

CITY OF SPOKANE HEARING EXAMINER

Re: Preliminary Plat Application by Whipple Consulting Engineers, Inc. to subdivide approximately 7.03 acres into 27 single-family lots on property located at 5808 S. Meadow Lane Road.)
) FINDINGS, CONCLUSIONS,
) AND DECISION
) FILE NO. Z22-269PPLT
)

I. SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant is proposing to subdivide approximately 7.03 acres into 27 single-family lots in a plat to be known as “The Greens at Meadowlane Phase II.”

Decision: Approved, with *revised* conditions.

**II. FINDINGS OF FACT
BACKGROUND INFORMATION**

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

Owner: Meadowlane Greens LLC
George Paras
603 N Havana Street
Spokane, WA 99202

Property Location: The subject property is located on parcel number 34064.0047 and currently addressed as 5808 S. Meadow Lane Road, which is located west of US-195 at the intersection of E. Meadowlane Road, City of Spokane, Washington.

Legal Description: The legal description of the property is provided in Exhibit 3 (Subdivision Guarantee).

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

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

Site Description: The site is approximately 7.03 acres in size. The site is rectangular in shape. The site has some significant slopes, some of which are greater than 30%. The existing site is one parcel with one existing single-family home and associated outbuildings.

Surrounding Conditions and Uses: The land surrounding the proposal is zoned RSF. Adjacent land uses to the south are single family. To the west is the site of Qualchan View Estates Preliminary Long Plat, which was approved by the Hearing Examiner on October 23, 2023. To the east of this site is an existing church, and directly to the west is the old Eagle Ridge Golf Course and the approved Greens at Meadowlane Phase I plat.

III. PROCEDURAL INFORMATION

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

Notice of Community Meeting: Mailed: April 8, 2022
Posted: April 11, 2022
Publication: April 8 & 15, 2022

Notice of Application/Public Hearing: Mailed: August 30, 2023
Posted: August 25 & 29, 2023
Publication: August 29 & September 5, 2023

Community Meeting: April 27, 2022

Site Visit: October 2, 2023

Public Hearing Date: October 4, 2023

State Environmental Policy Act (SEPA): A Mitigated Determination of Non-Significance (MDNS) was issued on September 13, 2023. See Exhibit 2. The MDNS was not appealed.

Testimony:

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

Todd Whipple
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Greg Figg
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Present but did not Testify or Submitted Comments to the Record:

Scott Barrick
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Exhibits:

1. Planning Services Staff Report dated 09/27/23
2. MDNS dated 09/13/23
3. Application Materials, including:
 - General Application, pp. 1-2
 - Preliminary Long Plat Application with maps, pp. 3-9
 - Supplemental Information, pp. 10-22
 - State Environmental Policy Act (SEPA) Environmental Checklist dated 07/07/23, pp. 12-32
 - Trip Generation and Distribution Letter (TGDL) dated 12/20/21 with appendices, pp. 33-43
 - Shoreline/Critical Areas Checklist, pp. 44-46
 - Subdivision Guarantee with legal description, pp. 47-51
 - Cultural Resources Report, pp. 52-107
 - Pre-Development Conference Notes, pp. 108-113
4. First Request for Agency Comments, including:
 - Request for Comments dated 07/25/22, pp. 1-3
 - Spokane Fire Department (SFD), pp. 4-6
 - Washington State Department of Transportation (WSDOT), pp. 7-10
 - City Engineering, pp. 11-16
 - Technically Incomplete Letter dated 08/11/22, pp. 17-22
5. Second Request for Agency Comments, including:
 - Request for Comments dated 05/31/23, pp. 1-3
 - Applicant Response to Determination of Completeness with enclosures, pp. 4-14
 - City Traffic, p. 15
 - SFD, p. 16
 - City Engineering, pp. 17-22
 - WSDOT, pp. 23-27
 - Technically Complete Letter dated 07/14/23, pp. 28-33
 - Applicant/Agency follow up regarding traffic, pp. 34-90
6. Notice of Application and Public Hearing Materials, including
 - Notice of Application and Public Hearing Instructions dated 08/21/23, pp. 1-2
 - Notice of Application and Public Hearing, pp. 3-6
 - Affidavit of Publication on 08/29/23 and 09/05/23, pp. 7-10
 - Affidavit of Posting on 08/25/23 and 08/29/23, pp. 11-12
 - Affidavit of Mailing on 08/30/23, p. 13

- Public Comments, pp. 14-20
7. Community Meeting Materials, including:
 - Notification Map Application with attachments, pp. 1-4
 - Notice of Virtual Community Meeting on 04/27/22, pp. 5-6
 - Community/Traffic Scoping Meeting instructions, pp. 7-8
 - Affidavit of Posting on 04/11/22, pp. 9 & 11
 - Affidavit of Mailing on 04/08/22, p. 10
 - Affidavit of Publishing on 04/08/22 and 04/15/22, p. 12-13
 - Community Meeting Notes and Comments, pp. 14-23
 8. Integrated Capital Management Letter to Hearing Examiner with attachments:
 - SRTC letter dated 07/20/22 re: US 195/Meadowlane J-Turn
 - Conditions of Award dated 08/02/22
 - US 195/Meadowlane J-Turn Option 6
 9. M. Marshall comment letter dated 10/02/23
 10. Planning Services Presentation
 11. Applicant's Attorney Memo dated 10/03/23
 12. Applicant's Letter to Hearing Examiner dated 10/4/23
 13. Applicant's Presentation
 14. Redline Memo in support of Greens at Meadowland
 15. Easement
 16. Qualchan Aerial with Overlay

IV. 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 4.73 dwelling units per acre (DUs/acre). See Staff Report, p. 4. Therefore, the net density of the project fits within the 4-10 DUs/acre allowed under the municipal code. See *id.* The proposed development also satisfies the minimum lot size requirement for the SFR zone. See *id.* In addition, 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 CP 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 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 DUs/acre and a maximum of 10 DUs/acre. See *id.* The density of the project fits within this designation, as discussed above.

The proposal is generally supported by the goals, objectives, and policies of the CP. The site is within the Urban Growth Area and is designated for precisely this type of development. The site is mostly surrounded with single-family uses. *Testimony of A. Brast*. There is an existing residential neighborhood immediately to the south. In addition, the proposed development is consistent in density to the adjacent, recently approved plats, including Qualchan View Estates and Greens at Meadowlane Phase I development. 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). 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).

Mitigation measures were required in order to address insufficiencies in the transportation system and the public water supply. With those mitigation measures in place, the relevant City departments and WSDOT have agreed that those public facilities are sufficient to serve the proposed subdivision. Aside from transportation and water, no facility or service providers reported that the public infrastructure was not sufficient to accommodate the development. See Paragraph IV.3. So long as the project conditions are satisfied, public services and facilities will be adequate to serve the proposed development. This fulfills Policy LU 1.12, Public Facilities and Services. See CP, Chapter 3, Policy LU 1.12, p. 3-14. In addition, the project, as conditioned, promotes 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.

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 July 25, 2022, and again on May 31, 2023, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction, consistent with SMC 17D.010.020(B)(1). See Exhibits 4 & 5. The distribution list included the Police Department, SFD, Spokane School District (as well as the Cheney School District, District 81, and the Mead School District), Spokane Transit Authority (STA), Planning & Development, Street Operations, Engineering Services, Parks Department, Water Department, and WSDOT, among many others. See *id.* The relevant departments and agencies had the opportunity to provide comments, suggest mitigating measures or conditions, and advise whether public facilities and services are sufficient to support the proposed development.

The responsibility to determine whether a project satisfies the concurrency requirement lies with the facility and service providers. See SMC 17D.010.020(B). When reviewing a project, the facility and service providers must determine whether a development application will reduce the level of service (LOS) below the minimum LOS standards. See SMC 17D.010.020(C). If the project cannot pass this test, even with mitigating measures, the project must be denied. See *id.*

With regard to this application, there were no comments from school representatives, the Police Department, Spokane Transit Authority, or the Parks Department, to name some

examples, despite having two separate opportunities to comment. When an agency or department does not comment, the Hearing Examiner must conclude that those entities have no concerns about the effect of the proposal on the LOSs for their respective facilities or services. The municipal code makes this clear:

Failure by the notified facility and service provider to respond shall be construed as a finding that concurrency is met.

See SMC 17D.010.020(B)(1) (emphasis added).

According to the comments received, public services and facilities are sufficient to serve the proposed development, with two exceptions. First, the City is requiring a phased approach for the development until sufficient water capacity is available. See Staff Report, p. 5. An analysis was undertaken to measure the capacity of the water system to support the plats being developed in the area. *Testimony of A. Brast*. The analysis resulted in a number of water system improvements required for this region. See *id.* This application, however, is only dependent upon one improvement, namely the Marshall Road Water Main Extension. *Testimony of A. Brast*; see also Exhibit 10, p. 12. The City will be completing the Marshall Road Water Main Extension, which is scheduled for construction in 2024. *Testimony of A. Brast*. Thus, the relevant deficiency in the water system is being resolved by the City.

Second, the additional traffic from the project will impact the LOS of the intersection of US 195 and E. Meadowlane Road. See Staff Report, pp. 7-8. The additional traffic load also impacts the ramp at northbound US 195 and eastbound I-90. See *id.* To address these impacts, the developer will be required to pay impact fees (some of which will undoubtedly be directed by the City to offset the costs of the improvements to the intersection of Meadowlane Road and US 195). The Applicant will also be contributing funds toward a mitigation project at the intersection of 16th Avenue and US 195. WSDOT, the City, and the Applicant's traffic engineer have confirmed that these projects are sufficient to mitigate the potential traffic impacts of the proposed development. A more detailed comment on the project conditions related to Meadowlane Road and 16th Avenue is found in Paragraph IV.8.

There was public testimony contending that other public services were insufficient to support the development. However, no specific evidence was submitted to support such claims. For example, there was an objection that school services were already deficient, requiring extensive bussing from this area to other places with school services. *Testimony of C. Laub*. However, the schools did not comment on this project. There was no data or analysis provided on the LOS for schools. There was no evidence that the students added to the area from this development would have any effect on school operations. On this record, there is no basis to conclude that concurrency is not satisfied for schools.

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 Hearing Examiner concludes that the property is suitable for the proposed use, given its physical characteristics. The development area is of sufficient size to accommodate the project, as is demonstrated by the layout shown on the proposed plat.

The site is rectangular in shape, and thus poses no substantive development challenges in that regard. The site is adjacent to an existing residential neighborhood and two other sites which have been approved for residential development, all within an area designated for urban development. This is an appropriate location for the proposed residential development.

The topography and slope of the site poses development challenges. Much of the site consists of slopes of 16% or greater. See Staff Report, p. 5. Some portions of the site contains slopes over 30% in grade. See *id.* The areas shaded in pink on the preliminary plat are the portions of the site over 30% in grade. *Testimony of B. Goodmansen*; see also Exhibit 3, p. 8 (Preliminary Plat). The plat shows that the steepest parts of the site will remain on the 75,000+ square-foot lot being set aside for the existing, single-family residence. See Exhibit 3, p. 8 (Block 3, Lot 11, Preliminary Plat). In addition, other areas with the steepest slopes will be set aside in a tract to be managed by the homeowner's association. See Exhibit 3, p. 8 (Open Space Tract "A", Preliminary Plat). The development is concentrated in the less sloped areas of the site. Thus, the plat has been designed to account for the topography.

There are no visible signs of unstable soils at the site or its immediate surroundings. See Exhibit 3, p. 17 (Environmental Checklist ¶ B(1)(d)). However, the northwest corner of the property and the adjacent property to the west has erodible soils. This property will be set aside as a separate lot, and is also the location for the existing single-family residence. See *id.* As a result, no development activity will impact the steep slopes on that lot. Under the circumstances, there are no erosion concerns regarding this part of the site. See *id.*

There will likely be some localized erosion during the construction, although those impacts will be mitigated by best management practices. See Exhibit 3, p. 18 (Environmental Checklist ¶ B(1)(f) & (h)). 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 surface waters on the site. See Exhibit 3, p. 19 (Environmental Checklist ¶ B(3)(a)(1)). There is no apparent evidence of groundwater at the site. See Exhibit 3, p. 6. Storm water drainage on the property will be handled through the typical methods identified in the Spokane Regional Stormwater Manual (SRSM). See Exhibit 3, pp. 15 & 20 (Environmental Checklist ¶¶ A(15)(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 3, pp. 20-21 (Environmental Checklist ¶¶ B(3)(c)(1) & (2)). No groundwater will be withdrawn as water will be supplied by the City of Spokane. See Exhibit 3, p. 20 (Environmental Checklist ¶ B(3)(b)(1)). There is no reason to expect that groundwater will be impacted by this project.

Neither the Washington State Department of Archaeology and Historic Preservation (WSDAHP) nor the Spokane Tribe of Indians commented on the proposal. See Exhibits 4-5. Nonetheless, a Cultural Resource Survey was completed for the site. See Exhibit 3, pp. 58-107. The report concludes that the proposed development will not affect any historic properties. See *id.*, p. 80. The report further states that "no further archaeological investigations are recommended prior to, or during, execution of this project." See *id.* WSDAHP concurred with the findings and recommendations of the survey report. See Staff Report, p. 5. An Inadvertent Discovery Plan was also prepared for this project, to establish the protocol should any historic or cultural resources be discovered during the development of the site. See Exhibit 3, pp. 96-107.

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 Staff Report, p. 5.

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).*

On July 7, 2022, the Applicant prepared an environmental checklist for the project. See Exhibit 3, pp. 12-32. The checklist supports the conclusion that no significant environmental impacts will arise from this project or will occur without being adequately mitigated.

The site does not contain environmentally sensitive features that will be impacted by the project. There are no wetlands, surface waters, or other limiting features. See Exhibit 3, p. 19 (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 3, p. 19 (Environmental Checklist ¶ B(3)(a)(5)). The site does include some challenging topography, with the steepest slopes exceeding 30% in grade. See Exhibit 3, p. 17 (Environmental Checklist ¶ B(1)(a)-(b)); see also Exhibit 3, p. 8 (Preliminary Plat). However, as previously discussed, the most significantly sloped areas are set aside to avoid the impacts. See Staff Report, p. 5.

In public testimony, Ms. Laub contended that a 2022 plan designated most of Latah Valley as a special habitat protective area. *Testimony of C. Laub*. However, this plan was not submitted into the record for consideration. The Hearing Examiner is not familiar with this plan and does not know what it actually says. Further, there is no evidence that priority habitat exists on this site. The WDFW did not provide any comments on this proposal, despite two opportunities to do so. See Exhibits 4-5. Further, the environmental checklist, which was reviewed and accepted by the City, confirmed that no threatened or endangered species were identified on the site. See Exhibit 3, p. 22 (Environmental Checklist ¶ B(4)(c) & B(5)(b)).

The project will have some impact on the environment. For example, the potential impacts of runoff and drainage from the site will be handled by implementing measures in accordance with the SRS. See Paragraph IV.4.

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 3, pp. 18 & 24-25 (Environmental Checklist ¶¶ B(2)(a) & B(7)(b)) (addressing dust, emissions, and noise). And the environmental impacts of the completed project are minor. See *id.* To the extent that impacts arise, those concerns will be addressed by the project conditions.

The project will also result in additional traffic. No specific impacts to the transportation system immediately adjacent to the proposed development were identified. There are, however, impacts associated with US 195. Those impacts will be addressed by a combination of approaches. As pertinent here, the Applicant will be contributing impact fees to account for the potential impacts to the transportation system. Those fees will be

applied, as the City determines, to offset the costs of improvement projects in the vicinity, including the construction of a J turn at Meadowlane Road. An extensive discussion of traffic mitigation occurred at the public hearing. The City, WSDOT and the Applicant's traffic engineer all agreed that the mitigation measures, as adjusted to account for the current circumstances, address the potential impacts of this proposal.

Based upon the foregoing, the Hearing Examiner concludes that the proposal will not have significant adverse impacts on the environment or the surrounding properties that will not be adequately addressed by project mitigation. 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 public health, safety, and welfare. The record does not contain evidence that this project is antithetical to the community's interests. 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.

The transportation and water systems contain deficiencies. For this reason, specific mitigation measures were proposed to address the concerns. Other than those issues, there were no other 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 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 5-6 of the Staff Report. This criterion is met.

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

Area residents raised several concerns about the proposed development. While the Hearing Examiner does not believe it is necessary to address every comment submitted, the primary objections and concerns should be specifically considered.

Vibration Damage. Mr. Barrick, who owns property adjacent to the proposed development, raised concerns about the potential vibration damage that may occur to his property/home during the construction of the development. See Exhibit 6, p. 16. While this concern is understandable, Mr. Barrick did not submit specific evidence demonstrating that there was a genuine risk of vibration damage. Expressions of worry about a potential risk are not a sufficient basis to condition a proposed development. Mr. Barrick did not suggest any specific mitigation measures. In addition, no expert testimony was provided to elucidate the risk or justify project conditions. Mr. Barrick's comment essentially asked questions about the risks. See *id.* Those questions were sufficiently answered by the project engineer. See Exhibit 6, p. 14. Without more, there is no basis to condition or deny the proposal based upon a general concern about vibration damage.

Sidewalk on Meadowlane. Ms. Wittwer requested that the City include in its plans the construction of a sidewalk between the Eagle Valley development and the Greens at Meadowlane. See Exhibit 6, p. 17 (E-mail of S. Wittwer). While this is a good suggestion for a public improvement project, the Hearing Examiner concludes that it is improper to condition the Greens at Meadowlane Phase II upon the construction of a sidewalk that fully connects these two neighborhoods. The developer will already be required to install a sidewalk along the west side of Meadowlane Road from Turner Avenue to the site's northern property line. See Exhibit 6, p. 17 (E-mail of A. Brast). This is appropriate, because the improvement relates to the potential impacts of this particular project, and constitutes an improvement within the control of the developer. A property owner cannot be required to supply public amenities that broadly address pre-existing deficiencies. Under Washington law, the Hearing Examiner cannot impose a condition requiring this developer to construct a sidewalk connecting the two neighborhoods, despite the obvious public benefit.

Unauthorized Use of Access Road and Church Property. Mr. Eash submitted both written comments and offered testimony on behalf of St. John's Lutheran Church, which owns the property to the north of the Greens at Meadowlane. See Exhibit 6, pp. 19-20; *Testimony of D. Eash.*

As relevant here, Mr. Eash contended that, given the lack of open space in the development, future residents of the development will likely start using the church's open space, even though it is not public property. *Testimony of D. Eash.* To prevent such unauthorized use, Mr. Eash suggested that the developer should be required to take steps to prevent such access, such as constructing a fence between the development and the church's property. See *id.*

Mr. Eash also worried that future residents would use a dirt access road between the church property and the Greens at Meadowlane Phase I. See *id.* This road historically provided access to the house that is located on the seven-acre parcel being developed as Phase II. See *id.* Mr. Eash suggested that the project should include a condition precluding future residents from using that access road. See *id.* He also suggested that, at some point, the access road should be eliminated entirely. See *id.*

The Hearing Examiner does not believe the suggested conditions are appropriate on this record. Initially, the Hearing Examiner doubts it is appropriate to condition the development based upon the prediction that future residents will commit acts of trespass. Those future residents are responsible for such behavior, not the property owner developing the land. In addition, if St. John's wishes to increase the security for its property as the area develops with more residences, the church can erect its own fence, install signage, or take other steps to protect its own property. Such measures do not seem to properly be the responsibility of the adjacent property owner.

The Hearing Examiner reaches a similar conclusion with respect to the access road. The Hearing Examiner is not inclined to attempt to regulate the future, unauthorized use of an access road. Project conditions do not seem to be the right mechanism to control such behavior. In any case, the nature and scope of the easement rights are determined by the easement itself. The Hearing Examiner does not have authority to adjudicate easement rights within the context of the preliminary plat review. The Hearing Examiner certainly has no power to terminate an easement. These kinds of powers can only be exercised by the courts.

Consistency with CP. Ms. Laub (public testimony) and Ms. Marshall (written comment) both contended that the proposal was inconsistent with the CP. *Testimony of C. Laub*; see

also Exhibit 9. The primary objection was that public facilities were not adequate to support the proposed development, as required by policies such as CFU 2.1, CFU 2.2, and LU 1.12. See *id.* Three public facilities or services, in particular, were called out as inadequate: transportation, fire protection, and parks. See *id.* The record, however, does not support denial of the proposed development due to insufficient public facilities or services.

Ms. Marshall and Ms. Laub contended that the transportation system was inadequate. They pointed to a Spokane Regional Transportation Council (SRTC) study as proof that many intersections in the study area now operate at an LOS F, including Meadowlane Road. *Testimony of C. Laub*; see also Exhibit 9. They contended that development should be prohibited when the LOS drops below an acceptable level. See *id.* The Hearing Examiner disagrees with these contentions, given the record in this case.

The Applicant's traffic engineer prepared a TGDG for this proposal. See Exhibit 3, pp. 66-76. This analysis showed that the proposal will result in 29 PM peak trips. See Exhibit 3, p. 68. This is not, relatively speaking, a large contribution to the load on the transportation system. The TGDG concludes that the proposal will have "minimal impact" on public infrastructure. See Exhibit 3, p. 71. To the extent there are impacts, the Applicant will be paying impact fees to compensate for the effect of its proposal. See *id.*

The SRTC study referenced by Ms. Marshall and Ms. Laub was not submitted into the record. The data and testimony submitted by the Applicant's traffic engineer is the only expert testimony on this record regarding traffic impacts. That uncontested information demonstrates that the project will not have significant impacts on the transportation system and that payment of the impact fee accounts for the potential impacts of this proposal. In any case, mitigation projects are planned to address the key issues regarding US 195. See Paragraph IV.8.

There is no evidence in this record establishing that the City or SFD is failing to satisfy the LOS for fire protection in the Eagle Ridge area. Ms. Marshall and Ms. Laub cited to an International Association of Fire Fighters report in their comments. They also pointed to a 2017 study purporting to show that the SFD was not satisfying the required response times. However, neither of these studies were submitted for inclusion in the record. Nor is it known whether these studies actually analyzed or applied the LOS standard for the adopted LOS standard for fire protection within the City of Spokane.

The City followed the procedures to carry out the concurrency test for fire protection, consistent with Chapter 17D.010 SMC. The City notified the SFD of the development proposal. See Exhibits 4-5. The SFD had the opportunity to consider the potential effects of the proposal on the LOS for fire protection, among other things. The SFD did not suggest that there were any concerns regarding the level of service for fire protection. *Testimony of A. Brast.* According to the municipal code, the failure of a facility or service provider to respond "shall be construed as a finding that concurrency is met." See SMC 17D.010.020(B)(1). Thus, the lack of comment by the SFD means that the concurrency test is passed for fire protection.

There is no evidence in this record that the proposed development causes the LOS for parks to drop below acceptable levels. Without such evidence, it is not appropriate to condition or deny this proposal due to alleged impacts to the park system. The neighbors did not identify the applicable level of service standard or explain or prove how this proposal failed to satisfy that standard. The Parks Department provided no comments on this proposal at all, let alone suggesting that the developer should be held responsible to address alleged park impacts. While it is understandable for area residents to desire park

facilities, there is no basis to require this particular property owner to create or pay for such amenities.

8. *Under the facts of this case, and based upon the stipulations of WSDOT and the City of Spokane, the traffic conditions for this project should be revised.*

On July 25, 2022, the City issued its first Request for Comments on the Greens at Meadowlane Phase II. See Exhibit 4.

On August 5, 2022, WSDOT provided its initial comments on the project. To address the unacceptable level of service of the intersection of Meadowlane Road and US 195, WSDOT suggested the following project condition:

Vehicular traffic from this project is expected to deteriorate the level-of-service and negatively impact safety at the intersection of US 195/Meadowlane Road. The Greens at Meadowlane Phase II may not final plat any lots until a financial commitment is in place (secured by a letter of credit or bond), which has been approved by the City, providing for the construction of the "improvement" shown below at US195/Meadowlane. This commitment may be defined as an agreement between several developers to fund and construct the improvement within a specified time frame, not to exceed six years, as agreed upon by city staff and WSDOT. The improvement project will consist of developing a new at grade intersection for Meadowlane on the west side of US 195 further to the south, installing a US 195 j-turn north of the intersection, and eliminating the westbound to southbound left turn at the intersection. The applicant's contributions to funding the design and construction of the improvement project will qualify for a credit against transportation impact fees per SMC 17D.075.070.

See Exhibit 4, p. 7 ("Meadowlane Condition"). To reduce the potential impact of additional traffic on the US 195/I-90 Eastbound On-Ramp, WSDOT suggested the following project condition:

Per the trip letter, vehicular traffic from this project is expected to add 4 AM trips and 3 PM trips to the NB US 195 to EB I-90 ramp. WSDOT has commented that no additional peak hour trips may be added to the ramp due to safety concerns. The Greens at Meadowlane Phase II is required to complete an improvement to the US 195 corridor that will reduce the impact of its traffic on NB US 195 to EB I-90 ramp ("Mitigation Project"). Greens at Meadowlane Phase II may not final plat any lots until a financial commitment is in place (secured by a letter of credit or bond), which has been approved by the City, providing for the design and construction for the Mitigation Project, which shall be under contract for construction within one year from recording of the final plat. The details of the mitigation project will be agreed upon by the developers, City, and WSDOT. The applicant's contributions to funding the design and construction of the mitigation project will qualify for a credit against transportation impact fees per SMC 17D.075.070.

See *id.* ("16th Avenue Condition").

On May 31, 2023, the City issued its second Request for Comments on the Greens at Meadowlane Phase II. See Exhibit 5.

On July 11, 2023, WSDOT again commented on the proposal. See Exhibit 5, pp. 23-24. WSDOT repeated its requests that the Meadowlane Condition and the 16th Avenue Condition be imposed on the Greens at Meadowlane Phase II. See *id.* However, WSDOT proposed an alternative condition with respect to the Meadowlane intersection. See Exhibit 5, p. 23. Specifically, WSDOT stated:

... in lieu of condition # 3, the following may be substituted as it relates to US 195/Meadowlane Intersection only:

A letter from the City of Spokane Public Works Director and/or City Attorney's Office to WSDOT detailing the following:

- *Timeline for PE obligation, design, and construction.*
- *Letter of award from SRTC for the secured funds.*
- *Description of how the impact fees will be used for the local match. This should be from the person that can obligate these funds.*
- *Show the concept plan of the improvement.*
- *The project needs to be included in the City's 6 year TIP plan.*

See Exhibit 5, p. 23 ("Alternative Condition").

On July 14, 2023, the City advised the Applicant that the preliminary plat application was considered technically complete and the project could proceed to a public hearing. See Exhibit 5, p. 28. This notice set forth both the Meadowlane Condition and the 16th Avenue Condition. See *id.* The notice also included the Alternative Condition as an option to address the deficient conditions at Meadowlane Road. See *id.*

On September 13, 2023, the City issued an MDNS for the Greens at Meadowlane Phase II. See Exhibit 2. The MDNS included the Meadowlane Condition and the 16th Avenue Condition. See Exhibit 2 (Mitigation Measures 2 & 3). For reasons not clear on this record, the Alternative Condition was not set forth in the mitigating measures of the MDNS.

On October 2, 2023, Inga Note, the Senior Traffic Planning Engineer for the City of Spokane, confirmed that the City had received a federal grant to design and construct the improvements as required by the Meadowlane Condition. See Exhibit 11, p. 32. Ms. Note advised that the grant provided \$1,607,240 in federal dollars toward the Meadowlane improvements, and that the City would be providing matching funds in the amount of \$809,663. See *id.* As a result of this combination of funding, the US 195/Meadowlane improvement "is fully funded." See *id.* Ms. Note further confirmed that the improvement is "included in the City's 2023-2028 Six Year Comprehensive Street Program." See *id.* Based on the foregoing, she concluded that the Meadowlane Condition "is satisfied."¹ See Exhibit 11, p. 32.

On October 4, 2023, the Hearing Examiner conducted the public hearing on the preliminary plat application for Greens at Meadowlane Phase II. During that hearing, Mr. Greg Figg, the representative of WSDOT, confirmed that the Alternative Condition had not been withdrawn by WSDOT and remained an acceptable option to address the deficient conditions of the intersection of Meadowlane Road and US 195. *Testimony of G. Figg.* He further stipulated that the City's commitment to complete those improvements using

¹ To be clear, Ms. Note previously confirmed that the Meadowlane Condition or its equivalent had been satisfied for three prior projects, namely Tangle Ridge, The Summit, and Green at Meadowlane (Phase I). See Exhibit 11, pp. 14, 21, & 27. The Hearing Examiner has previously verified that the Meadowlane Condition was satisfied as well, albeit on a purely advisory basis. See e.g. Exhibit 11, pp. 19-20 & 25-26.

federal and local matching funds fulfilled WSDOT's requirements to make the necessary improvements described in the Meadowlane Condition. See *id.*

During the public hearing, there was a discussion between the Applicant and WSDOT regarding the wording of the 16th Avenue Condition. After that discussion, the Applicant and WSDOT stipulated to some minor revisions to the condition. See Exhibit 14; *Testimony of E. Tellessen & G. Figg*. The City of Spokane also agreed that the proposed changes were acceptable. *Testimony of A. Brast*. The changes were made in light of the fact that the Applicant was only contributing funds toward the completion of the 16th Avenue improvements, as a participant in a Mitigation Contribution Agreement. *Testimony of E. Tellessen*; see also Exhibit 11, pp. 36-40. The Applicant is not making those improvements or posting security for that project. *Testimony of E. Tellessen*. WSDOT had no objection to those circumstances, so long as the required improvements were completed. *Testimony of G. Figg*.

Based on the foregoing facts, the Hearing Examiner concludes that the Meadowlane Condition is satisfied and, therefore, should not be imposed as a condition of the Greens at Meadowlane Phase II. The intent of the Meadowlane Condition is to require that a financial commitment be in place to ensure that the required improvements are completed. That financial commitment has been made by the City of Spokane. Moreover, the terms of the Alternative Condition has been fulfilled. The City has received a letter of award from the SRTC. See Exhibit 11, pp. 33-34. The City has committed to provided the required matching funds. See Exhibit 11, p. 32. A concept plan has been formulated. See Exhibit 11, p. 35. The project has been included in the City's 2023-2028 Six Year Comprehensive Street Program. See Exhibit 11, p. 32. And there is a timeline for completion of the work, as confirmed by the City's Senior Traffic Planning Engineer. See *id.*

The Hearing Examiner further concludes that that the proposed changes to the 16th Avenue Condition are relatively minor and do not undermine the intent or purpose of that condition. WSDOT and the City stipulated that the proposed changes are acceptable. The Greens at Meadowlane Phase II is still conditioned on the completion of the necessary improvements, regardless of who ultimately will complete the work. In this way, US 195 is protected from the potential impacts, as required by WSDOT.

V. 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:

SEPA Comments:

1. Water Phasing Restrictions – Water for this plat is reliant on the water improvements for the Greens at Meadowlane Phase I Plat being installed. Due to high velocities in the existing 24-inch water transmission main serving the Eagle Ridge area, the City is requiring a phased approach for all developments until a second water transmission main is in service. The second transmission main is anticipated to be operational in 2024 barring any unforeseen circumstances. Because this proposed plat relies on water service from the Greens at Meadowlane Plat, final platting of the 27 lots in this proposed plat will not be allowed until the water system serving the Greens at Meadowlane Plat is operational and the second water transmission main is operational.

2. Per the trip letter, vehicular traffic from this project is expected to add 5 AM trips and 3 PM trips to the NB US 195 to EB I-90 ramp. WSDOT has commented that no additional peak hour trips may be added to the ramp due to safety concerns. An improvement to the US 195 corridor that will reduce the impact of its traffic on NB US 195 to EB I-90 ramp ("Mitigation Project"). Studies of the US 195 corridor have identified the removal of the left and thru movements from Eastbound 16th Ave at US 195 as the appropriate mitigation project. This mitigation project was recently confirmed in a December 2021 US 195/I-90 Study led by the Spokane Regional Transportation Council in collaboration with WSDOT, the City of Spokane, and other partnering agencies. The Greens at Meadowlane II may not final plat any phase of the subdivision until an agreement is signed with WSDOT for construction of the Mitigation Project and a financial commitment is in place (secured by a letter of credit or bond), which has been approved by the City, providing for the design and construction for the Mitigation Project, which shall be under contract for construction within one year from the date of project approval. The details of the above mitigation project will be agreed upon by the developers, City and WSDOT. The applicant's contributions to funding the design and construction of the mitigation project will qualify for a credit against transportation impact fees per SMC 17D.075.070.
3. Street trees are required with all new construction. A street tree plan will be required to be submitted with the Engineering public improvement documents to ensure sufficient plantings are achieved. *Especially in subdivisions with narrower lots, utility/driveway/tree conflicts should be considered from the beginning with some utilities being placed under the driveways to allow room for the required trees. Each lot that is unable to accommodate a street tree will be required to pay a fee-in-lieu of planting. That fee is \$650 per tree.* The approved plan will get adopted as the planting plan for the subdivision and each single-family building permit will be required to adhere to the plan.

Street & Lot Layout Comments

1. 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.
 - a. Signing and striping plans, where appropriate, shall be included as part of the design submittal.
 - b. Street design for the plat shall include supporting geotechnical information on the adequacy of the soils underneath to support vehicular design loads.
 - c. The preliminary plat shows proposed right-of-way widths of 51.12' and 55.25. Please note that the final plat must reflect the minimum right-of-way widths reflected in the City Design Standards Table 3.14 unless a variance request is approved by the City.
 - d. Garages shall be a minimum of 20 feet from the back of sidewalk to fully accommodate a parked vehicle without obstructing the sidewalk.
 - e. 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.

- f. The developer will be responsible for all costs associated with constructing street improvements necessary to serve the proposed plat.
- g. Centerline Monuments must be installed in accordance with City Design Standards. If street improvements are bonded for in order to record the final plat early, a \$250.00 deposit will be required for each monument.
- h. Further comments regarding access, transportation, and transportation mitigation will be addressed by other City Staff outside of this memo.

Water Comments

- 2. Water for this plat is reliant on the water improvements for the Greens at Meadow Lane Plat being installed. All water improvements serving lots in both plats must be installed and accepted by the City of Spokane Construction Management Office before any portion of this plat may be final platted.
 - a. Phasing Restrictions - Due to high velocities in the existing 24-inch water transmission main serving the Eagle Ridge area, the City is requiring a phased approach for all developments until a second water transmission main is in service. The second transmission main is anticipated to be operational in 2024 barring any unforeseen circumstances. Because this proposed plat relies on water service from the Greens at Meadowlane Plat, final platting of the 27 lots in this proposed plat will not be allowed until the water system serving the Greens at Meadowlane Plat is operational and the second water transmission main is operational.
 - b. The developer will be responsible for all costs associated with design and construction of water improvements necessary to serve the proposed plat.
 - c. 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 developer expense.
 - d. Two copies of an overall water plan and hydraulic analysis must be submitted to the Development Services Center for review and acceptance. The hydraulic analysis must include supporting calculations for domestic and fire flows.
 - e. In addition to the hydraulic analysis, construction plans shall be submitted to the Development Services Center for review and acceptance. The water system, including individual service connections to each lot, shall be constructed and accepted for service prior to the City Engineer signing the final plat.

Sewer Comments:

- 3. Sewer for this plat is reliant on the sewer improvements for the Greens at Meadow Lane Plat being installed. All sewer improvements serving lots in both plats must be installed and accepted by the City of Spokane Construction Management Office before any portion of this plat may be final platted.
 - a. The developer will be responsible for all costs associated with design and construction of sanitary sewer improvements necessary to serve the proposed plat.
 - b. The sanitary sewer system shall be designed and constructed in accordance with City standards.

- c. Construction plans shall be submitted to the Development Services Center for review and acceptance. The sanitary sewer system, including individual service connections to each lot, shall be constructed and accepted for service prior to the City Engineer signing the final plat.

Stormwater Comments:

4. All stormwater and surface drainage generated on-site shall be disposed of on-site 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 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 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 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 the Development Services Center for review and acceptance prior to issuance of a building permit.
 - b. Prior to construction, a grading and drainage plan shall be submitted to the Development Services Center 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 the Development Services Center review and acceptance prior to construction.
 - d. If drywells are utilized, they will be tested to insure design infiltration rates are met. A minimum factor of safety of two (2) 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.

General Comments

1. Addresses must be shown on the face of the final plat. Please contact The City of Spokane Addressing team at addressing@spokanecity.org or (509) 625-6999 to develop addresses prior to submitting the final plat.
2. All easements whether existing or proposed, must be shown on the face of the final plat including easements for public sidewalks.
3. 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 the Development Services Center for review and acceptance prior to construction. Civil engineered plans and profiles shall use NAVD88 datum (City of Spokane datum minus 13.13 feet).
4. 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.

5. 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. Sewer and water improvements necessary to serve the plat cannot be bonded for.
6. Prior to final plat, the ownership of of tract "A" will need to be determined along with operational and maintenance responsibilities.

STATEMENTS TO BE INCLUDED IN THE DEDICATORY LANGUAGE

7. 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.
8. 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 the Development Services Center prior to the issuance of any building and/or grading permits.
9. 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 Development Services Center and having adequate pressure for domestic and fire uses, as determined by the Water and Hydroelectric Services Department.
10. 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.
11. All stormwater and surface drainage generated on-site shall be disposed of on-site in accordance with SMC 17D.060 "Storm water 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 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.
12. 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.
13. Slope easements for cut and fill, as deemed necessary by the Development Services Center in accordance with City Design Standards, are granted along all public right of ways.
14. Only City water and sanitary sewer systems shall serve the plat; The use of individual on-site sanitary waste disposal systems and private wells is prohibited.

15. 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.
16. 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.

SIGNED this 3rd day of November 2023.



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 6th day of November. **THE DATE OF THE LAST DAY TO APPEAL IS THE 27th DAY OF NOVEMBER 2023, 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.