

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Conditional Use Permit Application by the ) FINDINGS, CONCLUSIONS,  
City of Spokane Wastewater Department ) AND DECISION  
to allow the construction of a Combined )  
Sewer Overflow (CSO) storage tank near )  
the intersection of Ray Street and )  
Congress Avenue ) FILE NO. Z1300012-CUP3

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The City of Spokane Wastewater Department seeks a conditional use permit in order to allow the construction of a Combined Sewer Overflow (CSO) storage tank. The proposed tank is 60 feet wide, 350 feet long, and 20 feet in height. The tank volume is 1,030,000 gallons. The tank will be installed underground, necessitating tree removal and substantial volumes of cut and fill. The site will be replanted and landscaped following the tank installation.

**Decision:** Approved, with conditions.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

**Applicant/** City of Spokane Wastewater Department  
**Owner:** 808 West Spokane Falls Boulevard  
Spokane, WA 99201

**Agent:** Dan Buller, P.E.  
City of Spokane, Engineering Design  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

**Property Address:** 2000 S. Ray Street, Spokane, WA

**Property Location:** The project is west of Ray Street, approximately between 20<sup>th</sup> Avenue and 21<sup>st</sup> Avenue (if those streets were extended to the west), and east of Parkwood Drive, in the City of Spokane, Washington. The site is northwest of Lincoln Heights Elementary School.

**Legal Description:** The legal description is attached to the statutory warranty deed recorded as instrument no. 4498813, included in the record as Exhibit 41.

**Zoning:** The property is zoned RSF (Residential Single-family).

**Comprehensive Plan Map Designation:** The property is designated as Residential 4-10 in the city's Comprehensive Plan.

**Site Description:** The site is roughly rectangular in shape. The tax parcel number of the property is 35272.0016. According to the Assessor's records, the site is approximately 3.62 acres

in size. The property is unimproved, with the exception of an existing access road, and is largely covered in evergreen trees.

**Surrounding Conditions and Uses:** The site is surrounded by property that is zoned RSF. The properties to the north, east and west are used for single family residences. The property to the south is vacant land owned by the Spokane Methodist Homes. The surrounding properties are designated as Residential 4-10/units per acre on the City of Spokane Land Use Map.

**Project Description:** The City of Spokane Wastewater Department is proposing to construct an underground Combine Sewer Overflow (CSO) storage tank with the dimensions of 60 feet in width by 350 feet in length by 20 feet in height. The tank volume is 1,030,000 gallons. The estimated amount of cut is 20,623 cubic yards with 17,568 cubic yards of fill. The proposed project will require the clearing of 1.75 acres which includes the removal of approximately 100 trees. The project will also require the closure and removal of a private access road. The site will be replanted and landscaped according to plans on file dated February 15, 2013.

### PROCEDURAL INFORMATION

**Authorizing Ordinances:** Spokane Municipal Code ("SMC") 17C.110, Residential Zones; SMC 17C.320.080(F), Conditional Use Criteria, and SMC 17G.060.170, Decision Criteria.

**Notice of Community Meeting:** Mailed: October 5, 2012  
Posted: October 3, 2012

**Notice of Application/Public Hearing:** Mailed: March 11, 2013  
Posted: March 11, 2013

**Community Meeting:** October 23, 2012

**Public Hearing Date:** April 11, 2013 (At the hearing on this matter the Hearing Examiner requested additional information on jurisdictional matters, the geotechnical report and the critical materials to be contained within the tank. Time was also allotted to the Applicant and those in opposition to the project to file briefs and rebuttals. Therefore, record remained open until May 20, 2013, at which time it was closed.)

**Site Visit:** April 8, 2013

**SEPA:** A Determination of Nonsignificance ("DNS") was issued by the City of Spokane on September 6, 2012. An Addendum to the DNS was issued on February 6, 2013.

#### **Testimony:**

Tirrell Black, City Planner  
City of Spokane Planning & Development  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Lars Hendron, P.E.  
City of Spokane Wastewater Department  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

Elizabeth Schoedel, Assistant City Attorney

P. Mike Taylor, P.E.

Office of the City Attorney  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

Director of Engineering Services  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

Sandra Bachmeyer  
Green Ridge Estates Homeowners Ass'n  
1911 S. Greene Street  
Spokane, WA 99223

Dean M. Loberg  
Green Ridge Estates Homeowners Ass'n  
1905 S. Greene Street  
Spokane, WA 99223

David F. Kokot, P.E.,  
Fire Protection Engineer  
City of Spokane Fire Department  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

**Exhibits: Z1300012 CUP3**

1. Planning Services Staff Report
2. Application, including:
  - 2A General application
  - 2B Conditional Use Permit application
  - 2C Notification Map
  - 2D Site Plan
    - 2D1 Aerial Photo of Storage Site Plan
    - 2D2 Storage Site Plan Construction Drawing
    - 2D3 Demolition and Excavation Plan
    - 2D4 Grading and Drainage Plan dated 02-07-13
    - 2D4a Grading and Drainage Plan dated 11-28-12
    - 2D5 Access Road and Sidewalk Plan
    - 2D6 Storm DrainPlan
    - 2D7 Landscape Plan
    - 2D8 Tree planting, irrigation plan
  - 2E Spokane County parcel Summary
  - 2F Water Type Modification Form, Washington State Department of Natural Resources
  - 2G Six Year Comprehensive Wastewater Program 2012-2017
  - 2H Historic Inventory Report
  - 2I Photos of site dated 12-04-12
  - 2J Conditional Use Permit Counter Complete Checklist
3. Engineering Services comments
4. Traffic Engineering comments
5. Building comments
6. Design Review comments
7. Spokane Tribe of Indians comments
  - 7A Cultural Resources Report Cover Sheet
8. Spokane Regional Clean Air Agency comments
9. Washing State Department of Wildlife comments
10. Department of Natural Resources comments
11. Williams Pipeline comments

12. Recap of agency responses
13. Notice map
14. Notice distribution listing
15. Notice of Community Meeting
16. Notice of Application and Notice of Public Hearing
17. Affidavit of mailing, Community Meeting 10-05-12
18. Affidavit of mailing, Notice of Application and Hearing 03-11-13
19. Affidavit of posting , Community Meeting 10-03-12
20. Affidavit of posting, Public Hearing 03-11-13
21. Affidavit of sign removal, Community Meeting 10-18-12
22. Environmental Checklist
  - 22a addendum to Environmental Checklist dated 02-06-13
23. SEPA Determinations
  - 23a Determination of Nonsignificance, CSO Basin 34 Control Facilities, dated 09-06-12
  - 23b Determination of Nonsignificance, paving Fiske Street from 19<sup>th</sup> Avenue to 17<sup>th</sup> Avenue, dated 03-19-13
24. Community Meeting sign in sheet
25. Email dated 12-14-12 to Dan Buller from Tirrell Black  
re: joint community meeting Ray Street Water Booster Station and CSO34-3
26. Email dated 12-18-12 to Dan Buller from Tirrell Black  
re: CSO34-3 requires a separate CUP3 permit
27. Email dated 01-22-13 to Randy Abrahamson from Dan Buller  
re: cultural resource survey of CSO 34-3
28. Memo dated 01-15-13 to Elizabeth Schoedel from Greg Smith  
re: closure of private access road and release of easement
29. Email dated 01-29-13 to Tirrell Black from Tamara Palmquist  
re: combined community meeting
30. Memo dated 02-14-13 to Tirrell Black from Dan Buller  
re: background information on the CSO 34-3 project
31. Letter dated 02-21-13 to Interested Parties from Tirrell Black  
re: request for comments
32. Memo dated 02-26-13 to Tirrell Black from Dan Buller  
re: parcel number clarification
33. Email dated 03-04-13 to Tirrell Black from Dan Buller  
re: update on public comment, informational meeting and public hearing
34. Email dated 03-06-13 to Tirrell Black from Dan Buller  
re: cultural resource survey
35. Email dated 03-06-13 to Tirrell Black from Cindy Kinzer  
re: private road on construction site
36. Email dated 03-07-13 to Tirrell Black from Dan Buller  
re: submittal of Cultural Resource Survey
37. Email dated 03-07-13 to Kristen Griffin from Tirrell Black  
re: no comments from Historic Preservation on the CSO 34-3 project
38. Email dated 03-07-13 to LuAnn Weingart from Tirrell Black  
re: no comments from Avista on the CSO 34-3 project
39. Letter dated 03-08-13 to Dan Buller from Tirrell Black  
re: Notice of Application/Public Hearing Instructions
40. Letter dated 03-11-13 to Property Owner/Occupant from Dan Buller  
re: Informational meeting regarding CSO 34-3 project
41. Email dated 03-12-13 to Tirrell Black from Elizabeth Schoedel

- re: agreement, legal description, termination of easement
- 42. Email dated 03-18-13 to Sally Phillips from Tirrell Black
  - re: Informational meeting regarding CSO 34-3 project
- 43. Article from Spokesman Review dated 12-16-12
  - re: stormwater
- 44. Declaration of David F. Kokot regarding East Parkwood Drive
- 45. Public Comment Correspondence
  - 45-1 From Sandra Bachmeyer dated 12-11-12, concern about closing of road easement through project
  - 45-2 From Sandra Bachmeyer dated 03-25-13 with response from Tirrell Black regarding concerns of road closure, landscaping and termination and release of easement
  - 45-3 From Dean M Loberg dated 03-25-13 concerns regarding no second access and landscaping with response from Tirrell Black
- 46. Parkwood South historical documents
  - 46-1 Memo dated 11-20-79 to E. Terry Clegg from B.J. Schmitz
  - 46-2 Memo dated 11-26-79 to Terry Clegg from W. A. Hendron
  - 46-3 Memo dated 11-26-79 to E. Terry Clegg from A. L. O'Connor
  - 46-4 Letter dated 12-04-79 from E. Terry Clegg to Parkwood South
  - 46-5 Letter dated 12-07-79 to A. S. Brown from Marilyn J. Montgomery
  - 46-6 Letter dated 12-18-79 to A. S. Brown from Marilyn J. Montgomery
  - 46-7 Memo dated 12-27-79 to E. Terry Clegg from B. J. Schmitz
  - 46-8 Letter dated 12-28-79 to Terry Novak from E. Terry Clegg
  - 46-9 Letter dated 01-12-82 to Barry Briggs from E. Terry Clegg
  - 46-10 Memo dated 01-20-82 to Terry Clegg from Greg Smith, Assistant Corporation Counsel
  - 46-11 Chronology of events following January 20, 1986
  - 46-12 Letter dated 02-05-82 to Parkwood South from E. Terry Clegg
  - 46-13a Parkwood South Final Planned Unit Development Plat dated 05-82
  - 46-13b Parkwood South, First Addition Final Planned Unit Development Plat dated 10-97
  - 46-14 Letter dated 08-29-86 to Earnest Greco from E. Terry Clegg
  - 46-15 Document dated 09-04-86
  - 46-16 Memo dated 09-08-86 to File from E. Terry Clegg
  - 46-17 Memo dated 09-11-86 to E. Terry Clegg from Garry Miller
  - 46-18 Letter dated 09-17-86 to Ernest Greco from Greg Smith, Assistant City Attorney
  - 46-19 Minutes dated 09-26-86 of the City Plan Commission, Parkwood South
  - 46-20 Parkwood South Development, Ray Street Access from L. Butler 09-29-86
  - 46-21 Letter dated 10-30-86 to Ernie Greco from E. Terry Clegg
  - 46-22 Staff Report for Preliminary Plat and Planned Unit Development Application File No. 92-89-PP/PUD, 11-92 (amendment to Parkwood South)
  - 46-23 Letter dated 01-14-05 to Greg Smith, Hearing Examiner from Dave Kokot
  - 46-24 92-89-PP/PUD Parkwood South decision dated 11-19-92
  - 46-25 Preliminary plat dated 10-92
- 47. Copy of Planning Department's presentation
- 48. Copy of Wastewater's presentation
- A. Submittals from Engineering Services during open record period:
  - A-1 Email dated 04-12-13 to Hearing Examiner from Alex Sylvian
    - re: transmittal of CSO 34-3 CUP plan clarification
    - A-1a CSO-34-3 geotechnical engineering evaluation report
    - A-1b CSO-34-3 addendum #1 to geotechnical engineering evaluation dated 11-14-11

- B. Submittals from City Legal during open comment period
  - B-1 City's post hearing response to questions posed
  - B-2 Second Declaration of David F. Kokot
  - B-3 Declaration of Mark Serbousek
  - B-4 National Pollutant Discharge Elimination System Waste Discharge Permit # WA-002447-3
  - B-5 Email to/from City Legal and Hearing Examiner requesting and granting of time extension until 05-20-13, to respond to Ms. Bjordahl's submittal of 05-6-13
  - B-6 Response to Ms. Bjordahl's filing (See Exhibit C-6)
- C. Submittals from Opposing Parties during open comment period
  - C-1 Voice Mail received on 04-24-13 from Dean Loberg requesting an extension of time, with response from City Legal dated same date.
  - C-2 Email dated 04-24-13 to Dean Loberg granting extension.
  - C-3 Email dated 04-25-13 from Stacy Bjordahl requesting extension until 05-06-13.
  - C-4 Response email dated 04-26-13 from City Legal agreeing to extension.
  - C-5 Email dated 04-29-13 to Stacy Bjordahl granting the continuance.
  - C-6 Response filed on behalf of the Green Ridge Estates by Stacy Bjordahl, attorney at law.

## **FINDINGS AND CONCLUSIONS**

### **A. Conditional Use Permit**

To be approved, the proposed conditional use permit must comply with the criteria set forth in Spokane Municipal Code sections 17G.060.170 and 17C.320.080(F). The Hearing Examiner has reviewed the proposed conditional use permit 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 project site is zoned Residential Single Family ("RSF"), a residential category. The uses allowed in the residential zones are shown on Table 17C.110-1. See SMC 17.110.110. The table does not specifically identify a CSO or related infrastructure among the regulated uses. See Table 17C.110-1. However, stormwater facilities and conveyance systems are elsewhere identified as Basic Utilities, an institutional category of use. See Exhibit 1 (Staff Report, p. 4).

"Basic Utilities" are infrastructure services that need to be located in or near the area where the service is provided. SMC 17C.190.400(A). Examples include water and sewer pump stations, sewage disposal and conveyance systems, water towers and reservoirs, water quality and flow control facilities, water conveyance systems, and stormwater facilities and conveyance systems. SMC 17C.190.400(C). The proposed project fits the general definition of a Basic Utility, and is explicitly identified in the examples listed in the municipal code.

According to Table 17C.110-1, Basic Utilities are a limited ("L") use, rather than a conditional use ("CU"). However, the use category for "Basic Utilities" is modified by the

bracketed number “[3]”, suggesting that additional terms apply. The footnotes to Table 17C.110-1 include this clarification:

Standards that correspond to the bracketed numbers [ ] are stated in SMC 17C.110.110.

See Table 17C.110-1. The pertinent portion of SMC 17C.110.110 provides as follows:

**This regulation applies to all parts of Table 17C.110-1 that have a note [3].** Basic utilities that serve a development site are accessory uses to the primary use being served. In the RA, RSF and RTF zones, a one-time addition to an existing base utility use is permitted, provided the addition is less than fifteen hundred square feet and five or less parking stalls located on the same site as the primary use. The addition and parking are subject to the development standards of the base zone and the design standards for institutional uses. **New buildings or larger additions require a conditional use permit and are processed as a Type III application. ...**

See SMC 17C.110.110(A)(3) (emphasis added). As a result, the project requires a conditional use permit which is processed as a Type III application. See id.

The land use codes permit Basic Utilities, such as the proposed project, to be constructed in the RSF zone, so long as the project satisfies the criteria for a conditional use and the other development standards in the municipal code. The Hearing Examiner finds that 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 project site has a Residential 4-10 designation under the comprehensive plan. While the provisions describing this land use designation do not directly address utilities, it necessarily follows that residential uses and developments require adequate water facilities and infrastructure. There are various provisions in the comprehensive plan that directly support this premise.

For example, the first goal of the Land Use element of the comprehensive plan memorializes the objective of providing coordinated, efficient, and cost effective public facilities and utility services. See Comprehensive Plan (“CP”), Goal LU 1, Citywide Land Use. Policy 1.12 of the Land Use element recognizes the adequate public facilities and services systems must exist to accommodate proposed development, and must exist before development is permitted to occur. See CP, Policy LU 1.12, Public Facilities and Services.

Similarly, the Capital Facilities element calls for the city to provide and maintain adequate public facilities and utility services, as well as to ensure reliable funding is in place to protect the public’s investment in this infrastructure. See CP, Goal CFU 1, Adequate Public Facilities and Services (also noting that such investments ensure adequate levels of service). Policy CFU 1.2 of the Capital Facilities Element further provides as follows:

Require the development of capital improvement projects that either improve the city's operational efficiency or reduce costs by increasing the capacity, use, and/or life expectancy of existing facilities.

See CP, Policy CFU 1.2, Operational Efficiency.

The project satisfies the foregoing goals and policies by ensuring that the utility infrastructure is adequate to serve the public need. The project is also designed to control the overflow of untreated stormwater and sewage into the Spokane River during storm events. As a result, while the project does have some environmental impact at the development site, from a larger perspective the project serves to protect the environment, specifically the Spokane River. This fulfills the intent of Goal CFU 5 of the Capital Facilities Element, which states as follows:

Minimize impacts to the environment, public health, and safety through the timely and careful siting and use of capital facilities and utilities.

See CP, Goal CFU 5, Environmental Concerns.

The policies underlying this goal also demonstrate that the project fulfills the intent of the comprehensive plan, in particular by controlling the impacts of runoff and overflows. Policy CFU 5.3, Stormwater, provides: "Implement a Stormwater Management Plan to reduce impacts from urban runoff." In the discussion of that policy, the following objective is stated: "...the City of Spokane should work continuously toward the reduction of existing combined sewer overflows wherever technically, economically, and environmentally appropriate." See CP, Chapter 5, p. 19.

The Hearing Examiner finds that the project is consistent with the goals and policies of the comprehensive plan, and therefore this criterion is satisfied.

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

The decision criteria for Type III decisions, such as the conditional use permit under review, require that any proposal satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). In addition, under the concurrency standards, facilities for public wastewater (sewer and stormwater) must be evaluated for concurrency. See SMC 17D.010.010(I). Accordingly, on February 21, 2013, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 31.

The city received minimal response to its request for comments. See e.g. Exhibits 35, 37, and 38. City staff submitted that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1 (Staff Report, p. 5). A review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. There was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

To the extent that there was a 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 31.



The proposal, by its nature, does not place any substantive demands on public infrastructure. The project does not have any discernible effect on public services such as fire, police, or schools. See Exhibit 22 (Environmental Checklist ¶ B(15)). The only potentially direct impact would be on the transportation system. However, the site will only be accessed by utility workers, and the trips to the site are *de minimis*. In reality, the project increases the capacity to handle stormwater overflows, so results in an expansion of public infrastructure. It also serves to protect water resources, by increasing the ability of the city to control discharges in to the Spokane River.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the conditional use permit 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 "site plan" for the project consists of a packet of plans included in the record as Exhibit 2D. These documents show the location, size, shape, and topography of the property. See Exhibit 2D. They also include information about the physical characteristics of the site and details about the proposed project. See id.

The site is approximately 3.2 acres in size, and is roughly rectangular in shape. The site abuts Ray Street, a major arterial. The ease of access to Ray Street makes the property a good location for the proposed facility. The site is also located adjacent to the primary stormwater and sewer pipelines, making the site a convenient location for a CSO tank. Given these characteristics, it is not surprising that the city acquired the site specifically for a CSO tank project.

The proposed location of the tank within the site itself was selected in order to avoid, as much as possible, disturbing the steep slopes that exist on the site. See Testimony of T. Black. In other words, the proposed tank was situated to mitigate against the risk of erosion present due to steep slopes on the site. See Exhibit 2B. The steep slopes in the immediate vicinity of the tank will be filled once the tank is constructed. See id. Exhibit 2B. Any slopes outside the excavation area will not be disturbed. See id.

The area that will be disturbed by the construction is approximately 1.75 acres. See Exhibit 2B. Approximately 100 trees will be removed to accommodate the excavation and installation of the CSO tank. See id. In addition, a small ravine on the site will be partially filled when the CSO tank is installed underground. See id. However, the city is taking a number of steps to mitigate the impacts of excavation, tank installation, tree removal, and fill.

Although there will be a substantial excavation and fill activity, the natural drainage course throughout the site will be preserved. See Exhibit 2B. The city is seeking to avoid disturbing the site, as least to the extent practical under the circumstances. For example, as stated above, the city will not be disturbing the slopes outside the excavation area. See id. The treed buffer on the north and west sides of the project will also be untouched. See id. To address the unavoidable impacts, the city will be replacing many of the removed trees with native trees, primarily ponderosa pines, as the site is restored following completion of the

construction work. See id. Not all trees will be replaced, however, in part because trees cannot be planted on top of the buried tank, or in the proposed access road. See id. The city will be installing a large number of native shrubs as part of its restoration plans. See id.

There is some reason to be concerned about drainage and water conditions at the site. The environmental checklist suggests that the soils of the site have poor drainage characteristics. See Exhibit 22 (Environmental Checklist ¶ A(14)(a)(1)). The site contains steep slopes, which could raise erosion concerns. The site includes a ravine and appears to constitute a natural drainage way for the immediate area. At one time, DNR maps showed a stream existed on the site. Despite these facts, the concerns appear to have been adequately addressed.

City staff testified that soil conditions were taken into account in designing the drainage facilities shown in the site plans. See Testimony of L. Hendron. The tank is being located on the site in order to avoid disturbing the steep slopes, to mitigate against erosion impacts. The city's design is also intended to preserve the natural drainage characteristics of the site. See Exhibit 2B. The city contends that all stormwater will be collected, treated, and disposed of on the site. See id. It is not anticipated that the excavation will have any effect on groundwater. See id. Finally, with respect to the DNR maps, a Water Type Modification removing that stream from the official maps was accomplished in May 2011. See Exhibit 1 (Staff Report, p. 5); see also Exhibit 2F. In effect, DNR agreed that no stream actually exists on the property.

There are no known cultural or historic resources on this site that warrant against approval of the proposal. There are no buildings on the site, as the property is undeveloped except for the access road constructed in the mid to late 1980s. Thus, there are no historic structures that could be impacted by the project. As for cultural resources, an assessment of the site was completed in March 2013. See Exhibit 2H. "Nothing was found that would indicate that this site would be unsuitable for use from a cultural resource standpoint." See Exhibit 1 (Staff Report, p. 6).

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 record before the Hearing Examiner confirms that the proposed project will not have a significant adverse impact on the environment. To the extent certain impacts occur or may occur, those impacts can be addressed adequately through appropriate mitigation measures.

The environmental review process, completed pursuant to the State Environmental Policy Act, demonstrates that the project will not have significant environmental impacts.

On or about August 21, 2012, the City of Spokane prepared an environmental checklist, pursuant to the State Environmental Policy Act, for this project and other tank installations. See Exhibit 22 (Environmental Checklist). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties. For example,

there are no wetlands or streams on or near the site, which could be affected by the proposed construction. See Exhibit 22 (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 22 (Environmental Checklist ¶ B(3)(a)(5)). A portion of the site is within a 500-year flood zone, as evidenced by the flood plain maps of the Federal Emergency Management Agency (“FEMA”). See Exhibit 1 (Staff Report, p. 6). However, there are no specific development standards or restrictions in the municipal code with respect to a FEMA 500-year flood zone. See SMC 17E.030.010 et seq. No part of the site has been designated as “environmentally sensitive.” See Exhibit 22 (Environmental Checklist ¶ B(8)(h)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 22 (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). No environmental hazards (e.g. exposure to toxic chemicals, risk of fire or explosion, hazardous wastes, etc.) are anticipated to arise due to this project. See Exhibit 22 (Environmental Checklist ¶ B(7)(a)). No threatened or endangered species were identified on the site. See Exhibit 22 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)).

On September 6, 2012, the Department of Engineering Services of the City of Spokane, as lead agency, issued a Determination of Non-significance (“DNS”) for the project. See Exhibit 23a. Any appeal of the DNS was due on September 20, 2012. See id. No appeal of the DNS was filed.

On February 6, 2013, the City of Spokane issued an addendum to the environmental checklist and the DNS. See Exhibit 22a. The addendum corrected the description of the location of the project, and had no substantive effect on the environmental analysis. See id. No appeal or other challenge was pursued with respect to the addendum.

On March 19, 2013, the Department of Engineering Services of the City of Spokane, as lead agency, issued a Determination of Non-significance (the “Road DNS”) for the City of Spokane’s proposal to make improvements to Fiske Street from 19<sup>th</sup> Avenue to 17<sup>th</sup> Avenue. See Exhibit 22. The appeal deadline for the Road DNS was April 2, 2013. See id. No appeal was filed to challenge the Road DNS.

The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. No one appealed the DNS, the related addendum, or the Road DNS. There was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review.

Despite the foregoing, specific consideration should be given to a number of potential impacts<sup>1</sup>. Specific comments are appropriate regarding the following elements of the project: (1) tree removal; (2) construction impacts; (3) aquifer protection; (4) stormwater management; and (5) transportation impacts, including the removal of the secondary access road.

The project calls for the removal of approximately 100 trees over a 1.75 acre area of the site. It should be noted initially that the proposal to remove trees does not require a DNR authorization. See Exhibit 10. Rather, the issue is whether the potential impacts can be properly mitigated. The city proposes to do several things to address the consequences of tree removal. The city will restore the project area by planting natural vegetation and dryland grasses. See Exhibit 2B; see also Testimony of T. Black. The city will also be replanting many of the trees,

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<sup>1</sup> The potential impacts arising from light, glare, odor, noise, and other nuisances are addressed in Section 8 below. As a result, the comments on those issues are not repeated in this Section 5, although also pertinent to the environmental analysis.

although it cannot plant trees on top of the underground tank or in the proposed access road. See Exhibit 2B. The landscaping plan is sophisticated and well designed. See Exhibit 2D7; see also Testimony of T. Black. There were no substantive criticisms of the city's approach in this regard at the public hearing.

There will certainly be some impact from the construction project. Installing a 1+ million gallon concrete tank will require substantial excavation, and will require operating equipment and vehicles on the site. These activities will have the effects that naturally accompany construction work. However, the construction impacts will not result in significant environmental impacts, and can be adequately mitigated. This is true for a number of reasons.

The construction activity is necessarily limited in time. Once the construction project ends, the potential impacts from noise, dust, and emissions from vehicles will cease. See e.g. Exhibit 22 (Environmental Checklist ¶ B(2)(a) and B(7)(b)(2)) (addressing emissions and noise). During construction, the typical mitigation measures can address the anticipated impacts. For example, erosion control measures, such as silt fences and inlet protection BMPs will be utilized to prevent erosion. See Exhibit 22 (Environmental Checklist ¶ B(1)(f)). Mitigation measures suggested by the Spokane Regional Clean Air Agency will be incorporated into any approval, to guard against construction impacts. See Exhibit 8. Once the tank is completed, it will be completely buried and the project site will be landscaped. As the landscaping takes hold, the project will appear as open space to observers and the neighborhood. Ultimately, the future use will have very little or no negative impact on the surroundings.

The site is located within the Aquifer Sensitive Area and the Aquifer Critical Area Recharge Zone, and therefore is subject to the requirements of SMC Chapter 17E.010 Critical Aquifer Recharge Areas-Aquifer Protection. See Exhibit 1 (Staff Report, p. 6); see also Exhibit 22 (Environmental Checklist, ¶ A(13)). However, this project will not involve the disposal or discharge of any fluids below the ground surface. See Exhibit 22 (Environmental Checklist ¶ A(14)(a)(1)). No chemicals will be stored, handled, or used on site where a spill or leak may result in surface or groundwater pollution. See Exhibit 22 (Environmental Checklist ¶ A(14)(a)(4)). As a result, no protective measures are needed to address such concerns. See e.g. Exhibit 22 (Environmental Checklist ¶ A(14)(a)(3)).

There was no testimony presented or evidence submitted at the hearing or made part of the record suggesting that the project poses a significant risk of pollution to the aquifer. In addition, if project conditions were necessary for aquifer protection, those conditions should have been included as part of the threshold determination. See SMC 17E.010.010(F)(3). However, as discussed above, the lead agency issued an unqualified DNS for this project.

The checklist raised some initial concerns about the management of stormwater at the site. The checklist states that the proposed CSO sites "are not suitable for infiltration so stormwater will have to be mitigated otherwise." See Exhibit 22 (Environmental Checklist ¶ A(14)(a)(1)). However, this statement was generally characterizing three different CSO sites, prior to the detailed examination of site conditions. For example, at the time the checklist was prepared, a geotechnical study of the project site had not been completed. See Exhibit 22 (Environmental Checklist ¶ A(14)(b)(1)). By the time of the hearing, a geotechnical study had been completed. See Exhibits A-1b and A-1c. In addition, based upon further consideration of site conditions, the city designed drainage swales to handle the stormwater accordingly. See Exhibits 2D4, 2D4a and A-1. The city will also be filling the excavation area in a manner that is intended to preserve the drainage way through the site. See Exhibit 2B. Ultimately, the soil

conditions of the site were taken into account and the drainage facilities were properly designed in accordance with those conditions. See Testimony of L. Hendron.

The primary objections to the project concerned potential traffic impacts. The project itself does not generate more than a *de minimis* amount of traffic. In its environmental checklist, the city stated that there would be no traffic generated at all. See Exhibit 22 (Environmental Checklist ¶ B(14)(f)). Although this is not accurate, it is safe to conclude that the traffic impacts of the project itself are extremely small. The CUP application states that the "...proposed project will result in less than 1 trip per day, on average, to the site." See Exhibit 2B. This is credible, given the nature of the utility being proposed.

The real cause for concern was an indirect traffic impact arising from the removal of the secondary access road. Specifically, the concern is that the removal of the secondary access road necessarily results in re-routing the traffic using that road to Greene Street. See Testimony of S. Bachmeyer and G. Lobel. While this is an understandable objection, the environmental question is whether the additional traffic to Greene Street is substantial enough to require mitigation or, ultimately, denial of the project (in the case significant impacts are caused and cannot be adequately mitigated). For various reasons, the Hearing Examiner concludes that the additional traffic that will be routed to Greene Street as a result of the elimination of the secondary access road will not give rise to significant environmental impacts.

First, the traffic from Parkwood South already has the option of traveling on Greene Street. It is not clear, from this record, how much drivers use the secondary access road and thus how much traffic will actually be re-routed to Greene. There will probably be some increase in traffic on Greene, but the impacts from traffic out of Parkwood South may already exist, in large part.

Second, the only expert testimony in this record is that Greene Street is more than adequate to handle the traffic from Parkwood South. Mike Taylor, the Director of Engineering, testified that those residential streets were designed to handle approximately 1,000 trips per day. See Testimony of M. Taylor. He further testified that at the maximum, the traffic on Greene would reach 2/3 of that capacity. See id. Although the neighbors are correct that there was no formal traffic study completed, no such study would be required when so little traffic is attributable to the proposal, directly or indirectly. There is no contrary expert testimony or analysis of traffic that would compel a different conclusion than was offered by Mr. Taylor.

Third, the poor visibility at the egress points from Greene Ridge Estates, while concerning, are not caused by the project. Neither the project itself, nor the removal of the secondary access road, directly result in poor egress visibility from Greene Ridge Estates. Those conditions are pre-existing, and unconnected to the proposal. Therefore, the possible insufficiencies in egress from Greene Ridge Estates are not a proper subject for conditioning or denying the project.

Fourth, to the extent that the re-routing of traffic does require off-site improvements, the city has addressed those concerns. The city will be paving Fiske Street from 17<sup>th</sup> Avenue to 19<sup>th</sup> Avenue, thereby providing residents currently using the fire access road an alternative route to Ray Street. See Exhibit 2B. To some degree, this will also encourage entry to Ray Street through a safe, signalized access, in contrast to the uncontrolled connection via the secondary access road. See Exhibit 2B.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment, that cannot be adequately addressed through mitigation. Therefore, this criterion for approval of the conditional use permit is satisfied.

6. The overall residential appearance and function of the area will not be significantly lessened due to the construction of utilities and infrastructure. The project will not result in the construction of improvements that are disproportionate to the residential household uses in the surrounding area. See SMC 17C.320.080(F).

This project will not have a material, negative impact on the residential appearance or function of the area. The nature and design of this utility project ensures that, upon completion, the site and use will be compatible with nearby residential neighborhoods.

The site is currently undeveloped open space. Once the CSO tank is installed, and the landscape plan is carried out, the site will again exist as open space, albeit with an underground utility installed. See Exhibit 2B. The tank will be completely buried. See Exhibit 2B. There will be no visual or aesthetic impact from the tank itself. There will be almost no visible indication of the utilities on the site. See Exhibit 2B; see also Testimony of L. Hendron. The site will essentially look like open space before and after the project.

There are some other improvements, in addition to the underground tank. Bioinfiltration swales will be constructed on the property, to facilitate the drainage of stormwater. See Exhibits 2D4 and 2D4a. The existing asphalt access road and cul de sac will be removed. See Exhibit 2D3. A new access road will be constructed on the site, made of "geotextile with grass." See Exhibit 2D5; see also Exhibit 2D7 (referencing "grass pave"). This surface will allow water to drain through, and will have grass growing in it. See Testimony of T. Black. Therefore, the access road will have less impact, both visually and in terms of drainage characteristics. A sidewalk will be installed on the site as well. The sidewalk is well designed and will provide walking access to the neighborhood, and therefore benefits the nearby residents. See Exhibit 2D5.

The residential function and appearance of the area will not be altered by this project. The project does not include any buildings that would detract from the residential character of the neighborhood. The utility infrastructure will be almost entirely invisible to neighbors or observers. Given that reality, there is nothing in this project that could be considered incongruous or disproportionate to nearby residential uses.

The Hearing Examiner concludes that this criterion for approval is met.

7. The proposal will be compatible with the adjacent residential developments based on the characteristics as the site size, building scale and style, setbacks and landscaping. The proposal will mitigate the differences in appearance or scale through such means as setbacks, screening, landscaping and other design features. See SMC 17C.320.080(F)(2).

The site is currently open space. There will be impacts upon the surrounding residences due to noise, dust, and aesthetics as a result of the excavation and construction work. However, those impacts will be temporary in nature. Once the project is completed, and the proposed landscaping is installed, the site will, for all practical purposes, return to use as open space. The CSO tank will be completely buried and thus not visible to neighbors or others near the site. There are no other structures or buildings proposed that could be considered incompatible with

nearby residences. The proposed landscaping will mitigate the visual impacts of tree removal. Although the removal of trees within the excavation area will decrease the buffer between the residential areas to the west and Ray Street, the impacts of this tree removal will be relatively small, in particular given that numerous trees along the western and southern borders of the site will not be removed.

8. The proposal will not have significant adverse impacts on the livability of nearby residential lands due to noise, glare, late-night operations, odors and litter, or privacy and safety issues. See SMC 17C.320.080(F)(3).

The operation of the underground utility, by its nature, will have little to no impact on nearby residents. As stated previously, once the construction work is completed, the site will essentially appear as landscaped, open space.

The tank is underground. There are no above-ground buildings. Operational activity on the site will be of very low intensity. City workers will visit the site, on average, less than one time per day. See Exhibit 2B. The operations room is underground, and therefore is out-of-sight. See Exhibit 2D2. No lighting is proposed. See Exhibit 1 (Staff Report, p. 9). There will be no night operations at the property, except in the case of an emergency. See Exhibit 2B. No litter or garbage is generated on site. See Exhibit 1 (Staff Report, p. 9). There will be no operations carried on at the site that would apparently result in noise, glare, odors, litter, or similar impacts. See Exhibit 2B. There was no testimony or evidence offered at the public hearing to suggest that such impacts were a probable result of this project.

The only apparent source of noise would be by construction activities, and perhaps the occasional utility vehicle accessing the site. The construction noise is temporary, and will cease when the project is completed. See Exhibit 22 (Environmental Checklist ¶ B(7)(b)). The vehicle noise is not a material factor, as the traffic to and from the site is too small to create a substantive impact, as discussed above.

The plans show air intake and exhaust ports on the proposed CSO tank. See Exhibit 2D2. As a result, a concern could be anticipated with respect to odor from a tank that temporarily holds wastewater. However, the only evidence in the record demonstrates that no odors will emanate from the tank or site. A city engineer testified that no air will be exhausted from the tank without passing through an activated carbon filter. See Testimony of L. Hendron. The city engineer further testified that the same system was utilized at other CSO tanks in the city, and there have been no complaints about odor associated with such facilities. See Testimony of L. Hendron. Accordingly, the city anticipates that no odors will be generated by this project. See Exhibit 1 (Staff Report, p. 9).

No concerns about privacy or safety have been raised, and none are anticipated based upon the record in this case. See Exhibit 1 (Staff Report, p. 9).

9. The proposed use is in conformance with the street designations of the transportation element of the comprehensive plan. The transportation system is capable of supporting the proposed use in addition to existing uses in the area, upon consideration of the evaluation factors provided in the municipal code. See SMC 17C.320.080(F)(4).

The proposal is to construct utility infrastructure. The site is not open to the public. As a result, factors such as connectivity, circulation, and transit availability are not particularly relevant to the proposal or the nature of the use. Traffic generated from the utility operation is minimal. The area transportation system therefore easily accommodates the proposed use. The removal of the secondary access road will result in the re-routing of some traffic to Greene Street, which does create some indirect impacts. However, that additional traffic does not require specific mitigation measures, as previously discussed. The existing residential roads easily have sufficient capacity to handle the re-routed traffic.

The project will not require the construction of any new roads. Access to the site is directly to Ray Street, a principal arterial. The project will not decrease the level of service of Ray Street, or any other nearby roads. See Exhibit 1 (Staff Report, p.10). As a result, and given the nature of the proposal, it is not anticipated that the project will negatively impact pedestrian, bicycle, or transit circulation, or raise concerns about safety.

As discussed above on the issue of concurrency, there are adequate public services to support the proposed use. The Staff Report confirms: "The site has access to all City of Spokane public services, and will not require any additions to be made in order to fully accommodate the proposed site development." See Exhibit 1 (Staff Report, p. 10). In fact, with respect to the management of wastewater, the project is intended to increase the capacity and performance of public services.

The proposal is consistent with the transportation element of the comprehensive plan, and therefore this criterion to approve a condition use is satisfied.

## **B. Secondary Access Road**

One of the basic elements of the proposal is the plan to remove the secondary access road that bisects the project site. At the public hearing, the Hearing Examiner raised a question as to whether he had authority to revisit the decision, made by his predecessor a few months prior, to allow the removal of the secondary access road. This question was raised primarily because the objections of the project opponents largely arise from the traffic that would flow down Greene Street once the secondary access road is removed. This issue was also troubling to the Hearing Examiner, given the fact that the city had previously insisted, over a period of many years, that the secondary access road was necessary as a fire lane for the neighboring subdivision. The Hearing Examiner invited further comment from the city and the project opponents on this issue<sup>2</sup>. Those comments and arguments have now been considered, along with the history of the secondary access requirement. Ultimately, the Hearing Examiner concludes that he lacks jurisdiction to revisit the prior decision to allow the removal of the secondary access road. Having reached that conclusion, the removal of the road is only properly considered for purposes of determining whether the city has satisfied the criteria for approval of a conditional use permit.

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<sup>2</sup> The Hearing Examiner also sought comment on whether SMC 17E.010, Article III, was applicable to the proposed CSO tank. Only the city commented on the matter. See Exhibit B-1 (City's Post Hearing Response, pp. 3-4). The Hearing Examiner accepts the city's contention that the underground tank regulations, under SMC 17E.010, do not apply to the proposed CSO tank. The CSO tank does not store materials within the meaning of SMC 17E.010, Article III. See Exhibit B-1 (Second Declaration of D. Kokot ¶ 4). In addition, the cited provisions of the municipal code govern tanks that store "critical materials." Domestic sewage and storm water are not considered to be critical materials. See Exhibit B-1 (Second Declaration of D. Kokot ¶ 5).



1. Background Facts re: Parkwood South and Secondary Access Road

On September 19, 1979, the Spokane Zoning Board granted a special permit for Parkwood South, a 90-unit single family condominium development. See Exhibit 46-4. The Board conditioned its approval upon the developer obtaining an agreement guaranteeing sufficient right of way to extend Mount Vernon Street to Parkwood South, thereby ensuring a secondary access to the development. See id.

On September 26, 1979, the approval of the special permit was appealed to the City Council. See id. The appeal was pursued on behalf of numerous owners who resided along Mount Vernon Street.

On December 17, 1979, the City Council issued its decision denying the appeal, but modifying the conditions of approval. See Exhibit 46-6. The City Council eliminated the "requirement of a future dedication of a Mount Vernon Street extension..." and instead concluded that the Mount Vernon access route would only be designated for emergency or a possible service only entrance. See id.; see also Exhibit 46-8 ("We note the Mount Vernon access has been diluted to a nonthrough, emergency and service only access..."). With respect to a secondary access road, the City Council conditioned the project approval as follows:

**That if it is the feeling of the City staff and/or the Parkwood South developers that a secondary entrance is required, the entrance at Ray Street would be developed suitable to the Traffic Engineering Department, taking into consideration traffic on Ray Street and the proper location of a gate well enough into the development to prevent serious traffic hazards;...**

See Exhibit 46-6 (emphasis added). The City Council's decision was a final decision on the project, and was not appealed.

Subsequent to the City Council's decision, there was some controversy or confusion about whether the installation of the secondary access road was mandatory or discretionary. Shortly after the decision, the city received inquiries from the attorney for Parkwood South, who suggested that the secondary access road to Ray street was not a requirement of the City Council's decision. See Exhibit 46-8. In looking into the matter, the Planning Director acknowledged that that "record is not too clear." However, the Planning Director stated: "In checking again with the Traffic Engineering, Public Works and Planning Departments it appears that we are all in agreement that the access should be required." See id. The Planning Director ultimately concluded that the "...special permit was issued requiring the new Ray Street access. See id.; see also Exhibit 46-7 ("The Traffic Engineering Department firmly requires that a second entrance to this development be installed with access to Ray Street...").

Approximately three years later, in early 1982, the Planning Director sent a letter to the developer's attorney, responding to a request to defer completion of the road, stating as follows: "The Ray Street access is a condition of project approval and must therefore be completed." See Exhibit 46-9. Commenting on the contents of that letter, however, Mr. Greg Smith, as Assistant Corporate Counsel for the City of Spokane, offered this opinion:

**The findings of the Council, as adopted on December 17, 1979, state that the decision to open a second access onto Ray Street at 21<sup>st</sup> Avenue will be in the discretion of the City staff and/or the Parkwood South developers. That appears to be the final word of the Council on this matter, as contained in the City Clerk's files.**

...The decision by the Council left the matter up to either the joint decision of the City staff and the Parkwood South developers, or the Parkwood South developers acting alone if they determined that such a second access was necessary. If City staff and the developers got together and could not determine when this access was necessary, then the matter should've been returned to the City Council for its determination.

See Exhibit 46-10 (bold and underline added).

In the weeks and months that followed Mr. Smith's comments, there were various meetings and discussions regarding the installation of the secondary access road. See Exhibit 46-11. Although the history is sometimes difficult to follow from the records, the city did clearly treat the secondary access road condition as a requirement and not as a matter for the unilateral discretion of the developer. In the 1980s, the focus was largely on the timing of the construction of the secondary access road, not whether it was necessary to install the road in the first instance. See e.g. Exhibit 46-12.

On February 5, 1982, the Planning Director advised the developer that it would "...be required to grade and crushed rock surface this roadway during the 1982 construction season or when 15 units in total are built and curb and pave the roadway before your development has 50% of the lots built on." See Exhibit 46-12.

On May 28, 1982, the Final Planned Unit Development Plat of Parkwood South was recorded. See Exhibit 46-13a. The final plat was filed for 44 lots out of the 90 lots originally approved under the 1979 preliminary plat. See Exhibits 46-24 and 46-13a. The final plat shows the CSO site as "unplatted," and does not depict the secondary access road. See id.

In 1986, the city received inquiry from an attorney representing the new owner of the property as to whether the secondary access road was mandated. See e.g. Exhibit 46-19. The city again reiterated that the construction of the secondary access road was required and necessary. See Exhibits 46-14 through 46-17.

In 1992, the project developer proposed changes to the Parkwood South project. By this time, the secondary access road had been constructed on the project site. See Exhibit 46-24. In any case, the revised proposal reduced the total number of residential units from 90 to 67. See Exhibit 46-24. A final plat for 44 of the originally approved lots had already been filed by this time. The 1992 revision affected the remainder of the site, which was still in the preliminary plat stage. The revised project also included a plan to construct townhouses in the site of the CSO proposal and to realign the secondary access road. See Exhibit 46-24.

On November 19, 1992, the Hearing Examiner, Greg Smith, approved the revisions to the preliminary plat for the remainder of Parkwood South, with certain conditions. See Exhibit 46-24. The revised preliminary plat shows the townhouses and the secondary access road on the project site. See Exhibit 46-25.

On November 3, 1997, the Final P.U.D. Plat of Parkwood South, First Addition, was filed. See Exhibit 46-13b. This final plat was for six additional lots on the western border of the subdivision. See id. The remainder of the modified preliminary plat from 1992 was not the subject of a final plat. Thus, no final plat was filed for the project site, and no townhouses or other buildings were ever constructed in that location.

On May 15, 2000, Parkwood Associates, Inc., as grantor, conveyed the project site to the City of Spokane. See Exhibit 41 (statutory warranty deed). The site was acquired by the City of Spokane specifically as a location for a CSO tank. See Exhibit 30.

On December 6, 2004, the developer of Parkwood South requested that the secondary access road to Parkwood South be closed. See Exhibit 28 (Letter of Smith 3-18-05).

On January 14, 2005, David Kokot, Fire Protection Engineer, submitted a letter opposing this request on behalf of the fire department, noting that "...the removal of the current second access would result in a lower level of protection and potentially longer response to the development." See Exhibit 46-23.

On March 18, 2005, the Hearing Examiner declined the developer's request, in material part because the Fire Department opposed the closure of that access road. See Exhibit 28 (Letter of Smith 3-18-05).

On January 3, 2013, the City's Wastewater Management Department, through the Office of the City Attorney, made a new request that the Hearing Examiner authorize the closure of the secondary access road. See Exhibit 28 (Letter of Schoedel 1-15-13). In support of this request, the City's Wastewater Management Department explained that the City of Spokane and the Parkwood South Homeowners' Association reached an agreement to terminate and release the easement covering the private access road and to remove that access road from the project site. See Exhibit 28 (Letter of Schoedel 1-15-13) and Exhibit 41.

In addition, the fire department confirmed that the access road is not used by fire apparatus and could be removed permanently. See Exhibit 28 (E-mail of Kokot 6-12-12); see also Exhibit 44 (Affidavit of D. Kokot). The fire department stated that its access to the residential area is through the main gate located at S. Green St. See id. It also confirmed that the "fire lane" could be taken out of service without causing any issue of fire access delay. See id.

On January 15, 2013, the Hearing Examiner agreed to the closure of the secondary access road. See Exhibit 28 (Memorandum of Smith 1-15-13). This time, the requested closure of the access road was supported by the Fire Department and other city departments. See id. The Hearing Examiner's decision has not been appealed to date.

2. The current Hearing Examiner does not have jurisdiction to review the predecessor Hearing Examiner's decision to allow the removal of the secondary access road.

The essential question here is whether the current Hearing Examiner, for purposes of reviewing the CUP application of the city, is bound to his predecessor's decision to allow the removal of the secondary access road. After considering the issue at length, the Hearing Examiner concludes that he lacks jurisdiction to revisit his predecessor's decision to permit removal of the secondary access road. The rationale for this conclusion is as follows.

- a) The current Hearing Examiner's jurisdiction, with respect to a prior decision to delete the secondary access condition of Parkwood South, has not been properly invoked.

The Hearing Examiner does not have jurisdiction to revisit, modify, or reverse his predecessor's decision to eliminate the secondary access condition for Parkwood South. The Hearing Examiner's jurisdiction is defined by SMC 17G.050.070 and related provisions of the municipal

code. The Hearing Examiner is the decision-maker regarding Type III applications, which includes certain quasi-judicial matters, such as preliminary plats, variances, and rezones. See SMC 17G.050.070(B). As pertinent to land use matters, all remaining jurisdiction is appellate in nature. See SMC 17G.050.070. In this case, the specific question is whether the Hearing Examiner has authority to reconsider, modify, or reverse an earlier, unappealed decision to delete a condition of the Parkwood South plat. The short answer is “no.”

A Hearing Examiner does not have jurisdiction to revisit an earlier, final decision. Once a final decision is rendered by the Hearing Examiner, in the absence of a timely request for reconsideration or a remand from an appellate body, there is no authority to revisit the earlier decision. See e.g. Lejeune v. Clallam County, 64 Wn.App. 257, 271, 823 P.2d 1144 (1992) (holding that an administrative tribunal lacks inherent power to reconsider its own final decisions). There is no application available to seek such relief directly to the Hearing Examiner, even though that office made the original decision. As a result, the current Hearing Examiner could only revisit the previous decision if the matter was properly presented via an appeal. However, the municipal code contains no avenue for an appeal, in effect, from the Hearing Examiner to the Hearing Examiner. The only appellate route potentially applicable at the administrative level is to the city council. See SMC 17G.050.310. No such appeal was filed.

The matter properly before the Hearing Examiner is whether or not to approve the Wastewater Department’s request for a conditional use permit. One of the features of the application is the plan to remove a secondary access road that traverses through the project site. As a result, it is proper for the Hearing Examiner to determine whether removing the road is consistent with the criteria for permit approval. If the removal of the road was not consistent with the CUP criteria, the Hearing Examiner could condition or deny the permit accordingly. This does not mean, however, that the Hearing Examiner has independent authority to reach back in time to re-hash a separate decision, made in January, regarding the plat conditions for Parkwood South. Legally, these are two separate decisions, each subject to appeal. See e.g. Wenatchee Sportsmen Association v. Chelan County, 141 Wn.2d 169, 175, 4 P.2d 123 (2000) (holding a previous site-specific rezone could not be challenged via an appeal of a subsequent plat approval). The current Hearing Examiner only has authority to consider the matter presented to him, i.e. the conditional use permit.

- b) The Hearing Examiner lacks jurisdiction to review the prior decision to allow closure of the secondary access road because the deadline to appeal that decision has elapsed.

The prior Hearing Examiner decided, on January 15, 2013, that the condition of Parkwood South, requiring the secondary access road, could be deleted. That decision, made approximately three months prior to the hearing in this matter, has not been appealed. As the city contends, the time period to lodge such an appeal has expired. As a consequence, the Hearing Examiner lacks authority to revisit that decision.

Section 17G.050.310 of the hearing examiner ordinance describes the applicable appeal route and time frame. In pertinent part, the ordinance provides as follows:

The applicant, **a person with standing**, or a city department **may appeal to the city council any decision of the hearing examiner**, except as provided in SMC 17G.060.210, by filing with the permit application department **a written appeal within fourteen days** of the date of the written decision of the hearing examiner.

See SMC 17G.050.310(B) (emphasis added). Thus, an aggrieved party can appeal “any decision” of the hearing examiner to the city council, except in cases in which a different appeal route or procedure is specified under SMC 17G.060.210. In this case, the proper appeal route was to the city council as provided under the hearing examiner ordinance. The specific exceptions under SMC 17G.060.210 do not dictate a different result.

SMC 17G.060.210 is entitled “Appeals” and is found in the code provisions discussing land use application procedures. The appeal routes for various types of decisions are described in subparagraphs B through E. SMC 17G.060.210(B) concerns appeals of a director’s decision on Type I and Type II applications. The decision at issue here is a decision of the Hearing Examiner, not a director. Subparagraphs D and E concerns shoreline permits and thus are not relevant here. The only provision of SMC 17G.060.210 that *conceivably* could change the appeal route under the circumstances of this case is subparagraph C. That paragraph states that appeals of hearing examiner decisions on Type III applications are to superior court by land use petition, except that decisions on preliminary plats and PUDs (among others) are appealable to the city council as a closed record appeal. The prior Hearing Examiner’s decision, in this case, was to eliminate a condition requiring a secondary access road to serve Parkwood South. Whether this decision is treated as a Type III decision under 17G.060 (land use application procedures) or a “decision” under 17G.050 (hearing examiner ordinance), the appeal route is the same, i.e. to city council. Cf. SMC 17G.050.310(B) with SMC 17G.060.210(C). The time frame to file an appeal to the city council is also the same, i.e. fourteen days. See SMC 17G.060.210(F). Thus, the land use application procedures under SMC 17G.060.210 are consistent with the hearing examiner ordinance, as pertinent to this case.

The Association contends, not without some force, that the prior Hearing Examiner’s decision was outside his jurisdiction, and thus was *ultra vires*. See Exhibit C-6 (Letter of S. Bjordahl). While the specific contentions will be discussed below, the broad implication of the Association’s argument can be summarized as follows: because the Hearing Examiner did not have authority to delete a condition of the prior plat approval, the decision was without legal effect and no appeal deadline was triggered. Unfortunately for the Association, the most relevant case law<sup>3</sup> in the land use context clearly suggests that the resolution of such jurisdictional questions must be addressed and resolved through a timely appeal. In the absence of a timely appeal, the reviewing body has no jurisdiction to reverse even an *illegal* decision. The cases describing this reality undermine any proposition that improper land use decisions can be collaterally attacked, outside of a timely appeal, based upon a lack of decision-making authority.

For example, in Nykriem, the County approved a boundary line adjustment (“BLA”) that divided a single lot into three lots, contrary to applicable law. See Chelan County v. Nykriem, 146 Wn.2d 904, 52 P.3d 1 (2002). The planning official decision was improper, because a BLA cannot be utilized to subdivide land. See Nykriem, 146 Wn.2d at 910-14. Even though the BLA was illegal, the Supreme Court of Washington rejected the legal challenge to the BLA because the appeal of the administrative approval was not timely. The Court held that the formerly unlawful BLA *became legal* once the appeal deadline had passed without an appeal being filed. See Nykriem, 146 Wn.2d at 925-926.

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<sup>3</sup> The Association did not cite to any Washington case which applied the doctrine of *ultra vires* to invalidate a decision in the land use context. The Hearing Examiner’s independent research did not reveal such cases. The only authorities that provide relevant guidance conclude that, in the absence of timely appeal, there is no legal basis to invalidate a final land use decision, even if unlawful.

Similarly, in Wenatchee Sportsmen, Chelan County improperly rezoned property to allow residential subdivisions inconsistent with the County's interim urban growth area regulation. See Wenatchee Sportsmen Association v. Chelan County, 141 Wn.2d 169, 175, 4 P.2d 123 (2000). Although the rezone was unlawful, the failure to timely appeal the County's approval barred the challenge to its validity. See id. The Court held that the rezone decision "...became valid once the opportunity to challenge it had passed." See Wenatchee Sportsmen, 141 Wn.2d at 181 (emphasis added).

The prior Hearing Examiner's decision was to allow the removal of a plat condition. Assuming *arguendo* that the Hearing Examiner did not have authority to make that decision, the question of the Hearing Examiner's jurisdiction should have been addressed and resolved via a timely appeal. The Association's claim that the decision was *ultra vires* and *void ab initio* cannot be squared with the conclusions reached in land use cases such as *Nykriem* and *Wenatchee Sportsmen*. In those cases, the illegality of the land use decision in question did not permit a challenge in the absence of a timely appeal. The failure to pursue a timely appeal meant the opportunity to challenge the improprieties was lost, and the decisions were deemed valid by operation of law.

The rationale of this rule is bolstered by the strong public policy in Washington favoring the finality of land use decisions. See Nykriem, 146 Wn.2d at 931; see also Exhibit B-1 (City's Post Hearing Response, p. 5 (citing additional case law regarding finality)). The doctrine of exhaustion of remedies also compels the conclusion that an appeal was required in this case. The Land Use Petition Act, which proscribes the exclusive means for judicial review of land use decisions, requires the exhaustion of all administrative remedies prior to seeking court review. See RCW 36.70C.060. In addition, under LUPA, relief may be granted when a decision-maker engaged in an "unlawful procedure," ignored a "prescribed process," or when the decision is "**outside the authority or jurisdiction of the body or officer making the decision.**" RCW 36.70C.030(1)(a) & (e) (emphasis added). Thus, it is clear that any challenge to a local decision-maker's authority or jurisdiction must be addressed and resolved through the appeal process. Stated another way, any claim that a decision is *ultra vires* must be challenged through the available appellate channels.

- c) The Hearing Examiner's lack of jurisdiction to reconsider the prior decision largely disposes of the Association's remaining arguments. Regardless of the jurisdictional issues, the Hearing Examiner's conclusions are nonetheless supported by the record and the law.

Since the Hearing Examiner lacks the requisite jurisdiction to grant the desired relief, the Association's specific arguments regarding the prior access decision may not need to be addressed. Nonetheless, further comment seems warranted in this case.

The Association contends that eliminating the secondary access road violates the subdivision code, because SMC 17G.080.070(A)(7) requires secondary access for subdivisions in excess of thirty lots. See Exhibit C-6 (Letter of S. Bjordahl, p. 2). The Association is correct that, under the current subdivision code, a secondary access is required for subdivisions over thirty lots. See SMC 17G.080.070(A)(7). However, the plat was approved with conditions in late 1979. Modifications to a portion of the plat were approved in 1992, but those modifications did not alter the secondary access condition adopted by the city council. The condition for secondary access was imposed well prior to the current code cited by the Association. At the time of the approval of Parkwood South, there was no requirement for secondary access tied to the size of the subdivision. The requirement for secondary access was a condition of approval, not a mandate of

the code. SMC 17G.080.070(A)(7) does not retroactively impose a secondary access condition upon Parkwood South, and the Association did not cite to any authority to the contrary.

In addition, the Hearing Examiner's decision was consistent with the original condition for secondary access. As Mr. Smith opined in 1982, under the terms of the condition, the decision to open the secondary access was in the discretion of city staff and the developer. See Exhibit 46-10. The city staff and homeowner's association (having taken the place of the developer) are now in complete agreement that the secondary access road may be removed, and have even entered into a contract for this purpose. See Exhibit 41; see also Exhibit B-1 (City's Post Hearing Response, p. 6). Further, that secondary access road was intended to serve Parkwood South, and not to confer benefits to others, or even to protect neighbors from additional traffic. See Exhibit B-1 (City's Post Hearing Response, p. 6). One could argue, although there is no need to go this far in this decision, that the removal of the secondary access road did not require Hearing Examiner approval in the first place, given the discretionary wording of the original condition. After all, the condition imposed by the city council states that the secondary access road should be installed if the city staff and the developer deem that to be necessary. Had the staff agreed to forgo the secondary access in 1979, the road never would have been constructed. The city's current agreement to remove the road, therefore, is consistent with the discretionary authority contained in the original condition.

The Association cites to SMC 17G.060.230 for the proposition that a new plat application is required when there is any change that "increases or significantly modifies the traffic pattern for a proposed development." See Exhibit C-6 (Letter of S. Bjordahl, p. 3). However, that section of the code concerns modifications to applications and permits, not to subdivisions. Here, the prior Hearing Examiner decided to eliminate an access road condition to an approved plat, which has since been constructed. The modification was not to an application that had previously been deemed complete, requiring a reconsideration of the nature of the proposal. See SMC 17G.060.230. That said, if the prior Hearing Examiner did not properly follow the applicable requirements, or exceeded his authority in some fashion, that matter would have to be further considered and resolved by appeal, as noted above.

Whether the decision actually alters the plat or is substantial is a debatable proposition. At the time the preliminary plat was approved, in 1979, the project site was a part of the property to be developed as Parkwood South. The final plat for the first 44 lots of Parkwood South, filed in 1982, shows the project site as unplatted, and does not depict the secondary access road. The only other final plat, filed in 1997, added six lots and some common area on the western part of the development. That final plat also does not reference the secondary access road. The modified preliminary plat of the remainder of the site, approved in 1992, shows the secondary access road. By that time, the road had been built and was shown as an existing improvement; the road itself was not the subject matter of the conditions to the plat modifications. In any case, the project site was not developed as depicted on the 1992 preliminary plat. Neither the project site nor the secondary access road on the project site was incorporated into any final plat. In 2000, the project site was sold to the city. At that point, the project site was no longer associated with Parkwood South. Thus, the Hearing Examiner's decision in January 2013 authorizes the removal of an alternate access route to the platted ground, but it does not change anything within Parkwood South or depicted on a final plat for Parkwood South.

The Association asserts that SMC 17G.010.240 supports the rescission the prior Hearing Examiner's decision. See Exhibit C-6 (Letter of S. Bjordahl, p. 3). That code provision states that applications that are not compliant with governing law are inoperative and confer no rights. However, as the city points out, this section of the code concerns building and construction

permits, not subdivisions. See gen. SMC 17G.010.010 et seq.; see also Exhibit B-6 (City's Reply Memorandum, p. 6). The Association's claim is the *ultra vires* argument, stated in a different manner. In any case, this reasoning has been tacitly rejected in the land use context. See e.g. Chelan County v. Nykriem, 146 Wn.2d 904, 920, 52 P.3d 1 (2002) (recounting that pre-LUPA cases held that permits issued in violation of law conferred no rights in the applicant, before concluding that that is no longer the law when a party fails to timely appeal).

The Association argues that the Hearing Examiner lacked jurisdiction to delete a condition of plat approval, noting there is no explicit provision allowing this power in SMC 17G.050.070. See Exhibit C-6 (Letter of S. Bjordahl, p. 3). In support of this proposition, the Association cites HJS Development v. Pierce County, 148 Wn.2d 451, 471 (2003), holding that a hearing examiner's authority is limited by the terms of the legislative grant. The city counters that the Hearing Examiner possesses broad powers to carry out the intent of the municipal code, including decisions affecting plat conditions, relying on SMC 17G.050.070(D) in particular. See Exhibit B-6 (City's Reply Memorandum, p. 5). Having already concluded that jurisdiction is lacking to entertain the Association's jurisdictional challenge, it is not necessary to directly resolve this debate<sup>4</sup>. If the Association desired to challenge the prior Hearing Examiner's authority, an administrative appeal was necessary.

Finally, the Association contends that the prior Hearing Examiner's decision failed to include statutory language advising that it was a final decision, and therefore the prior decision "is still subject to appeal and/or revocation." See Exhibit C-6 (Letter of S. Bjordahl, p. 3). Assuming that such language was required, this alleged defect does not render the prior decision invalid. First, the Association does not cite to language in the municipal code that states that the failure to include the statutory language is fatal to the decision. Nor does the Association cite to language stating that such decisions are appealable on an indefinite basis, or cannot be or become "final." Second, alleged defects in the decision-making process are not reviewable if an appeal is not timely filed, as discussed extensively above. Third, once the Association obtained actual notice of the decision, the time period for appeal commenced. See e.g. Larsen v. Town of Colton, 94 Wn.App. 383, 393, 973 P.2d 1066 (holding that neighbors were required to appeal a building permit within a reasonable time after receiving actual notice). The allegedly improper form of the decision, i.e. the lack of statutory notice of finality, would not operate to extend the appeal period indefinitely, as the Association implies. Indeed, even assuming the Association first learned of the prior decision at the CUP hearing, the fourteen-day period would have expired in late April. A challenge to the prior decision is time-barred, even if the appeal period is calculated based on actual notice.

- d) The history of Parkwood South does not provide a legal basis for the Hearing Examiner to require that the secondary access road be retained.

The Hearing Examiner reviewed the records of Parkwood South, to gain a better understanding of the decision to eliminate the secondary access condition, as well as to determine if there was jurisdictional authority to revisit the matter. This was done partly because the city had long insisted that this access road be built and maintained. To the extent that some explanation is desired, the Hearing Examiner has two comments, which are admittedly academic given the

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<sup>4</sup> Under the circumstances, the Hearing Examiner also deems it unnecessary to consider the city's contention that conditioning the CUP on retaining the secondary access road would constitute a regulatory taking. See Exhibits B-1 and B-6. Because the Hearing Examiner lacks authority to reconsider the prior decision to eliminate the access condition, there is no need to delve into whether requiring the road to remain has constitutional implications.



conclusion that the Hearing Examiner does not have authority to require that the city retain the road.

First, for approximately thirty years the city insisted that the secondary access road was necessary as a fire lane to serve Parkwood South, and took this position despite numerous requests to eliminate the requirement. As recently as 2005, the fire department claimed that the secondary access road was necessary for fire safety, and that removal would result in delayed response times in an emergency. In the summer of 2012, the homeowners' association of Parkwood South requested that the access road be eliminated. This time, the fire department took the exact opposite position, claiming that the access route was not necessary and would not result in any delay in service. There was no credible explanation for this change in position. It was only after the city acquired the property, and desired to use it for some other purpose, that the secondary access road became superfluous, or so it seemed on this record.

Second, and ironically given the above criticism, the Hearing Examiner must agree that removal of the road actually is of little consequence for fire safety. The reality is that the road is obviously not a "secondary" access route. The secondary access road intersects at the connection between Parkwood Drive and Greene Street, outside of the gate to Parkwood South. With or without the secondary access road, there is only one main route in and out of Parkwood South. It is difficult to see how this route was ever characterized as a *secondary* fire access, as it does not provide a means of ingress to or egress from the subdivision, independent of the primary access (i.e. Parkwood Drive). The fire department even testified that the turning radius was inadequate for fire apparatus. In sum, the city's current position supporting removal the access road makes sense on this record, although the Hearing Examiner found the historical background troubling enough to warrant a serious review.

### **DECISION**

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

1. Approval is for a conditional use permit to allow the City of Spokane Wastewater Department to construct an underground tank to be used as a combined sewer overflow tank by the City of Spokane Wastewater Department. The tank will be constructed substantially as set forth in the General Application submitted and included in the record as Exhibit 2A and the Site Plan documents submitted and included in the record as Exhibit 2D. If changes are sought to the General Application and Site Plan Documents, they shall be submitted to Planning Services for review and approval. If Planning Services finds that the changes are substantial, than they shall be forwarded to the Hearing Examiner for review and approval.
2. The project will be developed in substantial conformance with SMC 17C.110.500, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with and limit the negative impacts on surrounding residential areas.
3. The project will be developed in substantial conformance with the plans that were submitted at the time of application for this Conditional Use Permit and dated 02-18-2013.
4. A Landscape Plan for the purposes of Vegetation Replacement, dated February 15, 2013, was prepared for this proposal. The Landscape Plan will be required as a component of any building or grading permits issued for this project. The Landscape Plan, at the time of the building

permit, must include a plan for monitoring and vegetation replacement for a period of five years. This plan should also include details on temporary or long-term irrigation, as deemed necessary by a licensed landscape architect.

5. A monitoring plan designed to monitor and assure the success of the Landscape Plan is required to be in place prior to construction. This Monitoring Plan must be submitted to City of Spokane Planning and Development. A Monitoring Report on a yearly basis, for the first five years following construction completion, must be provided to City of Spokane Planning and Development Services. This report shall describe the survival rates of all types of vegetation as well as replanting and other actions take to correct plan survival rates falling below 80%. Monitoring in all instances shall be bonded. Reporting results of the monitoring data to the Planning Director is the responsibility of the applicant.

6. All storm water and surface drainage generated on this site must be disposed of in accordance with SMC 17D.060 "Storm Water Facilities" as per the Project Engineer's recommendations, based on a final drainage plan accepted. A grading and drainage plan showing finished 1-foot contours and supporting calculations is required.

7. An erosion and sediment control plan prepared in accordance with the Spokane Regional Stormwater manual is required.

8. Measures must be taken to avoid the deposition of dirt and mud from unpaved surfaces onto paved surfaces. If tracking or spills occur on paved surfaces, measures must be taken immediately to clean these surfaces.

9. 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.

10. In the event any archeological resources are discovered during excavation or construction related to this project, the Spokane Tribe of Indians shall be notified immediately, and all excavation and construction shall cease.

11. 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.

12. 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.

13. The applicant shall comply with the requirements of the Spokane Regional Clean Air Agency as set forth in Exhibit 8.

14. 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.

15. Prior to the issuance of any building or occupancy permits, the applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office.

**COVENANT**

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

16. This approval is subject to the above-stated conditions. By accepting this approval the applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above required covenant constitutes the applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

DATED this 4<sup>th</sup> day of June, 2013.



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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 by the Hearing Examiner regarding conditional use permits are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE DECISION SET OUT ABOVE.** The date of the decision is the 4<sup>th</sup> day of February, 2013. **THE DATE OF THE LAST DAY TO APPEAL IS THE 25<sup>th</sup> DAY OF JUNE 2013 AT 5:00 P.M.**

In addition to paying any Court costs 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 Court.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.