

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Shoreline Conditional Use Permit ) FINDINGS, CONCLUSIONS,  
Application by Riverton LLC for the ) AND DECISION  
construction of an apartment complex )  
at 1601 E. Mission, on the shoreline of ) FILE NO. Z1500101-SCUP  
the Spokane River )

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** Riverton LLC has applied for a shoreline conditional use permit in order to construct an eighty (80) unit apartment complex with a club house, utilities, parking and landscaping, on land in a Residential Multi-Family zone and partially within the shoreline of the Spokane River.

**Decision:** Approval, subject to conditions.

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

**Applicant/  
Owner:** Riverton, LLC  
11808 E. Mansfield Ave., Ste. 1  
Spokane Valley, WA 99206-4795

**Agent:** Mark Krigbaum & Todd Whipple  
Whipple Consulting Engineers  
2528 N. Sullivan Rd.  
Spokane Valley, WA 99216

**Property Location:** The site is located adjacent to Riverton Avenue and the Spokane River, and is addressed as 1601 E. Mission. The parcel numbers of the site are 35093.2821; 35093.2809; 35093.2810; 35093.2811; 35093.2816; and 35093.2817.

**Legal Description:** The legal description for the site is provided in Exhibit 2A.

**Zoning:** RMF (Residential Multi-Family).

**Comprehensive Plan Map Designation:** Residential 15-30.

**Shoreline Designations:** Shoreline Residential Environment; Upriver Shoreline District.

**Environmental Overlays:** Habitat and Species, Riparian Habitat Area 2.

**Site Description:** The site is approximately 2.8 acres in size and fronts along South Riverton Avenue. The site slopes up about 25 feet in grade across the western half of the site and levels out across the eastern half. There are two existing houses along the ridge and a detached garage east of the larger house. The eastern half of the site consists mainly of weed cover and a circular gravel drive. The western half of the site is predominantly grass covered with a variety of trees and shrubs. There is a gravel alley along the south edge of the site. A gravel right of way, Park Court, enters the site at the southeast corner.

**Project Description:** The Applicant proposes to construct an eighty-unit apartment complex with a club house, utilities, parking, and landscaping. The existing residences and detached garage will be removed. Improvements will be made to South Riverton Avenue, including paving, curb, sidewalk and street trees. Improvements will be made to Park Court, including paving, curb, and sidewalk. The existing alley will be paved. The project will also include the construction of water, sewer, and storm drainage facilities.

**Surrounding Conditions:** The properties in the immediate vicinity of the site include a mix of single-family, multi-family, and apartment buildings, along with an elementary school and some small-scale commercial uses along Mission Avenue. West of the site is South Riverton Avenue, which is between the site and the Spokane River. Across the river, there are commercial and utility land uses. East of the site are three single-family residences with garages/sheds and two multi-family and apartment buildings. North of the site is an apartment building and a large lot with a residence, office space, shop buildings and equipment yard.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code (“SMC”) 17E.060, Environmental Standards; and SMC 17G.060.170, Decision Criteria.

**Notice of Community Meeting:** Mailed: October 29, 2015  
Posted: October 30, 2015

**Notice of Application/Public Hearing:** Mailed: March 25, 2016  
Posted: March 25, 2016

**Community Meetings:** November 17, 2015 and December 14, 2015

**Hearing Date:** May 12, 2016

**Site Visit:** May 11, 2016

**SEPA:** A Determination of Nonsignificance was issued by the City on April 28, 2016.

**Testimony:**

Donna deBit, Assistant Planner  
City of Spokane Planning & Development  
808 West Spokane Falls Boulevard  
Spokane, WA 99201

Mark Krigbaum  
Whipple Consulting Engineers  
2528 N. Sullivan Rd.  
Spokane Valley, WA 99216

Carol J. Nedved  
1633 E. Mission  
Spokane, WA 99202

Bob Nedved  
1633 E. Mission  
Spokane, WA 99202

Trudy Lockhart  
1728 E. Sinto  
Spokane, WA 99202

Steve White  
P.O. Box 949  
Hayden, ID 83835

Todd Whipple  
Whipple Consulting Engineers  
2528 N. Sullivan Rd.  
Spokane Valley, WA 99216

Tracy Lockhart  
[no address given]

**Exhibits:**

1. Planning Services Staff Report
2. Application, including:
  - 2A General application
  - 2B Shoreline Conditional Use Permit application
  - 2C Shoreline Critical Areas Checklist
  - 2D Project Narrative,
    - 2D-1 Submitted at time of application
    - 2D-2 Revised 03-14-16
  - 2E Notification Map application
  - 2F Aerial view of site
  - 2G Site Plan
  - 2H Site elevation
  - 2I Proposed View, Riverton and Mission looking onto the site
  - 2J Proposed View, Alley, looking North West at building 1
  - 2K Proposed View, parking lot view building 1
  - 2L Technically incomplete letter dated 01-15-16 to Whipple Consulting Engineers
3. Engineering Services Comments
  - 3A Narrative for how the Ordinary High Water Line was determined dated 01-28-16
  - 3B Trip Generation & Distribution Letter dated 06-15-15
4. Parks & Recreation Comments
5. Department of Ecology Comments
  - 5A Supplemental CUP Shoreline Narrative dated 03-08-16
6. Spokane Tribe of Indian comments
7. Comments from Department of Archaeology and Historic Preservation (dahp)

- Archaeology – Survey Requested
- 8. Spokane Transit comments
- 9. Notice map
- 10. Parcel listing
- 11. Address Listing
- 12. Notice of Community Meeting
- 13. Notice of Application and Public Hearing
- 14. Affidavit of mailings
  - 14A Community Meeting dated 10-29-15
  - 14B Application and Public Hearing dated 03-25-16
- 15. Affidavit of postings:
  - 15A Community Meeting dated 10-30-15
  - 15B Application and Public Hearing dated 03-25-16
  - 15C Application and Public Hearing sign posting dated 03-25-16
- 16. SEPA Determination of Nonsignificance dated 04-28-16
- 17. Environmental checklist dated 12-03-15
- 18. Community Meeting sign in sheet
- 19. Community Meeting Summary dated 11-30-15
- 20. Community Meeting Summary dated 12-16-15
- 21. Letter dated 10-22-15 to Todd Whipple from Donna deBit
  - re: community meeting instructions
- 22. Letter dated 12-29-15 to Interested Parties from Donna deBit
  - re: requesting comments
- 23. Letter dated 03-21-16 to Mark Krigbaum from Donna deBit
  - re: notice of application and notice of hearing instructions
- A. Material received at hearing:
  - A-1 Hardcopy of Staff's PowerPoint presentation
  - A-2 Photos of site and site analysis and existing conditions
  - A-3 Emails dated 03-16/03-18-16 to/from David Moore and Donna deBit
    - re: approval of revised project narrative dated 03-14-16
  - A-4 Letter dated 05-10-16 from Mark Krigbaum to Hearing Examiner
    - re: clarification of project and proposed conditions of approval
  - A-5 Design Review comments dated 09-18-15

### **FINDINGS AND CONCLUSIONS**

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

1. *The proposal is allowed under the provisions of the land use code.*

To be allowed, the use must be permitted in both the shoreline jurisdiction and in accordance with the zoning applicable to the property. See SMC 17E.060.690(C).

The property is zoned Residential Multi-Family (RMF) and lies within the Shoreline Residential Environment (SRE). See Exhibit 1, p. 4. In the RMF zone, multi-dwelling

structures are permitted outright. See Table 17C.110-2. In the SRE, multi-family residences are permitted as a conditional use. See Table 17E.060-04.

Under both the zoning and shoreline designations, the proposal is allowed, provided the applicable development standards and requirements are met. Therefore, this criterion is satisfied.

*2. The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property.*

The Comprehensive Plan designates the site and the surrounding neighborhood as Residential 15-30. See Exhibit 1, p. 4. This designation allows higher density residential use, specifically at a density of 15 to 30 units per acre. See CP, Chapter 3, Land Use, p. 35. The site is also designated as Shoreline Residential Environment, which is a proper designation for multi-family residential development. See CP, Chapter 14, Shorelines, p. 17. In its policies, the Comprehensive Plan recognizes the benefit, in appropriate cases, of increased density. Specifically, the land use element of the plan calls for increased residential density to support the efficient functioning of transit and mass transit. See Policy TR 3.4, CP, Chapter 4, Transportation, p. 21. Given the location and character of the site and the surrounding area, the proposal aligns well with the objectives and policies of the comprehensive plan.

As the Staff points out, there are several other policies in the Comprehensive Plan which are supportive of the application. For example, the applicant will be constructing a new separated sidewalk along South Riverton Avenue, as well as internal walkways to Mission Avenue where existing sidewalks provide a route to schools, transit stops, and local retail. See Exhibit 1, p. 5. These improvements are supported by Policy TR 2.6, which promotes walking as a viable alternative to driving, and Policy TR 2.7, which calls for safe pedestrian circulation, primarily in the form of separate sidewalks. See Policy TR 2.6 & TR 2.7, CP, Chapter 4, Transportation, pp. 15-16.

The proposal is also consistent with policies directed specifically at use of the shoreline environment. The proposal will improve access to the shoreline by adding pavement, curb, a landscape strip, and a sidewalk. "These improvements will provide on street parking for those visiting the river. Additionally, the sidewalk will provide a safe walking access along the site to the intersection of South Riverton Ave. and Mission St. where pedestrians can cross to the river side of the street and access the existing trail." See Exhibit 1, p. 5.

The project will ensure that there is no net loss of ecological functions of the shoreline, consistent with Policy SMP 1.3. See Policy SMP 1.3, CP, Chapter 14, Shorelines, p. 22. The applicant has submitted a complete report about the ecological functions of the shoreline adjacent to the development site. See Exhibit 5A. This particular shoreline has been impacted by the planting of non-native species and fairly intense human activity. See *id.* The applicant has proposed to replace non-native plants and trees with native species, which will guard against any loss of ecological function. See Exhibit 1, p. 5. Planting with native species also promotes Policy SMP 4.5, which encourages landscaping with native plant communities as new development occurs. See Policy SMP 4.5, CP, Chapter 14, Shorelines, p. 28.

To the extent that some impacts may arise, the Hearing Examiner believes those concerns are addressed by project conditions and mitigation measures. As stated above, the shoreline will be improved, to some extent, by the planting of native species of plants and trees. See Exhibit 1, p. 5. In addition, the applicant will be implementing storm water controls to ensure that storm water runoff is filtered and then discharged into the groundwater. See *id.* Thus, the policy that calls for the mitigation of any adverse impacts arising from the project will also be fulfilled. See Comprehensive Plan, SMP 4.6

Because the project is consistent with the designations, goals, and policies of the Comprehensive Plan, the Hearing Examiner finds that his criterion has been satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010.*

The decision criteria for Type III decisions (such as a shoreline conditional use permit) require that these types of applications satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on December 29, 2015, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 22.

The city received several comments regarding the proposal. See e.g. Exhibits 3, 3A, 3B, 4, 5, 5A, 6, 7 and 8. Aside from the Department of Ecology, none of the commenting departments or agencies contended that concurrency could not be achieved. See Exhibit 1, pp. 5-6. Once the applicant had submitted supplemental comments, the Department of Ecology also concluded that the proposal was concurrent with Ecology's regulations. See Exhibit 1, p. 6; see *also* Exhibit A-3. In addition, there was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied.

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the shoreline 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.*

The site plans for the project is included in the record as Exhibits 2F-2H. These documents generally show the location, size, and shape of the property. They also include information about the physical characteristics of the site and details about the proposed project.

The project includes four apartment buildings ranging in size from four units to forty units. See Exhibit 1, p. 6. The project also includes a clubhouse, parking and landscaping. See *id.* A review of the site plans demonstrates that the project is well designed to fit the property, given its characteristics. The project is designed to satisfy all setbacks and height requirements outlined in SMC 17C.110-3. See *id.*

The site slopes up about 25 feet in grade across the western half, but is generally level in the eastern half of the site. See *id.* The slope is not severe and there is no evidence that the slopes present any specific development challenges. Per project conditions, the site will be planted with native species of plants. The applicant will be required to dispose of all storm water on-site. To the extent that slopes, drainage characteristics, or soil conditions are a concern, the development standards and project conditions will mitigate the potential impacts.

There are no wetlands, streams, or bodies of water on the development site. There is no evidence in the record that this site has encountered any problems with surface drainage or groundwater.

There are no known historic or cultural features on the site. However, the Department of Archaeology and Historic Preservation (“DAHP”) commented that the “...area has the A high potential for both historic and archaeological resources.” See Exhibit 7. The DAHP also contended that there are “multiple precontact and historic archaeological sites within approximately 3,500 feet of the project area on similar landforms.” See *id.* As a result, the DAHP recommended that a professional archaeological survey of the project area be conducted prior to ground disturbing activities. See *id.* The Spokane Tribe of Indians also recommended an archaeological survey, as well as sub-surface testing, for this site. See Exhibit 6. Based upon these comments, the Planning Department recommended that an archaeological survey be completed as a condition of this project.

The Hearing Examiner concludes that project conditions<sup>1</sup> will address the concerns raised by the DAHP and the Spokane Tribe. The Hearing Examiner will include a condition stating that should anything be discovered during the construction process, the work must cease and the protocols required by state law must be followed.

Based upon the foregoing, the Hearing Examiner concludes that this criterion for project approval 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 or neighboring property or the surrounding area, considering the design and intensity of the proposed use.*

The City issued a Determination of Nonsignificance (“DNS”) on April 28, 2016. See Exhibit 16. The comment period on this DNS expired on May 11, 2016. See *id.* No comments in opposition to the DNS were submitted on or before that comment deadline. The DNS was not appealed.

Approximately five months prior to the issuance of the DNS, on December 3, 2015, the applicant prepared an environmental checklist for the project. The checklist supports the conclusion that no significant environmental impacts will arise from this project. For example, although the site is near the Spokane River, there are no wetlands, surface

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<sup>1</sup> The proposal to condition to the project on an archaeological survey and subsurface testing is discussed in greater detail in Paragraph 8a below.

waters, or other limiting features on the development site. See Exhibit 17, Environmental Checklist ¶ B(3)(a)(1). The property does not lie within a 100-year floodplain. See Exhibit 17, Environmental Checklist ¶ B(3)(a)(5). No threatened or endangered species were identified on the site. See Exhibit 17, Environmental Checklist ¶ B(4)(c) & B(5)(b). The project is not anticipated to create any significant noise. See Exhibit 17 Environmental Checklist ¶ B(7)(b).

The applicant will be required to implement on-site controls for storm water and surface drainage generated from the project. See SMC 17D.060.010 et seq. The applicant has recognized this requirement. See e.g. Exhibit 17, Environmental Checklist ¶¶ B(3)(b)(1), B(3)(c)(1), & B(3)(d). The other potential impacts of this project are those typical of construction projects, such as dust and vehicle exhaust. See Exhibit 17, Environmental Checklist ¶ B(2)(a). However, mitigation measures imposed at the time of permitting, such as watering for dust control, can control such impacts. See e.g. Exhibit 17, Environmental Checklist ¶¶ B(1)(h) & 2(c).

There was no substantive evidence that environmental impacts make the project infeasible or materially problematic. The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. No one appealed the DNS. There was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review.

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

6. *For shoreline conditional use permits the following additional criteria apply:*

- a. *The proposed use is consistent with the policies of RCW 90.58.020 and the Shoreline Master Program;*

The Hearing Examiner agrees with Staff's conclusion that this proposal is consistent with the policies of the Shoreline Master Program. See Exhibit 1, p. 7. The site is designated as Shoreline Residential Environment and Upriver District. These designations contemplate that this property is a proper location for a multi-family development. In addition, as discussed in Paragraph 2 above, the proposal is also consistent with the adopted shoreline policies.

The proposal will not diminish the quality of the shoreline environment, given the sites characteristics and condition. The project will be constructed outside the 75-foot shoreline buffer. See Exhibit 2B. There is a public right-of-way between the site and the shoreline. See *id.* The site is improved with two residences and a garage. See *id.* There is an unpaved alley and unpaved Park Court join and loop across the property outside the rights of way. See *id.* These have some gravel surfaces and highly compacted soil. See *id.* The remainder of the site is covered by landscaping, such as a mowed lawn, non-native trees and shrubs, and annual grasses and weeds. See *id.* It appears that the site was cleared of native vegetation when the site was developed for residential use. See *id.*

Thus, given this history, it is doubtful that the site currently serves a shoreline ecological function. *See id.*

The Hearing Examiner concludes that the project is consistent with the policies of state law and the Shoreline Master Program. Therefore, this criterion for approval is satisfied.

- b. The proposed use will not unreasonably interfere with the normal public use of public shorelines;*

This project does not affect "normal public use" of the shorelines by the public. No part of the project will be constructed on the public shoreline. *See Exhibit 2B.* The project site itself is not used by the public, as this property is on the opposite side of South Riverton Avenue and consists of private residential properties. *See Exhibit 2B.* Since this project will be constructed on private property, the owner/applicant is not required to create public, physical access to the shoreline. *See SMC 17E.060.280(A)(1).*

That said, it should be noted that the proposal does not result in diminished public access to the shoreline. If there is any effect on access, that effect is most likely positive. The project includes the construction of Riverton Avenue to city standards. *See Exhibit 1, p. 7.* The applicant will also be installing new, separated sidewalks along the east side of the new street. *See id.* The new sidewalk will be connected to a crosswalk that will cross over South Riverton Avenue along Mission Avenue, which will then connect to the existing trail along the Spokane River. *See id.* The Hearing Examiner concludes that this criterion is met.

- c. The cumulative impact of several additional conditional use permits on the shoreline in the area will not preclude achieving the goals of the Shoreline Master Program;*

There is no evidence, in this record, of multiple conditional use permits affecting the shoreline in this vicinity. Therefore, there is no basis upon which to perform a cumulative impacts analysis. In addition, the area landward of South Riverton Avenue and which falls within the shoreline jurisdiction is already developed. Thus, there is little reason to suspect that there are additional projects on the horizon. The Hearing Examiner concludes that there are no cumulative impacts that could undermine the goals of the Shoreline Master Program. As a result, this criterion is satisfied.

- d. The proposed use of the site and design of the project is compatible with other authorized uses within the area and with the uses planned for the area under the comprehensive plan and the Shoreline Master Program;*

The uses surrounding the project site include multi-family and single-family residences. *See Exhibit 1, p. 7.* The land use designations to the north, east, and partially to the south are Residential 15-30. Thus, properties in those areas are designated for relatively dense residential uses, similar to the project site. There is also Residential 4-10 property designated south of the site. *See id.* The project will result in the development of additional residential uses, which are similar to and compatible with residential uses already in the immediate vicinity. There is no evidence in this record that the proposed

apartment complex will not fit in with the surrounding uses or be incompatible in any material way. The Hearing Examiner concludes that this criterion is satisfied.

- e. The proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located, and the public interest in enjoying the physical and visual access suffers no substantial detrimental effect.*

The discussion in paragraphs 5 and 6b demonstrates that the proposed use will not have significant adverse effects on the shoreline environment or public access to the shorelines. With respect to visual access, it should be noted that the multi-family and single-family zones have the same height limitation, i.e. 35 feet maximum. See Exhibit 1, p. 8. The Staff Report confirms that the "...height of the proposed structures will not exceed the current height restrictions of the surrounding lots." See *id.* In addition, because of the topography, existing residences, and vegetation, the properties to the east currently have no visual access to the shoreline. See *id.* Properties to the north will retain the same visual access to the shoreline as existed before the project. See *id.* The Hearing Examiner concludes that this criterion is satisfied.

*7. The Hearing Examiner concludes that this project should be approved, although the neighbors raised various concerns about the potential impacts of the project.*

Neighboring property owners, while generally supportive of the efforts to develop the subject site, raised a myriad of questions and concerns about the project. *Testimony of C. Nedved, B. Nedved, Trudy Lockhart, and Tracy Lockhart.* The objections and concerns raised about the project included the following: the project would add a significant amount of traffic to the neighborhood; access from Mission Avenue was not adequate; there was not enough parking provided within the development; the development would decrease parking available to neighbors; not enough consideration was given to pedestrian safety; and similar concerns. The neighbors also had questions about traffic safety; access during construction; demographics of future residents at the apartment complex; safety at intersections; and the like.

The neighbors' concerns were genuine and understandable. However, the issues raised were often expressed as questions or general fears, rather than as evidence of an impact. Further, to the extent that impacts can be anticipated, those matters will be addressed by project conditions and through proper practices in the construction of the project. In the Hearing Examiner's view, the Applicant sufficiently addressed the various concerns and questions that were raised during the course of the hearing.

Most of the criticisms of the proposal concerned potential traffic impacts, including traffic volume, safety, and access. However, the city issued a DNS for this project, which was not appealed. Regardless of that, the applicant will be making significant road improvements in support of the project, including paving, curbs, and sidewalks. In addition, the developer will be paying impact fees, which are designed to address the broader potential impacts of development. Moreover, many concerns about traffic were outside of the scope of the project, or were not the responsibility of the developer to address. For example, the developer is not responsible for the existing access issues on Mission Avenue. The project did not create the pre-existing shortcomings of that roadway. Even so, to the extent that the developer is contributing impact fees as a result of the

project, the developer is contributing its fair share toward improving the transportation system.

Another question that should be briefly addressed is parking. There was a contention that the developer did not provide enough parking spaces to serve the development. The Hearing Examiner disagrees. It was undisputed that the municipal code requires a minimum of 104 spaces for this development. Testimony of M. Krigbaum. The Applicant designed the project to provide approximately 123 spaces, well in excess of the minimum. See *id.* Since the project satisfies the specific design requirements of the code, the Hearing Examiner does not believe it is appropriate to require additional parking. There was no specific evidence tending to show that more parking was actually needed, and thus the claim that the parking was insufficient was speculative.

*8. The Hearing Examiner concludes that the project conditions, as enumerated in this decision, are sufficient to mitigate the impacts of the development.*

There were a number of conditions proposed for this project. Conditions were suggested by commenting departments and agencies, as well as by members of the public. Many of those conditions were incorporated into the Planning Department's recommendations. However, the Hearing Examiner concludes that some of the proposed conditions are not appropriate, as is further discussed below.

- a. An archaeological survey and subsurface testing should not be required prior to commencing construction of this project.*

As was discussed above, the Planning Department recommended that an archaeological survey be completed as a condition of this project. That recommendation was based upon the comments of the DAHP and the Spokane Tribe. See Exhibits 6 & 7. The Spokane Tribe also suggested that subsurface testing be completed. See Exhibit 6. The Hearing Examiner declines to impose these conditions, for the following reasons.

First, the comments of the DAHP and the Spokane Tribe were not, on this limited record, based upon any site-specific analysis. Because the commenting agencies did not identify the characteristics of this site that give rise to the need for the condition, the Hearing Examiner determines that the condition should not be imposed.

The Spokane Tribe provided no specific comment or rationale for its recommendation to conduct both an archaeological survey as well as subsurface testing. No representative of the Spokane Tribe attended the hearing in order to explain its recommendations.

The DAHP did provide a substantive rationale for its recommendation. The DAHP stated that the "area" has a "high potential for both historic and archaeological resources." The DAHP also stated that there are "multiple precontact and historic archaeological sites within approximately 3,500 feet of the project area." The Hearing Examiner took note of these concerns, but ultimately is not convinced that the requested condition is justified.

The DAHP did not demonstrate that it gave any specific consideration to the physical characteristics or historic uses of the project site itself. The DAHP did not

demonstrate that the property itself had a high potential to contain historic or archaeological resources. Rather, it contended that such resources existed in the “area.” The DAHP did not define the “area” that it was referring to. Further, while the DAHP stated that such resources exist on multiple sites within 3,500 feet, the DAHP failed to provide a map of such locations, describe the conditions of those sites, or do any specific comparison to the project site. There was no way to know how close any of these historic sites were in relation to the project site. No representative of the DAHP was present at the hearing to answer questions, provide additional details, or explain the DAHP’s concerns about this site.

Second, the Applicant requested that this proposed condition be removed, and supported that request with specific and detailed information about the condition and characteristics of the project site. See e.g. Exhibit A-4. The Applicant’s engineers testified, among other things, that: the site has been previously graded for development purposes; most of the important archaeological or historic resources would be discovered in the first three feet of excavation, and the site had already been disturbed in that zone; a public road with utilities had been developed between the site and the shoreline/river; the properties to the north have already been developed with multi-family and single-family residences, and has been graded, etc., for purposes of development; and the site has been repeatedly impacted by development activities in the past.

The Hearing Examiner concludes that neither an archaeological survey nor sub-surface testing are justified in this case. The Hearing Examiner will impose the standard condition requiring that the protocols required by state law must be followed in the event that archaeological or historic resources are discovered in the course of construction. That condition is sufficient, based upon this record.

*b. The developer should not be required to create ADA-accessible bus stops.*

The STA requested a project condition stating that the developer must provide ADA accessible pedestrian access from the proposed apartments to the bus stops on Mission Avenue. See Exhibit 8. The Hearing Examiner concludes that this proposed condition is not appropriate, for various reasons.

The assumption underlying the STA’s request is that pedestrian access to the existing transit stops is inadequate. That assumption may or may not be accurate. There was no testimony specifically confirming that ADA access to the bus stops was lacking on Mission Avenue. Even the STA comment letter did not advance that contention. There was some evidence that sidewalk access ramps existed in some locations on Mission Avenue. *Testimony of D. deBit.* On this record, there is no way to determine whether pedestrian access is currently insufficient. No representative of the STA was present to provide any further explanation.

Assuming *arguendo* that pedestrian access is inadequate or nonexistent, there is still no justification for requiring this developer to create that access. There is no apparent connection between the proposed development and any insufficiency of access to existing transit stops. The development will include separated sidewalks within the project site, and those sidewalks will connect to Mission Avenue. Thus, there will be proper access between the project and public sidewalks. From there, pedestrians have access to the

transit stops. The project does not obstruct or interfere with access to any transit stop. And there are no transit stops on or immediately adjacent to the project site. To impose the requested condition would be nothing more than requiring the developer create public amenities. This is inappropriate under the circumstances, as well as improper under Washington law.

- c. *The developer cannot be required to provide parking, fencing, or other improvements for the benefit of neighboring property owners.*

A neighboring property owner requested that two conditions be imposed on this project: first, that the developer set aside an unspecified number of parking spaces for use by neighboring property owners; and second, that the developer construct a fence along the neighbor's property line on Park Court, in order to protect that property from traffic. *Testimony of C. Nedved.* The Hearing Examiner concludes that imposing these conditions is beyond his authority and would be unlawful. Therefore, the Hearing Examiner declines to impose such conditions on this project.

The neighbors have historically been able to park along the existing alley or in some open areas of the project site. Apparently, at least some of the neighbors do not have adequate parking on their own properties. The neighbors want to continue to have the ability to park on adjacent land after the development is completed. While the neighbors' desires are understandable, the developer cannot be required to provide public parking.

The developer owns the project site. As a private property owner, the developer has the right to exclude others from using its property, just as the neighbors have the right to the exclusive use of their properties. In reality, the neighbors never had a right to park on the project site in the first place. The neighbors also lack the right to park in an alley, which is public right of way and must remain unobstructed. *Testimony of D. deBit.* The fact that some neighbors do not have sufficient parking on their own lots is a pre-existing condition of those properties. The developer did not cause those properties to have insufficient space for parking. It is not legally proper, then, to require the developer to use its property to solve this problem.

By the same reasoning, the Hearing Examiner cannot require the developer to construct a fence for the benefit of a neighboring property owner. While it is true that the project will generate traffic impacts, those impacts were not enough to result in specific mitigation measures. A DNS was issued for the project, and that determination was not appealed. The Engineering Department did not contend that so much traffic would be generated that the neighbor was in need of some kind of infrastructure for protection. In addition, the Applicant's engineer pointed out that the developer would already be improving Park Court, including installation of a curb along Park Court. The curb will act as one form of barrier between the road and the neighbor's property. Finally, it would be extraordinary, in the Hearing Examiner's experience, for a developer to be required to build a fence on neighboring property, purely because there would be additional vehicles traveling on the improved lane.

For the foregoing reasons, the Hearing Examiner concludes that it is not appropriate to impose the conditions requested by the neighboring property owner.

9. *The Hearing Examiner bases this approval on the site plan as modified at the hearing and reflected in Exhibit A-4*

At the hearing, the Applicant presented some minor site plan revisions. See Exhibit A-4. Based upon the Engineering Department's comments, the alley was widened from 12 feet to 16 feet, and this change required that the parking be reconfigured slightly. See Exhibit A-4. As a result of the modification, the number of parking spaces was reduced from 123 to 122. See Exhibit A-4. The site plan revision was necessary because 16 feet is the minimum width for an alley. See Exhibit 3. This will require the dedication<sup>2</sup> of additional right-of-way if there is not sufficient area to accommodate the modification. See *id.* To be clear, this approval is for the site plan as revised at the time of hearing.

### **DECISION**

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

Approval is for a Shoreline Conditional Use Permit to allow the Applicant, Riverton, LLC, to construct an eighty (80) unit apartment complex with a club house, utilities, parking, and landscaping within the shoreline of the Spokane River. The apartment complex and associated facilities will be constructed substantially as set forth in the General Application and Shoreline Permit Application submitted and included in the record as Exhibits 2A and 2B, and the Site Plan submitted and included in the record as Exhibit 2G with the revisions shown in Exhibit A-4. If changes are sought to the applications and Site Plan, they shall be submitted to Planning Services for review and approval. If Planning Services finds that the changes are substantial, then they shall be forwarded to the Hearing Examiner for review and approval.

1. The site will be developed in substantial compliance with the plans presented at Design Review on September 18, 2015.
2. The project shall comply with Shoreline Master Program, SMC 17E.060 and SMC 17E.020, which provide that a project shall not result in a net loss of shoreline ecological functions.
3. Per the Department of Ecology, landscaped areas within the shoreline jurisdiction must be planted with native vegetation.
4. 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

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<sup>2</sup> The Engineering Department noted: "If the alley cannot be reconfigured to be improved within the existing right-of-way, additional right-of-way will need to be dedicated." The Applicant requested that, in lieu of dedicating additional right-of-way, the Applicant should be permitted to grant an easement for the additional area needed for the reconfigured alley. The Hearing Examiner leaves the decision whether or not to accept an easement in lieu of a dedication of additional right-of-way to the discretion of the Engineering Department.

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.

5. This approval does not waive the applicant's obligation to comply with all of the requirements of the Spokane Municipal Code including the International Codes (as adopted in this jurisdiction), as well as requirements of City Departments and outside agencies with jurisdiction over land development.

6. 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.

7. 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.

8. 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.

9. 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 17<sup>th</sup> day of May, 2016.



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 shoreline conditional use permits are reviewed by the Washington State Department of Ecology. After review, they may be appealed to the Washington State Shoreline Hearings Board. **All appeals must be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date of the Ecology decision.**

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.