

## CITY OF SPOKANE HEARING EXAMINER

**Re:** Preliminary Plat Application by ) FINDINGS, CONCLUSIONS,  
Whipple Consulting Engineers, Inc. to ) AND DECISION  
subdivide approximately 21 acres into )  
98 new single-family lots on property ) FILE NO. Z19-228PPLT  
located at 6820 S. Cedar Road )

## SUMMARY OF PROPOSAL AND DECISION

**Proposal:** The Applicant is proposing to subdivide approximately 21 acres into 98 single-family lots in a plat to be known as "The Summit."

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

## FINDINGS OF FACT BACKGROUND INFORMATION

**Applicant/  
Agent:** Ray Kimball  
Whipple Consulting Engineers, Inc.  
21 S. Pines Road  
Spokane Valley WA 99206

**Owner:** OO Land Holdings, LLC  
19425 E. Broadway Avenue  
Spokane Valley WA 99016

**Property Location:** The subject property is addressed as 6820 S. Cedar Road at the intersection of Cedar Road and Eagle Ridge Boulevard, and is designated as tax parcel 24121.0001, in the City of Spokane, Washington.

**Legal Description:** The legal description of the property is provided in Exhibit 7G.

**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 southwest corner of the municipal boundary in the Latah Hangman neighborhood, across Cedar Road from the Eagle Ridge development. Currently the site is vacant and relatively flat. Properties to the south and west are outside the City limits and in the jurisdiction of Spokane County.

**Surrounding Conditions and Uses:** The adjacent zoning to the north and east is RSF. All adjacent land uses in the City are single-family homes or vacant low-density single-

family lots. The properties to the south and west of the site are in Spokane County and have a low-density zoning classification. There are single-family residences on larger lots along Cedar Road within the County.

**Project Description:** The Applicant is proposing to plat 98 new single-family lots across Cedar Road from the Eagle Ridge development. The project proposes to provide water through a new booster station located at the Cedar Hills tank site, which sits near South Lincoln Way. Sewer will be provided through three phases, the first phase through gravity flow to the existing manhole located at the intersection of Eagle Ridge Boulevard and Cedar Road. The remaining 71 lots in phases two and three are proposed to gravity flow to a private lift station within the boundary of the plat.

### **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: September 25, 2018  
Posted: September 25 & 28, 2018

**Notice of Second Community Meeting:** Mailed: April 10, 2019  
Posted: April 12, 2019

**Notice of Second Traffic Meeting:** Mailed: November 26, 2019  
Posted: November 26, 2019

**Notice of Application/Public Hearing:** Mailed: December 3, 2019  
Posted: December 2, 2019  
Publication: December 4 & 11, 2019

**Community Meetings:** October 16, 2018 and May 2, 2019

**Second Traffic Meeting:** December 17, 2019

**Site Visit:** January 10, 2020

**Public Hearing Date:** January 16, 2020

**State Environmental Policy Act (SEPA):** A Mitigated Determination of Non-Significance (MDNS) was issued on December 20, 2019. The MDNS was not appealed.

**Testimony:**

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

Ray Kimball  
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Joe Sicilia  
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Spokane, WA 99224

**Exhibits:**

1. Planning Services Staff Report dated 01/08/2020
2. MDNS dated 12/20/19
3. Notice of Application and Public Hearing Instructions dated 11/27/19, including:
  - 3A Notice of Application and Public Hearing on 01/16/19
  - 3B Affidavit of Public Notice of Hearing on 01/16/19 posted on 12/02/19
  - 3C Affidavit of Individual Notice of Hearing on 01/16/19 mailed on 12/03/19
  - 3D Affidavit of Publication on 12/04/19 and 12/11/19 dated 12/16/19
4. Community Meeting Instructions dated 09/19/18, including:
  - 4A Meeting Summary from 10/16/18 Community Meeting
  - 4B Notice of Community Meeting on 05/02/19
  - 4C Affidavit of Public Notice of Community Meeting on 05/02/19 posted near project on 04/12/19
  - 4D Affidavit of Public Notice of Community Meeting on 05/02/19 posted at libraries and City Hall on 04/12/19
  - 4E Affidavit of Individual Notice of Community Meeting on 05/02/19 mailed on 04/10/19
  - 4F Community Meeting Sign-in Sheet
  - 4G Summary of 05/02/19 Community Meeting
  - 4H Affidavit of Public Notice of Second Traffic Study Meeting on 12/17/19 posted near project site on 11/26/19
  - 4I Affidavit of Public Notice of Second Traffic Study Meeting on 12/17/19 posted at libraries and City Hall on 11/26/19
  - 4J Affidavit of Individual Notice of Second Traffic Study Meeting on 12/17/19 mailed on 11/26/19
5. Request for Agency Comments dated 06/05/19, including:
  - 5A Developer Services dated 10/30/19 and 01/07/20
  - 5B Traffic Engineering dated 06/18/19, including
    - 5B.1 Traffic Impact Analysis dated 03/28/19
    - 5B.2 Addendum to TIA dated 12/18/19

- 5C Washington State Department of Transportation (WSDOT), including:
  - 5C.1 Email dated 12/19/19
  - 5C.2 Letter dated 10/31/19
  - 5C.3 Letter dated 06/17/19
- 6. Public Comments
- 7. Application, including:
  - 7A General Application
  - 7B Preliminary Long Plat Application
  - 7C Preliminary Plat Map
  - 7D Water Line Easement Agreement
  - 7E Project Narrative
  - 7F Trip Generation & Distribution Letter
  - 7G Commitment for Title Insurance
  - 7H Environmental Checklist
- 8. Pre-Development Conference Notes dated 03/22/18
- A Exhibits received at the hearing:
  - A-1 Hard copy of Planning's PowerPoint presentation
  - A-2 Corrected page 7 of Staff Report (item VI.2 referencing condition #4 on page 8) along with page 8 for reference.
  - A-3 Hard copy of Applicant's PowerPoint presentation
  - A-4 Letter from Applicant dated 01/15/20
  - A-5 Traffic Memo from Applicant dated 01/13/20
  - A-6 Letter from Applicant's Council dated 01/16/20

### **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 4.59 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 Residential 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 4.59 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 areas within the City. 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). The large-lot residential lots/uses to the south and west are outside the UGA, in Spokane County and, therefore, do not provide an appropriate basis for comparison. See Exhibit 1, p. 4. With respect to urban land within the City, this proposal is a natural progression in the residential development, 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. 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 Comprehensive Plan. Therefore, this criterion is satisfied.

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

On June 5, 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-5C. As a result of the comments, the Applicant submitted a Traffic Impact Analysis. See Exhibit 5B.1 and 5B.2.

Generally, the plat appears to meet concurrency requirements with the exception of water and sewer. Water for this plat is proposed to connect into the existing 12-inch water line located at the intersection of Cedar Road and Eagle Ridge Boulevard. The project proposes to build a new booster station located at the Cedar Hills tank site to pump to the Eagle Ridge system to serve this development. This proposal has been accepted by the City's Engineering department.

A phasing plan was provided for the plat, and sewer for Phase 1 is proposed to gravity flow to the existing manhole located at the intersection of Eagle Ridge Boulevard

and Cedar Road. The remaining lots in Phases 2 and 3 are proposed to gravity flow to a proposed sanitary sewer lift station near the northwest corner of the site. The City's Engineering Department has stated that this proposed lift station will be required to be private and maintained by a Homeowner's Association. See Exhibit 1, pp. 4-5. No other departments indicated that concurrency could not be met. See *id.* In addition, there is no evidence in the record suggesting that the project transgresses any concurrency requirements.

The Hearing Examiner concludes that, with the proposed conditions, the project satisfies this criterion for approval.

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 project, as is demonstrated on the proposed plat. There are slopes with grades as high as 25% on the site. See Exhibit 1, p. 5. However, those areas are confined to the northwest corner of the site. See *id.* The Staff characterized the site as generally "very flat." See *id.* Similarly, the location is appropriate for a residential development. The properties in the vicinity are already developed or are being developed with single-family homes. Various City departments and agencies reviewed the SEPA checklist for physical characteristics of the property and no other comments were received indicating the site is unsuitable for development. See *id.*

There is no history of unstable soils on the site. See Exhibit 7H (Environmental Checklist ¶ B(1)(d)). There will likely be some localized erosion during the construction, although those impacts will be mitigated by best management practices. See Exhibit 17H (Environmental Checklist ¶ B(1)(f)). No erosion is anticipated from the completed project because 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 17H (Environmental Checklist ¶ B(3)(a)(1)). Storm water drainage on the property will be handled through the typical methods identified in the Spokane Regional Stormwater Manual (the "SRSW"). See Exhibit 17H (Environmental Checklist ¶¶ A(14)(a)(1) & B(3)(b)). All future runoff will be treated in the catchment areas before infiltrating through the treatment soil and into the native soil. See Exhibit 17H (Environmental Checklist ¶¶ B(3)(c)(1) & (2)). No groundwater will be withdrawn as water will be supplied by the local water purveyor. See Exhibit 17H (Environmental Checklist ¶ B(3)(b)(1)). There is no reason to expect that groundwater will be impacted by this project.

There are no known natural, historic, or cultural features on the development site itself. See Exhibit 17H (Environmental Checklist ¶ B(13)(a)-(b)). The Spokane Tribe did not comment or raise any concerns regarding this project. The Department of Archaeology and Historic Preservation (WSDAHP) also did not comment on this project. Based on this record, the Hearing Examiner concludes that the proposal is unlikely to

have any impact on any historical or cultural resources. To the extent such resources are discovered, the project conditions are sufficient to address any concern.

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 an MDNS on December 20, 2019. See Exhibit 2. The appeal period for this MDNS expired on January 3, 2019. See *id.* The MDNS was not appealed.

On May 10, 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 will occur without being adequately mitigated. For example, there are no wetlands, surface waters, or other limiting features. See Exhibit 7H, Environmental Checklist ¶ B(3)(a)(1). The property does not lie within a 100-year floodplain. See Exhibit 7H, Environmental Checklist ¶ B(3)(a)(5). No threatened or endangered species were identified on the site. See Exhibit 7H, Environmental Checklist ¶ B(4)(c) & B(5)(b).

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 7H, Environmental Checklist ¶¶ B(2)(a) & B(7)(b) (addressing dust, emissions, and noise). And the environmental impacts of the completed project are minor. See Exhibit 7H. To the extent that impacts arise, those concerns will be addressed by the project conditions.

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 storm water; 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 placed 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.

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 5-7 of the Staff Report. See Exhibit 1. This criterion is met.

*7. The Hearing Examiner concludes that this project should be approved despite other concerns raised by neighboring property owners.*

Neighboring property owners and area residents raised various objections about the project. One of the primary concerns related to traffic. Several neighbors contended the project would exacerbate the traffic problems in the area traffic, diminishing the rural atmosphere, increasing the danger to animals, and creating safety hazards for people in the area. See Exhibit 6 (E-mails of Kiser, Burrows, and McLuen). There were serious concerns about traffic management, safety and collisions, especially along US 195 and at the US 195/I-90 interchange. See *id* (E-mails of Ford and Lemberg). The additional traffic, it was noted, could overburden the US 195/I-90 interchange ramp. See *id* (E-mail of Burrows). Safe access routes across the highway are already lacking. See *id*. Finally, it was suggested that the traffic from all developments in the area should be considered together. See *id* (Letter of Palaia).

The neighbors raised legitimate concerns about the sufficiency of the existing infrastructure to handle the additional traffic load. The WSDOT shared the neighbors' concern that the US 195/I-90 interchange could become overburdened by the additional traffic. In addition, the intersection of Meadowlane Road and US 195 is already at a level of service "F," and thus is not operating at acceptable levels. However, the project conditions limit the development to 20 lots unless and until improvements are properly planned and financed for the Meadowlane Road intersection. In addition, with WSDOT's concurrence, the project includes a plan to divert traffic from US 195 to Thorpe/Inland Empire Way. If successful, that mitigation will ensure that the additional traffic arising from this development does not overburden the US 195/I-90 interchange. Additional mitigation may be triggered if an insufficient amount of traffic is diverted from the state highway. There was no expert testimony suggesting that the transportation system, with appropriate mitigation, could not handle the traffic from this development. Extensive analysis was provided by the project's traffic engineer, and a great deal of review and discussion took place among the traffic engineer, the City traffic department, and WSDOT. Although even the experts did not have answers to every question or concern; that is because the traffic conditions along US 195 are complex and dynamic. The Hearing Examiner is satisfied that the traffic concerns, although genuine and legitimate, have been adequately addressed by the project conditions.

There are tradeoffs, of course, in managing traffic. A property owner on Inland Empire Way, for example, pointed out that diverting traffic from the highway to Inland Empire way could "create a mess" on Inland Empire Way, and leads to safety concerns. See *id* (Letter of Palaia). The Hearing Examiner acknowledges that there are consequences to diverting traffic from one route to another. However, there was no evidence that Thorpe/Inland Empire Way lacked the capacity to handle the level of traffic



that was anticipated to take that route. The proposed mitigation is signage that is intended to encourage use of the Alternate Route. The signage will not force all drivers to use that route. Only a percentage, likely a relatively small one, of the traffic will actually utilize the Alternate Route. In any case, there is insufficient evidence to conclude that Inland Empire Way will be significantly impacted by the additional traffic. Although there is some uncertainty in how traffic patterns will be affected, none of the traffic experts who testified went that far.

The concerns about safety were understandable but were largely anecdotal in nature. There was no expert testimony regarding any specific safety hazard created by this project, either to animals or people. Pre-existing problems, such as the confusing configuration of the Cedar-Cheney Spokane intersection, are not the responsibility of this developer. In addition, there is nothing about the design of this subdivision that creates a safety hazard. There was no specific data concerning any particular risk flowing from the traffic to and from the proposed development. The commenting agencies focused on levels of service, not safety. It was also unclear whether there are any safety standards to apply to this case. The risks of traffic, in general, are a societal issue, not a specific impact of this subdivision. Generalized fears about what may arise as development occurs are not a legal basis for the denial or mitigation of a project.

There were several objections that the development would negatively affect the area's rural lifestyle, including diminishing views, disrupting the peace and quiet, and adding urban levels of traffic. See Exhibit 6 (E-mails of Davis, Burrows, Magi, Murray, and Kiser). Undoubtedly, many area residents would prefer the area not undergo any further development. However, this project is located within the UGA and has been zoned for precisely this type of development for some time. The density of the proposal is within the density range that is sanctioned by the zoning standards as well as the CP. In other words, the proposal fits within the long-range plans for the area, at least within the City, as envisioned by the policymakers who adopted these standards. Under the circumstances, the proposed site is already "urban" in nature, and this proposal is in furtherance of that reality.

Another objection was that the location of the development is a dangerous place to construct residences due to the risk of wildfires. See *id* (E-mail of Magi). If a wildfire occurred, it was suggested, the evacuation routes out of the neighborhood would be impassable. See *id* (E-mail of Burrows). Although these are certainly significant concerns, the Hearing Examiner does not believe there is evidence to support conditioning or denying this proposal due to the risk of wildfire. The Hearing Examiner reaches this conclusion for several reasons.

The record does not contain sufficient information regarding the relative risk of wildfires, either in the area generally or as specific to the project site. The Fire Department did not provide any comments on this project. There was no expert testimony on this issue. No evidence tended to show that this project actually created any unique or measurable risk of fire. Nor is there any evidence that the emergency routes to or from the project site, or the neighborhood, pose genuine risks to residents. The claims that the project location is "dangerous" or emergency access is inadequate is speculative, in the Hearing Examiner's view. It is certainly possible to imagine a scenario in which a natural disaster, such as a wildfire, could cause great damage and loss of life. However, to justify precluding a development would require some specific demonstration that the proposed

use created such risks and those risks could not be adequately addressed or mitigated. There is no such showing on this record.

Although there are certainly other concerns that were raised, the Hearing Examiner believes one other concern should be specifically discussed. At least two are residents noted that area schools are already overcrowded and underfunded, suggesting that this project may negatively impact the school system. *See id* (E-mails of Burrows & Murray). The Hearing Examiner concludes that the alleged impact on area schools does not warrant additional project conditions. 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, the demographics of the area, 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 comment at all, let alone one suggesting that the school system did not have capacity to provide educational services to the future residents of the subdivision. The Hearing Examiner is not inclined to condition a project on school impacts when the schools themselves are not asserting that conditions or mitigation measures are required.

8. *The Hearing Examiner has authority to clarify project conditions contained in an MDNS, even though not appealed, so long as the clarifications do not materially change the meaning of those conditions.*

On or about December 12, 2019, the City of Spokane issued an MDNS for the proposed subdivision. *See* Exhibit 2. The MDNS included several conditions designed to address traffic impacts from the project. *See id*. The Applicant did not appeal the MDNS conditions, believing those requirements to be acceptable at the time of issuance. Those conditions were also the subject of some discussion between the Applicant, the City of Spokane, and WSDOT. As is typical in such cases, the MDNS conditions were incorporated as proposed conditions of approval for this project. Despite the foregoing, at the hearing on this matter, the Applicant objected to the terms of certain conditions, and requested that the Hearing Examiner revise or clarify some of the requirements. Each of the Applicant's concerns will be considered in turn.

The Applicant first contended that Condition No. 1 failed to identify any objective standard for determining whether the signage mitigation was effective or not. Without an objective standard, the requirement for further mitigation would be determined by an arbitrary exercise of discretion.

The Hearing Examiner agrees that Condition No. 1 is flawed because there is no objective standard of "effectiveness" by which success can be measured. However, at the hearing, an extensive discussion was conducted between the Applicant, the City of Spokane, and WSDOT. That discussion resulted in a stipulation by WSDOT, the agency with jurisdiction over the state highway system, that the effectiveness of the signage requirement would be determined by the amount of AM peak traffic that was diverted from US 195 to Thorpe/Inland Empire Way. WSDOT also generally agreed to the methodology for testing the effectiveness of the signage. The Hearing Examiner revised Condition No. 1 to incorporate the standards and methods that were discussed and agreed upon at the hearing. The Hearing Examiner also included a provision to retain jurisdiction and provide a mechanism to resolve any disputes that may arise in the implementation of the mitigation measures.

The Hearing Examiner concludes that he has discretion to make these revisions for a few reasons. First, the Hearing Examiner ordinance provides that the Hearing Examiner has "such other powers as are necessary to carry out the intent" of the municipal code. See SMC 17G.050.070(C). The Hearing Examiner's duties include crafting appropriate conditions to the approval of a project. That authority necessarily includes a degree of discretion to clarify conditions, even when those conditions are proposed by commenting agencies and have not been challenged or appealed. Second, the revisions to the conditions do not change their meaning or intent. Rather, the changes made clarify language that would otherwise be ambiguous or subject to arbitrary interpretation. Third, the agency that authored the conditions generally agreed that the proposed clarifications were appropriate and consistent with the original intent of the conditions.

The Applicant also objected to the "additional mitigation" provision of Condition No. 1, which is contingent upon the City acquiring right of way (ROW) or easements at the intersection of Thorpe (23<sup>rd</sup>) and Inland Empire Way. The Applicant argued that this condition was not "reasonable or capable of being accomplished," per the requirements of SEPA and Revised Code of Washington (RCW) 82.02.020, because the condition requires the agreement of third parties over which the developer has no control.

The Hearing Examiner doubts that this provision, as originally written, is consistent with state law. However, the Applicant failed to appeal this condition of the MDNS. The Hearing Examiner does not have jurisdiction to make material changes or to delete this condition in the absence of an appeal. There is some authority for the proposition that the "threshold determination" is only the decision whether or not to require an Environmental Impact Statement (EIS). In other words, the "threshold determination" is not synonymous with the related or attached conditions of approval. However, there is no explicit authority for the proposition that a Hearing Examiner can change or modify MDNS conditions that have not been appealed. The authority to withdraw, change, and re-issue a threshold determination is reserved to the lead agency. In addition, even if the Hearing Examiner believed he could modify the conditions, such an action would undoubtedly require the SEPA review process to be completed a second time. Finally, the Hearing Examiner cannot conceive of a "clarification" of this condition that would not be tantamount to a wholesale revision of the condition. As a result, the Hearing Examiner is inclined to leave this condition in its original form.

The Applicant next objected to Condition No. 2 because that condition limits development to the first 20 lots until an intersection improvement project for US 195/Meadowland Road is funded and added to the City's six-year plan. The Applicant contended that this condition was not "reasonable or capable of being accomplished" because the developer had no control over whether the intersection improvement plans were funded or added to the City's capital improvement plans. Because the City may not ever take these steps, the Applicant suggested that the condition should have some limits on time or scope, such as an expiration date, or be subject to further review by the Hearing Examiner. The Applicant also suggested that the limitation should apply to the issuance of building permits for residences, not to the "development" generally, since the Applicant may be making various improvements to prepare the site that do not involve the construction of the residences.

Consistent with the analysis above, the Hearing Examiner feels constrained to leave the first part of Condition No. 2 as-is. The Applicant did not appeal the language limiting the development until the Meadowlane improvements were funded and added to



the six-year plan. The Hearing Examiner also concludes that this condition is akin to a determination that the existing public infrastructure is not adequate to support the development. Consistent with the principles of concurrency, a project cannot proceed if the infrastructure does not exist to support the use. Here, it is appropriate to limit the development until that infrastructure is at least funded and added to the capital improvement plan.

The Hearing Examiner agrees, however, that the second part of Condition No. 2 should be clarified. The restriction should be tied to the issuance of building permits for residences, as the Applicant argued, rather than suggesting that no site preparations can occur beyond the 20<sup>th</sup> lot. If the developer chooses to invest in site preparations prior to the time when the Meadowlane improvements are funded or programmed, that is the developer's prerogative and risk. Regardless of such actions, only 20 residences can be constructed until the project condition is satisfied. The change to the condition is, therefore, a proper clarification, consistent with the original intent, and not a material change or revision. Neither the City nor WSDOT suggested otherwise.

### **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 *revised* conditions:

1. Approval is for a preliminary plat of 98 single-family lots to be developed in substantial conformance with the plans, drawings, illustrations, and specifications for the "The Summit" 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. Lots 1-4 and Lots 58-60 shall have front yard designations on Walnut and vehicular access to those lots is prohibited from Cedar Road.
3. Per the MDNS, prior to platting the first phase of The Summit, install two signs on US 195 ("Ramp Metered Ahead When Flashing" and "Alt Route Downtown City Center"). Follow-through signage will also be installed on the adjacent City street network as directed by City Traffic in mitigation measure #5 below.
  - a. A follow-up assessment of the effectiveness of this mitigation is required prior to platting the second phase. *That assessment will include a pre-signage analysis and a post-signage analysis prepared by the Applicant's traffic engineer. The purposes of the analysis is to determine to what extent, if any, the signage results in the diversion of traffic from US 195 to Thorpe/Inland Empire Way (the "Alternate Route").*
  - b. *The post-signage analysis shall be based upon traffic data collected between 14 days and 30 days after the signage is installed.*
  - c. *During the period that data is being collected for the post-signage analysis, WSDOT will not change its ramp metering protocol for the US 195/I-90 interchange, in order to ensure that the results of the post-signage analysis*

*are not affected by changes in the metering protocol. The WSDOT stipulated to this condition at the hearing on the plat application.*

- d. *The signage is intended to mitigate the impacts of additional traffic on the US 195/I-90 interchange by diverting traffic from US 195 to the Alternate Route, prior to reaching the interchange.*
  - e. *If the assessment proves effective at mitigating the project's impact, then no further mitigation for the US 195/I-90 traffic is required. The signage shall be considered proven effective if the signage results in the diversion of 12 trips during the AM peak hour from US 195 to the Alternate Route. WSDOT and the Applicant's traffic engineer stipulated at the hearing that 12 trips was equivalent to the additional AM peak trips from the project which would turn north onto US 195 and, if not diverted to the Alternate Route, would create additional traffic load on the US 195/I-90 interchange.*
  - f. *If the mitigation does not prove effective prior to platting the second phase of the project, then additional mitigation would be required. That mitigation includes, but is not limited to, removal of the stop sign for the eastbound traffic at Thorpe (23rd) and Inland Empire Way intersection to encourage eastbound traffic to use this route. This additional mitigation would be contingent upon City acquisition of the ROW or easements required to ensure safe sight distance at that intersection.*
  - g. *The Hearing Examiner retains jurisdiction over this matter for the limited purpose of resolving any disagreements between the City, WSDOT, and the Applicant, concerning the methodology or results of the pre-signage analysis and a post-signage analysis; the effectiveness of the foregoing mitigation measures; the requirement for additional mitigation; or the application or interpretation of the mitigation conditions 3-5 of this decision. Upon being notified of such a dispute, the Hearing Examiner may, in his discretion, schedule a public hearing to receive testimony and argument for purposes of rendering findings, conclusions, and a decision resolving the dispute. The Hearing Examiner's decision may, as appropriate, include revisions to the project conditions.*
- 4. *Per the MDNS, due to the failing level of service at US 195/Meadowlane Road, the Summit shall not be issued building permits for single-family residences beyond the 20th lot until an intersection improvement project is funded and added to the City's six-year transportation plan. This project is expected to be a full or half J-turn.*
  - 5. *Per the MDNS, in coordination with the WSDOT condition for signage on US 195, prior to final platting the first phase of The Summit, the Applicant shall install follow-through signage for the Alternate Route via Inland Empire Way. Signage is recommended at the intersection of 23rd Avenue/Chestnut Street and at 23rd Avenue/Inland Empire Way. Signage shall conform to City standards. A plan shall be submitted for City review and approval prior to installation.*

6. Per the MDNS, frontage improvements on Cedar Road shall provide a northbound and southbound left turn pocket for the intersection of Cedar Road/Eagle Ridge Boulevard.
7. The proposed sewer lift station must be a private station and must be managed/maintained by a Homeowner's Association.
8. The segment of Eagle Ridge Boulevard between Walnut Street and Cedar Road may need to be wider to match up with Eagle Ridge Boulevard on the east side of Cedar Road.
9. If the final plat is phased, provisions for temporary public turnarounds will need to be established at that time.
10. All stormwater and surface drainage generated onsite shall be disposed of onsite in accordance with SMC 17D.060 "Stormwater Facilities," the SRSM, 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.
  - a. 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 SRSM, 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 Planning & Development for review and acceptance prior to issuance of a building permit.
  - b. Prior to construction, a grading and drainage plan shall be submitted to Planning & Development for review and acceptance.
  - c. An erosion/sediment control plan, detailing how dust and runoff will be handled during and after construction, shall be submitted to Planning & Development for review and acceptance prior to construction.
  - d. 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.
  - e. The developer will be responsible for all costs associated with constructing storm water improvements necessary to serve the proposed plat.
11. Public street improvements within the plat and also along the frontage of Cedar Road are to include full pavement section within the plat and to centerline of Cedar

Road, curb, and separated sidewalk with street trees, 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.

- a. Street design for the plat shall include supporting geotechnical information on the adequacy of the soils underneath to support vehicular design loads.
  - b. All street identification and traffic control signs required due to this project must be installed by the developer at the time street improvements are being constructed. They shall be installed and inspected to the satisfaction of the City's Construction Management Office in accordance with City standards prior to the occupancy of any structures within the plat.
  - c. The developer will be responsible for all costs associated with constructing street improvements necessary to serve the proposed plat.
12. Please revise 68th Avenue to say 67th Avenue and 69th to say to 68th Avenue.
13. Construction plans for public street, sewer, water, and storm water systems must be designed by a Professional Engineer, licensed in the State of Washington, and submitted to Planning & Development for review and acceptance prior to construction.
14. Plan review fees for sanitary sewer, water, street, and storm water improvements will be determined at the time of plan submittal and must be paid prior to the start of review.
15. Addresses must be shown on the final plat.
16. Civil engineered plans and profiles shall use NAVD88 datum plus 13.13 ft.
17. Centerline survey monuments will be required to be installed in the locations defined in the City of Spokane Design Standards.
18. 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 here on 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 Planning & Development 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 Planning & Development Department and having adequate pressure for domestic and fire uses, as determined by the Water and Hydroelectric Services Department.
  - d. All stormwater and surface drainage generated onsite shall be disposed of onsite in accordance with SMC 17D.060 "Storm water Facilities," the Spokane 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 off-site 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.
  - e. 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 Spokane 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.
  - f. Slope easements for cut and fill, as deemed necessary by Planning & Development in accordance with City Design Standards, are granted along all public right of ways.
  - g. 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.
  - h. 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.
  - i. A Transportation Impact Fee and GFC fees will be collected prior to the issuance of a building permit for the affected lot.
19. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services should be immediately notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the WSDAHP before excavating, removing, or altering Native American human remains or archaeological resources in Washington.



22. Spokane Municipal Code section 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.
23. 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.

DATED this 7<sup>th</sup> day of <sup>February</sup> ~~January~~ 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 7<sup>th</sup> day of February 2020. **THE DATE OF THE LAST DAY TO APPEAL IS THE 21<sup>st</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.