public Hearing Date: January 23, 2014

Site Visit: January 29, 2014

SEPA: A Determination of Non-Significance (DNS) was issued on April 4, 1983 for the Quail Ridge preliminary plat/PUD. The DNS was not appealed. The city relied upon and referred to this original SEPA review to support this proposal.

Testimony:

Dave Compton, City Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Frank R. Ide, Landscape Architect
Taylor Engineering, Inc.
106 W. Mission Avenue
Spokane, WA 98223

John M. Riley, III
Witherspoon Kelley
422 W. Riverside, Suite 1100
Spokane, WA 99201

Bob Tomlinson
5417 S. Quail Ridge Circle
Spokane, WA 99223

Paul Zimmerman
5411 S. Quail Ridge Circle
Spokane, WA 99223

Mike Murphy
5420 S. Quail Ridge Circle
Spokane, WA 99223

Exhibits:

1. Planning Services Staff Report
 - 1A Revised Planning Services Staff Report, received on 01-22-14
2. Application, including:
 - 2A General application
 - 2B Preliminary Long Plat application
 - 2C Notification Map application
 - 2D Quail Ridge Site Plan
 - 2E Altered Final Plat and PUD of Quail Ridge
 - 2F Recorded Amendment to and Restatement of Declaration of CCRs of Quail Ridge recording date 10/26/09
 - 2G Recorded First Amendment to Amendment to and Restatement of Declaration of CCRs for Quail Ridge recording date 10-04-13
3. Engineering Services comments
4. Avista comments
5. Spokane Tribe of Indians comments
6. Spokane Regional Clean Air Agency comments
7. Washington State Department of Ecology comments
8. Notice map
9. Parcel listing
10. Notice of Application and Public Hearing
11. Amended Notice of Application and Public Hearing
12. Affidavit of mailing combined application and hearing dated 12-17-13
13. Affidavit of posting combined application and hearing dated 12-18-13
14. Copy of publication of combined application and hearing dated 12-18-13
15. SEPA Determination of Nonsignificance MDNS issued 04-04-83
16. Environmental checklist dated 02-18-83
17. Email dated 11-05-13 to Dave Compton from Frank Ide
re: signatures on application comply with State Law re community meeting
18. Letter dated 11-06-13 to Frank Ide from Dave Compton
re: alteration of Quail Ridge final plat
19. Letter dated 11-11-13 to Interested Parties from Dave Compton
re: requesting comments
20. Letter dated 11-26-13 to Frank Ide from Dave Compton
re: notice of application and public hearing letter
21. Letter dated 12-06-13 to Dave Compton from John Riley
re: community meeting requirement.
22. Emails dated 01-03-14 to/from James Richman and John Riley
re: procedural questions and changes to notice.
23. Letter dated 01-21-14 to Hearing Examiner from John Riley
re: additional background regarding application with a copy Exhibit 2G attached
24. Hardcopy of Planning Services PowerPoint presentation
- A-1 Overview of Quail Ridge PUD submitted by the applicant

FINDINGS AND CONCLUSIONS

To be approved, the proposed plat modification must comply with the criteria set forth in Spokane Municipal Code section 17G.060.170. The Hearing Examiner has reviewed the plat modification application and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The proposed plat modification is allowed under the applicable land use codes. In particular, the creation of an additional single family lot is consistent with the zoning of the subject site as well as the surrounding subdivision. Further, the proposal is consistent with both the local ordinance and the state statute governing modification of final plats.

The site is zoned Residential Single Family ("RSF"). The applicant proposes to create one single family lot by carving out a 24,600 square foot area from a common area within an existing plat. The zoning allows single-family uses, just as it did when the plat was first developed. See Table 17C.110-1. There is nothing in the applicable zoning provisions that precludes the conversion of common area to single-family use. In addition, the planning staff has concluded that the modification of the existing plat does not create any nonconformities under the current codes. *Testimony of D. Compton.*

The alteration of a plat is governed by RCW 58.17.215. See SMC 17G.080.020(D). Under that statute, the party requesting a plat modification must submit an application containing the signatures of a majority of the persons having an interest in the lots of the subject subdivision. See RCW 58.17.215. In cases in which the proposed alteration would violate the applicable restrictive covenants, the owners must agree to modify the covenants to allow the plat alteration. See id. These requirements are satisfied in this case.

First, a majority of the property owners in the subdivision provided written consent to the plat modification, as required by RCW 58.17.215. Actually, the applicant obtained signature from more than a simple majority of owners. The covenants of Quail Ridge require a 67% vote in order to authorize a change to the covenants. *Testimony of J. Riley.* To ensure that the necessary consents were obtained, the applicant collected signatures supporting the plat modification (along with associated changes to the covenants) clearly in excess of that threshold. See id.; see also Exhibit 2B. Signatures aside, the evidence in the record is that the property owners overwhelmingly supported this project. *Testimony of P. Zimmerman.* It would be difficult to conclude otherwise, since there was no opposition to this project, in writing or otherwise.

Second, the applicant has completed the steps necessary to amend its restrictive covenants to allow the creation a new residential lot in Quail Ridge. The restrictive covenants of the subdivision, as originally written, precluded the construction of residential structures in the common area as well as the sale of common area property. See Exhibit 2F. However, the Association, having the requisite support of its members, followed the required procedures to modify its covenants to allow the residential lot to be created. See Exhibit 2G; *Testimony of J. Riley.* The amendment to the covenants is effective upon approval of the plat modification. See

id. Thus, the applicant has sought and obtained the agreement of the property owners to allow the plat modification, as required under RCW 58.17.215.

For the above reasons, the Hearing Examiner concludes that the proposal is authorized by the applicable land use codes. This criterion is satisfied.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

The proposal is consistent with both the land use designation for the property as well as the goals and policies of the Comprehensive Plan, in particular with respect to the land use element of the plan.

The subject property is designated as Residential 4-10 under the Comprehensive Plan. The addition of one residential lot to the existing subdivision is consistent with the density range called out by the Residential 4-10 designation. The proposed lot is roughly equivalent to the larger lots within the subdivision, as well as being comparable to other residential lots in the area. And there was no testimony or other evidence that the creation of a new lot would create any nonconformity under the land use codes.

The proposal to create a new residential lot in Quail Ridge is also consistent with the goals and policies of the Comprehensive Plan. Goal LU 1 of the Comprehensive Plan seeks to foster a harmonious blend of opportunities for living and working. See CP, Section 3.4, Goal LU 1, p. 9. Policy LU 1.3, entitled "Single Family Residential Areas," seeks to protect the character of single-family residential neighborhoods by focusing higher-intensity land uses in designated centers and corridors. See CP, Section 3.4, Policy LU 1.3, p. 10. The Comprehensive Plan appears to be directed at development on a much larger scale than a single-lot development. Nonetheless, the proposed re-development of common area is consistent with the objectives underlying the above policies. In addition, the creation of the residential lot is an efficient use of the land, and supports the objective of achieving residential densities as suggested under Policy LU 3.12.

Policy LU 5.5, entitled "Compatible Development," seeks to ensure that infill and redevelopment projects are well-designed and compatible with surrounding uses and building types. This policy appears to directly support the applicant's project. The tennis courts are unused, with fencing that is in disrepair. The community building is also basically unused, and the homeowners are unwilling to commit resources to upgrade or improve unwanted facilities. Re-purposing this property for a new residential owner puts the property to more productive use and is clearly compatible with the remainder of the residential subdivision. Moreover, the subdivision is served by common areas that greatly exceed the minimum requirements. The creation of the lot will not reduce the common areas below legal minimums or materially affect the use or enjoyment of remaining common areas by the subdivision residents.

The Hearing Examiner concludes that the proposal is consistent with the Comprehensive Plan, as discussed above. In addition, there was no evidence presented that the proposal deviated from the goals or objectives of the plan in any way. Therefore, this criterion is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010SMC. See SMC 17G.060.170(C)(3).*

On November 11, 2013, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 19. The staff confirmed that it received no communications suggesting that concurrency was not satisfied. See Exhibit 1A, p. 4. The comments that were received either stated that concurrency was satisfied or addressed other concerns, such as mitigation measures. See e.g. Exhibit 3-7. There is no evidence in the record that the project transgresses any concurrency requirements.

Given the lack of substantive comments from departments and agencies with jurisdiction, the Hearing Examiner must conclude that concurrency standards are satisfied. The concurrency provisions of the municipal code state that a lack of response by a notified facility or service provider shall be construed as a finding that concurrently is met. See SMC 17D.010.020(B)(1). In addition, the Request for Comments advises that a lack of comment by any referral agency will be considered acceptance of the application as technically complete and meeting concurrency requirements. See Exhibit 27.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the plat modification is met.

4. *If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water and the existence of natural, historic or cultural features. See SMC 17G.060.170(C)(4).*

The Hearing Examiner agrees with the staff that the site is suitable for this proposal, given its physical characteristics. See Exhibit 1A, p. 4.

The area to be converted to residential use is generally flat. The site is already improved with two tennis courts (in a fenced area) and a small community building. Thus, it is already established that the proposed residential lot is an appropriate location for construction. The physical elements of the whole subdivision were discussed in the environmental checklist submitted in support of the original plat/PUD for Quail Ridge. See Exhibit 16. In general, that checklist characterized the subdivision site as lacking any material development constraints. See id. For example, the checklist noted that the soils were stable, that the soils were suitable for site drainage, that there would be no impacts on ground or surface water, and that the slopes on site were generally mild. See id. There is no reason, on this record, to expect any different conclusions regarding the proposed residential lot.

There is no information in this record showing that any problems are anticipated due to soil types, drainage characteristics, the existence of ground or surface water, or the like. There are no known environmental conditions (such as critical areas) that might restrict site development, as is further discussed below. In addition, there are no known natural, historic, or cultural features of the site that are in need of protection. In any event, the conditions of approval will require that such resources be protected, should any be uncovered during the construction phase.

The Hearing Examiner concludes that the property is suitable for the proposed use, given the conditions and characteristics of the site. As a result, this criterion is satisfied.

5. *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

The proposal will not have significant, adverse effects on the environment, in particular considering the nature and intensity of the use. The project only seeks to create one residential lot. The area to be converted to residential purposes is part of a common area that is already improved with a community building and tennis courts. The tennis courts will be demolished and the community building will be extensively modified, all in conjunction with the construction of a single-family residence. There will undoubtedly be impacts from construction at the site, but such impacts are easily mitigated using approaches that are typically employed at construction sites. The construction impacts will be temporary, and the addition of one more residence in the subdivision will have minimal overall effect.

The city did not require the applicant to prepare a checklist for this specific proposal. Likewise, the city did not issue a threshold determination specifically for this proposal. However, an environmental checklist for the Quail Ridge subdivision was completed prior to the original plat approval. See Exhibit 16. That checklist demonstrates, as discussed above, that there are no material limitations on the development potential of the site due to environmental considerations. Not surprisingly, then, the city subsequently issued a Determination of Nonsignificance (the "DNS") for the subdivision project. See Exhibit 15. The DNS for Quail Ridge was not appealed. Although this environmental review was completed in 1983, there is no evidence in this record to suggest that the conclusions reached at that time do not continue to apply to the site. The staff concluded that the previous SEPA review was sufficient for purposes of both evaluating and placing conditions on the proposed project. See Exhibit 1A, p. 4. The Hearing Examiner generally agrees with this conclusion.

The city was permitted to use and rely upon the SEPA documents prepared for the Quail Ridge subdivision. "An agency may use environmental documents that have been previously prepared in order to evaluate proposed actions, alternatives, or environmental impacts." See WAC § 197-11-600(2). Those documents may be used even though the previous proposal is not the same as the current one. See *id.* Further, there is no need to prepare a new threshold determination unless there are substantial changes to a proposal such that significant, adverse environmental impacts are likely to occur. See WAC § 197-11-600(3)(b). Even then, if the potential impacts are covered by the range of alternatives and impacts analyzed in the existing environmental documents, a new threshold determination is not required. See WAC § 197-11-600(3)(b)(ii).

The SEPA documents prepared for Quail Ridge are sufficient to evaluate the proposal to create an additional residential lot in the subdivision. Based upon the previous SEPA review, and the record in this case, there is no evidence that significant, adverse environmental effects will arise because of this proposal. The relatively small impacts that will occur, such as arise from demolition and construction activities, are easily mitigated.

Based upon the foregoing, the Hearing Examiner concludes that the proposal will not have a significant adverse impact on the environment or the surrounding properties, and therefore this criterion for approval has been met.

6. *The proposed subdivision makes appropriate (in terms of capacity and concurrence) provisions for: (a) public health, safety, and welfare; (b) open spaces; (c) drainage ways; (d) street, roads, alleys, and other public ways; (e) transit stops; (f) potable water supplies; (g) sanitary wastes; (h) parks, recreation and playgrounds; (i) schools and school grounds; and (j) sidewalks, pathways, and other features that assure safe walking conditions. See SMC 17G.060.170(D)(5).*

The proposal is consistent with the approval criteria for subdivisions. Initially, it should be noted that the proposal makes adequate provisions for the public health, safety, and welfare. There is no reason to suspect that public services are unavailable or lack capacity to serve the additional residential use. There were no comments from any department or agency, such as the Police Department or the Fire Department, suggesting that the proposed development placed undue stresses on the public infrastructure or services. Moreover, there was no testimony or other evidence suggesting that the proposal would have negative effects on the public health, safety, or welfare.

The applicant is not proposing to create any additional open space. However, under the circumstances of this case, no additional open space is necessary. The common area of Quail Ridge is substantially larger than the minimum size required under the current code. Even after the new residential lot is carved out of the common area, the subdivision will still have open space well in excess of code minimums. See Exhibit 1A, p. 5. And the resulting lot is relatively large, preserving a fair amount of lot space for open areas, albeit within the confines of one owner's property. The Hearing Examiner concludes that the proposal properly accounts for the need for open space.

The existing subdivision already handles storm water drainage adequately. The addition of a single residence to the subdivision will not materially affect drainage at the site. The project site is already developed, and there was no evidence submitted suggesting there were drainage problems on the proposed lot or related to the existing improvements. There was also no evidence of pre-existing conditions that created concern, such as natural areas in which water collected. The project sufficiently addresses drainage considerations.

The proposed residential lot will be served by the existing infrastructure within the subdivision. Thus, the lot will use the existing roadway system for access. The new lot will be a corner lot and have frontage on both Quail Ridge Court and Quail Ridge Circle. See Exhibit 1A, p. 5. No new ingress and egress points are being proposed. See id. There are existing sidewalks that provide connectivity throughout the subdivision. See Exhibit 1A, p. 6. The subdivision is connected to public sewer and water supplies. The private sewer and water lines within the subdivision are available for connection to the new residential lot. Thus, the new lot has a readily available source of potable water and a means to dispose of sanitary wastes.

The transit system has adequate capacity to serve this development. The proposal only creates one residential lot. This will not have any material effect on the capacity of the STA system. While it is true that there are no STA stops close to the subdivision, this is not a problem that the applicant can be expected to solve. The STA did not submit any comments on the

proposal, and therefore did not advise of any plans to change or expand transit services in the area. See Exhibit 1A, p. 5.

The proposal is adequately served by parks and recreational areas. Hangman Park and Campion Park are located within walking distance of Quail Ridge. See Exhibit 1A, p. 6. Both of these parks are regularly used by the public for hiking, biking, and running on a well-established trail system. See id. The closest city park is Hamblen Park approximately 1.5 miles to the northeast. See id. The next closest public park is Comstock Park approximately 2 miles to the northwest of Quail Ridge. See id. There is also plenty of common area within the subdivision for the recreational use of the residents. See id.

Finally, the proposed residential site is adequately served by the school system. Again, a single lot proposal simply won't impact the capacity of the school system. The site is located within District 81. See Exhibit 1A, p. 6. District 81 did not provide any comments on the proposal. Given the lack of comments, it must be assumed that the school system has the capacity to provide services to the new residential lot. See id. There is no evidence in this record to suggest otherwise.

The Hearing Examiner concludes that the proposal satisfies the applicable subdivisions standards. The Hearing Examiner also adopts and incorporates the staff's analysis of this issue, found on pages 5-6 of the Staff Report. See Exhibit 1A. This criterion is met.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed preliminary plat subject to the following conditions:

1. The Hearing Examiner approves the application of the Quail Ridge Homeowners Association to modify a portion of a final plat and PUD named Quail Ridge. As approved, the plat modification creates a new, single-family residential lot within the Quail Ridge subdivision by dedicating a portion of the existing common area for such use. The project shall be developed in substantial conformance with the plans and specifications for the "Altered Final Plat and PUD of Quail Ridge" located in the southwest sector of the City of Spokane, Spokane County, Washington. The applicant is authorized to prepare a final plat in compliance with the preliminary plat and the conditions of approval placed upon it. Any changes to the application must be submitted to Planning Services for its review and approval. If Planning Services finds the proposed changes to be substantial, then the changes shall be forwarded to the Hearing Examiner for review and approval.
2. The approximate new lot lines shown on the preliminary plat must be established and the final plat must show bearings and distances in order to create new property corners.
3. The community center is assumed to have an existing 2-inch water service line.
 - a. If the community center is demolished, this water service line will need to be capped by the City of Spokane Water Department.
 - b. If the line is re-tapped, it will require a City of Spokane tap permit.

- c. If the line is galvanized and it sits unused for over one (1) year, it will not be allowed to be reused; provided, however, if it is copper or HDE, it can be reused at a later time.
 - d. The 2-inch line cannot be connected to a 1-inch reducer. It will need to be tapped with a 1-inch line and the cap will need to remain in place.
4. If the community center is demolished, the existing sewer service line shall be capped onsite. If it is in good condition, it can be reused at a later time.
5. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services should be immediately notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.
6. Dust emissions during construction and excavation projects must be controlled in accordance with the Spokane Regional Clean Air Agency.
7. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code including the Uniform Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.
8. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.
9. Spokane Municipal Code section 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.

DATED this 11th day of February 2014.



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions of the Hearing Examiner regarding preliminary plats are final. They may be appealed to the City Council. All appeals must be filed with the Planning Department within fourteen (14) calendar days of the date of the decision. The date of the decision is the 11th day of February 2014. **THE DATE OF THE LAST DAY TO APPEAL IS THE 25th DAY OF FEBRUARY 2014 AT 5:00 P.M.**

In addition to paying the appeal fee to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the City Council.