

## CITY OF SPOKANE HEARING EXAMINER

Re: Preliminary Plat Application by ) FINDINGS, CONCLUSIONS,  
Whipple Consulting Engineers, ) AND DECISION  
Inc. to subdivide a portion of one )  
parcel into 138 new single-family ) FILE NO. Z190145PPLT  
lots on roughly 53.69 acres )

### SUMMARY OF PROPOSAL AND DECISION

**Summary of Proposal:** The Applicant is proposing to subdivide approximately 53.69 acres into 138 single-family lots, in a plat to be known as "Woodridge View 3<sup>rd</sup> Addition."

**Decision:** Approved, with *revised* conditions.

### FINDINGS OF FACT BACKGROUND INFORMATION

**Applicant** Todd Whipple  
Whipple Consulting Engineers, Inc.  
21 S. Pines Road  
Spokane Valley WA 99206

**Owner:** MSSK Holdings, LLC  
944 E. 30<sup>th</sup> Avenue  
Spokane WA 99203

**Property Location:** The subject property is a portion of parcel 26155.0002, northeast of the existing Woodridge development and east of Indian Trail Road.

**Legal Description:** The legal description of the property is provided in Exhibit 8C.

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

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

**Site Description:** The subject property is at the municipal boundary in the Indian Trail neighborhood, northeast of Weiber Road. The proposed project is a subdivision of a portion of one parcel into 138 single-family lots, with a site size of approximately 53.69 acres. Currently the site is vacant, and a portion of the site is heavily treed. The parcel contains the Woodridge water reservoir. The proposed plat creates a separate parcel for the water reservoir. Portions of the site are very steep with much of the property designated at between 16% and 30% slope on the City's GIS map. To the north and east are undeveloped parcels in the County; to the south and west sit previously built phases of the Woodridge plat.

**Surrounding Conditions and Uses:** The adjacent zoning to the south and west of the site is RSF. The properties to the north and east are in the County and are zoned Urban Reserve. The nearby properties in the County are undeveloped. The adjacent uses in the City consist of single-family homes (or platted single-family lots to be built upon soon), except for the water tank that sits at the southern end of the proposed site.

**Project Description:** The Applicant is proposing to plat 138 new single-family lots adjacent to the previously approved Woodridge View plats, all situated east of Indian Trail Road.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code (SMC) 17C.110, Residential Zones; SMC 17G.080.050, Subdivisions; and SMC 17G.060.170, Decision Criteria.

**Notice of Community Meeting:** Mailed: November 7, 2018  
Posted: November 9, 2018

**Notice of Application/Public Hearing:** Mailed: November 21, 2019  
Posted: November 20, 2019  
Publication: November 21, 2019

**Community Meeting:** November 27, 2018

**Public Hearing Date:** January 9, 2020

**Site Visit:** January 8, 2020

**SEPA:** A Determination of Non-Significance (DNS) was issued on December 11, 2019. The DNS was not appealed.

#### **Testimony:**

Ali Brast, Assistant Planner  
City of Spokane Planning & Development  
808 W. Spokane Falls Boulevard  
Spokane WA 99201

Todd Whipple  
Whipple Consulting Engineers  
21 S. Pines Road  
Spokane Valley WA 99206

Taadd A. Hume  
Parsons, Burnett, Bjordahl, Hume, LLP  
Steam Plant Square, Suite 225  
159 S. Lincoln  
Spokane, WA 99201

James Richman  
Assistant City Attorney  
Office of the City Attorney  
808 W. Spokane Falls Boulevard  
Spokane WA 99201

#### **Exhibits:**

1. Planning Services Staff Report dated 12/20/19
2. DNS dated 12/11/19

3. Notice of Application and Public Hearing Instructions dated 10/30/19, including:
  - 3A Notice of Application and Public Hearing
  - 3B Affidavit of Individual Notice dated 11/25/19
  - 3C Affidavit of Public Notice dated 11/25/19
  - 3D Affidavit of Publication dated 11/21/19
4. Community Meeting Instructions dated 10/22/18, including:
  - 4A Notice of Community Meeting
  - 4B Affidavit of Public Notice near project site dated 11/09/18
  - 4C Affidavit of Public Notice at Main library and City Hall dated 11/12/18
  - 4D Affidavit of Public Notice at branch library dated 11/12/18
  - 4E Affidavit of Individual Notice dated 11/07/18
  - 4F Community Meeting Sign-in Sheet
  - 4G Summary of Community & Scoping Meeting dated 11/28/18
  - 4H Community Meeting Recording
5. First Request for Agency Comments dated 04/04/19, including:
  - 5A Spokane County Public Works dated 04/15/19
  - 5B Washington State Department of Ecology (WSDOE) 04/17/19
  - 5C Developer Services dated 05/01/19
  - 5D Washington State Department of Archeology & Historic Preservation (WSDAHP) dated 04/09/19, including:
    - 5D.1 Response by Applicant dated 05/21/19
    - 5D.2 Response by WSDAHP dated 05/29/19
    - 5D.3 Cultural Resource Survey
  - 5E Revised Trip Generation and Distribution Letter dated 06/19/19
  - 5F Response to Comments by Applicant dated 06/24/19
  - 5G Letter to Applicant indicating application technically incomplete dated 05/03/19
6. Second Request for Agency Comments dated 06/25/19, including
  - 6A Developer Services dated 07/17/19
  - 6B Letter to Applicant indicating application technically incomplete dated 07/25/19
  - 6C Water System Distribution System Analysis Report dated 09/05/19
    - 6C.1 City's response dated 10/14/19
    - 6C.2 Developer Services response dated 10/25/19
7. Public Comments
8. Application, including:
  - 8A General Application
  - 8B Preliminary Long Plat Application
  - 8C Preliminary Plat Map (five sheets)
  - 8D Project Narrative
  - 8E Commitment for Title Insurance
  - 8F Notification Map Application
  - 8G Environmental Checklist
  - 8H Storm Drainage Report dated March 2019
9. Pre-Development Conference Notes dated 03/26/19
  - A Exhibits received at the hearing:
    - A-1 Hardcopy of Planning's PowerPoint presentation
    - A-2 Letter of Todd R. Whipple, P.E., dated January 8, 2020
    - A-3 Hardcopy of Whipple Consulting Engineers' PowerPoint presentation
    - A-4 Letter of Taudd A. Hume, dated January 9, 2020

- B Exhibits received after the hearing during open record period:
- B-1 Letter from the City of Spokane, dated January 24, 2020
  - B-2 Letter from Taud A. Hume, dated January 24, 2020
  - B-3 Email from James Richman, Assistant City Attorney, dated January 24, 2020

### **FINDINGS AND CONCLUSIONS**

To be approved, the proposed preliminary plat must comply with the criteria set forth in Section 17G.060.170 SMC. The Hearing Examiner has reviewed the plat application 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 site is zoned RSF. The Applicant proposes to develop the site with single-family residences. This proposed use is outright permitted in the RSF zone. See Table 17C.110-1; see also SMC 17C.110.115. The density of the proposal is approximately 5.93 units per acre, which is consistent with current code requirements. See Exhibit 1, p. 3. The Staff also concluded that the project satisfies the "minimum density requirements, minimum lot size, and frontage requirements for the residential single family zone, per 17C.110." See *id.* The proposed development will be required to satisfy all other applicable development standards, as provided in the conditions of approval. The Hearing Examiner concludes that this proposal is authorized by the land use codes.

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 proposed development is consistent with the pertinent provisions of the Comprehensive Plan (CP). The site is designated as R 4-10. This designation allows single-family residences on individual lots, and attached (zero-lot line) single-family residences. See CP, Chapter 3, p. 3-40. Land with this designation may be developed with a minimum of 4 units per acre and a maximum of 10 units per acre. See *id.* The density of the project fits within this designation, having an approximate density of 5.93 units per acre. See Exhibit 1, p. 3.

In addition, the proposal is generally supported by the goals, objectives, and policies of the CP. The site is within the Urban Growth Area (UGA) and is designated for precisely this type of development. The proposed development will include lots and homes of similar style and nature to the nearby residential neighborhood. See CP, Chapter 8, Policy DP 1.4, p. 10 (encouraging project designs that blend with existing neighborhoods); see also CP, Chapter 8, Policy DP 1.2, p. 8-5 (stating that new development should be compatible with the context of the area and improve the surrounding neighborhood). Moreover, this proposal is a natural progression in the residential development in this neighborhood, consistent with the long-term plans for the area. See CP, Chapter 3, Goal LU 5, p. 3-26 (promoting development that is complementary with other land uses); see also CP, Chapter 3, Policy LU 5.5, p. 3-27 (discussing the need to ensure compatibility when permitting infill developments).

There were no reports that the public infrastructure was not sufficient to accommodate the development, except that a water tank intertie is required to supply water to the development. The intertie is a requirement of the development, as reflected in the project conditions. That aside, public services and facilities near the site appear to be sufficient, or will be made so through mitigation measures, making the proposal consistent with Policy LU 1.12, Public Facilities and Services. See CP, Chapter 3, Policy LU 1.12, p. 3-14. The proposal, therefore, promotes the efficient use of land by focusing growth in areas where adequate facilities and services exist. See CP, Chapter 3, Policy LU 3.1, p. 3-17.

Considering the characteristics and design of the proposal, the Hearing Examiner agrees with the Staff that it is consistent with the CP. Therefore, this criterion is satisfied.

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

On April 4, 2019, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 5. In response, the City received comments from various agencies regarding the project. See e.g. Exhibits 5A-5D. On June 25, 2019, a second Request for Comments on the application was circulated. See Exhibit 6. Additional comments were received from Planning and Engineering. See Exhibit 6A & 6B. As a result of the comments, the Applicant submitted a water analysis, which was accepted by Engineering and determined to meet the City of Spokane standards. See Exhibit 6C. The proposal requires an intertie connection between the Kempe and Woodridge tanks. See Exhibit 1, p. 4.

Generally, the plat appears to meet concurrency requirements, except for the two identified lots that require reconfiguration to achieve a sewer connection within the City limits. See Exhibit 1, p. 4. The developer will reconfigure those two lots in order to address this concern. *Testimony of T. Whipple*. No departments indicated that concurrency could not be met. See *id.* Therefore, the Hearing Examiner finds that this criterion for project approval is satisfied.

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 development area is of sufficient size to accommodate the development, as is demonstrated on the proposed plat. The site is an irregular shape, but there is no indication in this record that the shape poses a genuine obstacle to development. Similarly, the location is appropriate for a residential development. The area surrounding the site has been developed or will be developed with single-family homes. The zoning and the CP both contemplate that this type of development will take place in this location.

The topography, soils, and drainage do present development challenges, however. The project is located on a hillside, with slopes generally ranging from 8% to 30% throughout the site. See Exhibit 1, p. 4; see also Exhibit 8G (Environmental Checklist ¶ B(1)(c)). Some slopes have grades as high as 60%. See *id.* There are

erodible soils on the site. See Exhibit 8G (Environmental Checklist ¶ B(1)(d)). The proposed development is also located in the Five Mile Special Drainage District, an area known to have relatively poor drainage characteristics. See Exhibit 1, p. 4. As a result, basements are not recommended in the area. See *id.*

Although site conditions are challenging, that does not mean that the site is not suitable for the proposed development. The area is hilly and many houses have been constructed on lots with fairly steep slopes. The engineering and mitigation needed to facilitate the construction of these residences is certainly more extensive than would be required for flat ground, but there is no reason to suspect that the homes cannot be properly constructed in this location.

Some minor, localized erosion could occur during the construction phase of this project. However, the potential erosion can be mitigated through typical best management practices. See Exhibit 8G (Environmental Checklist ¶ B(1)(f) & (g)). No erosion is expected to occur after the project is completed. See *id.* Once the development is completed, the surfaces will be stabilized by paving, concrete, buildings, and landscaping. See *id.*

There are no indications of surface water on or in the immediate vicinity of the site. See Exhibit 8G (Environmental Checklist ¶ B(3)(a)). Stormwater drainage on the property will be handled through the typical methods identified in the Spokane Regional Stormwater Manual (the "SRSW"). See Exhibit 8G (Environmental Checklist ¶¶ A(14)(a)(1) & B(3)(b)). No groundwater will be withdrawn as water will be supplied by the local water purveyor. See Exhibit 8G (Environmental Checklist ¶ B(3)(b)(1)). No water will be discharged via septic or other on-site systems. See Exhibit 8G (Environmental Checklist ¶ B(3)(b)(2)). All future runoff will be treated in the catchment areas before infiltrating the treatment soil and into the native soil. See Exhibit 8G (Environmental Checklist ¶ B(3)(c)(2)). The project engineer has prepared a Preliminary Storm Drainage Report to describe the measures that will be taken to manage drainage from the site. See Exhibit 8H. In that report, the project engineer concluded that onsite storm drainage facilities will adequately collect, treat, and discharge stormwater runoff. See *id.*, p. 5. There is no reason to expect that groundwater will be impacted by this project.

The Washington State Department of Archaeology and Historic Preservation (WSDAHP) concluded that the project area had a significant potential to contain cultural resources. See Exhibit 5D. As a result, the WSDAHP recommended that a professional archaeological survey be completed. See *id.* In accordance with that recommendation, the developer enlisted the services of Plateau Archaeological Investigations, LLC, to conduct a cultural survey. See Exhibit 5D.3. The survey included, for example, excavating 55 subsurface shovel probes throughout the project area, concentrating on "high risk" areas where cultural resources were most likely to be discovered. See Exhibit 5D.3, p. 15. "No pre-contact or historic-era cultural materials or features were observed during subsurface probing." See *id.*, pp. 15-18. Ultimately, the archaeologist concluded that no further archaeological investigation was required as a condition of this project. See *id.*, p. 20.

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 City issued a DNS on December 11, 2019. See Exhibit 2. The appeal period for the DNS expired on December 26, 2019. See *id.* The DNS was not appealed.

On March 26, 2019, the Applicant prepared an environmental checklist for the project. The checklist supports the conclusion that no significant environmental impacts will arise from this project or that cannot not be adequately mitigated. For example, there are no wetlands, surface waters, or other limiting features. See Exhibit 8G, Environmental Checklist ¶ B(3)(a)(1). The property does not lie within a 100-year floodplain. See Exhibit 8G, Environmental Checklist ¶ B(3)(a)(5). No threatened or endangered species were identified on the site. See Exhibit 8G, Environmental Checklist ¶ B(4)(c) & B(5)(b). The project is not anticipated to create any significant noise or light, beyond that associated with normal residential uses. See Exhibit 8G (Environmental Checklist ¶ B(7)(b) & B(11)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 8G (Environmental Checklist ¶¶ B(3)(a)(6), B(3)(b)(2) & B(3)(c)(2)). No environmental hazards are anticipated to arise due to this project. See Exhibit 8G (Environmental Checklist ¶ B(7)(a)).

The Applicant will be required to implement onsite controls for stormwater and surface drainage generated from the development. See SMC 17D.060.010 *et seq.* As discussed above, all stormwater will be collected, treated, and discharged in accordance with the SRSM. See Exhibit 8G (Environmental Checklist ¶ B(3)(c)(2)).

There will be some impacts due to construction activity. However, the construction impacts will not result in significant environmental impacts, and can be adequately mitigated (e.g. dust control, limited work hours, etc.). Further, the construction activity is temporary. Once the construction project ends, the potential impacts from noise, dust, and emissions from vehicles will cease. See e.g. Exhibit 8G, Environmental Checklist ¶ B(2)(a) and B(7)(b)(2) (addressing dust, emissions, and noise). In addition, the environmental impacts of the completed project are minor. This is undoubtedly among the reasons the City issued a DNS for the proposal.

Based upon the foregoing, the Hearing Examiner concludes that the proposal will not have a significant adverse impact on the environment or the surrounding properties and, therefore, this criterion for approval has been met.

6. *The proposed subdivision makes appropriate (in terms of capacity and concurrence) provisions for: (a) public health, safety, and welfare; (b) open spaces; (c) drainage ways; (d) street, roads, alleys, and other public ways; (e) transit stops; (f) potable water supplies; (g) sanitary wastes; (h) parks, recreation and playgrounds; (i) schools and school grounds; and (j) sidewalks, pathways, and other features that assure safe walking conditions. See SMC 17G.060.170(D)(5).*

The proposal makes adequate provisions for the public health, safety, and welfare. The proposal is designed and will be required to satisfy the applicable City standards for drainage, streets and other public ways, proper disposal of stormwater, and the like. All

the pertinent facilities, such as streets, curbing, sidewalks, etc., must be designed and constructed in accordance with City standards. The development will be connected to public sewer and water. There were no comments from any department or agency suggesting that the proposed development places undue stresses on the public infrastructure or services. There was no testimony or other evidence that convinced the Hearing Examiner that there would be significant impacts on the public health, safety, or welfare.

Rustle Drive, which is proposed to be built in Spokane County, will provide connectivity and circulation to this plat, once constructed. Staff recommend that this road be shifted west to be included within the City limits and inside the UGA. If the Applicant chooses to maintain the road in its proposed location – which is outside the City limits and outside the UGA – the City's Engineering Department recommended conditions will be imposed. See Exhibit 1, pp. 5-6. The project engineer confirmed that the Applicant intended to construct Rustle Drive as proposed, and stipulated that the Applicant accepted the City's conditions in that regard. *Testimony of T. Whipple.*

The Hearing Examiner concludes that the proposal satisfies the applicable subdivision standards. The Hearing Examiner also adopts and incorporates the staff's analysis of this issue, found on pages 5-6 of the Staff Report. See Exhibit 1. This criterion is met.

*7. The Hearing Examiner concludes that this project should be approved despite concerns raised by area residents.*

There were several public comments submitted prior to the public hearing. Those comments objected to the proposal for various reasons. The primary objections to the project concerned traffic impacts or the inadequacy of existing infrastructure, the burden on schools, the loss of wildlife habitat, and the failure to include open space or parks in the development. See Exhibit 7 (E-mails of T. Blake, C. Savage, T. Scott, and P. Wilde and Letter of M. Marsh). Each of these objections will be considered in turn.

A trip generation letter was prepared by the Applicant's traffic engineer. The analysis demonstrates that the existing transportation system can handle the traffic that would arise from the proposed subdivision. See Exhibit 5E. In addition, the traffic engineer testified at the hearing that all of the studied intersections will operate at acceptable levels of service following the development of the project. *Testimony of T. Whipple.* The results of the project engineer's analysis were accepted by the City. Moreover, the City issued a DNS for this project. No specific traffic mitigation was required by the City, other than the payment of standard traffic impact fees.

The public comments raised understandable concerns about the additional traffic. However, the comments concerning traffic were not based on any specific data related to traffic patterns, levels of service, or other objective standards of performance. There was no expert testimony to contradict the opinions of the traffic engineer or the judgments of City officials or engineers. Moreover, the Applicant has agreed to pay the applicable traffic impact fees and, therefore, will be contributing all that is due. The record does not support requiring more.

Some area residents objected that the project would overburden the school system. However, no specific information was provided about current school capacity,

additional capacity that may be planned or financed, the number of students the project will contribute, or any other details that would be needed to properly analyze the issue. Moreover, the school district was provided notice of this development application and did not submit any comments. *Testimony of A. Brast*. There is no evidence that the school system does not have capacity to provide educational services to the future residents of the subdivision.

Another objection was that the project would result in the loss of wildlife habitat. Any development of vacant land has the potential to displace wildlife. That general observation alone, however, is not sufficient to warrant limiting or conditioning a project. No information was provided to demonstrate that the site contains wildlife habitat. According to the City, there is no evidence of wildlife habitat on this site. *Testimony of A. Brast*. There were no comments from the Washington State Department of Fish and Wildlife, for example, or any other agencies raising a concern about habitat loss. There was no testimony by a qualified biologist or other expert to establish that the project would impact wildlife. As a result, the record does not support conditioning or limiting this project on such a basis.

The last major objection to the project was that it did not include open space or parkland. There is no requirement that a plat set aside public open space or area for parks. There are no concurrency requirements for parks that apply to this project. *Testimony of A. Brast*. In addition, there is no evidence that the project causes any material impacts to the park system, such that conditions of approval or mitigation measures are needed. Given the development standards that apply in this case, there is no legal basis to require the developer to contribute funds or land for parks.

8. *The Hearing Examiner concludes that the project should be approved with only minimal changes to the project conditions.*

The Applicant objected to the language of Conditions 5 and 7<sup>1</sup>. Condition 5 states that the developer shall be "responsible for all costs associated with design and construction of sanitary sewer and water improvements necessary to serve the proposed plat." The Applicant was concerned that this condition may be interpreted to require the developer to assume costs of infrastructure outside the development area. The City, however, confirmed that the intent of the condition was to clearly state that the developer was responsible for development costs within the development site. Under the circumstances, the Hearing Examiner has added a clarifying sentence to the condition. The meaning and intent of Condition 5 is not changed by this revision.

Condition 7 provides that the Kempe and Woodridge water tank intertie connection is required in order to provide water service to the plat. The Applicant contended that Condition 7 was not actually a condition, but rather constituted a statement of fact or a legal conclusion. See Exhibit A-4 (Hume Letter dated January 9, 2020). The Applicant insisted that the intertie was not a "condition" because it was not necessary to mitigate an impact of the subdivision. See *id.* Moreover, the Applicant objected that the intertie requirement was not proper because accomplishment of the mitigation was entirely within the discretion and control of a third party, namely the City of Spokane. See *id.* To address its concern, the Applicant requested that the Hearing

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<sup>1</sup> These conditions discussed in this section were originally numbered as Condition 4 and Condition 6. In this decision, the conditions have been re-numbered as Conditions 5 and 7.

Examiner include a finding in the decision which spelled out, among other details, the City's obligation to complete the water tank intertie within a specified period of time. See *id.*

At the hearing, the foregoing objections were briefly discussed. In addition, the Applicant and the City confirmed that there were ongoing negotiations with respect to the plans to complete the water tank intertie. The commitments, terms, or obligations were apparently in dispute, at least in certain respects. The parties jointly requested that the record remain open for two weeks to allow the parties to discuss the matter further and, if possible, submit a joint proposal for a condition related to the required intertie. The Hearing Examiner held the record open until January 24, 2019, for this purpose.

On January 24, 2019, the parties did not submit a proposed condition for consideration. However, the City submitted its own comment letter. See Exhibit B-1. In that letter, the City contested some of the arguments previously advanced by the Applicant. Most notably, the City also argued that there was "nothing preventing the applicant from installing the connection itself—i.e., the connection is not at the discretion and timing of the 3<sup>rd</sup> party as applicant contends." See Exhibit B-1. The City's letter also submitted proposed findings regarding the water tank intertie. See *id.* The proposed findings reflected the parties' discussions about water service and generally described the anticipated steps to prepare the site and establish the water tank intertie. See *id.*

That same day, the Applicant submitted a short rebuttal letter objecting to the City's arguments, contending that the record was not held open for substantive rebuttal. See Exhibit B-2. The Applicant nonetheless advised that it did not object to including the City's proposed findings in the decision. See *id.* The Applicant also suggested that the Hearing Examiner retain jurisdiction over the intertie issue, "to the extent the rights and obligations of the Parties need clarification in the future." See *id.* The City, in a brief e-mail, objected to that proposal, contending that the Hearing Examiner had no authority to retain jurisdiction over the matter. See Exhibit B-3.

The Hearing Examiner concludes that Condition 7 should remain in the decision in its original form. The parties all agreed that the intertie was required in order to ensure that the development was supplied with water. To that extent, it is a necessary precondition to the development of this plat. The arguments about whether Condition 7 is a "condition," a fact, or a conclusion, strike the Hearing Examiner as academic in the context of this case. The intertie is necessary to create the water infrastructure to allow the use. All were in agreement of this reality. Therefore, it is proper to acknowledge that reality in the project conditions.

The Hearing Examiner declines to direct the City to complete the intertie work, or to do so within a specific time period. Whether the City made prior commitments to accomplish those tasks, the extent of those obligations, etc., are matters under dispute, which would likely be resolved based on the principles of contract law or possibly equitable estoppel. The Hearing Examiner does not have general authority to enforce contracts. Even if the Hearing Examiner could examine the history of communications and find a binding commitment existed, the Hearing Examiner does not have authority to grant injunctive relief (such as specific performance) or to craft equitable remedies in the absence of an enforceable contract.

The Hearing Examiner also declines to incorporate the City's proposed findings into the decision. The Hearing Examiner appreciates the City's effort to craft a set of findings that would be acceptable to the parties. However, in this case the discussions are ongoing and the findings do not actually resolve the matter. The parties are free to enter into whatever agreements are needed to facilitate the improvements to the water system. In the Hearing Examiner's estimation, it makes more sense for any such agreement to be negotiated separately from this decision. Ultimately, the matter must be resolved because an adequate water supply is a prerequisite to the development. Condition 7 makes that sufficiently clear.

### **DECISION**

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

1. Approval is for a preliminary plat of 138 single-family lots to be developed in substantial conformance with the plans, drawings, illustrations, and specifications for the "Woodridge View 3<sup>rd</sup> Addition" preliminary plat on file in the Department of Planning Services. The Applicant is authorized to prepare a final plat in compliance with the preliminary plat and the conditions of approval placed upon it.
2. The conceptual sewer plan shows sewer being constructed outside of the City limits. If sewer is installed in this easterly roadway, outside of the City limits, it must be a dry line sewer that doesn't provide service to property outside of the Urban Growth Boundary until that property is annexed into the UGA.
3. Lots 56 and 57 will need to be reconfigured so they are connecting into sewer within the limits of the City municipal boundary.
4. In order to serve water outside the UGA, a Developer Agreement must be established with Spokane City Council per the City of Spokane CP.
5. The developer will be responsible for all costs associated with design and construction of sanitary sewer and water improvements necessary to serve the proposed plat. *This condition applies to improvements within the plat; it is not intended to govern the cost of improvements outside of the development site.*
6. Construction plans for water and sewer must be designed and constructed in accordance with City standards and must be submitted to Developer Services for review and acceptance. The water/sewer systems, including individual services connections to each lot, must be constructed and accepted for service prior to the City Engineer signing the final plat. Also prior to construction acceptance and prior to the City Engineer signing the final plat, sewer connection cards, as-built drawings, and construction costs must be submitted to the construction office.
7. The Kempe and Woodridge water tank intertie connection is required in order to provide water service to the plat.
8. The water system shall be designed and constructed in accordance with City standards. A pressure of 45 pounds per square inch (psi) minimum at the property line is required for service connections supplying domestic flows. Pressures shall

not drop below 20 psi at any point in the system during a fire situation. Pressures over 80 psi will require that pressure relief valves be installed at developer expense.

9. Two copies of an overall water plan and hydraulic analysis must be submitted to Developer Services for review and acceptance. The hydraulic analysis must include supporting calculations for domestic and fire flows.
10. All stormwater and surface drainage generated onsite shall be disposed of onsite in accordance with SMC 17D.060 "Stormwater Facilities," the Regional Stormwater Manual, Special Drainage Districts, City Design Standards, and, per the Project Engineer's recommendations, based on the drainage plan accepted for the final plat. Pre-development flow of any offsite runoff passing through the plat shall not be increased (rate or volume) or concentrated due to development of the plat, based on a 50-year design storm. An escape route for a 100-year design storm must be provided.
11. No building permit shall be issued for any lot in the plat until evidence satisfactory to the City Engineer has been provided showing that the recommendations of SMC 17D.060 "Stormwater Facilities," the Regional Stormwater Manual, Special Drainage Districts, City Design Standards, and the Project Engineer's recommendations, based on the drainage plan accepted for the final plat, have been complied with. A surface drainage plan shall be prepared for each lot and shall be submitted to Engineering Services – Developer Services for review and acceptance prior to issuance of a building permit.
12. Because the proposed plat is located in the Five Mile Special Drainage District, basements are not recommended. The development of any below-grade structures (including basements) in the plat is subject to review of a geotechnical evaluation for foundation design to determine suitability and affects from stormwater and/or subsurface runoff. The geotechnical evaluation is required to be performed for each lot with below-grade level structures and submitted for review and concurrence to the City of Spokane Building Department and Developer Services prior to issuance of a building permit. An overall geotechnical analysis may be performed in lieu of individual lot analyses to determine appropriate construction designs.
13. An erosion / sediment control plan, detailing how dust and runoff will be handled during and after construction, shall be submitted to Developer Services for review and acceptance prior to construction.
14. If drywells are utilized, they will be tested to ensure design infiltration rates are met. A minimum factor of safety of 2 (two) will be required. In accordance with State Law, existing and proposed Underground Injection Control structures need to be registered with the Washington State Department of Ecology. Proof of registration must be provided prior to plan acceptance. The use of drywells within special drainage districts may pose potential problems for onsite or adjacent properties because of areas with shallow soil, bedrock near the surface, specific soils, or other geological features.
15. Public streets, including paving, curb, sidewalk, signs, storm drainage structures/facilities, and swales/planting strips necessary to serve the proposed plat

shall be designed and constructed in accordance with City standards. Sidewalks shall serve each lot.

16. Rustle Drive, which is a proposed road in Spokane County, adjacent to this plat, will provide connectivity and circulation to this plat, when constructed. It is recommended that this road be shifted to the west to be included in this plat and inside the City limits. If included in this plat, no utility connections will be allowed to properties adjacent to this road, located outside the City limits, outside the UGA Boundary, and inside the City's Retail Water Service Boundary, unless they meet the conditions stipulated in CFU 3.6 (Limitation of Services Outside Urban Growth Areas) of the City's CP. If Rustle Drive is to be constructed where shown, which is outside the City limits, outside the UGA Boundary, and inside the City's Retail Water Service Boundary, the City recommends the following conditions for construction of the road:
  - a. Right-of-way (ROW) required for the road should be dedicated to Spokane County.
  - b. Road must be constructed consistent with phasing of the adjoining plat or temporary cul-de sacs will be required on connecting streets until the road is constructed. Developer must design and construct the road to City Standards.
  - c. For a cluster development built in the County adjacent to the plat, a water main can be constructed to serve said development. A sewer line can also be constructed but it may be a "dry line" only. No sewer service will be allowed until the cluster development is included in the UGA boundary. In all cases, water and sewer service can be extended outside a UGA Boundary, only if a developer agreement incorporating mitigation requirements is approved by the City Council.
  - d. The City will operate and maintain the road until it is included in any County platting, whereby, the County will assume these responsibilities (to be addressed in a Memorandum of Understanding or agreement between the City and County).
  - e. Approval is obtained from appropriate County Staff for any actions requiring their concurrence.
17. Street design for the plat shall include supporting geotechnical information on the adequacy of the soils underneath to support vehicular design loads.
18. Any grades exceeding 8% must be shown on the preliminary plat.
19. Street centerline monuments are required to be installed in the required locations as outlined in Section 3.3-20 of the City of Spokane Design Standards. If centerline monuments are not installed prior to the plat being finalized a \$250.00 deposit will be required for each.

20. In accordance with the City's Financial Guarantee Policy, a financial guarantee will be required for all street, drainage, and erosion / sediment control improvements not constructed prior to approval of the final plat.
21. 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 Revised Code of Washington (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 WSDAHP before excavating, removing, or altering Native American human remains or archaeological resources in Washington.
22. 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. The project shall conform to the requirements of any additional agency permits.
23. This approval does not waive the Applicant's obligation to comply with all other requirements of the SMC as well as requirements of City Departments and outside agencies with jurisdiction over land development.
24. SMC 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.
25. The following statements will be required in the dedication of the final plat. Additional statements may need to be added to the final plat and will be determined during final plat review.
  - a. Ten foot utility and drainage easements as shown hereon the described plat are hereby dedicated to the City and its permittees for the construction, reconstruction, maintenance, protection, inspections, and operation of their respective facilities together with the right to prohibit structures that may interfere with the construction, reconstruction, reliability, and safe operation of the same.
  - b. Development of the subject property, including grading and filling, are required to follow an erosion/sediment control plan that has been submitted to and accepted by Engineering Services – Developer Services prior to the issuance of any building and/or grading permits.
  - c. Prior to the issuance of any building permits, the lots shall be connected to a functioning public or private water system complying with the requirements of the Engineering Services Department and having adequate pressure for domestic and fire uses, as determined by the Water and Hydroelectric Services Department.
  - d. The water system shall be designed and constructed in accordance with City Standards. A pressure of 45 psi minimum at the property line is required for service connections supplying domestic flows. Pressures shall not drop below 20 psi at any point in the system during a fire

situation. Pressures over 80 psi will require that pressure relief valves be installed at the developer's expense.

- e. All stormwater and surface drainage generated onsite shall be disposed of onsite in accordance with SMC 17D.060 "Stormwater Facilities," the Regional Stormwater Manual, Special Drainage Districts, City Design Standards, and, per the Project Engineer's recommendations, based on the drainage plan accepted for the final plat. Pre-development flow of offsite runoff passing through the plat shall not be increased (rate or volume) or concentrated due to development of the plat, based on a 50-year design storm. An escape route for a 100-year design storm shall be provided.
- f. No building permit shall be issued for any lot in this plat until evidence satisfactory to the City Engineer has been provided showing that the recommendations of SMC 17.060 "Stormwater Facilities," the Regional Stormwater Manual, Special Drainage Districts, City Design Standards, and the Project Engineer's recommendations, based on the drainage plan accepted for this final plat, have been complied with. A surface drainage plan shall be prepared for each lot and shall be submitted to Developer Services for review and acceptance prior to issuance of a building permit.
- g. The development of any below-grade structures, including basements, is subject to prior review of a geotechnical evaluation for foundation design to determine suitability and effects from stormwater and/or subsurface runoff. The geotechnical evaluation shall be submitted to Developer Services for review and concurrence prior to the issuance of a building permit. It must address the disposal of stormwater runoff and the stability of soils for the proposed structure. This evaluation must be performed by a geotechnical engineer, licensed in the State of Washington. It must be submitted to the City Building Department and to Developer Services for review and concurrence prior to issuance of any building permit for the affected structure. An overall or phase-by-phase geotechnical analysis may be performed in lieu of individual lot analyses to determine appropriate construction designs.
- h. Slope easements for cut and fill, as deemed necessary by Developer Services in accordance with City Design Standards, are granted along all public ROWs.
- i. All public improvements (street, sewer, storm sewer, and water) shall be constructed to City standards prior to the occupancy of any structures served by said improvements.
- j. No building permit shall be issued for any lot in the plat until evidence satisfactory to the City Engineer has been provided showing that sanitary sewer and water improvements, constructed to City standards, have been provided to the lot in question.

- k. A Transportation Impact Fee and applicable General Facilities Charge (GFC) will be collected prior to the issuance of a building permit for the affected lot.

DATED this 12<sup>th</sup> day of February 2020.



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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 of the Hearing Examiner regarding preliminary plats are final. They may be appealed to the City Council. All appeals must be filed with the Planning Department within fourteen (14) calendar days of the date of the decision. The date of the decision is the 12<sup>th</sup> day of February 2020. **THE DATE OF THE LAST DAY TO APPEAL IS THE 26<sup>th</sup> DAY OF FEBRUARY 2020, AT 5:00 P.M.**

In addition to paying the appeal fee 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 City Council.