

## **CITY OF SPOKANE HEARING EXAMINER**

**Re:** Application to Amend the Riverpoint ) FINDINGS, CONCLUSIONS,  
Village Planned Unit Development ) AND DECISION  
(PUD) to remove Unit 12 from the )  
PUD ) FILE NO. Z21-105PPUD

### **SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The applicant is requesting approval of an amendment to the Riverpoint Village PUD that will remove Unit 12 from the boundaries of the PUD so that it may be developed independent of the PUD, in accordance with the standards of the existing zoning regulations.

**Decision:** Approved, with conditions.

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

**Applicant/Agent:** Goodale & Barbieri Company  
Attn: Stephen Barbieri  
818 W Riverside Ave, Suite 300  
Spokane, WA 99201

**Owner:** Huckleberry Bay Company  
818 W Riverside Ave, Suite 300  
Spokane, WA 99201

**Property Location:** The subject property is located on parcel number 35173.3003, addressed as 643 N Riverpoint Boulevard, in the City of Spokane, Washington.

**Legal Description:** The legal description of the property is provided in Exhibit 1A.

**Zoning:** The property is zoned DTU (Downtown University).

**Comprehensive Plan (CP) Map Designation:** The property is designated as Downtown.

**Site Description:** The subject property is 30,377 square feet in size. It is undeveloped and irregular in shape. The site is relatively flat and is currently a large grassy area. This parcel is identified as Unit 12 in the Riverpoint Village PUD plan.

**Surrounding Conditions and Uses:** The land adjacent to the site, to the north, south, east and west, is zoned Downtown University (DTU). Adjacent land uses to the north and east are residential uses, which are within the existing Riverpoint Village PUD. The Spokane River forms the northerly border of the Riverpoint Village PUD. On the other side of the Spokane River, the land is zoned Community Business to the northwest, Residential High Density to the north, and General Commercial to the northeast. Gonzaga University's

campus is located northeasterly of the site, on the opposite side of the Spokane River. To the south, west, and east is the campus of WSU-Spokane.

**Project Description:** The applicant is proposing an amendment to remove Unit 12 from the Riverpoint Village PUD. Removing Unit 12 will allow it to be developed separately from the PUD. At this time, there are no immediate development plans for Unit 12. No specific project is being proposed in conjunction with the requested amendment.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code (SMC) 17C.124, Downtown Development; SMC 17G.060, Land Use Application Procedures; SMC 17G.070, Planned Unit Developments; and SMC 17G.060.170, Decision Criteria.

**Notice of Community Meeting:** Mailed: April 30, 2021  
Posted: May 5, 2021

**Notice of Application/Public Hearing:** Mailed: July 30, 2021  
Posted: August 3, 2021

**Community Meeting:** May 20, 2021

**Site Visit:** August 17, 2021

**Public Hearing Date:** August 18, 2021

**State Environmental Policy Act (SEPA):** The May 1, 1992, Mitigated Determination of Non-Significance (MDNS) for Riverpoint Village PUD was adopted by reference pursuant to SMC 17E.050.180 and Washington Administrative Code (WAC) 197-11-600.

#### **Testimony:**

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

William Lenz  
Witherspoon Kelley  
422 W. Riverside Avenue, Suite 1100  
Spokane, WA 99201

Russell Oakley  
639 N. Riverpoint Boulevard, 3W  
Spokane, WA 99202

Stephen Barbieri  
Goodale & Barbieri Company  
818 W Riverside Ave, Suite 300  
Spokane, WA 99201

Roger Felice  
639 N. Riverpoint Boulevard, 6E  
Spokane, WA 99202

Susan McLaughlin  
PO Box 30522  
Spokane, WA 99223

**Submitted Comments to the Record or Present but did not Testify:**

Bruce & Pam Gallaher  
639 N. Riverpoint Boulevard, H103  
Spokane, WA 99202

Larry & Betty Guenther  
[larryguenther@outlook.com](mailto:larryguenther@outlook.com)  
[betsyguenther@outlook.com](mailto:betsyguenther@outlook.com)

Kathleen & James McLean  
[Kmclean888@hotmail.com](mailto:Kmclean888@hotmail.com)

Constance Scarpelli  
639 N. Riverpoint Boulevard, J307  
Spokane, WA 99202

Michael Hinnen  
639 N. Riverpoint Boulevard, 9W  
Spokane, WA 99202

Giotom Tsegay  
639 N. Riverpoint Boulevard, J308  
Spokane, WA 99202

Jill Serbousek  
639 N. Riverpoint Boulevard, H101  
Spokane, WA 99202

**Exhibits:**

Staff Report, dated 08/11/21, including the following exhibits:

1. Application Materials, including:
  - A General Application
  - B Planned Unit Development Application
  - C Notification Map Application
2. Request for Agency Comments dated 06/23/21, including:
  - A Spokane Tribe of Indians
  - B City of Spokane Treasury Accounting
  - C Avista
  - D City of Spokane Engineering
3. Noticing Documents, including:
  - A Notice of Public Hearing Instructions dated 06/21/21
  - B Notice of Public Hearing for 08/18/21 Hearing
  - C Noticing Affidavits
4. Public Comments
5. Community Meeting Materials, including:
  - A Community Meeting Instructions dated 04/26/21
  - B Notice of Community meeting for 05/20/21
  - C List of Meeting Participants
  - D Affidavits
  - E Community Meeting Recording
6. Historical Documents, including:
  - A Exceptions
  - B Original Recorded Plat
  - C Original Zone Change and PUD Application
  - D Original Hearing Date
  - E Title Report, Vesting Deed, Corporate Resolution
  - F Original PUD Decision
7. Staff Presentation

## **FINDINGS AND CONCLUSIONS**

To be approved, an amendment to a PUD must comply with the criteria set forth in Section 17G.060.170 SMC. The Hearing Examiner has reviewed the 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 Applicant seeks to remove a parcel of land from an existing PUD. Modifications to a PUD are allowed, so long as the proposal goes through the Type II or Type III review process as appropriate. *Testimony of D. deBit.* In this case, a Type III process was required because the proposal to remove Unit 12 from the PUD was considered a “major modification.” *See id.*; *see also* SMC 17G.070.200(D)(6)(c). This process is not out of the ordinary. In fact, land has been removed from this same PUD previously. *Testimony of D. deBit.*

There is no statute, rule, or regulation, to the Hearing Examiner’s knowledge, that prohibits the removal of land from a PUD. The original decision approving the PUD, similarly, does not include conditions that preclude the removal of Unit 12 from the PUD. *Testimony of D. deBit*; *see also* Exhibit 6F. In addition, Staff noted that the PUD would continue to comply with the original decision criteria after the removal of that parcel. *See* Staff Report, p. 4. Thus, approving this proposal will not create a nonconformity or put the remainder of the site into noncompliance with the project conditions or the original decision criteria.

Removing the parcel from the PUD will permit the property to be developed without the restrictions imposed by the PUD. However, a new development will be required to meet any applicable land use standards at the time of submittal. *See* Staff Report, p. 4; *Testimony of D. deBit.* Compliance with those development standards would have to be reviewed at the time a development application is submitted. *See id.* This review will ensure that the future use and development of the property will comply with 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 CP does not contain any goals, policies, or commentary that are especially relevant to a proposal to remove a parcel of land from an existing PUD. In addition, the mere removal of the property from the PUD is not a specific project action. This makes evaluating specific goals or policies more difficult. Even so, the CP does lend general support to this proposal, as the following discussion illustrates.

As the Staff noted, any future proposal to develop the property must demonstrate consistency with this land use designation, in addition to satisfying the applicable zoning and development regulations. *See* Staff Report, p. 4. Thus, when a specific development project is proposed, consistency with the CP will be one of the requirements. In addition, future development proposals will also be required to satisfy concurrency standards, which will ensure that public infrastructure and services are adequate to support the future use. *See id.* This fulfills Policy LU 1.12, Public Facilities and Services. *See* CP, Chapter 3, Policy LU 1.12, p. 3-14. This will also promote the efficient use of land by

focusing growth in areas where adequate facilities and services are available. See CP, Chapter 3, Policy LU 3.1, p. 3-17.

Given the nature of this proposal, the goals and policies of the CP are of limited application. However, to the extent the CP is relevant at this stage, the Hearing Examiner agrees with Staff that the proposal is consistent with the CP.

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

On June 23, 2021, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 2. In response, the City received comments from various agencies regarding the proposal. See e.g. Exhibits 2A-2D. None of the commenting agencies or departments reported that concurrency was not satisfied. See Staff Report, p. 4. The Hearing Examiner concludes that this criterion is met.

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

The proposal is to remove a parcel of property from an existing PUD. No specific development project is being proposed at this stage. As a result, there is no site plan to consider. Since this criterion assumes a site plan is under consideration, this criterion is not especially relevant to this proposal.

That being said, the site was previously evaluated and approved for development. In accordance with the original PUD, the site is an appropriate location for single-family residences, parking areas, and a parking garage. See Exhibit 7 (Riverpoint Village PUD History); see *also* Exhibit 6F. There is little reason to believe the site cannot support other types of development as well. For example, the site is relatively flat, contains sufficient area to support various uses, and is adjacent to a public road, among other things. There is no evidence in this record suggesting that the physical characteristics of the property make it inappropriate for future development. In any case, Staff correctly noted that any new development proposed for this site will be reviewed by Development Services to determine suitability regarding site planning, soils, drainage, as well as building and land use codes. See Staff Report, p. 4.

There are no known historic or cultural features on the development site. See Exhibit 2A. However, the Spokane Tribe of Indians indicates a high probability of encountering cultural resources within the area. See *id.* The Tribe also recommended an inadvertent discovery plan be implemented in the scope of work. See Exhibit 2A. Staff proposed specific project conditions to address the Tribe's concerns. Those conditions have been incorporated into this approval. See Conditions 1 & 2.

The Hearing Examiner concludes that the property is suitable for future development separate from the Riverpoint Village PUD, 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).*

As stated previously, there is no specific development project associated with this proposal. The mere removal of the site from the PUD will not result in environmental impacts. Removal of the site from the PUD will allow the owner to develop the property in various ways. However, the owner will be required to develop the site in compliance with all current regulations concerning land use and environmental protection. See Staff Report, p. 5. In addition, future development proposals will require a new SEPA review unless it is found to be categorically exempt per SMC 17E.050.070. See *id.* Finally, approval of this proposal will not diminish or alter the conditions of approval applicable to the remainder of the PUD. See *id.* Thus, the remainder of Riverpoint Village PUD will continue to be required to meet the conditions of the 1992 approval and the MDNS issued on May 1, 1992. See *id.* The Hearing Examiner concludes that this criterion is, therefore, satisfied.

- 6) *The remainder of Riverpoint Village PUD will continue to comply with the PUD criteria after the removal of Unit 12.*

When the Hearing Examiner approved the Riverpoint Village PUD in 1992, he found that the proposal was consistent with the decision criteria for PUDs. See Exhibit 6F (referencing former SMC 11.19.361); see also Staff Report, p. 5. The Staff determined that the Riverpoint Village PUD will continue to satisfy these criteria after Unit 12 is removed from the PUD. The Hearing Examiner agrees. No testimony or evidence presented at the hearing undermined the Staff's conclusion. The Hearing Examiner adopts and incorporates the Staff's analysis of this issue, found on page 5 of the Staff Report.

- 7) *The Hearing Examiner concludes that request to remove Unit 12 from the PUD should be approved despite the objections to the proposal.*

A number of objections and criticisms were raised about the proposal, both in written comments and in public testimony. The primary concerns raised in the public comments are discussed below.

*Loss of Green Space.* Condominium owners objected that the proposal would result in the loss of green space that they enjoy. See Exhibit 4 (E-mail of B. Guenther 8-12-2021, 3:42 PM). Some owners purchased their properties because of the green space provided by Unit 12. See Exhibit 4 (E-mail of G. Tsegay 8-4-2021, 10:00 AM; Letter of J. Serbousek 7-2-2021). Others believed the loss of green space would negatively impact both the environmental health of the area as well as the aesthetics of the district. See Exhibit 4 (E-mail of K. McLean 8-11-2021, 2:39 PM; Letter of C. Scarpelli 8-14-2021); *Testimony of R. Felice.*

The Hearing Examiner is sympathetic to these concerns. However, Unit 12 is a privately owned lot. *Testimony of S. Barbieri & W. Lenz.* The property was not designated as green space or open space when the PUD was approved. *Testimony of D. deBit.* One condominium owner contended that Unit 12 was designated as a "Group Limited Common Element" in the recorded Condominium Association ("Association") documents. See

Exhibit 4 (Letter of J. Serbousek 7-2-2021). However, she did not identify the specific provisions that supported this claim. The Hearing Examiner concludes that Ms. Serbousek is mistaken. At the hearing, both the owner and the Association specifically confirmed that Unit 12 was not a common element or a limited common element of the condominium.

*Testimony of S. Barbieri & W. Lenz.*

Unit 12 is maintained as a grassy, open area by the current owner, at its expense. The owner is not required to continue this arrangement indefinitely. In fact, that was never the intent. Under the original PUD, Unit 12 was to be developed with single-family residences, parking areas, and a parking garage. See Exhibit 7 (Riverpoint Village PUD History); see also Exhibit 6F. The removal of the site from the PUD may result in a different kind of development than originally contemplated. However, the proposal does not eliminate green space that was set aside for the benefit of the condominium owners or others.

Violation of Condominium CC&Rs. The Association contended that removing Unit 12 from the PUD violates the Covenants, Conditions, and Restrictions (CC&Rs) of the condominium. *Testimony of W. Lenz*; see also Exhibit 8. Under those covenants, the owner had the option to remove Unit 12 from the PUD, but had to do so by a stated deadline. See *id.* That deadline expired in 2003. See *id.* Thus, the owner missed its opportunity to remove Unit 12 from the PUD, and cannot legally do so now. See *id.*; see also Exhibit 4 (E-mail of B. Gallaher 8-13-2021, 10:12 AM; Letter of J. Serbousek 7-2-2021). The Association also pointed out that Unit 12 could be developed with a residential use, consistent with the CC&Rs. *Testimony of W. Lenz.* However, any proposal to convert the property to a non-residential use is prohibited. See *id.*; see also Exhibit 8.

The removal of Unit 12 may or may not be permissible under the terms of the CC&Rs. The CC&Rs may or may not operate to preclude non-residential uses of the site. Unfortunately, the Hearing Examiner does not have authority to answer these legal questions through this administrative process. The Hearing Examiner's authority is limited to rendering a decision on the application presented, based upon the relevant codes and regulations that govern this type of application. See *Chausee v. Snohomish County Council*, 38 Wn.App. 630, 636-37, 689 P.2d 1084 (1984) (holding that a hearing examiner can only exercise the powers specifically conferred by the local legislature). The Hearing Examiner cannot interpret and enforce CC&Rs, grant equitable remedies, or award damages. For these types of relief, the Association or its members must turn to the courts. The Hearing Examiner concludes that he has no jurisdiction to interpret and enforce the terms of private covenants.

Noncompliance with Condominium Act. The Association argued that the Applicant must comply with the requirements of the Condominium Act in order to withdraw Unit 12. See Exhibit 8. In order to withdraw the property from the condominium, the Applicant must prepare, execute, and record an amendment to the CC&Rs as well as a new/certified survey map and plans. See *id.* (Citing to Revised Code of Washington [RCW] 64.34.232 & .264). Those procedures have not been followed to date. See *id.* Any attempt to withdraw without following these procedures is invalid, according to the Association. See *id.*

The application before the Hearing Examiner seeks to remove Unit 12 from a PUD. A PUD is a form of subdivision of land authorized by local ordinance. As the Association notes, it is a "planning construct" created by the City to facilitate the efficient and beneficial use of land. See Exhibit 8. The creation of a condominium, by contrast, is a private arrangement by or among the owners of real estate. See *id.* The condominium process is legally distinct

from the creation of a PUD. The Hearing Examiner has no role in that process and no jurisdiction to apply or enforce condominium law in the context of a land use application. The Hearing Examiner concludes that this issue is outside the scope of his authority. As with the controversy over the effect of the CC&Rs, this issue can only be resolved in the courts.

*Lack of Specific Development Proposal.* Several public comments were made objecting to the fact that the owner did not submit a specific development proposal for Unit 12. The Association emphasized that more specificity was necessary in order to properly evaluate the effect of the proposal. *Testimony of W. Lentz.* One condominium owner stated that it was difficult to determine the purpose for the change, given the uncertainty regarding the future use. *Testimony of R. Felice.* Other owners predicted that there would be a range of impacts, if the property was ultimately developed in a more intense way, such as a commercial or institutional use. See e.g. Exhibit 4 (E-mail of K. McLean 8-11-2021, 2:39 PM; E-mail of R. Oakley 8-7-2021, 9:40 AM).

The proposal seeks to remove a parcel from a PUD, in order to permit development consistent with the current zoning. There is no rule mandating that an owner formulate a specific development plan as a precondition to removing a parcel from a PUD. *Testimony of D. deBit.* In addition, proposals to remove property from a PUD has been approved in the past, including at Riverpoint Village. See *id.* The proposal is in the nature of a non-project action, like a rezone. Rezones can be approved without specific development plans attached. Often, changes of that type are made with only long-term plans in mind. Moreover, the uncertainty surrounding this proposal is not materially different than occurs with any undeveloped parcel. An undeveloped parcel can be developed in a variety of ways, depending on the zoning, the market conditions, and the intent of the owner.

Ultimately, any future development proposal will require a new application and review for compliance with SEPA requirements. The developer will be required to provide all the salient details about such a proposal. The project will be subject to the City's application review process. The environmental impacts of any non-exempt project would also be considered at that time. In other words, there is a process in place to consider the project-specific impacts. That process will take place at the time a specific development application is submitted to the City.

*Potential Impacts of Proposal.* Project opponents predicted that removal of Unit 12 from the PUD would damage views; create noise impacts; lower property values; exacerbate parking problems; increase traffic and congestion; create safety hazards; and increase crime, among other concerns. See e.g. Exhibit 4 (E-mail of K. McLean 8-11-2021, 2:39 PM; E-mail of R. Oakley 8-7-2021, 9:40 AM; E-mail of G. Tsegay 8-4-2021, 10:00 AM; and Letter of J. Serbousek 7-2-2021). For various reasons, the Hearing Examiner concludes that these concerns do not justify denial of the proposal.

As previously discussed, Unit 12 was not set aside as open/green space for the benefit of neighboring owners or the community. It is a parcel of private property that was always slated for development. The original plan included a parking garage, single-family residences, and parking areas. The views across Unit 12 were never going to be preserved. In addition, a neighboring owner does not have a right to a view across another person's land, in the absence of an easement or covenant preserving the view. No objecting party contended that such an easement or covenant existed. Finally, the Hearing Examiner agrees with the Applicant that Riverpoint Village is primarily oriented toward the



Spokane River, rather than to the south. *Testimony of S. Barbieri*. There is also an existing parking garage and common areas that provide some buffer between Unit 12 and the residential units in the PUD. See *id.* Ultimately, Unit 12 was not intended to be preserved as a view amenity.

The other impacts listed by project opponents are more appropriately considered when a specific development proposal is submitted. It is difficult to see how the mere removal of the property from the PUD will result in such negative outcomes. The predictions of noise, traffic, congestion, crime, unsafe conditions, lower property values, etc. reflect generalized fears regarding how the property might be developed in the future. However, unsubstantiated fears of area residents do not constitute a substantive basis for denial of a land use application. See *Sunderland Family Treatment Services v. Pasco*, 127 Wn.2d 782, 796-97, 903 P.2d 986 (1995). Similarly, general community fears or displeasure are not a proper basis to condition or deny a project. See *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990).

In this case, there is no specific evidence in this record substantiating the predicted impacts. For example, there is no data supporting the idea that removing the property from the PUD will actually cause a drop in property values, an increase in crime, or any of the other impacts. There was no expert testimony explaining why the listed impact would necessarily arise from this proposal. It is also entirely possible that none of the predicted impacts will occur, depending upon the ultimate proposal. It is also possible that entirely different impacts will have to be considered or mitigated. At this stage, the predictions are essentially speculative.

To address its concerns, the Association suggested a range of project conditions, including a prohibition on tree removal; subjecting future development to architectural committee review; ensuring compliance noise and light regulations; and requiring the developer to be responsible for any utility modifications or relocations. See Exhibit 4 (E-mail of R. Oakley 8-7-2021, 9:40 AM). The Hearing Examiner does not believe these proposed conditions are appropriate.

First, the Hearing Examiner has no authority to require a property owner to preserve the trees<sup>1</sup> on his or her land. There is no rule or regulation upon which to base such a condition. In addition, there was no condition requiring the preservation of trees in the original decision approving the PUD. Thus, tree removal is at the discretion of the property owner, regardless of whether the property is developed for residential purposes or not.

Second, the Hearing Examiner does not have authority to interpret and enforce the CC&Rs of the Association, as previously discussed. Thus, the Hearing Examiner is not inclined to condition any future projects upon approval by the architectural review committee of the Association. As with the other questions related to the CC&Rs, the courts will have to determine whether future projects must comply with the architectural review provisions of the Association documents.

Third, the remaining, proposed conditions are unnecessary. Any future development will be required to satisfy the applicable regulations. That includes compliance with regulations

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<sup>1</sup> "Street trees" located within the public right-of-way, by contrast, cannot be removed by the adjacent property owner without first obtaining a permit. See SMC 12.02.900 *et seq.* Incidentally, these types of permits are only granted in limited circumstances. See *id.*

regarding noise and light/glare. In addition, the developer will certainly be responsible to move utility lines as necessary to accommodate the development of Unit 12. That work must be done with necessary permits and in coordination with the utility providers.

*Inconsistency with PUD Approval.* The Association maintains that the Hearing Examiner's original decision required that the PUD "be made subject to the Declaration and be for the purpose of residential development." See Exhibit 8; see *also* Exhibit 6F. As a result, the Association concludes that the removal of Unit 12 from the PUD is inconsistent with the Hearing Examiner's original decision approving the PUD. Thus, the proposal should be denied. The Hearing Examiner disagrees with the Association's reasoning.

As the Association contends, the Hearing Examiner's decision approving the PUD states that the PUD shall be subject to the terms and conditions of the CC&Rs of the Riverpoint Village Planned Unit Development. See Exhibit 6F (Conditions 21 & 22). The primary purpose of these conditions, however, is to ensure that there is a mechanism to allocate a fair share of the costs of maintaining the common areas before sale of any lots/units. This also provides fair warning to future buyers regarding the obligations that go with ownership. The Association's argument seems to suggest that by requiring CC&Rs to be put in place before the development could proceed, the Hearing Examiner intended to adopt all the terms and conditions of those CC&Rs as conditions of approval for the PUD. The Hearing Examiner rejects this suggestion. This PUD conditions do not purport to dictate all the specific terms and conditions that must be included in the CC&Rs. Nor do the PUD conditions incorporate all the specific terms of the CC&Rs as conditions of the PUD itself.

The Hearing Examiner concludes that the proposal is consistent with the original decision approving the PUD. Nothing in those project conditions precludes the Hearing Examiner from approving this proposal.

## **DECISION**

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

1. If any artifacts or human remains are found upon excavation, The Spokane Tribe of Indians and the City of Spokane shall be immediately notified, and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation (WSDAHP) before excavating, removing, or altering Native American human remains or archaeological resources in Washington.
2. Prior to any land disturbing activities an Inadvertent Discovery Plan (IDP) shall be provided to the City, in a form satisfactory to the Planning Department. The IDP shall be kept on site during all land disturbance activity.
3. The land remaining within the Riverpoint Village PUD is and will remain subject to the applicable conditions of approval as set forth in the Hearing Examiner's decision dated June 16, 1992, including the MDNS issued on May 1, 1992.

4. The land removed from the PUD will be subject to such regulations and standards for land development as are in effect at the time that a development proposal is submitted.
5. If any existing easements exist on the subject property, they shall remain in place and in full force and effect until legally abandoned.

DATED this 20<sup>th</sup> day of September 2021.



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 amendments to PUDs 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 20<sup>th</sup> day of September 2021. **THE DATE OF THE LAST DAY TO APPEAL IS THE 4<sup>th</sup> DAY OF OCTOBER 2021, 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.