

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Conditional Use Permit and Variance ) FINDINGS, CONCLUSIONS,  
Applications by the City of Spokane ) AND DECISION  
Engineering Services to construct a water )  
tower at 2105 E. 32<sup>nd</sup> Avenue ) FILE NO. Z19-001CUP3

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The City of Spokane Engineering Services proposes to construct a 2,000,000 gallon (approximate size) reservoir on a vacant lot with associated site piping and a small single-story building for reservoir controls. The proposed reservoir will be 100 feet tall. Due to the proposed height of the structure, a variance is required in addition to the conditional use permit (CUP).

**Decision:** Approved, with conditions.

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

**Applicant/** City of Spokane Engineering Services  
**Owner:** 808 West Spokane Falls Boulevard  
Spokane, WA 99201

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

**Property Location:** The proposed site is located at 2105 E. 32nd Avenue, Parcel No. 35332.3112.

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

**Comprehensive Plan Map Designation:** The property is designated as Residential 4-10 in the Comprehensive Plan for the City of Spokane ("CP")

**Site Description:** The site is located at 2105 E. 32nd Avenue and is owned by the city. The site is approximately 2.03 acres in size and is irregular in shape. The site is undeveloped and consists mostly of solid rock. The proposed location of the reservoir is a relatively flat area of solid rock, which is also the highest part of the site. The highest part of this site is also one of the highest points on the South Hill. The remainder of the site is generally sloped. Some areas have a slope of 16%-30% in grade.

**Surrounding Conditions and Uses:** The land to the south, east, and west of the site is zoned RSF. The land to the north is zoned Residential Multi-Family (RMF). To the northeast is an area zoned Center and Corridor Type 1 (CC1). To the immediate north are some residential condominiums. To the west is the Touchmark Retirement campus. To the northeast are offices. To the immediate south and southwest is undeveloped land that is currently being proposed for

residential development. Slightly farther to the south, southwest, and southeast are existing residential areas.

**Project Description:** The City of Spokane Engineering Services is proposing a new reservoir that will be approximately 2,000,000 gallons in size and 100 feet in height. The proposal also includes site piping and a small single-story building (maximum of 20 feet × 20 feet) for reservoir controls. The reservoir is needed to provide a more reliable drinking/fire suppression supply to Spokane's South Hill. The applicant is also requesting a height variance to accommodate the 100-foot height needed to match the other reservoirs in the same pressure zone. This is required in order to fill all reservoirs equally.

### **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(C) and (E)(1), Decision Criteria.

**Notice of Community Meeting:** Mailed: November 27, 2018  
Posted: November 27, 2018

**Notice of Application/Public Hearing:** Mailed: February 19, 2019  
Posted: February 19, 2019

**Community Meeting:** December 12, 2018

**Public Hearing Date:** March 7, 2019

**Site Visit:** March 6, 2019

**SEPA:** A Determination of Nonsignificance (DNS) was issued by the City of Spokane Engineering Department on December 19, 2018. Any appeal of the DNS was due on January 2, 2019. No appeal was filed.

#### **Testimony:**

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

Dan Buller, P.E.  
City of Spokane Wastewater Department  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

Rick Boal  
2026 E. 30<sup>th</sup> Avenue  
Spokane, WA 99203

#### **Exhibits:**

1. Planning Services Staff Report
2. Application, including:
  - 2A General application
  - 2B Conditional Use application

- 2C Variance application
- 2D Notification Map application
- 3. Request for Comments letter dated 01/02/19
  - 3A Department of Ecology dated 01/15/19
  - 3B Lincoln Heights Neighborhood Council dated 01/15/19
  - 3C Planning & Development dated 02/27/19
- 4. Determination of Nonsignificance "DNS" dated 12/19/18
  - 4A SEPA Environmental Checklist dated 12/17/18
- 5. Parcel Listing
- 6. Notice Map
- 7. Notice of Community Meeting instructions dated 11/16/18
  - 7A Notice of Community Meeting
  - 7B Affidavit of Mailings dated 11/27/18
  - 7C Affidavit of Posting property dated 11/27/18
  - 7D Affidavit of Posting dated 11/27/18
  - 7E Affidavit of Removal of Public Sign dated 12/13/18
  - 7F Community Meeting Sign in Sheet
  - 7G Community Meeting Presentations
  - 7H Community Meeting Overview
- 8. Public Comment dated 02/27/19
- 9. Notice of Application Instructions dated 02/07/19:
  - 8A Notice of Application & Public Hearing
  - 8B Affidavit of Mailings dated 02/19/19
  - 8C Affidavit of Posting on property dated 02/19/19
  - 8D Affidavit of Posting dated 02/19/19
- A Exhibits received at the hearing:
  - A-1 Hardcopy of Planning's PowerPoint presentation
  - A-2 Time-lapse Videos of Sun Movement and Shadow Effect
  - A-3 High Systems Storage Alternative Preliminary Design Report
  - A-4 City of Spokane Water System Plan
  - A-5 2019-2024 Citywide Capital Improvement Plan

## **FINDINGS AND CONCLUSIONS**

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

To be approved, the proposed CUP must comply with the criteria set forth in SMC Sections 17G.060.170(C) and 17C.320.080(F). The Hearing Examiner has reviewed the proposed CUP 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 RSF, a residential category. The uses allowed in the residential zones are shown on Table 17C.110-1. See SMC 17C.110T.001. The table does not specifically

identify water towers, reservoirs, or related infrastructure among the regulated uses. See Table 17C.110-1. However, those uses are elsewhere identified as Basic Utilities, an institutional category of use. Examples of Basic Utilities include water and sewer pump stations, sewage disposal and conveyance systems, water towers and reservoirs, water quality and flow control facilities, water conveyance systems, and stormwater facilities and conveyance systems. See SMC 17C.190.400(C). SMC 17C.110.110 provides that any new buildings that house a basic utility are required to obtain a CUP, which this processed as a Type III application. See Exhibit 1, p. 3; see also SMC 17C.110.110(C).

The land use codes permit Basic Utilities, such as the proposed project, to be constructed in the RSF zone, so long as the project satisfies the criteria for a conditional use and the other development standards in the SMC. The Hearing Examiner finds that this criterion is satisfied.

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

The project site has a Residential 4-10 designation under the CP. While the provisions describing this land use designation do not directly address utilities, residential uses and developments certainly require adequate infrastructure for water service. There are various provisions in the CP that directly support this premise.

For example, the first goal of the Land Use element of the CP memorializes the objective of providing coordinated, efficient, and cost-effective public facilities and utility services. See CP, Goal LU 1, Citywide Land Use. Policy 1.12 of the Land Use element recognizes that adequate public facilities and systems must exist to accommodate proposed development, and must be installed before development is permitted to occur. See CP, Policy LU 1.12, Public Facilities and Services.

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

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

See CP, Policy CFU 1.2, Operational Efficiency. In addition, CFU 1.3 calls for the maintenance, rehabilitation, and renovation of existing facilities. See CP, Policy CFU 1.3, Maintenance.

The project satisfies the foregoing goals and policies by providing a more reliable supply of water for domestic use and fire suppression for the area. See Exhibit 1, p. 3. For example, Washington State Department of Health (WSDOH) regulations require additional storage in the City's high-pressure system to provide adequate fire flow. See Exhibit 4A (Environmental Checklist ¶ A(11)). These requirements prompted the need for this project. *Testimony of D. Buller.*

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

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

The decision criteria for Type III decisions (such as a CUP) mandate that all proposals satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Under the concurrency standards, facilities for public water must be evaluated for concurrency. See SMC 17D.010.010(B). Accordingly, on January 2, 2019, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction.

The city received limited responses to its request for comments. See Exhibits 3A-3C. Upon reviewing the comments, City staff noted that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 4. To the extent that there was a lack of substantive comments from departments and agencies with jurisdiction, the Hearing Examiner must conclude that concurrency standards are satisfied. See SMC 17D.010.020(B)(1); see also Exhibit 3.

A review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. There was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied. The proposal, by its nature, does not place substantive demands on public infrastructure. If anything, the proposal improves public facilities by increasing the City's capacity to provide water. See Exhibit 4A (Environmental Checklist ¶ B(15)).

The Hearing Examiner finds that the project satisfies the concurrency requirements of the SMC. Therefore, this criterion for approval of the CUP is met.

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

The site selected for the proposed reservoir is well-suited to the proposed use. The site is at the highest point on the South Hill, and it is mostly solid rock making it an ideal site to situate a reservoir. See Exhibit 1A, p. 4. The site is also located within several hundred feet of the large diameter transmission main that connects other reservoirs in this zone to the primary source of supply, the Lincoln Heights Booster Station, which makes it an ideal location hydraulically. See *id.*

The site is approximately 2.03 acres in size, and is irregular in shape. See Exhibits 2A & A1. Although the shape of the property is irregular, the site is sufficiently sized to accommodate the proposed water tower and associated facilities. See Exhibit 2C (maps). The site largely consists of solid rock and contains challenging topography. However, because the proposal is for a water tower, the area of relatively high elevation and solid rock actually provide an ideal platform for the proposed use. *Testimony of D. Buller.*

There is no surface water on this site, and no impacts to surface water are anticipated. See Exhibit 4A (Environmental Checklist ¶ B(3)(a) & (c)(2)). It is acknowledged that the site is located within the Aquifer Critical Area Recharge Zone and must comply with the aquifer protection measures contained in SMC 17E. See Exhibit 1, p. 4. However, no impacts to

groundwater are anticipated from this project. See Exhibit 4A (Environmental Checklist ¶ B(3)(b) & (c)(2)).

The project does not alter drainage patterns from the site. See Exhibit 4A (Environmental Checklist ¶ B(3)(c)(3)). The site stormwater will be collected, treated, and disposed of in accordance with the Spokane Regional Stormwater Manual (SRSM). See Exhibit 4A (Environmental Checklist ¶ B(3)(c)(1) & (d)).

There are no known cultural or historic resources on this site that warrant against approval of the proposal. See Exhibit 4A (Environmental Checklist ¶ B(13)).

The Hearing Examiner concludes that this site is a proper location for the proposed utility, given the physical characteristics of the property. As a result, this criterion for approval is satisfied.

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

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

On or about December 17, 2018, the City of Spokane prepared an environmental checklist, pursuant to SEPA, for this project. See Exhibit 4A (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 the site. See Exhibit 4A (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 4A (Environmental Checklist ¶ B(3)(a)(5)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 4A (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). With the exception of the initial painting of the tank with paint that may be described as a hazardous chemical, no other 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 4A (Environmental Checklist ¶ B(7)(a)). No threatened or endangered species were identified on the site. See Exhibit 4A (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)).

The only environmental impacts that are apparent from this project concern aesthetics and light. The proposed tower will be approximately 100 feet tall, and thus will be visible from a significant distance. The proposed location is relatively close to a row of condominiums along 30<sup>th</sup> Avenue, immediately north of the site. The water tower will result in additional shade that will affect those residences to varying degrees. The shade from the water tank will be most significant during the winter months when the sun is lower in the sky, resulting in longer shadows off of the water tank. In the Hearing Examiner's estimation, some shade is inevitable from this structure, given its height and mass, as well as the proximity to the homes to the immediate north. Having said all that, there are still compelling reasons to approve this project, even though some impacts appear to be unavoidable.

Despite the concerns, the Hearing Examiner believes that the impacts of a water tower are not so great that the project should be denied. There will undoubtedly be disproportionate

impacts to adjacent residences. However, the public good calls for taking a wider perspective when evaluating this type of facility. There are tradeoffs and competing interests involved in most property developments. Perhaps the tradeoffs are more dramatic or obvious in a case like this one. Here, for example, health regulations compel the need to upgrade the high-pressure water system in order to provide proper fire flow to approximately 50,000 homes on the South Hill. On the other hand, a handful of residences adjacent to the site will experience periods when the sunlight to their properties is diminished or cut off because of the proposed tower. Views in the vicinity will also be diminished by this type of structure. These kinds of impacts are nearly inevitable when placing a tall water tank in a residential area.

The neighbors who are most affected by this proposal recognized this reality. For example, Mr. Boal stated that the neighbors did not dispute the City's "right to erect water towers for the public good." See Exhibit 8. Ms. Walker acknowledged that the proposal was being driven by the public need for water. See *id.* Both had various concerns about the project impacts as well, but there was no explicit call to deny the project outright. Another homeowner, Ms. Tomsic, focused on mitigating measures, such as color, art, and the shape of the tank, among other things. See *id.* Again, the point here is that the project serves the greater good, although it must be acknowledged that there is a genuine and direct impact on some nearby residents.

Water reservoirs, of various shapes and sizes, are a part of residential living in a city. These facilities can be somewhat difficult to locate, given the technical requirements. The location of the proposed water tower is the highest point on the South Hill, and happens to provide a solid rock platform for construction. This location also provides an ideal location to upgrade the high-pressure system, which requires that all such tanks have a matching height. *Testimony of D. Buller.* These facilities cannot readily be relocated in order to eliminate the potential impacts to neighbors. See *id.* For example, if the proposed facility was moved to Hamblen Park, other residences that surround the park would also experience shading from the tower. See *id.*

The residences to the immediate north of the site naturally lack sunlight already. Several of the residences are constructed in a draw that is below the ridge to the south and 30<sup>th</sup> Avenue to the north. This southern ridge is lined with mature pine trees as well, creating additional shade, although light naturally filters through the trees as well. Thus, there is already, naturally, a lack of sunlight to these residences. The addition of a water tower will exacerbate the problem. However, this is not a situation in which a water tower is built on flat ground and surrounded by residences. The impact will be fairly concentrated to a relatively small area, and the impact will vary depending on the season and time of day.

The neighbors did not contend that there were "significant" impacts within the meaning of SEPA. The lead agency, City of Spokane Engineering Services, issued a DNS for the proposal on December 19, 2018. See Exhibit 4. No comments were submitted during the comment period for the DNS. In addition, any appeal of the DNS was due on or before January 2, 2019. See *id.* There was no appeal of the DNS. For purposes of the SEPA analysis, therefore, the potential aesthetic impacts or reduction in sunlight cannot be deemed "significant."

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

6. *The overall residential appearance and function of the area will not be significantly lessened due to the construction of utilities and infrastructure. The project will not result in the construction of improvements that are disproportionate to the residential household uses in the surrounding area. See SMC 17C.320.080(F)(1).*

The proposed reservoir, associated piping, and accessory building are part of an expansion of the water system that serves the South Hill. The proposed water tower will ensure sufficient water supply and fire flow for residences in the area, including the nearby homes. Water reservoirs of various shapes and sizes co-exist with residential development in many parts of the City. One example is the concrete water tower located near the intersection of 37<sup>th</sup> Avenue and Stone Street, which is not far from the proposed site. The residential neighborhood is developed in all directions from that facility. In other words, the construction of basic utilities that serve the residential development is an expected part of the landscape in an urban, residential area. Such utilities enable residential development to occur in the first place, and are essential to the public health, safety, and welfare. For this reason, the Hearing Examiner concludes that the proposed facility is consistent with the residential appearance and function of the area.

Having concluded that the water system is essential to the existence of residential neighborhoods, the Hearing Examiner also concludes that the proposed water tower should not be considered "disproportionate" to the nearby residential uses. It is obvious that a 100-foot water tower is not proportionate in size to any individual residence. However, such facilities are constructed in proportion to a demonstrated public need and, as such, are proportionate to the size and density of the residential uses in a service area. To a certain degree, the Hearing Examiner concludes that the standards requiring proportionality are intended to address other types of government or institutional uses. The construction of a water tower, in other words, has some unique characteristics and functions that must be considered.

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 site of the proposed facility is 2.03 acres. Depending on the final design, the footprint of the water tower will occupy between 40 square feet and 80 square feet, using approximate numbers. *Testimony of D. Buller.* A small building for reservoir controls is also proposed. See Exhibit 1, p. 2. However, that building will be no more than 20 feet x 20 feet in size. See *id.* As a result, the amount of ground occupied by the footprint of the proposed structures is relatively small, at least in relation to the area of the whole site. In addition, the remainder of the site will remain as open space, in its natural state. The relatively small footprint of the structures along with the preservation of open space are characteristics that make the project compatible with nearby residential uses. That being said, the proposed utility, by its nature, will stand out in contrast to the surrounding residences.

The proposed water tower cannot reasonably be screened through traditional methods, such as landscaping or setbacks. The proposed tower is 100 feet tall, and its scale is governed by the need to store a sufficient amount of water to maintain the proper capacity and flow. It is simply too tall to screen with fences or trees, for example. The height is dictated by the need to match the elevation of other tanks that form a part of the high-pressure system. *Testimony of D. Buller.* If the tank is moved to the south, for example, the tank will need to be taller to compensate for the lower elevation of that part of the property. See *id.* As a result, relocating the

tower within the property won't achieve the goal of making the tank less visible, but it will complicate the construction of the tower considerably. *See id.*

Given the nature of the project, certain characteristics cannot realistically be modified, such as the scale of the water tower and the height. There is some flexibility in the design, such as selecting between the "Coke-can shaped" and the "mushroom shaped" tower. *See id.* It is also possible to select colors that better blend with the sky or surroundings. Nonetheless, the project will result in a large reservoir being constructed relatively close to residential uses, and that structure will admittedly affect the view and light available on nearby properties, during certain times of the day or year. *See id.*

Despite the limited options to mitigate the impacts, the Hearing Examiner concludes that the project is compatible with adjacent residential developments. The shadow cast by the tank will directly impact a limited number of residents. Most of the residential users surrounding the site will not experience those types of impacts. By using a "spheroid" or "mushroom" design, more light will be allowed to filter through to the adjacent residences to the north. This is because the "stem" of the "mushroom" is 40 feet at the base, but narrows to approximately 25 feet before flaring out to the tank above. *Testimony of D. Buller.* This design will allow more light to pass, at least between ground level and approximately 35 feet high. *See id.*

Setting aside the design features, it should be reiterated that the proposed facility will ensure that all the residents within the pertinent pressure zone have an adequate supply of water, in particular for fire flow. This type of utility is essential to the public health, safety, and welfare because it is a critical part of the infrastructure to respond to a fire emergency. There are inevitably going to be some trade-offs, such as impacts to view, that arise when a facility of this nature is constructed. The public need should take precedence in cases like this, however, especially when the proposed facility serves some 50,000 residents throughout the South Hill.

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 Hearing Examiner concludes that the project will not impact the livability of nearby residential lands due to the conditions listed in the SMC. For example, the only noise anticipated from this project is due to the construction activity. *See Exhibit 1, p. 6.* However, that noise source is temporary. *See id.* Once the project is completed, no significant source of noise will exist.

There will be some lighting at the tower. However, any overhead lighting is required is to be contained on site pursuant to the SMC. *See SMC 17C.110.520.* There was some concern about emergency lights to warn aircraft of the position of the structure. *Testimony of R. Boal.* It was anticipated, however, that such lighting would be on top of the tank and not visible to the nearest residences. *Testimony of D. Buller.*

The project will not include late night operations, except in the event of an emergency. *See id.* In addition, the operation of a water tank does not generate odor. *See id.* No litter or garbage is generated on site. *See id.*

The proposal itself does not raise any concerns about privacy, and there was no evidence or testimony suggesting any ways in which the new reservoir could create such concerns. There was a comment raising a question about whether a large tank in close proximity to nearby

homes creating a safety hazard, for example, if the structure collapsed. However, the City Engineer pointed out that structures of this type are constructed to exacting standards, and are designed to withstand high winds, earthquakes, and other natural forces. *Testimony of D. Buller.* In addition, the City Engineer emphasized that there are hundreds of these types of tanks throughout the country, and he could find no empirical evidence of tanks falling or collapsing and causing damage to neighbors. *See id.* There was no specific evidence introduced to demonstrate that water towers, such as the one proposed, present a genuine safety concern. The Hearing Examiner is satisfied that the project does not create any public safety hazards.

The Hearing Examiner concludes that 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).*

The proposal is to construct utility infrastructure. As a result, factors such as connectivity, circulation, and transit availability are not particularly relevant to the proposal or the nature of the use.

Traffic generated from the utility operation is minimal. *Testimony of D. Buller.* It is estimated that there will be one or fewer trips per day to the site. *See Exhibit 4A (Environmental Checklist ¶ B(14)(f)).* The area transportation system will easily accommodate the proposed use. The project does not decrease the level of service of any adjacent street. *See Exhibit 1, p. 6.* No improvements to the transportation system are necessitated because of this proposal. *See Exhibit 4A (Environmental Checklist ¶ B(14)(d)).* Undoubtedly for these reasons, no traffic study was required for this proposal. *See Exhibit 1, p. 6.*

As discussed above on the issue of concurrency, there are adequate public services to support the proposed use. In fact, with respect to water service, the project is intended to increase the capacity and performance of public services.

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

## **B. Variance**

To be approved, the proposed variance must comply with the criteria set forth in SMC Section 17G.060.170(E)(1). The Hearing Examiner has reviewed the proposed variance and the evidence of record with regard to the application and makes the following findings and conclusions:

- a. *The variance or modification of the standard or requirement is not prohibited by the land use codes. See SMC 17G.060.170(E)(1)(a).*

The question here is whether the land use codes specifically forbid the Hearing Examiner from granting the requested deviation from the 35-foot height limitation applicable in the RSF zone. The Hearing Examiner did not find any such prohibition in the land use codes. Staff also verified that there is no prohibition against utilizing a variance to increase the height of a structure beyond the 35-foot restriction. *See Staff Report, p. 7.* As a result, the Hearing Examiner concludes that this criterion for approval is met.

- b. *No other procedure is provided in this chapter to vary or modify the standard or requirement, or compliance with such other procedure would be unduly burdensome. See SMC 17G.060.170(E)(1)(b).*

Staff confirmed that there are no other provisions in the SMC that allow for an increase in the height for a basic utility. See Staff Report, p. 7. The Hearing Examiner is not aware of any procedures to increase the height of a structure other than a variance. Because there are no other reasonable options, this criterion for approval is satisfied.

- c. *Strict application of the standard or requirement would create an unnecessary hardship due to the physical characteristics of the land. See SMC 17G.060.170(E)(1)(c).*

The Hearing Examiner concludes that a variance from the strict application of the development codes is proper under the circumstances of this case. The City proposes to construct this water tower in order to satisfy the requirements of the WSDOH. See e.g. Exhibits A3 & 7G. In particular, the proposed water tank will ensure that the water system has sufficient capacity to maintain the necessary fire flow for residences on the South Hill. See *id.* The 100-foot height of the water tower is necessary in order to ensure that the top of the tank is at the same elevation as the other water reservoirs that make up the high-pressure system. *Testimony of D. Buller.* In this way, the pressure from the system is in balance and the system will operate properly. See *id.*

The proposed location of the water tank is a city-owned parcel, which is currently natural, open space. Within the site is a basalt formation that is the highest point on the South Hill. *Testimony of D. Buller.* This basalt “platform” is an ideal place to support a water tank. See *id.* The high elevation ensures that the tank is high enough to match the other reservoirs in the high-pressure system. See *id.* However, if the tank was moved to another part of the site, such as to the south, the bottom of the tank would be at a lower elevation. See *id.* This would require the construction of a taller tank in order to compensate for the difference. See *id.* To properly function, the tops of the reservoirs in the high-pressure system need to be the same. See *id.* Moving the proposed tank to a lower elevation would also complicate the construction project considerably due to the steep slopes, undoubtedly requiring additional excavation, leveling, and support. See *id.* The unique topography of the site coupled with the technical requirements of this type of utility justify the granting of a variance from the height limitation of the zone.

The Hearing Examiner’s research revealed very few cases that provided any direct guidance on the situation presented by the City’s variance application. The Hearing Examiner did not discover any Washington cases, for example, that discussed an application for a height variance related to a water tank or a similar utility. However, there is some authority for granting a height variance, most notably with respect to a cellular tower. In one such case, the City of Medina challenged a hearing examiner’s decision approving a special use permit and a height variance<sup>1</sup> for a wireless communication tower. See *City of Medina v. T-Mobile USA*, 123 Wn.App. 19, 95 P.2d 377 (2004). In *T-Mobile*, the hearing examiner concluded that a 55-foot cell tower was necessary to provide adequate coverage to Medina residents. See *T-Mobile*, 123 Wn.App. at 30. The hearing examiner determined that a height variance for the tower was justified because of the existing vegetation and topography of Medina required the structure to be that high. See *id.* The Hearing Examiner believes that the conclusion reached in *T-Mobile* is instructive here.

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<sup>1</sup> T-Mobile also applied for variances for setbacks and to locate support equipment above ground. However, those variance requests are not particularly relevant to this decision.

From *T-Mobile*, it is clear that exceeding the height limit was justified in large part by the fact that the tower needed to be a certain height in order to function properly. A cell tower cannot transmit through earth and vegetation. The structure must be high enough to achieve an unobstructed line-of-sight between transmission sites. The other important factor in the case was the existing topography and vegetation, which created the special circumstances that warranted a deviation from the zone code requirements. The same reasoning applies to this case. The proposed water tank cannot function properly unless it is constructed to an elevation that matches the other water towers that make up the high-pressure system. Constructing the tower in this manner ensures that the proper fire flow can be maintained throughout the system. The construction of the proposed tower is, therefore, affected by not only the topography of the site, but the topography of the area. This is fairly analogous to the placement of cell towers as described in *T-Mobile*. For similar reasons as stated in that case, then, the variance for the proposed water tower should be approved.

Although there were no Washington cases directly on point, the Hearing Examiner did find a couple of cases from other jurisdictions that are worth discussing. For example, a fairly similar set of circumstances was described in an unpublished<sup>2</sup> decision by the Superior Court of Connecticut. See *Regional Water Authority v. Zoning Board of Appeals*, 1998 WL 560385. In that case, the water authority proposed to replace an existing water tank. The existing water tank was 60 feet in height and had a capacity of 800,000 gallons. See *Regional Water Authority*, 1998 WL 560385, p. 1. The tank was designed to serve 12,000 people. See *id.* However, the tank remained in operation and was being used to serve 50,000 people with drinking water and fire protection, despite the fact that many of those people lived at an elevation higher than the existing tank. See *id.*

Because of the inadequate size and height of the existing water tank, the water authority proposed to replace the existing tank with a 90-foot tank having a capacity of 1,000,000 gallons. See *Regional Water Authority*, 1998 WL 560385, p. 2. A variance was required for this proposal because the proposed tank exceeded the height limit<sup>3</sup> of the residential zoning. See *id.*, p. 2. The Zoning Board of Appeals (“Board”) denied the water authority’s request for a variance<sup>4</sup> to install a water tank that exceeded the height limits of the zoning code. The variance was denied because the Board “felt that [the proposed tank] was not appropriate for this zone and other locations could have been considered in industrial areas.” See *id.* The water authority appealed the denial of its variance application.

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<sup>2</sup> A decision by a Connecticut court is not controlling in Washington. In addition, an unpublished decision is typically considered to have no precedential value, even in the jurisdiction where the decision is issued. Nonetheless, given the paucity of relevant cases, it is worth discussing a decision that has so much in common with the situation presented here.

<sup>3</sup> In the R-18 zone, there is a general height limitation of 35 feet. See *Regional Water Authority*, 1998 WL 560385, p. 2. However, the regulations provided that water tanks were allowed an additional 15 feet, resulting in a total height limit of 50 feet. See *id.* The existing tank was 60 feet in height, but was only allowed because it was a legal, nonconforming use. See *id.* Under the nonconforming use rules, the existing tank could be replaced with another 60 foot tank. See *id.* However, the height of the existing tank was inadequate, even at 60 feet. The Water Authority found it necessary to seek a variance to authorize a 90-foot tank.

<sup>4</sup> The water authority actually submitted two different applications for a variance. In two separate votes, the Board voted 3-2 in favor of granting each variance application. See *Regional Water Authority*, 1998 WL 560385, p. 2. However, the voting rules required at least four affirmative votes to approve a variance. See *id.* Because four votes were not obtained, the Board was required to deny the applications. See *id.* To be clear, only the second request for a variance is relevant to the Hearing Examiner’s analysis, so only that request is discussed in this decision.

The court reversed the Board, finding that its conclusions were not supported by the record. See *id.*, p. 5. The court also emphasized:

*The fact that the plaintiff could have considered other locations for the water tower in no way relates to pertinent considerations regarding exceptional difficulty, unusual hardship, special circumstances of the land or the welfare of the public.*

See *id.* The court concluded that the water authority demonstrated that because of the low elevation of its property, enforcement of the zoning regulations resulted in an exceptional difficulty or unusual hardship. See *id.* (Acknowledging that peculiar topography may justify a variance). The court also found that its conclusion was supported by the broader policies and public interests implicated by this type of proposal. The court explained:

*...the plaintiff maintains the unique and arduous responsibility of providing a vital public utility water supply to the City of Milford, and the plaintiff has demonstrated that the granting of the variance would do substantial justice and secure the public safety and welfare by providing the most reliable method of accomplishing this task. Indeed, the Court is concerned with the reliability of the existing water tank to provide an adequate water supply to the city at peak demand, especially for purposes of fire protection. Concerns for public health and safety dictate that the Court consider this issue in determining the propriety of the present appeal.*

See *id.*, p. 6.

The situation faced in *Regional Water Authority* is very similar to the circumstances presented in this case, and the Hearing Examiner finds the court's analysis of the issues to be persuasive and relevant.

Like the situation here, the utility proposed a water tank in a residential zone and the tank is nearly three times the height allowed in the zoning. The tank was necessary, not only to increase the capacity to serve the population, but also to ensure adequate fire flow. That is precisely the situation in this case. In that case, the additional height of the tank was necessary to ensure the water supply could adequately serve the area, including residents whose homes were at a higher elevation than the site. Here, the height of the tank is necessary because the system cannot operate properly unless the tops of all the high pressure tanks in the zone are basically even. To keep the tank's overall height to the minimum, the proposed location of the tank is the highest elevation on a site. This point also happens to be the highest point on the South Hill. The site also contains steep slopes, which makes placing the tank on other parts of the site even more challenging. Thus, the peculiar topography of both the site and the area, together with the technical demands of this type of utility, demonstrate that unique conditions exist in support of a variance. Finally, like the Connecticut case, there is an overriding public interest component to this case. The need to maintain adequate fire flow for the thousands of residents on the South Hill should not be ignored, in particular given the unique requirements for these types of facilities.

In another illustrative case, a water company filed an application to build a water basin on two of its lots. See *Baird v. Board of Zoning Appeals*, 347 Ill.App. 158, 106 N.E.2d 343 (1952). Those lots and the surrounding property were zoned for single-family dwellings. See *Baird*, 106 N.E.2d at 344. The proposed facility was described as follows:

*The proposed basin will have a concrete wall eight feet above the surface of the ground, and will be one hundred twenty-five feet by ninety-two feet. The west side of the basin will*

*be located within thirteen feet of the west side of the Baird home, and will extend from the north line of Baird's front porch south along his entire house and continue on his west lot line for a distance of about a hundred feet.*

See *id.*, at 344. It was acknowledged that a variance<sup>5</sup> was required to authorize this project. See *id.*, at 345. Under the zoning ordinance, a variance could only be granted if the applicant could demonstrate, among other things, that the proposed variance would not impair an adequate supply of light and air to adjacent property and that the proposed variance would not unreasonably diminish or impair established property values within the surrounding area. See *id.*, at 347.

The building inspector for the city refused to issue the permit, concluding that the proposal was inconsistent with the zoning ordinance. See *id.*, at 345. The water company appealed that decision to the Zoning Board of Appeals ("Board"). See *id.* The Board approved a variance from the zoning ordinance and granted the permit. See *id.* In reaching its decision, the Board determined that the State Board of Health had concluded that the facilities should be expanded as a matter of public health and welfare; that the proposed plan was the most reasonable, convenient, and economical plan for the construction of the basin; and that the proposed basin would not impair the adequate supply of light and air to adjoining property or unreasonably impair established property values. See *id.* The neighboring property owner, Mr. Baird, appealed this decision to the Circuit Court, and then later to the Appellate Court. See *id.*

On appeal, Mr. Baird contended (among other things) that granting the variance would prevent him from receiving an adequate supply of light and air and would unreasonably impair property values. See *id.*, at 349. After considering the evidence, the Appellate Court concluded that Mr. Baird did not satisfy his burden of proof on appeal. See *id.* The Appellate Court acknowledged that Mr. Baird would be impacted by the project, but ultimately found that the impacts to his interests were justified under all the circumstances. The Appellate Court explained:

*We think it is necessary and reasonable for the public convenience and welfare of the people of Kankakee that this clarifying basin be constructed. It is unfortunate that Mr. Baird will be hurt by this improvement. On the other hand it is imperative that public service companies furnish adequate service for the people. Congestion of people in urban life requires zoning ordinances and variances from the strict letter of the same for the welfare and happiness of the people. Individual rights and precious liberties are often unjustly restricted, both in one's way of life and financially, by police power regulations. Public welfare for the good of all is of first importance, and for the public good our complex society at times demands numerous regulations, deprivations of liberty, and property damage without compensation.*

See *id.*

The situation in *Baird* also has some parallels to this case. In that case, the wall of the basin would be only 13 feet from Mr. Baird's house. After the construction, Mr. Baird's view on that side would be a concrete wall, 8 feet tall and 100 feet long, along much of the border of his property. Mr. Baird objected to the loss of light and air that would result. The neighboring property owners in this matter have similar concerns about the loss of views and diminished sunlight that will occur, to some degree, due to the proposed water tank. In both *Baird* and this case, there is

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<sup>5</sup> It should be noted that this case does not involve a variance from a dimensional standard, such as height. By the Hearing Examiner's review of the case, it appears that the proposal seeks a use variance.

an inherent tension between public needs and private interests, as well as apparently limited options to mitigate the burdens placed on individual homeowners. And in *Baird*, the court concluded that while the homeowner will be impacted to an extent, there are sometimes unavoidable tradeoffs in land development, and sometimes the public interests must take precedence. Ultimately, the Hearing Examiner believes the court's reasoning applies to this case as well.

For the reasons discussed above, the Hearing Examiner concludes that strict adherence to the height restrictions of the RSF zone would create a substantial hardship to the applicant. As a result, this criterion for approval of the variance is satisfied.

- d. *The following objectives are reasonably satisfied: (i) surrounding properties will not suffer significant adverse effects; (ii) the appearance or use of the property will not be inconsistent with the development patterns of the surrounding property; and (iii) the ability to develop the property in compliance with other standards will not be adversely affected. See SMC 17G.060.170(E)(1)(d).*

The Hearing Examiner concludes that all of the objectives of SMC 17G.060.170(E)(1)(d) are reasonably satisfied by this proposal.

The surrounding properties will be impacted by the proposed water tower. The neighbors' views will be negatively affected by the structure. The proposed tower will also cast a shadow that will especially impact the properties directly to the north. The degree to which the neighbors' sunlight will be affected varies with the time of day and the season, but the fact that there will be an impact cannot be ignored. Nevertheless, the Hearing Examiner concludes that the surrounding properties will not "suffer significant adverse effects."

The properties impacted by shadows are already affected by limited light, as has been previously discussed. There is an existing berm to the south of these properties, and a line of mature trees. These natural features already limit the light coming to those properties. The tank will cause some additional decrease in the light filtering to those properties. However, the impact is lessened to an important degree by the hydrosphere design suggested by the city. In the winter, under existing conditions, a relatively narrow band of light passes over the berm to the south of the condominium properties because the sun is quite low in the sky. *Testimony of R. Boal*. Because the base of this design is narrow, it allows more light to pass the structure and reach the surrounding properties. *Testimony of D. Buller*. This allows more light to pass through to the south, mitigating the loss of light in the winter months. *Testimony of D. Buller*.

The city prepared a video model showing the degree of shadowing caused by the proposed water tower. See Exhibit A2. By the Hearing Examiner's review, the hydrosphere design certainly mitigated the loss of light reaching those homes. The video model also demonstrated that there were times of year, such as in the summer, when the impact on nearby properties was minimal. See *id*. The model also demonstrated that the shadows were being cast over those properties due to natural conditions as well as the location in which those homes were constructed. See *id*. The construction of the proposed tank will certainly have an impact, but not one so significant that the project should not proceed.

The proposed utility will not be inconsistent with the development patterns of the surrounding area. Here, the idea of "consistency" with the surrounding area needs to be considered in context. The proposal is for a Basic Utility. It is not a residential development of similar density, types, or features as the nearby neighborhood. But that does not render the

proposal "inconsistent" with the neighborhood, in the Hearing Examiner's view. The proposal is a utility that provides the water necessary for domestic use as well as fire protection to the surrounding residences. The utility directly serves the residential uses on the South Hill. In addition, utilities of this type are not only allowed in the residential areas, they provide a necessary service for residential use. Basic Utilities are commonplace in the neighborhoods in the city, including the area near the proposed site. The water tank at Garden Place, on 37<sup>th</sup> Avenue, is a prime example. The Hearing Examiner concludes that the proposed utility is an important component of the water system that enables residential development to take place in the first instance. The presence of such utilities is, therefore, consistent with the development patterns of the surrounding area.

The proposed use will result in the property being used for a water tower and a control building, along with associated piping. The remainder of the property will be kept in a natural state, and thus it will not be developed with other uses (e.g., a residential subdivision) that could be pursued given its zoning classification. Nonetheless, the variance criteria require the Hearing Examiner to consider whether granting the variance will undermine the ability to develop the property in compliance with other applicable standards. In this case, the Hearing Examiner answers this question in the negative. Allowing the construction of the water tower does not prevent the city from complying with other development standards in the event the remainder of the property is developed. There was no evidence introduced that granting a variance would have such an effect. In any case, this is largely a hypothetical question. Here, it cannot be anticipated that the property would be used for anything other than utility purposes, once the tank is constructed. The city will have made a multi-million dollar investment into the public infrastructure. By that point, the use of the property is established on a 50-100 year horizon.

- e. The variance does not allow or establish a use that is not permitted in the underlying district, or modify or vary a standard or requirement of an overlay zone, unless a specific provision allows for such variance. See SMC 17G.060.170(E)(1)(e).*

The project site is zoned RSF. The land use codes permit Basic Utilities, such as the proposed project, to be constructed in the RSF zone. This conclusion was thoroughly discussed in Paragraph A.1 above of this decision. Thus, approving the requested variance does not authorize a use that is otherwise disallowed in the applicable zone. In addition, approving the requested variance does not result in the modification of a standard found in an overlay zone. See Exhibit 1, p. 8. The Hearing Examiner finds that this criterion is satisfied.

### **C. Other Issues.**

*Public Comments.* None of the public comments received on the project directly called for the flat denial of the water tower project. However, several concerns were raised about the impacts to the neighborhood, and some suggestions for mitigation measures were also submitted.

The neighbors had a myriad of concerns about the proposed water tower. A primary concern was the impacts to views and the potential loss of light. See e.g. Exhibit 8 (E-mail of D. Walker 2-28-2019, 8:36 PM); see also Exhibit 3B; see also Exhibit 7H (comments during community meeting). Several comments focused on the potential impacts of the construction work, including noise from trucks and equipment, noise from site preparation (e.g. blasting rock), and traffic. *Testimony of R. Boal.* Some neighbors sought assurances that the City would be responsible for property damage that might occur due to the tank leaking or falling, or from other unanticipated events. See Exhibit 8 (E-mail of D. Walker 2-28-2019, 8:36 PM); see also

Exhibit 3B (comment of Lincoln Heights Neighborhood Council). There was also a request to retain access to the trails on the site, and to preserve as many trees as possible. See Exhibit 8 (E-mail of C. Tomsic 3-5-2019, 10:43 PM); see also Exhibit 3B (comments of Lincoln Heights Neighborhood Council).

The Hearing Examiner finds that these issues are sufficiently addressed by this project. The impacts to view and light have been discussed elsewhere in this decision. The project will result in some inconvenience arising from construction. However, the impacts of construction are temporary and can be mitigated through typical construction management practices. Moreover, the traffic to and from the site will not be extensive, given the nature of the project. *Testimony of D. Buller.* Once the project is completed, traffic to and from the site will be minimal, and the water tank itself does not create noise or other disturbances.

The project plans do not call for tree removal. The City was candid that the project may result in the removal of some trees, but there is no intention to engage in extensive tree removal. *Testimony of D. Buller.* In addition, once the project is completed, the trails will again be available for use by the public. See *id.* Obviously, the installation of a large tank will impact the aesthetics of the area, but the remainder of the site will be set aside as natural, open space.

No evidence was presented to show there was a genuine risk to neighbors for tank leaks or tank collapse. There was no expert testimony describing the risks. However, the project engineer testified that the engineering included extensive safety factors and that there was no evidence of these kinds of tank failures occurring in other parts of the country. *Testimony of D. Buller.* The Hearing Examiner found this testimony to be convincing. Any suggestion that a future tank may collapse or cause other property damage was speculation.

Neighboring owners also suggested they may be entitled to certain legal remedies due to the damages from the project. For example, Mr. Boal suggested that the neighbors directly affected by the tank should be compensated for the diminished property values. *Testimony of R. Boal.* Ms. Walker requested a reduction in her property taxes, in compensation for the negative impact of the tank on her property value. See Exhibit 8 (E-mail of D. Walker 2-28-2019, 8:36 PM). Mr. Boal also suggested that the city should pay for the installation of additional windows, skylights, or full-spectrum light systems in residences that will suffer from reduced sunlight. *Testimony of R. Boal.*

The legal remedies requested by the neighbors are beyond the Hearing Examiner's jurisdiction. Even if the Hearing Examiner did have the authority to review damage claims, the record is insufficient to consider the issue. The specific impact on any particular property was not described with anything more than general observations or concerns. There was no expert testimony, for example, identifying the affected properties, describing the values of each parcel before and after the construction, or supporting any opinions with data. It is not even clear that the project impacts a recognized property interest. For example, the neighbors do not have a legal "right" to light, to the Hearing Examiner's knowledge. Ultimately, these issues cannot be addressed at the administrative level. As a result, the Hearing Examiner cannot consider these issues further.

*Tank Design.* At the hearing, the City presented information which focused primarily on two alternative tank designs. The two designs were referred to as the "Coke-can" design (more formally the "standpipe" type) and the "mushroom" design (specifically the "water spheroid" or "hydrospheroid"). The City requested that the final choice regarding the design type be left to its discretion. However, the Hearing Examiner is not inclined to leave this design choice for a later

date, in particular given that the Hearing Examiner is required to make a decision on the application based upon the information collected to the date of the hearing. In addition, given the nature of the structure, the options to mitigate the impacts of this project are very limited. The Hearing Examiner believes the tank type should be determined as part of this decision.

The spheroid type was the only tank design that maximized the amount of light that could pass through to the residences to the north. Admittedly, this design only allowed light to pass around the relatively narrow (25 feet in diameter at its narrowest point) stem for the first 35 feet of its height. However, a "Coke-can" (standpipe) design would block all light behind its much wider base (approximately 80 feet in diameter), for its full height. In addition, the rock plateau, which is the proposed location for the tank will accommodate the spheroid design without significant rock removal (e.g., heavy jackhammer work or blasting). The plateau is not large enough, however, to fit a "Coke-can" tank without more extensive rock removal. Thus, the impacts to the neighbors from the construction work will be greater with the "Coke-can" design. These differences are important given that the variance criteria specifically provide that the granting of a variance should not have undue impact on neighboring properties. In order to reduce such impacts as much as possible, the spheroid design should be employed.

### **DECISION**

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

1. Approval is for a condition use permit and variance to allow the City of Spokane Engineering Services to construct a new water tank (reservoir) and associated facilities at the property located at 2105 E. 32<sup>nd</sup> Avenue.
2. This approval is for the type of water tank identified in Exhibit 7G as a "Water Spheroid" (under Reservoir Types Considered) and as generally depicted in Figures 9 ("Hydrospheroid") and 10 of Exhibit A3.
3. The site shall be developed in substantial compliance with the plans submitted with the application, SEPA, as well as comments received on the project from City Departments and outside agencies that reviewed the project for concurrency.
4. The project will be developed in substantial conformance with SMC 17C.110.500, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with, and limit the negative impacts on surrounding residential areas.
5. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the Planning & Development Department 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. The project shall adhere to any additional performance and development standards documented in comment or required by City of Spokane, Spokane County Washington State, and any Federal agency.

## 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.

7. 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 25<sup>th</sup> day of March, 2019.



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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 March 28<sup>th</sup>, 2019. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 18th DAY OF APRIL 2019 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.