

**CITY OF SPOKANE HEARING EXAMINER**

Re: Conditional Use Permit Application by ) FINDINGS, CONCLUSIONS,  
Excelsior Youth Center to authorize ) AND DECISION  
the expansion of the campus located )  
at 3754 W. Indian Trail Road ) FILE NO. Z17-001CUP3

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** Excelsior Youth Center is proposing a campus expansion of approximately 22,000 square feet and an increase in the number of resident beds from 99 to 115. The expansion will include a new resident facility, administration and support services offices, parking, driveways, and landscaping. This is an existing group living and institutional use.

**Decision:** Approved, with conditions.

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

**Applicant/  
Property Owner:** Excelsior Youth Center  
c/o Andrew Hill  
3754 W. Indian Trail Road  
Spokane, WA 99016

**Agent:** Paul Harrington  
3421 S. Henry Road  
Greenacres, WA 99016

**Property Location:** The property is located at 3754 W. Indian Trail Road. The property is designated under Tax Parcel Nos. 26262.0047 and 26262.0045.

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

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

**Site Description:** The site of the proposed expansion is located to the northwest of the existing Excelsior Youth Center buildings. The property is currently vacant, fronts on West Indian Trail Road and is approximately 7.7 acres in size and is located within the approximately 27 acre campus. There will also be internal roadways added to the existing site to improve campus circulation.

**Surrounding Conditions and Uses:** The land to the north, south, east and west of the property is zoned Residential Single Family (RSF). Southeasterly of the Excelsior Youth Center, on the same side of Indian Trail, is the Assumption Elementary School. Farther to

the south are single family residences. The land westerly of Indian Trail Road is fully developed with single-family residences. Southwest of the site is the Indian Trail Elementary School. There is undeveloped land to the immediate north and northwest, as well as to the east of the site. There are single family residences to the north, east, and west of the property, beyond the areas of undeveloped land.

**Project Description:** The project proposal includes a new facility that is about 22,000 square feet in size, which will accommodate 16 new residential beds. The new standalone building will be home to the LifePoint program which provides transitional group home living to 16 transition-age youth. The remainder of the buildings will be dedicated to administration and support services of the campus.

### **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 26, 2016  
Posted: October 27, 2016

**Notice of Application/Public Hearing:** Mailed: February 8, 2017  
Posted: February 10, 2017

**Community Meeting:** November 15, 2016

**Public Hearing Date:** March 2, 2017

**Site Visit:** February 28, 2017

**SEPA:** A Determination of Nonsignificance ("DNS") was issued by the City of Spokane Planning Department on February 28, 2017. The appeal period for the DNS expired on March 14, 2017. The DNS was not appealed. As a result, the record in the case was closed and the ten-day period to issue a decision commenced.

#### **Testimony:**

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

Andrew Hill  
Excelsior Youth Center  
3754 W. Indian Trail Road  
Spokane, WA 99016

Paul Harrington  
3421 S. Henry Road  
Greenacres, WA 99016

Mike Nepean  
4117 W. Janice Avenue  
Spokane, WA 99208

Mark E. Anderson  
4114 W. Osage Way  
Spokane, WA 99208

Kelly Busse  
4220 W. Osage Way  
Spokane, WA 99208

Randy Abrahamson  
Tribal Historic Protection Officer  
Spokane Tribe of Indians  
P.O. Box 100  
Wellpinit, WA 99040

**Exhibits:**

1. Planning Services Staff Reports
  - 1A Draft dated 02-21-17
  - 1B Final dated 02-28-17
2. Application, including:
  - 2A General Application
  - 2B Conditional Use Permit Application
  - 2C Notification Map Application
  - 2D Site Plan
  - 2E Current Space Allocations
3. Engineering Services comments
4. Historical Preservation comments
5. Department of Ecology comments
  - 5A Email dated 01-24-17 regarding wetland delineations
6. Spokane Tribe of Indians comments
  - 6A letter dated 01-23-17
  - 6B email dated 02-08-17
  - 6C email dated 02-13-17
7. Cultural Resources Report dated 01-2017
8. Notice map
9. Parcel listing
10. Notice of Community Meeting
11. Notice of Application and Public Hearing
12. Affidavit of mailings:
  - 12A dated 10-26-16
  - 12B dated 02-08-17
13. Affidavit of posting:
  - 13A dated 10-27-16
  - 13B dated 02-10-17
14. Affidavit of sign removal:
  - 14A dated 11-30-16
15. SEPA Determination of Nonsignificance dated 02-28-17
16. Environmental Checklist dated 01-03-17
17. Community Meeting Sign in sheet dated 11-15-16
18. Excelsior Information Meeting handout
19. Letter dated 10-18-16 to Paul Harrington from Donna deBit  
re: community meeting instructions
20. Letter dated 01-06-17 to Interested Parties from Donna deBit  
re: requesting comments
21. Letter dated 02-08-17 to Paul Harrington from Donna deBit  
re: notice of application/public hearing instructions
22. Public Comments
  - 22A Mark Siebert, dated 03-24-17, opposing project

- 22B John Ahern, dated 03-24-17, supporting project
- 22C Kimmie Landahl, Business Manager, Indian Trail Service Center, opposing project
- 22D Richard Belt, Owner, Indian Train Service Center, opposing project
- 22E Kathleen Kelly, resident, opposing project
- 23. Email dated 02-28-17 to Councilwoman Mumm from Donna deBit  
re: misinformation regarding public hearing
- A Exhibits received at hearing
  - A-1 Planning's PowerPoint presentation
  - A-2 Indian Hill Block Watch aerial view of neighborhood, submitted by Mark Anderson
  - A-3 Youth's Perspectives on Group Care, 2016, submitted by Kelly Busse
- B. Comments received during the open record period (03-02 through 03-14-17)
  - B-1 The Padgett's, 03-03-17, opposing project
  - B-2 Bruce Chamberlain, 03-06-17, opposing project
  - B-3 Thomas Kauffman, 03-06-17, opposing project
  - B-4 Debbie Kauffman, 03-06-17, opposing project
  - B-4a Donna deBit's response
  - B-5 Don Brockett, 03-06-17, opposing project
  - B-6 Ted Warne, 03-06-17, opposing project
  - B-7 Lori Aspenleiter, 03-06-17, opposing project
  - B-8 Linda and Daniel Waud, 03-06-17, opposing project
  - B-9 Ken Marquess, 03-07-17, opposing project
  - B-10 Author request anonymity, 03-10-17, supporting project
  - B-11 Angela Moore, 03-13-17, supporting project
  - B-12 Mark Anderson, 03-14-17, inquiry regarding proposed continued hearing

### **FINDINGS AND CONCLUSIONS**

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.

"Group Living," which is a residential category of use, is permitted in the RSF zone as a Limited/Conditional Use. See Table 17C.110-1; see also Exhibit 1B, p. 2. In the Group Living setting, the residents may receive any combination of care, training or treatment, as long as they also reside at the site. See SMC 17C.190.100(A). Residential care for adults or youth is specifically referenced as an example of Group Living. See SMC 17C.190.100(C).

Certain kinds of "institutional" uses are also allowed in the RSF zone, including "community services." See Table 17C.110-1. "Community Services are uses of a public, nonprofit or charitable nature generally providing a local service to people of the community." See SMC 17C.190.420(A). A community service is allowed in the RSF zone, provided a conditional use permit is obtained. See Table 17C.110-1.

The proposed expansion of the Excelsior campus fits these categories of use, and should be processed as a Type III application. See Exhibit 1B, p. 3.

The Hearing Examiner concludes that, provided the criteria for conditional uses are satisfied, and assuming the other developments standards are adhered to, the proposed use is allowed in the RSF zone. As a result, this criterion for approval is met.

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 Hearing Examiner concludes the proposal is consistent with the goals and policies of the Comprehensive Plan ("CP").

Goal SH 2, concerning "Facilities for Special Needs Populations," is intended to "encourage development patterns and uses of public and private property that are responsive to the facility requirements of special needs populations." See CP, Chapter 10, Goal SH 2, p. 13. The comprehensive plan encourages the distribution of social services throughout the city. See CP, Chapter 10, Policy SH 2.1 & SH 2.2, p. 13. The comprehensive plan also contemplates that such uses will be designed to blend with the visual character of the surrounding neighborhood. See CP, Chapter 10, Policy SH 2.3, p. 14. As conditioned, the project appears to be in furtherance of all of these goals and policies.

The proposal is also more generally promotes development in a manner that is attractive, complementary, and compatible with other land uses, as suggested by the Staff. See CP, Chapter 3, Goal LU 5, p. 23; see *also* Exhibit 1B, p. 3 (also citing to Policy LU 5.1 and LU Policy 5.5).

The Hearing Examiner concludes that 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 a conditional use permit) mandate that all proposals must satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Accordingly, on January 6, 2017, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 20.

The city received a limited response to its request for comments. See *e.g.* Exhibits 3-6. City staff noted that no city departments or outside agencies "...reported that concurrency could not be achieved." See Exhibit 1B, p. 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 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 Hearing Examiner finds that the property is suitable for the proposed use given its physical characteristics.

The Applicant has proposed to add a new building to its campus. The project will add 22,000 square feet of building space to the campus, along with associated parking. However, the existing campus is approximately 27 acres in size, and will continue to include generous open space, landscaping, and natural features. See Exhibit 2B. The property is more than adequate in size to accommodate the new building and parking area.

The shape of the site is irregular, but the shape is not an obstacle to the use or development of the property. The steepest slopes of the site are in the 10-15% range. See Exhibit 16 (Environmental Checklist ¶ B(1)(b)). However, there is plenty of relatively flat area which can accommodate the proposed use. The soils are rocky, but there is no indication in this record that the soil conditions make the site problematic for development. See Exhibit 16 (Environmental Checklist ¶ B(1)(c)-(f)).

There is no evidence that the site suffers from poor drainage characteristics, or that drainage issues will be created by the proposed improvements. The stormwater will be handled using conventional methods. See Exhibit 16 (Environmental Checklist ¶ B(3)(b)-(c)). The site has a large amount of open space and natural area, which also should ensure drainage is properly disposed of on-site. In addition, there was no evidence of poor drainage at the existing campus, which already improved with a 56,000 square-foot building and associated parking areas.

A designated wetland exists on the site. See Exhibit A-1; *Testimony of D. deBit*. However, there is an 85-foot buffer around the wetland. See *id*; see also Exhibit 1B, p. 4. There are no aspects of the proposed development which will encroach into the wetland buffer or otherwise threaten the health of the wetland. See Exhibit 1B, p. 4. To the extent that the development plans change, resulting in a potential impact on the wetlands, the conditions of approval will require the developer to obtain a formal delineation.

There are Native American petroglyphs on a large rock outcropping that is located on the site. See Exhibit 4. The Historic Preservation Officer for the City/County of Spokane noted that there is a high probability of archaeological resources being present on the site. See *id*. Undoubtedly due to such concerns, the applicant arranged for the completion of an Archaeological Resources Inventory for the site, which has been included in the record. See Exhibit 7. That report concluded that, while there were archeological resources on the site, the proposed project "will have no adverse effect on the integrity of this resource either directly or indirectly." See Exhibit 7, p. 28. The report further recommended that if, during the project, resources are discovered that ground-

disturbing activities should cease and the appropriate parties should be notified. *See id.* Thus, the report's recommendations are consistent with the conditions of approval incorporated into this decision.

It should also be acknowledged that there has been an agreement in place, between the Spokane Tribe<sup>1</sup> and the property owner, to protect the Native American petroglyphs on the outcropping. *Testimony of D. deBit.* That agreement has been in place for over two years. *See id.* More recently, representatives of the Spokane Tribe met with the applicant on site to discuss where construction should and should not take place, and to discuss measures to protect the petroglyphs. *See id.* In any case, there is more than 200 feet between the new construction area and the petroglyphs. *See id.*

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).*

There is no evidence that this project may give rise to significant environmental impacts. The existing facility has been in operation for many years, apparently without causing significant environmental consequences. There is no reason to suspect that the campus expansion will create new or unique environmental impacts on the neighborhood. In addition, the environmental review process, completed pursuant to the State Environmental Policy Act, demonstrates that the project will not have significant environmental consequences. To the extent certain impacts occur or may occur, those impacts can be addressed adequately through appropriate mitigation measures.

On or about January 3, 2017, Excelsior Youth Center (through its consultant) prepared an environmental checklist, pursuant to the State Environmental Policy Act, for the proposed project. See Exhibit 16 (Environmental Checklist). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties.

There is a small area of wetland on the site. See Exhibit 16 (Environmental Checklist ¶ B(3)(a)(1)). However, the project will not disturb those wetlands. See Exhibit 16 (Environmental Checklist ¶ B(3)(a)(3)). The property does not lie within a 100-year floodplain. See Exhibit 16 (Environmental Checklist ¶ B(3)(a)(4)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 16 (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 16 (Environmental Checklist ¶ B(7)(a)). No threatened or endangered species were identified on the site. See Exhibit 16 (Environmental Checklist

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<sup>1</sup> On behalf of the Spokane Tribe, Mr. Randy Abrahamson requested that a fence be erected around the rock outcropping and that a 150' buffer be established around the petroglyphs. The Hearing Examiner declines to impose these measures as a condition of the project. Instead, the Hearing Examiner adopts the consultation condition suggested by City Staff. See Exhibit 1B, p. 6.

¶¶ B(4)(c) & B(5)(b)). The project is not anticipated to create any significant noise. See Exhibit 16 (Environmental Checklist ¶ B(7)(b)). The project will also not create a significant source of light or glare. See Exhibit 16 (Environmental Checklist ¶ B(11)).

On February 28, 2017, the Planning Department of the City of Spokane, as lead agency, issued a Determination of Non-significance ("DNS") for the project. See Exhibit 15. Thus, the city has concluded that the project is not a source of significant, environmental impacts. The record in this case supports that view. And the DNS was not appealed, so the conclusion reached by the city has not been challenged.

The Hearing Examiner concludes that the project will not have significant impacts on the environment, and therefore this criterion is satisfied.

6. *The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the residential household living category in the residential area. See SMC 17C.320.080(F)(1).*

The residential appearance and function of the area will not be negatively impacted by this project. The site has been used for transitional living for decades. The addition of the proposed improvements will not markedly change the overall appearance of the site or cause any aesthetic impacts to the surrounding properties. The project only adds a single, 22,000 square-foot building, and associated parking, on an approximately 27 acre site. There is significant open space on the Excelsior property. There will still be large amounts of open space on the property even after the project is completed. The appearance of the campus will be consistent with the historic use of the site and is not radically different than the school properties in the neighborhood, although the use is not the same. The project does not displace any residential uses and is of an appropriate scale for the area. The Hearing Examiner concludes that this criterion for approval is met.

7. *The proposal will be compatible with the adjacent residential developments based on characteristics such 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 design of the project appears to be proportionate to the neighborhood, and appropriate given the characteristics of the site, as already suggested above. A predominant characteristic of the site is its large amount of open space. There are also large buffers between the new construction and the surrounding properties. See Exhibit 1B, p. 5. These buffers are more than sufficient to protect surrounding properties from potential impacts. See *id.* The structures cannot exceed the height limitations of the RSF zone. In addition, the applicant must adhere to the institutional design standards for construction in a residential zone. See SMC 17C.110.500 *et seq.* These standards are intended to ensure that institutional uses remain compatible with surrounding residential neighborhoods. On this record, there is no reason to believe the new building will have any greater impact on the neighborhood than the existing campus. The Hearing Examiner concludes that this criterion for approval is satisfied.

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 proposal will not affect the livability of the surrounding residences. The project does not appear to include elements that may cause unanticipated or undue light, glare, odor, or litter. No late-night operations are associated with this use. See Exhibit 1B, p. 6. The light from any overhead lighting must be contained on-site, pursuant to SMC 17C.110.520. See *id.* No odor is anticipated from the proposed use. See *id.* Refuse will continue to be picked up each week. See *id.* There will be some noise during the construction phase. See *id.* However, no additional noise is anticipated once the project is completed. See *id.*

There is no evidence in this record that suggests that the campus expansion will give rise to diminished privacy for the neighbors. See Exhibit 1B, p. 6. No specific concerns about privacy were raised at the hearing, or are otherwise evident in this record. With respect to safety issues, many concerns were raised by area residents, primarily directed at fire hazards and youth crime. Those issues are discussed in greater detail below. Given the conclusions reached below, the Hearing Examiner concludes that safety concerns do not warrant denial of the conditional use. It should also be noted that the proposed facility expansion, which involves constructing a building to serve sixteen additional residents, does not give rise to any inherent safety hazards.

The Hearing Examiner concludes that the livability of the neighborhood will not be materially diminished by this project. Therefore, this criterion for approval has been satisfied.

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).*

This project does not appear to create any new or unique burdens on the transportation system or on other public facilities. The nature and intensity of the use is not materially changing as a result of this project. The proposal does not decrease the level of service on any adjacent street. See Exhibit 1B, p. 6. "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 *id.*; see also Paragraph 3 above. Moreover, there was no evidence introduced at the hearing suggesting that this project would cause any genuine stress on the transportation system. The Hearing Examiner concludes that this criterion is satisfied.

10. *The Hearing Examiner concludes that the proposed use should be approved, despite the fact that the neighbors have raised a number of concerns about the project.*

Several individuals opposed the proposed expansion of the Excelsior's campus. The objections to the requested CUP primarily centered around two issues: criminal behavior and fire hazards. Each of these two issues will be addressed below.

(a) *Adolescent Crime*

One of the central objections to authorizing the expansion of the Excelsior campus was the contention that its residents engage in criminal behavior. According to the neighbors, Excelsior residents are responsible for various crimes, including shoplifting, theft, burglary, vehicle prowling, vandalism, and other offenses. *Testimony of M. Nepean, M. Anderson, & K. Busse.* It seems that there have been many incidents which have occurred over the years. *Testimony of M. Nepean & M. Anderson.* The most serious incident occurred only a short time ago. It was undisputed that an Excelsior resident recently committed a rape in the neighborhood. *Testimony of M. Nepean & M. Anderson.*

Based upon these accounts, the neighbors opposed the expansion of the Excelsior campus. The proposed expansion should not be allowed because the facility could not protect the neighbors from the criminal acts of its population. *Testimony of M. Nepean.* It was also noted that the burdens imposed by the facility's residents were disproportionately borne by the immediate neighborhood. *See id.* Until the facility can demonstrate that it has the capacity to control its residents, the facility should not be allowed to expand. *See id.*

As further evidence that Excelsior was out of control, neighbors pointed to the extraordinary amount of police assistance required by the facility. A retired police officer stated that the police have been forced to react to "thousands of calls" from Excelsior in the last few years. *Testimony of K. Busse.* The high number of calls from the facility regarding assaults, runaways, thefts, and other matters led the SPD to consider a moratorium on responding to Excelsior. *See id.* And these kinds of problems are ongoing, it was suggested. *See id.*

The Hearing Examiner takes these issues very seriously. The neighbors make some persuasive contentions, and raise some very difficult policy questions as well. However, on the whole, the Hearing Examiner believes that the proposed expansion should be approved, despite the legitimate concerns being raised. The Hearing Examiner reaches this conclusion for several reasons.

First, the scope of the proposal should be kept in mind. The expansion will only add space for 16 additional residents at the campus. The Hearing Examiner doubts that the addition of this number of residents will have a measurable impact on the neighborhood. It must be acknowledged, on the other hand, that Excelsior originally planned a larger expansion. It seems likely that additional expansions will be proposed in the future. Nonetheless, the Hearing Examiner must consider the proposal that is actually being made. Excelsior has been operating at this campus for almost 60 years. Adding 12,000 to 22,000 square feet of space for operations and 16 additional residents is not a radical change in the scope or intensity of the existing use.

Second, as a policy matter, the individuals who commit the crimes are the ones responsible for that conduct. It is not clear to the Hearing Examiner that the treatment facility is truly responsible for the conduct of a resident who decides to leave the treatment environment, and then makes the further choice to engage in criminal behavior. It was suggested that Excelsior needs to either change its protocols or seek a change in the laws that are tying its hands when it comes to security and its capacity to respond to resident behavior. Actually, there was testimony that Excelsior is doing both of those things.

*Testimony of A. Hill.* Excelsior has requested that the laws be modified to allow for improved security. *See id.* In addition, the LifePoint Program, which would be conducted in the new building, represents a new approach for providing assistance to young people in transition. *See id.* And it appears that his new strategy is effective, having already shown that “breakthroughs” are possible. *See id.*

Third, the evidence of crime in the neighborhood was rarely specifically tied the Excelsior program. For example, there was testimony that neighbors have chased away young people who were making campfires in the woods. There was testimony about the ransacking of vehicles and garage prowling in the neighborhood. There was also testimony about break-ins at local businesses. What was typically missing, however, was evidence that these crimes were committed by Excelsior residents. Young people are committing similar crimes all over Spokane. It is not hard to accept that this problem has reached epidemic levels. *Testimony of A. Hill.* Even though the evidence on this issue was often lacking in specificity, there is no question, on this record, that Excelsior residents have committed crimes, disrupted the peace, and have created other nuisances for the immediate neighborhood. The history suggests that the operation needs to do more to protect the community. The Hearing Examiner is just not persuaded that the optimal response to these realities is to prevent the Excelsior from initiating a program that may help some of these troubled youths, possibly even preventing some of these destructive behaviors in the future.

It must be acknowledged that Excelsior has required an inordinate amount of police attention over the years. *Testimony of K. Busse.* The police even considered adopting a moratorium in responding to calls from Excelsior. *See id.* However, there are some factors which cut against the notion that the facility is an unwarranted drain on police resources or should not be supported going forward.

The statistics on the number of calls which required an actual police response were quite unclear. The SPD does not segregate calls received from emergent matters from the reports of runaways. *Testimony of A. Hill.* As a result, the statistics on the amount of calls made by Excelsior are somewhat misleading. With respect to actual calls for assistance, the evidence suggests that those types of calls to the Police fell dramatically between 2015 and 2016. In 2015, the police received over 600 calls for assistance from Excelsior. *See id.* In 2016, that number dropped to 120. *See id.* Even so, the number of calls to the police seems extraordinary. Given these figures, the Hearing Examiner would have expected the Spokane Police Department to have specific comments and concerns about the proposal. However, there was no comment at all from the SPD. At the minimum, this suggests that the SPD does not oppose the project. It also tends to corroborate the Executive Director’s testimony that the facility is working with the police and other agencies to address the concerns of the past. It appears, at least at this time, that those efforts are satisfactory to the police department.

Fourth, the Hearing Examiner does not believe that Excelsior’s alleged inability to “control” its residents is a proper basis to deny the application. Excelsior is a residential treatment facility, not a mental hospital or a prison. Without a change in the law, Excelsior cannot legally control its residents in the same way as those institutions. As a legal and policy matter, there is a difficult balance to strike between the civil rights of individuals who are in treatment (or committed or incarcerated, for that matter) and the need to control those individuals, both for their own protection and for the protection of others. Frankly, the

conditional use review process is ill-equipped to address this kind of question. This issue is really a legal and policy matter for the legislature and the courts to resolve.

(b) *Fire Hazards*

A second major objection to the proposed expansion of the Excelsior campus concerned the risk of fire. In general, residents were worried about the increased fire risk in the summer, in particular as a result of illegal campfires on or near the Excelsior property. *Testimony of M. Nepean & M. Anderson*. If a fire occurred, it would be very difficult to contain or control in that location. *Testimony of K. Busse*.

The Hearing Examiner does not doubt that fire can pose a genuine risk in this neighborhood. The Excelsior site and the surrounding areas are fairly heavily wooded. That being said, in the Hearing Examiner's view, the risk of fire is not a compelling reason to deny this application.

The testimony on this issue was in the form of general fears about the possibility of fire. There was no evidence demonstrating that the proposal actually increased the probability of fire. The Fire Department made no comments about the project and did not ask for any mitigating measures regarding the site. It appears that there is nothing inherently risky about the applicant's development plans. The proposal is to add a single building to an existing campus. While it is true that there will be 16 additional residents at this facility, alleging that the new residents will necessarily create fire hazards is speculation. It is not even certain, on this record, that Excelsior residents are the adolescents that have been seen building campfires in the past, although that is a possibility. It is also possible that other adolescents were responsible for building campfires. In either case, there is no evidence that Excelsior allows campfires on its property, or that Excelsior is not capable of addressing how its residents use its property.

There are neglected areas with dry wood that pose some hazard of fire. *Testimony of A. Hill*. However, those conditions have nothing to do with the proposal and would need to be addressed regardless of whether the new building is constructed or not. Fortunately, Excelsior is taking steps to clean up the property and address the potential fire hazards. *See id.* To that extent, the development activity is beneficial. *See id.* There are already hydrants on the property. *See id.* However, Excelsior is hoping to add hydrants to the back of the property, if permitted under the current codes. *See id.* In any case, the existing infrastructure would appear to be sufficient for purposes of responding to a fire. The Fire Department apparently did not conclude otherwise.

11. *The notice for this project was legally sufficient.*

One neighbor objected that many residents did not receive notice of the hearing, and therefore the notice was legally deficient. *Testimony of M. Anderson*. The Hearing Examiner disagrees. The record reflects that the individuals within 400 feet of the site were identified and provided notice by mail. *See Exhibits 8, 9, and 12B*. The project site was also posted in accordance with city codes. *See Exhibit 13B*. Mr. Anderson did not specifically identify any individuals who were within 400-foot boundary who were not sent the notice. In addition, there were no criticisms of the form of the notice. The Hearing Examiner concludes that proper notice of the proceedings was given. The process is not legally flawed for lack of notification.

## 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 construction of the Excelsior Youth Center expansion located at 3754 & 3910 W. Indian Trail Road. The project shall be completed substantially in conformance with the plans and application on file with the Planning and Development Department.
2. The project team shall consult with the Department of Archaeology and Historic Preservation ("DAHP") and the Spokane Tribe regarding whether any measures to avoid or minimize the impacts to any archaeological resources on site is appropriate or necessary.
3. The project shall be developed in substantial conformance with SMC 17C.110.500, Land Use Standards, Residential Zones, to maintain compatibility with and limit the negative impacts on surrounding residential areas.
4. If the site plan is modified in a manner that increases the likelihood of impacts to the designated wetland on site, a wetland delineation must be completed in accordance with the requirements of the Department of Ecology.
5. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services should be immediately notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.
6. 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 well as requirements of City Departments and outside agencies with jurisdiction over land development.
7. 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.
8. 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.
9. 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.

10. 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 29<sup>th</sup> day of March 2017.



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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 and variances 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 ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is the date the decision is entered into the public record. This decision was entered into the public record on March 29, 2017. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 19<sup>th</sup> DAY OF APRIL, 2017, 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.