

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Conditional Use Permit Application by ) FINDINGS, CONCLUSIONS,  
Verizon Wireless to allow the construction ) AND DECISION  
of a wireless communication tower on a )  
residential lot located at 1409 E. )  
Wellesley ) FILE NO. Z18-271CEL3

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** Verizon Wireless, on behalf of the property owner, seeks a conditional use permit in order to allow the construction of a 60' monopole wireless communication tower together with accessory ground support equipment, in a 50' x 50' leased area on a vacant lot in a Residential Single Family (RSF) zone.

**Decision:** Approved, with conditions.

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

**Applicant:** Verizon Wireless  
c/o Rod Michaelis  
P.O. Box 8436  
Spokane, WA 99203

**Agent:** Rod Michaelis  
ProLand, L.L.C.  
P.O. Box 8436  
Spokane, WA 99203

**Property Owner:** James Mahar  
8909 E. Maringo Dr.  
Spokane, WA 99212

**Property Location:** The property is located at 1409 E. Wellesley Avenue, Spokane, Washington, 99207. The property is designated as tax parcel no. 36333.4104.

**Legal Description:** The legal description of the property is included in Exhibit 2A.

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

**Comprehensive Plan Map Designation:** The property is designated as R 4-10 (Residential, 4-10 dwelling units per acre) in the city's Comprehensive Plan.

**Site Description:** The property is a typical, platted residential lot. The property is basically flat, and is rectangular in shape. The lot is approximately 5,100 square feet in size. The property is

vacant and it appears that it has never been developed. The property is adjacent to Wellesley Avenue, a principal arterial, and it is located across the street from the campus of Rogers High School. There is an alley providing access at the back of the lot.

**Surrounding Zoning and Uses:** The land surrounding the site, in all directions, is zoned RSF. The area to the west, north, and east is developed with single family residences. Across the street and to the south is the campus of Rogers High School.

**Project Description:** The applicant has requested a Type III conditional use permit for the construction of a 60' monopole wireless communication tower along with associated ground equipment. The applicant proposes to use stealth technology in an effort to mitigate the visual and aesthetic impact of placing a cell on a residential lot. The proposed tower will be a "mono-fir," i.e. the tower will be made to look like a fir tree, to better blend in with the surrounding environment. If approved, the tower and associated ground equipment will be constructed within a leased area, approximately 50 feet by 50 feet in size. A fence will be constructed to enclose the area in which the tower and ground equipment will be installed. There will also be landscaping to further screen the facilities.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code ("SMC") 17C.110, Residential Zones; SMC 17C.355A, Wireless Communication Facilities; and SMC 17G.060.170, Decision Criteria.

**Notice of Community Meeting:** Mailed: November 24, 2017  
Posted: November 24, 2017

**Notice of Application/Public Hearing:** Mailed: April 20, 2018  
Posted: April 20, 2018

**Community Meeting:** December 21, 2017

**Public Hearing Date:** May 31, 2018

**Site Visits:** The Hearing Examiner visited the site of the proposed WCF on May 30, 2018. On June 27, 2018, the Hearing Examiner conducted a site visit of an existing "mono-pine" WCF located at 2949 W. 22<sup>nd</sup> Avenue, Spokane, Washington, to get a better sense of the degree of visual/aesthetic mitigation that may be achieved by using stealth technology.

**SEPA:** A Determination of Nonsignificance ("DNS") was issued by the City of Spokane on May 16, 2018. The DNS was not appealed.

#### **Testimony:**

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

Charles Hansen  
1611 E. Queen  
Spokane, WA 99207

Rod Michaelis  
ProLand, L.L.C.  
P.O. Box 8436  
Spokane, WA 99203

Officer M. D. Roberge  
1100 W. Mallon  
Spokane, WA 99201

Cathy Pryor  
1503 E. Wellesley Ave.  
Spokane, WA 99207

Lori Wybomey  
1622 E. Wellesley Ave.  
Spokane, WA 99207

Mike Fagan  
1523 E. Dalton Ave.  
Spokane, WA 99207

### Exhibits:

1. Planning Services Staff Report
2. Application, including:
  - 2A General application
  - 2B Conditional Use Permit application
  - 2C Notification Map Request
  - 2D Aerial view of proposed location with parcel outlined
  - 2E Coversheet and Overall Site Plans
    - 2E-1 General Notes and Symbols
    - 2E-2 Site Survey
    - 2E-3 Site Plan
    - 2E-4 Proposed Compound Plan
    - 2E-5 Proposed Tower Elevations
  - 2F Utility Site Plan
    - 2F-1 Title Sheet
    - 2F-2 Scope of Work
    - 2F-3 Fiber Equip. Plan
    - 2F-4 Power Equip Plan
    - 2F-5 Photos (P-1 thru P-3)
  - 2G Alternate Locations Explored
    - 2G-1 Tower on Hoffman and Crestline, City Property, dated 08-25-16
    - 2G-2 Sharing Existing tower dated 01-03-18
    - 2G-3 Rogers High School property dated 01-20-18
  - 2H Aerial view with tower location and Photo simulations as is and proposed tower
  - 2I TOWAIR Determination Results
  - 2J Radio Frequency (RF) Emission Analysis report dated:
    - 2J-1 02-26-18
    - 2J-2 01-24-18
3. Conditional Use Permit Counter Complete checklist
4. Fire Department comments
5. Development Services comments
6. Notice map
7. Parcel listing

8. Notice of community meeting
9. Combined notice of application and public hearing
10. Affidavit of mailings
  - 10A community meeting dated 11-24-17
  - 10B combined application/public hearing dated 04-20-18
11. Affidavit of public notice
  - 11A community meeting dated 11-24-17
  - 11B combined application/ public hearing dated 04-20-18, with copy of sign
12. Removal of Public Sign dated 12-27-17
13. SEPA Determination of Nonsignificance dated 05-16-18
14. Environmental Checklist received 03-12-18, undated and unsigned
15. Project Web Posting
16. Community Meeting Sign in Sheet
17. Community Meeting Summary
18. Letter dated 09-25-17 to Rod Michaelis from Dave Compton  
re: community meeting instructions
19. Email dated 02-08-18 to Rod Michaelis from Dave Compton  
re: review of application
  - 19A Email dated 02-16-18 inquiry from Dave Compton as to response
  - 19B Response dated 02-25-18 from Rod Michaelis
20. Letter dated 03-08-18 to Dave Compton from Rod Michaelis  
re: recording of community meeting
21. Letter dated 03-14-18 to Interested Parties from Dave Compton  
re: request for comments
22. Letter dated 04-10-18 to Rod Michaelis from Dave Compton  
re: combined notice of application/public hearing instructions
23. Public Comments
  - 23A Letter dated 03-16-18 from Charles Hansen re fencing and type of tower
    - 23A-1 Response from Rod Michaelis dated 04-13-18
  - 23B Opposition packet from Councilman Fagan's Office dated 05-09-18
  - 23C Letter dated 05-10-18 from Charlene Giglio in opposition
  - 23D Email dated 05-10-18 from Danette Durant in opposition
  - 23E Letter dated 05-14-18 from Coryn Mercer in opposition
  - 23F Letter dated 05-14-18 from Ruth Rose in opposition
  - 23G Letter dated 05-14-18, with attachments, from Keith and Cathy Pryor in opposition
- A Exhibits received at hearing
  - A-1 Planning Services' PowerPoint presentation
  - A-2 Proposed site at Walgreen's coverage area map, submitted by Applicant
  - A-3 Proposed site at Nevada/Wellesley coverage area map, submitted by Applicant
  - A-4 Current coverage map for SPO Nevada, submitted by Applicant
  - A-5 Current proposed coverage design map for SPO Nevada, submitted by Applicant
  - A-6 Community meeting summary, submitted by Cathy Prior
  - A-6a Community meeting sign in sheet, submitted by Cathy Prior
  - A-6b Letter dated 01-31-18 regarding community meeting, submitted by Cathy Prior
  - A-6c Email dated 02-25-18 regarding qualifications and new community meeting,  
submitted by Cathy Prior
  - A-6d Letter dated 03-08-16 regarding digital recording failure of community meeting,  
submitted by Cathy Prior
  - A-6e Map of Glass Park, submitted by Cathy Prior

- A-6f Thor Street Cell Project Z14-250CUP2 decision, submitted by Cathy Prior
- A-7 Hardcopy of Cathy Prior's testimony
- A-8 Consumer information about radio frequency emissions, Verizon handout, submitted by Applicant
- A-9 Mono-Pine tower location, submitted by Dave Compton

## 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. 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"). The uses allowed in the Residential zones are shown on Table 17C.110-1. That table does not reference Wireless Communication Facilities. However, there is a separate chapter in the municipal code that specifically governs Wireless Communications Facilities. See SMC 17C.355A.010 *et seq.* According to SMC 17C.355A.030, wireless communication towers are allowed in various zones as described in Tables 17C.355A-1 and 17C.355A-2. According to Table 17C.355A-2, wireless communication towers are allowed in all residential zones, so long as a Type III conditional use permit is obtained. See Table 17C.355A-2; see *also* Exhibit 1, p. 5. The proposed facility must also satisfy the development standards in the wireless code. See Exhibit 1, pp. 5-6. For example, a tower in a residential zone cannot exceed 60' in height, and must use a stealth design. See Table 17C.355A-2. In summary, the proposed use is allowed under the land use codes, so long as the conditional use and other development standards are fulfilled.

The Hearing Examiner concludes 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 comprehensive plan ("CP") contains a limited number of goals and policies which focus on wireless communication facilities. The goals and policies that are present tend to focus on the need to minimize the impacts of such facilities. However, the comprehensive plan also recognizes the importance of strong communication networks. Considering these goals and policies as a whole, the Hearing Examiner concludes that the proposed facility is consistent with the comprehensive plan and therefore should be approved.

Goal CFU 5, Environmental Concerns, seeks to minimize impacts upon the environment through cautious site-selection and use of utilities. See CP, CFU 5, p. 5-16. Policy CFU 5.7, Telecommunication Structures, states the preference to use existing structures to support telecommunications facilities before new towers or stand-alone facilities are constructed. See CP, CFU 5.7, p. 5-18. The policy should be pursued through a number of methods, including encouraging the co-location of multiple carriers on a single support tower, promoting co-location agreement amongst wireless carriers, and the encouraging the use of existing structures

(buildings, water towers, etc.) as support sites for telecommunication facilities before new towers are built. *See id.*

Policy DP 2.20, Telecommunication Facilities, seeks to control the visual impact of telecommunication facilities. *See CP, DP 2.20, p. 8-12.* Therefore, efforts should be made to place support towers as efficiently and effectively as possible, in order to minimize the total number of such sites. *See id.* Again, this policy expresses a desire to co-locate such facilities as much as possible, before any new towers are constructed. *See id.* In addition, the policy encourages the city to require telecommunication sites to utilize visually unobtrusive technology, landscaping and screening techniques whenever possible. *See id.*

In addition, telecommunication facilities play an important role in emergency response. *See Exhibit 1, p. 6; Testimony of R. Michaelis.* This one of the reasons that Verizon employs diesel generators to provide back-up power in the event of a power-outage. *Testimony of R. Michaelis.* Policy CFU 3.4 calls for a regional plan for the provision of public services in the event of natural or man-made disasters. *See CP, CFU 3.4, p. 5-12.*

The proposed project fulfills the objectives described above. There are no other communication towers within the geographical area of need. *See Paragraph 6(a) below.* The Applicant investigated other properties in the area and found, for various reasons, no suitable alternatives. *See id.* The Applicant also did its due diligence regarding the possibilities for co-location, without success. *See id.* If a new tower is not located centrally, according to the need, then additional towers will undoubtedly be needed in the future to address the remaining gaps in coverage. *Testimony of R. Michaelis.* This will promote the proliferation of towers rather than limiting their numbers. *See id.* The new tower will also improve communications for first responders in emergency situations. *See Exhibit 1, p. 6; Testimony of R. Michaelis.*

The Hearing Examiner concludes that the proposal is consistent with the goals and policies of the comprehensive plan. 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 a conditional use permit, state that every project must satisfy the concurrency requirements under SMC 17D.010. *See SMC 17G.060.170(C)(3).* Accordingly, on March 14, 2018, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. *See Exhibit 21.* None of the commenting agencies or departments reported that concurrency was not achieved. *See Exhibit 1, p. 7.* In addition, there was no testimony at the public hearing or evidence in the record suggesting that the concurrency standards would not be satisfied.

The proposal, by its nature, does not place any substantive demands on public infrastructure. *See Exhibit 2B.* For example, there will be no staff on site and no sewer connection to the site. *See id.* Water is only necessary for landscaping. *See id.* There will be approximately 1 vehicle trip per month to the facility. *See id.*

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 property is suitable for a wireless communication facility, based on its physical characteristics. The lot is approximately 5,100 square feet in size. See e.g. Exhibit 2E-2. The property has sufficient area to accommodate the proposed wireless communication facility, which will take up a 50' by 50' space within the lot. See Exhibits 2E-2, 2E-3 & 2E-4. The shape of the parcel is rectangular and poses no development challenges. The property is flat, with the steepest slope being only 1-2% in grade. See Exhibit 14 (Environmental Checklist ¶ B(1)(a)-(b)). There are no wetlands or surface waters on the site. See Exhibit 1, p. 7. There is no reason to suspect that groundwater may be affected by this project, and there is no indication that the soil conditions would interfere with proper drainage of the site. There will be very little impervious surface on the site. See Exhibit 14 (Environmental Checklist ¶ B(3)(c)(1)). Storm water will be contained on site and allowed to percolate into the ground. See *id.*

There are no known historic or cultural resources on the property. See Exhibit 14 (Environmental Checklist ¶ B(13)). The Spokane Tribe of Indians did not comment on the project, suggesting that it had no concerns about the proposal. No other comments raised specific concerns about historic, archaeological, or cultural resources on the site.

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.

On or about January 28, 2018, the Applicant prepared an environmental checklist, pursuant to the State Environmental Policy Act, for this project. See Exhibit 14 (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 14 (Environmental Checklist ¶ B(3)(a)(1)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 14 (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). No threatened or endangered species were identified as being present on or near the site. See Exhibit 14 (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)). 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 14 (Environmental Checklist ¶ B(7)(a)). There are no indications of significant noise, odor, light or glare, other than some temporary impacts during the construction phase. See Exhibit 14 (Environmental Checklist ¶¶ B(7)(b),

B(11) & B(2)(a)). The tower will be constructed with stealth technology, and will be in the form of a "mono-fir." See Exhibit 2E-5. The tower will thus be disguised as a fir tree, better blending in with the neighborhood and reducing the visual and aesthetic impacts of the facility. There will also be substantial landscaping and screening to further mitigate such impacts. See e.g. Exhibits 2E-3 & 2E-4.

On May 16, 2018, the Department of Planning & Development of the City of Spokane, as lead agency, issued a Determination of Non-significance ("DNS") for the project. See Exhibit 13. The city did not attach any mitigating measures to the DNS. Any appeal of the DNS was due on May 30, 2018. See *id.* No appeal of the DNS was filed.

There was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review. That being said, it must be acknowledged that some area residents compiled a rather extensive list of criticisms of the SEPA checklist. See e.g. Exhibits 23E, 23F & 23G (Letters of C. Mercer, R. Rose, & C. Pryor). Having reviewed those contentions, however, the Hearing Examiner remains unconvinced that there are significant environmental impacts which are not being addressed through project mitigation. Moreover, as stated above, the DNS issued by the city was not appealed. Ultimately, then, the city's determination that there are no significant environmental impacts of this project is unchallenged.

Ms. Pryor questioned whether her comments on the environmental impacts were actually considered by the city, in particular given that a DNS was issued the day after her comment was submitted. *Testimony of C. Pryor.* She also stated that the construction would result in significant impacts to the area, due to air pollution and other causes. See *id.* The Hearing Examiner disagrees.

There is no reason to assume that the city did not consider Ms. Pryor's comments. It seems, rather, that the city just disagreed with her contentions. Moreover, it is not unusual for the city to make its threshold determination contemporaneously with the end of the public comment period. In addition, the end of the comment period does not cut off the ability of an objecting party to comment further or even challenge the city's conclusions through a SEPA appeal.

In the end, the Hearing Examiner is inclined to agree with the city. Ms. Pryor did not identify any significant impacts of this project. A review of the checklist suggests that there aren't any. See Exhibit 13. The construction impacts are temporary. Once the construction is completed, the impacts from disturbing the site, operating equipment, etc., will end. In the meantime, basic construction mitigation measures should be sufficient to address the concerns. The completed project will only occupy a small portion of one residential lot. The operation generates virtually no traffic. The back-up generator is utilized sparingly, primarily to ensure operational readiness. The facility itself utilizes electricity to operate, has no regular workforce, and operates silently (with the exception of period generator testing). There are no environmentally sensitive conditions and no apparent impacts on surrounding properties, aside from aesthetics. The aesthetic concerns, however, are addressed by through the development standards and the proposed mitigation measures.



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 proposed cell tower satisfies the decision criteria listed in SMC 17C.355A, governing Wireless Communication Facilities.*

In addition to the conditional use standards set forth in SMC 17G.060.170, the applicant must also satisfy the development standards that are specific to wireless communications facilities. Those standards are found in SMC 17C.355A.

- a) *The proposal satisfies the code requirements related to the location of cell towers. See SMC 17C.355A.050.*

The applicant demonstrated that there were no realistic options for collocation of its proposed facilities on existing towers or other structures, as required by SMC 17C.355A.050(A). That provision of the municipal code sets forth the collocation requirement, stating as follows:

*Tower Sharing and Collocation. New WCF facilities must, to the maximum extent feasible, collocate on existing towers or other structures of a similar height to avoid construction of new towers, unless precluded by zoning constraints such as height, structural limitations, inability to obtain authorization by the owner of an alternative location, or where an alternative location will not meet the service coverage objectives of the applicant. Applications for a new tower must address all existing towers or structures of a similar height within 1/2 mile of the proposed site as follows: (a) by providing evidence that a request was made to locate on the existing tower or other structure, with no success; or (b) by showing that locating on the existing tower or other structure is infeasible.*

In this case, the applicant explored the available options for collocation of its facilities on an existing tower or structure. The applicant identified three potentially viable, alternative locations for a facility. Specifically, those locations are (1) Rogers High School; (2) a city water department building at Hoffman and Crestline; and (3) an existing Crown Castle tower, located at the intersection of Crestline and Wellesley. Upon exploring these options further, it became clear that none were viable options for the proposed facility. See Exhibit 2B, p. 5.

Rogers High School was the preferred location and would serve the area perfectly. *Testimony of R. Michaelis.* As a result, the applicant contacted District 81 and requested permission to install a facility in that location. See Exhibit 2G-3. The school district declined to give its permission. See *id.*

The applicant also contacted the city regarding the placement of a facility on the water department building at Hoffman and Crestline. See Exhibit 2G-1. The city responded, for technical reasons, that construction of a wireless communication facility would not be allowed at that location. See *id.* In addition, the water department building is only 25' tall and wouldn't have met the coverage objectives. See Exhibit 2B, p. 5. "The building is too low and too far from the center of the search ring" to be a viable option. See *id.*

The applicant also explored the option of installing its facility on the existing tower at Crestline and Wellesley. See Exhibit 2B, p. 5; see also Exhibit 2G-2. However, the Crown Castle tower did not have sufficient capacity, at the necessary height, for the proposed facility. See *id.* In addition, the Crown Castle site did not have sufficient space for the ground equipment. See *id.* The site is also too far from the center of the search ring, undercutting its viability. See Exhibit 2B, p. 5.

At the hearing, the applicant presented additional information regarding two other, hypothetical<sup>1</sup> locations: (1) the Walgreens near the intersection of Wellesley and Crestline; and (2) at a gas station at Nevada and Wellesley. See Exhibits A-2 & A-3. Coverage maps demonstrated that in each case there would be substantial gaps in coverage if the facilities were placed in these locations. See *id.* Thus, these sites are too far from the center of the search ring to be considered viable. *Testimony of R. Michaelis.* Placing towers in such location would also necessitate placing another tower somewhere else to resolve the gap in coverage. See *id.* Thus, such options may lead to additional towers being sited. See *id.*

There was also testimony that the proposed facility should be located in one of the area parks. *Testimony of C. Pryor.* However, the Parks Department does not permit WCFs to be located in city parks. *Testimony of D. Compton & R. Michaelis.*

The municipal code also ranks the preferred tower locations in a specific order of priority. In a residential zone, towers shall be installed on the following sites, ranked from most preferred to least-preferred: (1) city-owned or operated property and facilities that are not in or near residential zones; (2) industrial zones and downtown zones; (3) city-owned or operated property and facilities in any zone, so long as the proposed tower will be inconspicuous from public areas or residential properties; (4) Community Business and General Commercial zones; (5) office and other commercial zones; (6) other City-owned or operated property and facilities; (7) parcels of land in residential zones; and (8) sites in residential zones on or within 150 feet of a designated historic structure or district. See SMC 17C.355A.050(B). The proposed location for this tower is a residential parcel. Thus, there are 6 types of properties which would be preferred before the proposed site should be considered.

No city-owned property was found in the relevant area that satisfied preference nos. 1 or 3. See Exhibit 2B, p. 6. The search area does not contain any industrial or downtown zoned property. See *id.* Similarly, the closest CB or GC property is located at Northtown, which is too far to be a viable option and is located near another Verizon WCF. See *id.* Thus, there are no viable options which satisfy preference nos. 2 or 4. See *id.*

The closest non-residential zone in the area are two pockets of NR35 (Neighborhood Retail) property. See Exhibit 2B, p. 6. These properties are located at Nevada and Wellesley and Crestline and Wellesley. See *id.* The options for these locations have already been discussed and discounted. The city water department building, the Crown Castle tower, as well as the Walgreens and the gas station, have all been determined to be deficient sites. Moreover, the

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<sup>1</sup> The applicant has not requested permission to place a cell tower on either of these sites. It is not known whether the owners would grant such permission, or whether there are other conditions at these sites that may preclude the placement of a wireless communication facility.

water department building is the only “other City owned or operated property” that exists in the area. As a result, there are no viable options for preference nos. 5 or 6.

Based upon these conclusions, it is apparent that the proposed site is the only viable option available to the applicant. The applicant has therefore demonstrated the location requirements of the municipal code have been satisfied.

b) *The applicant has satisfied the application submittal requirements. See SMC 17C.355A.060.*

The applicant submitted the required materials as part of its application for a wireless communication facility. The record includes the mandated FCC documentation. See Exhibits 2I & 2J-2. The applicant enlisted a Washington engineer to prepare complete and accurate site plans for the project. See Exhibit 2E. A visual analysis was prepared and submitted. See Exhibit 2H. That analysis included photo simulations of the visual effect of the WCF facility, both before and after construction. See *id.* A radio frequency analysis was also submitted, detailing the purpose and need for the proposed facility, along with the required maps and other documentation. See Exhibits 2J-1 & 2J-2. The applicant submitted a clear and detailed written analysis to justify the location and design of the proposed facility, in light of the provisions of the municipal code. See Exhibit 2B. Both in its written submissions and testimony, the applicant thoroughly considered alternative sites and collocation opportunities in the area, and the viability of those options based upon coverage data. Finally, the application included written consent from the property owner for the placement of the facility. See Exhibit 2A.

The one item of the application that seems to have been omitted is a noise study. According to the submittal requirements, Type III applications for a WCF “shall include” a “noise study, prepared, signed and sealed by a Washington-licensed engineer, for the proposed WCF and all associated equipment in accordance with the Spokane Municipal Code.” See SMC 17C.355A.060(l).

The applicant’s analysis of the submittal requirements seems to acknowledge that no noise study was completed. The applicant appears to make two arguments in support of this omission. First, the applicant contends that the facility is “quiet except for a backup emergency generator that will run for 20 [minutes] per week during the daylight hours and during power outages.” See Exhibit 2B, p. 8. Apparently, the applicant is suggesting that no noise study is required because sound emanating from the site will be minimal.

Second, the applicant argues that the proposed facility is exempt from the noise ordinance. SMC 10.08D.040 provides that the sounds identified in WAC 173-60-050 are exempt from the noise restrictions. See Exhibit 2B, p. 8. WAC 173-60-050(4)(f) exempts sounds “created by emergency equipment and work necessary in the interests of law enforcement **or for health safety or welfare of the community.**” See *id.* (emphasis in original). On the basis of these provisions, the applicant argues that the facility is exempt from the noise restrictions because the “backup generator will keep the WCF operational during power outages and benefit the health, welfare, and safety of the community.” See *id.*

The Hearing Examiner rejects these arguments. The municipal code provides, in mandatory terms, that a Type III application for a WCF "shall include" a professionally-prepared noise study. See SMC 17C.355A.060(I). This is a mandatory component of the application itself. The applicant's prediction that little to no noise will be generated at the site does not satisfy this requirement. Even if the Hearing Examiner was inclined to believe the prediction, the Hearing Examiner does not have authority to ignore or overlook code requirements.

The Hearing Examiner is similarly unconvinced that the project is exempt from the noise restrictions. The noise study requirement is specific to the WCFs. The exemption cited by the applicant, by contrast, applies generally to "emergency equipment" and "work necessary" for the health, safety, and welfare of the community. A broadly worded exception from noise restrictions cannot properly be interpreted to extinguish the more specific requirement for a noise study. In addition, if the drafters intended the exemption to apply to WCFs, it would have been a simple matter to explicitly state as much in the exemption. The Hearing Examiner concludes that the more specific code provisions, applicable to WCFs, control on this issue.

The Hearing Examiner also believes that the exemption is intended to apply in narrow circumstances in which noise must be generated to address emergency or other extraordinary circumstances. In emergency situations, for example, loud noises generated by emergency equipment or other work necessary to respond to the emergency will not give rise to noise violations. This exemption appears to have little relationship to the decision whether or not to approve the construction of a wireless communication tower. The tower placement, in other words, is an ordinary land use matter. The application requirements must be addressed, including the completion of a study concerning the noise generated during operations at the site.

Based upon the foregoing, the Hearing Examiner's approval of this project will be conditioned on the completion of a noise study satisfying the requirements of the municipal code. With that condition, the proposal satisfies the requirements of SMC 17C.355A.060.

*c) The proposal satisfies the general development standards applicable to wireless communication facilities. See SMC 17C.355A.070.*

SMC 17C.355A.070 sets forth the general development standards applicable to WCFs. The proposed WCF satisfies these standards or will do so, given the project conditions.

The proposed tower is 60' tall, which is the maximum height allowed in the RSF zone. See SMC 17C.355A-2. This satisfies the height restriction of the development standards. See SMC 17C.355A.070(A).

The proposed tower will employ "breakpoint technology." *Testimony of R. Michaelis.* Because of this design element, the required setback is reduced. When such technology is used, the tower setback is 110% of the distance from the top of the structure to the breakpoint level of the structure. See SMC 17C.355A.070(B)(2). The project conditions will require adherence to this standard.

Landscaping will be employed for screening and to mitigate the visual impacts of the proposed WCF. See Exhibits 2E-4 & 2E-5. The monopole will be disguised as a fir tree, in order to better blend with the surrounding environment. See Exhibits 2E-5 & 2H. This is a type of "stealth technology," which is intended to lessen the visual or aesthetic impacts of the project. Thus, the proposal properly addresses the development standards concerns, landscaping, visual impacts, and the use of stealth technologies. See SMC 17C.355A.070(C)-(E).

For new towers, only lighting that is necessary to satisfy FAA requirements is permitted. See SMC 17C.355A.070(F). There is no evidence that such lighting is needed at this site. See Exhibit 2B, p. 8.

The project will be required to satisfy the noise restrictions established in SMC 10.08D.070. See SMC 17C.355A.070(G). As discussed above, the applicant will be required to complete a noise study to demonstrate such compliance.

No signage or advertisements are proposed for the facility. The applicant will only utilize signage which is required by law or expressly permitted/required by the City. See Exhibit 2B, p. 9. Thus, the proposal satisfies the standards for signage. See 17C.355A.070(H).

In residential zones, all equipment will be located or placed in an existing building, underground, or in an equipment shelter that is designed to blend in with the surroundings and is located so as to be as unobtrusive as possible. See SMC 17C.355A.070(L). Here, the equipment on the ground will be in an enclosed area, surrounded by wooden fencing and landscape screening. See Exhibit 2B, p. 9; see also Exhibits 2E-4 & 2E-5. The equipment will also be located toward the rear of the lot, so that the facilities are set back and blend better with the surrounding area. See Exhibits 2E-3 & 2H.

There are other development standard applicable to the project as well. The project conditions explicitly state that the applicant must comply with all the development standards in Chapter 355A. The Hearing Examiner concludes that the project complies or will comply with the development standards applicable to WCFs.

*d) The proposal fulfills the additional criteria which apply when a wireless communication facility is subject to a conditional use permit. See SMC 17C.355A.080.*

To justify the installation of a wireless communication tower in or near a residential zone, a genuine need for the facility must be demonstrated. See SMC 17C.355A.080(A)(1). To satisfy this burden, the applicant is required to present evidence showing "...that no practical alternative is reasonably available to the applicant." See *id.* The proposed tower must also satisfy all the provisions and requirements of chapter 17C.355A. See SMC 17C.355A.080(A)(2).

The applicant has demonstrated a need for the facility. The record includes the testimony and documentary evidence demonstrating that an additional WCF is needed to address a gap in cellular coverage in this area. The radio frequency analysis submitted by the applicant provides specific data to demonstrate the need for the proposed facility. Moreover, as is discussed in some detail above, the applicant has exercised the proper due diligence and has submitted confirming evidence to show that there are no practical alternatives to the selected site. The Hearing Examiner has also concluded that the proposal, as conditioned below, satisfies all the

applicable criteria of the WCF chapter of the municipal code. The Staff concurs, concluding that the proposal meets all the requirements of 17C.355A. See Exhibit 1, p. 8. As a result, the additional requirements of 17C.355A.080(A) are satisfied.

Proposals within or near residential zones also must satisfy additional notice requirements. The public notice for these types of proposals must include a "black and white architectural elevation and color photo simulation rendering of the proposed WCF." See 17C.355A.080(B)(1). The sign required by SMC 17G.060.120(B) the architectural elevation and color photo simulation that is selected by the City to depict the visual impact of the proposal. See 17C.355A.080(B)(2).

The Hearing Examiner concludes that the additional notice requirements have been addressed. The applicant prepared the required architectural drawings and color photo simulations, which are included in the record. See Exhibits 2E-5 & 2H. The applicant also posted the required signage. See Exhibit 10B & 11B. Staff confirmed that all procedural requirements were followed. *Testimony of D. Compton*. There was no testimony or evidence presented at the hearing that the notice or signage was lacking. The Hearing Examiner concludes that this criterion is fulfilled.

7. *The wireless communication facility should be approved, with appropriate conditions, even though members of the public raised legitimate concerns about the project.*

Comments concerning the proposal raised a variety of issues, both procedural and substantive matters. Many of the comments are addressed, directly or indirectly, in the foregoing discussion of the criteria for approval. The remaining issues, to the extent they are material to this case or warrant a separate discussion, are addressed below.

*Community Meeting.* Ms. Pryor raised the objection that the community meeting was not properly documented by the applicant. *Testimony of C. Pryor*.

A community meeting was held for this project on December 21, 2017. See Exhibit A-6. The community meeting summary states that a "recording of the meeting is available upon request." See Exhibit A-6. However, it turned out that the digital recorder used at the original community meeting had failed and therefore no recording of the meeting was available. See Exhibit A-6d. The applicant subsequently advised the city that a new community meeting would be set up so that a recording of the meeting could be obtained. See Exhibit A-6b. However, there is no documentation regarding the new meeting and no recording of the new meeting is apparently available. *Testimony of C. Pryor*.

Based upon this record, the Hearing Examiner concludes that the second community meeting did not actually take place. Thus, to the extent the lack of a recording of the first community meeting creates a defect in the process, that defect was not cured. Having said that, the Hearing Examiner concludes that the lack of recording for the first community meeting does not create a jurisdictional defect which is fatal to the application or which requires the applicant and the city to start over.

The applicant followed the required steps for conducting a community meeting. The notice included the requisite information. See Exhibit 8. The notice of the community meeting was mailed all parcel owners within 400 feet of the site. See Exhibits 7 & 10A. The site was posted with notice of the community meeting. See Exhibit 11A. The meeting was conducted on December 21, 2017. The applicant submitted the sign-in sheet from the meeting, as well as summary of the discussion. See Exhibits 16 & 17. The meeting was recorded, although the applicant acknowledged that an equipment failure occurred. See Exhibit A-6d. The question is whether the lack of a recording of the meeting, by itself, renders the entire process a nullity. The Hearing Examiner answers this question “no,” for the reasons that follow.

The community meeting is a relatively informal process that is intended to give the public an opportunity to learn about a project. No decisions are made at a community meeting. Rather, the community meeting is intended to be informational, as well as to open a dialog between a sponsor and community members. The meeting is not the only opportunity for comment on a project. Comments can be submitted during the public comment period as well as at the public hearing. Written comments can be submitted at any time prior the close of the record at the conclusion of the public hearing on the project. There is no evidence in this case that anyone was deprived of the genuine opportunity to learn about the project, to comment on its effects, or to lodge appropriate objections. The lack of the recording simply would not materially impact the community’s ability to meaningfully participate in the process.

The municipal code does not specify the appropriate remedy for the lack of a recording of a community meeting. The community meeting was actually conducted, with appropriate notice in advance. The only insufficiency concerns not whether a meeting was conducted, but only the procedures to document the meeting. The recording is absent, due to an equipment malfunction, but there is other information in the record to both memorialize the meeting and to inform others about the substance of the meeting. Although there was an objection to the absence of the recording, there was no evidence or argument presented to demonstrate how the lack of the recording resulted in any prejudice to those concerned about the project. There was ample opportunity to participate in the process, raise concerns, or lodge objections after the community meeting. The Hearing Examiner concludes that the absence of the recording is not a jurisdictional defect that is fatal to the legal sufficiency of the process.

*Potential Health Impacts of WCF Emissions.* Council Member Fagan testified that the city council is currently considering the potential health impacts related to WCF emissions. *Testimony of M. Fagan.* He explained that a third-party field test was being conducted at a different WCF in Spokane. *See id.* He requested that the decision on this application be deferred pending the results of that field test. *See id.* He also suggested that the Hearing Examiner contact the City Attorney to obtain information on the status of the pending study. *See id.* Written comments were also received that raised objections or concerns about the potential health effects of WCFs. See Exhibit 23C (Letter of C. Giglio).

For several reasons, the Hearing Examiner must respectfully decline Council Member Fagan’s request to defer the matter pending the outcome of the referenced field-test. Under

federal law, the Hearing Examiner is not authorized to deny an application for a WCF based upon the alleged health effects from EMI/RFI emissions. All parties who testified on the matter agreed with this conclusion. *Testimony of C. Pryor, R. Michaelis, D. Compton, & M. Fagan.* Thus, the outcome of the field-test has no bearing on the decision whether or not to approve the proposed facility. Given this reality, it is not proper to await the test results before rendering a decision.

That aside, the Hearing Examiner does not have sufficient information about the field-test to consider it anyway. No information was provided about the testing company/firm or the carrier. There is no way to know whether the WCF being tested is of the same type or quality. The methodology, location, duration, or scope of the test is unknown. It was not clear if or when the test would be completed. The Hearing Examiner cannot do independent research to fill the gaps in information. The Hearing Examiner cannot investigate the facts or interview potential witnesses after the hearing and outside the public eye. The Hearing Examiner's role is to evaluate the evidence gathered in the file and presented at the hearing. The record is now closed and a decision is pending. The decision must be made based upon the information which has been made a part of the record.

*Engineer's Stamp and Qualifications.* Ms. Pryor contended that the engineering stamp was missing from site plans and the RF study. *Testimony of C. Pryor.* She challenged the completeness or validity of the application on this basis. *See id.* The Hearing Examiner rejects these claims. As the applicant's agent noted, the site plans in the record are preliminary in nature. It is standard practice to prepare conceptual drawings at this stage in a land use process. When the plans are put into final form for construction, they will be certified by an engineer's seal. In addition, it is not the standard practice for an engineer to place a seal on an RF study. *Testimony of R. Michaelis.* Other than the alleged lack of professional certification, Ms. Pryor had no other bases to challenge the accuracy or validity of the plans or RF information. The Hearing Examiner concludes that the information submitted by the applicant was sufficient and complete.

Ms. Pryor also stated that the file failed to include the RF engineer's qualifications. While it is true that there is no CV in this record, there is a statement of qualifications for the engineer. *See Exhibit 2J-1.* This statement is sufficient. There is no evidence in this record that calls the engineer's qualifications into question.

*Liability Insurance.* Ms. Pryor criticized the terms for the liability insurance that was being obtained for the facility. *Testimony of C. Pryor.* She claimed that the amount of coverage and the risks to nearby residents were both significantly underestimated. *See id.* She asserted that nearby residents may experience injury, dismemberment, or even loss of life, and that the insurance would not be sufficient to compensate for such calamities. *See id.*

The Hearing Examiner is not persuaded by these assertions. Ms. Pryor is not, to the Hearing Examiner's knowledge, an expert on insurance or risk analysis. She is also not a structural engineer, a materials engineer, or an expert on the construction of cell towers. Ms. Pryor's statements about the risks posed by the facility and the dangers to the public are speculative and conclusory. The record does not contain any reliable information suggesting that



there are serious risks from the proposed facility. Ms. Pryor did not present any expert testimony which would support her claims. The Hearing Examiner does not believe that there is any concrete basis to conclude that the nearby residents are at risk for serious injury, dismemberment or death because of the proposed tower. Nor is there sufficient information to establish that, because of such risks, the insurance coverage must be established at a specific level. Ultimately, the Hearing Examiner concludes that the decision on this application does not turn on insurance issues.

*Alley Improvement.* Ms. Pryor contended that the project should be conditioned on paving the alley providing access to the rear of the site. *Testimony of C. Pryor.* She stated that the same condition was imposed with respect to a WCF on Thor Street, and thus there is no reason the same condition should not apply here. *See id.*

The Hearing Examiner declines to impose a paving condition. Every case is decided on its own merits. In this case, the Traffic Engineering Department determined that no paving was necessary or required. *See Exhibit 5.* There is nothing in this record establishing that paving the alley is necessary to address the impacts of this project. There is no general rule mandating that an alley access to a WCF must be paved. Ms. Pryor testified that a city engineer advised her that heavy equipment can damage the gas line which is in the alley. However, she did not establish that Verizon's planned use of the site involved heavy equipment or otherwise posed a genuine risk to the gas line. Instead, she relied upon the fact that a paving condition was included for the Verizon tower on Thor. The Thor project may have been treated differently for a myriad of reasons, including the fact that the property has a commercial zoning. Ms. Pryor failed to explain why the two sites or projects should be treated exactly the same way. In the absence of that foundation, the Hearing Examiner is not inclined to consider the matter in greater detail.

*Bee Colonies and Bird Navigation.* Ms. Pryor submitted some information suggesting that emissions from WCFs may be the cause of the collapse of bee colonies. *See Exhibit 23G.* She also referenced information suggesting that WCFs interfere with the natural capacity of birds to navigate during migration. *See id.* Council Member Fagan offered comments in support of the theory WCF emissions hinder bird navigation, although he suggested that WCF emissions were not the likely cause of bee colony collapse. *Testimony of M. Fagan.*

The Hearing Examiner does not believe there is a rational basis to evaluate these types of claims without the input of live, expert testimony. Lay opinions based upon news articles or internet research, for example, is not sufficient to establish precisely how WCF emissions impact bee colonies or bird navigation. Many questions come to mind, but no answers are apparent on this record. What studies conclude that these impacts occur, and what methodologies were employed to reach the conclusions? What is the probability of such impacts occurring from this project? Do the alleged impacts have anything to do with tower height, power levels, or the number of antenna arrays, for example? What impacts can be attributed to a single, 60' tower, as distinguished from all the other WCFs scattered throughout the metropolitan area? Are there any effective mitigation measures, assuming that the alleged impacts could be specifically proven? These kinds of questions are not addressed. To attempt to answer these questions, on this

record, would be guesswork. In summary, in the absence of expert testimony and supporting scientific information, the Hearing Examiner is not inclined to consider such claims.

*Fencing, Screening, and Criminal Activity.* There was substantial testimony concerning the plans to fence and landscape the facility. The municipal code contains requirements for landscaping and fencing in order to minimize the impacts on a residential area. See e.g. SMC 17C.355A.070(C). The testimony at the hearing, however, focused on the need for visual access in order to deter and prevent criminal activity.

Mr. Hansen, an area resident, testified that the leased area should be visible from at least one side, so that criminal behavior could be seen. *Testimony of C. Hansen.* He suggested that the side which is facing Wellesley should be open to view. See *id.* Officer Roberge, of the Spokane Police Department, raised similar concerns. He explained that low visibility and a relatively short fence would make the site an ideal place for criminal behavior, and that this was particularly worrisome because the site is located across the street from a vulnerable population. *Testimony of Officer Roberge.*

Ms. Pryor suggested that the visibility was more important on the alley-side of the site. *Testimony of C. Pryor.* She suggested those engaged in criminal behavior tended to use the alley access. See *id.* However, Officer Roberge testified that the majority of the traffic is on the Wellesley side, and thus the visibility is needed from that position, rather than from the alley. See *id.* In addition, there will be a gate on that alley-side to allow Verizon workers to gain access. *Testimony of D. Compton.* This will provide some visual access from the alley.

Ms. Wybomey, the Principal of Rogers High School, also raised a concern about student safety. She testified that there would be a large number of students near the site, and that the fence should be constructed to safely deter, as much as possible, students from entering the leased area. *Testimony of L. Wybomey.*

The provisions governing wireless facilities are intended to minimize the impacts on nearby residences. As discussed previously, strategies to minimize the impacts include fencing, landscaping, screening, and stealth technology. Aesthetic impacts were also clearly considered. For example, chain link fencing cannot be used to enclose a WCF in a residential zone. See SMC 17C.355A.070(C)(2). Somewhat ironically, however, the concern here is that a fully fenced/screened facility will unintentionally create an ideal location for the criminal element to operate. And, with the high school across the street, this puts a particularly vulnerable population at greater risk.

The Hearing Examiner found the concerns raised to be compelling. As a result, the Hearing Examiner will include a condition intended to increase the visibility into the site, on the Wellesley side. This will improve the ability of the SPD and others to see into the site, and report, detect, or prevent any inappropriate behavior or criminal activity. In this particular case, the Hearing Examiner concludes that some flexibility in the design is necessary to better serve the public interest.

*Small Cell Facilities.* One of the objections to locating the WCF on the proposed site was that small cell facilities should be used instead. See e.g. Exhibits 23C (Letter of C. Giglio). Ms. Pryor supported this idea in her testimony, stating that there were other options for providing cell service, including small cells. *Testimony of C. Pryor.* On this record, the Hearing Examiner does not find that small cell facilities are a realistic option.

There was no specific evidence presented that small cell facilities were actually available to provide the needed service. Mr. Michaelis testified that there were no small cell facilities in actual operation in the area. *Testimony of R. Michaelis.* The installation of small cells is being done in anticipation of future markets (i.e. on speculation). See *id.* In addition, he also pointed out that small cells do not act as a substitute for a “macro” site, but only supplement those facilities. See *id.* The Hearing Examiner finds this evidence to be convincing. There is no basis to deny the proposal due to the potential use of small cells. Small cell facilities are neither a substitute for the proposed facility nor available at this time.

### **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 Verizon Wireless to construct a wireless communications monopole, which will use stealth technology (i.e. a “mono-fir”), built to a maximum height of 60 feet, along with related facilities. The project will be developed in substantial conformance with the plans that were submitted at the time of application for this conditional use permit.
2. The “mono-fir” will employ a high density pattern of artificial branches to better camouflage the monopole. For purposes of this condition, “high density” means 2.5 to 3 “branches” per foot, depending upon the manufacturer’s specifications for the type of stealth technology that is utilized.
3. The applicant shall comply with all other requirements of the Spokane Municipal Code which relate to wireless communication support structures and related facilities, including but not necessarily limited to the provisions of SMC 17C.355A.070(A)-(O) (e.g. setbacks, screening, lighting, landscaping and the continued maintenance of the same).
4. The fence around the equipment area will be at least 8 feet high. The setbacks from the property lines may need to be adjusted to permit an increase in the height of the fence. The fence will be designed to be resistant to and to deter climbing, to the extent practical given the other applicable requirements. The portion of the proposed fence which faces Wellesley Avenue (i.e. the portion of the fence running east-west and parallel to the front lot line, which shields the ground equipment and part of the monopole from being viewed from Wellesley Avenue) will be re-designed to permit sufficient visibility into the equipment area to facilitate the detection, reporting, and response to criminal activity. The landscaping plan will also be revised to facilitate visibility into the equipment area from the public right-of-way. The applicant will submit a revised plan for landscaping and fencing to the City of Spokane Planning Department for review and approval. The Planning Department, in consultation with the Spokane Police Department, will review the

revised plan(s) to determine whether they comply with the landscaping, fencing, and other development standards intended to address the visual and aesthetic impacts of WCFs, while also ensuring that the site does not create a space conducive to carrying on criminal enterprise without detection. The Planning Department and SPD will work with the applicant to develop or revise the design and select the materials that will achieve this objective. However, the choice of a materials must be consistent with the terms of SMC 17C.355A.070. Chain link fencing, for example, is not allowed.

5. The applicant shall submit to the Planning Department a noise study for the proposed WCF and all associated equipment, in accordance with the requirements of SMC 17C.355A.060(I). The Planning Department shall determine whether the noise study sufficiently demonstrates that the proposed facility will operate in compliance with the municipal code. Compliance with the noise limitations contained in the municipal code is a condition of this approval.

6. Any wireless communication facility that is no longer needed and its use is discontinued shall be immediately reported by the service provider to the Planning and Development Director. Discontinued facilities shall be completely removed within six months and the site restored to its pre-existing condition.

7. All surface drainage must be disposed of on-site in accordance with the Spokane Regional Stormwater Manual.

8. A certificate of occupancy will only be granted upon satisfactory evidence that the WCF was installed in substantial compliance with the approved plans and photo simulations. If it is found that the WCF installation does not substantially comply with the approved plans and photo simulations, the applicant shall immediately make any and all such changes required to bring the WCF installation into compliance.

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. 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.

11. 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.

12. 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.

13. 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.

14. 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 3<sup>rd</sup> day of July, 2018.



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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 ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is three days after a written decision is mailed by the local jurisdiction. This decision was mailed on July 3<sup>rd</sup>, 2018. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 27<sup>th</sup> DAY OF JULY 2018 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.