CITY OF SPOKANE HEARING EXAMINER

Re:	Application by Whipple Consulting Engineering, Inc. for Grove Road, LLC, to subdivide three parcels (a total of 1.32 acres) in the RSF zone (R1 effective 01/01/24) into 20 lots (and 4 tracts) for the purpose of constructing attached housing under the City's Interim Zoning ordinance found in chapter 17C.400 – Interim Housing Regulations Adopted to Implement RCW 36.70A.600(1)	FINDINGS, CONCLUSIONS, AND DECISION FILE NO. Z23-587PPLT

1 SUMMARY OF PROPOSAL AND DECISION

Proposal: The applicant, Whipple Consulting Engineers, Inc., with permission of Grove Road LLC, proposes to subdivide three parcels (a total of 1.32 acres) in the Residential Single Family (RSF) zone (R1 effective January 1, 2024) into 20 lots (and four tracts) for the purpose of constructing attached housing under the City's Interim Zoning ordinance found in chapter 17C.400 – Interim Housing Regulations Adopted to Implement Revised Code of Washington (RCW) 36.70A.600(1). The proposal in served by public streets and includes a private driveway access from North Ash Place for lots fronting North Ash Street. Private water and sewer utilities will serve proposed lots.

Decision: The preliminary plat is denied. The State Environmental Policy Act (SEPA) appeal is dismissed for lack of standing and/or the decision of the City is affirmed on the merits.

2 BACKGROUND INFORMATION

Applicant/ Agent:	Todd Whipple Whipple Consulting Engineers, Inc. 21 S. Pines Road Spokane Valley WA 99206
Owner:	Grove Road LLC 1102 N Monroe St. Spokane, WA 99201 brad@boswellhomes.com; myspokanebanker@yahoo.com

Property Location: The proposal is located at 3242, 3230, and 3224 N Ash Place (Parcels 25014.4207/.4701/.4702); SE ¼ Section 01, Township 25N, Range 42E., Willamette Meridian, Spokane County, Washington.

Zoning: R1

Comprehensive Plan Map Designation: Residential Low

Site Description: The subject property is generally located between North Ash Street to the east, North Ash Place to the west, West Liberty Avenue to the north, and unimproved West Dalton to the south.

Surrounding Conditions and Uses: The subject property and adjoining properties are zoned R1.

Adjacent land uses are single-family homes, vacant lots, and Drumheller Springs Conservation Area – a City of Spokane Parks Department property identified as a public natural land protected in its natural state. A church is located just to the northwest of the subject site.

Project Description: The applicant is proposing to subdivide three parcels (a total of 1.32 acres) in the RSF zone (R1 effective January 1, 2024) into 20 lots and four tracts for the purpose of constructing attached housing under the City's Interim Zoning ordinance found in chapter 17C.400 – Interim Housing Regulations Adopted to Implement RCW 36.70A.600(1).

The proposal in served by public streets and includes a private driveway access from North Ash Place for lots fronting North Ash Street. The private driveway, designed and constructed to accommodate fire/emergency and refuse collection vehicles, also provides access to any on-site parking proposed for the development. A combination of public sidewalks and internal paths will provide pedestrian connectivity. Private water and sewer utilities will be located in the private driveway.

3 PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.110 – Residential Development or SMC 17C.111 – Residential Zones; SMC 17C.400 – Interim Zoning Regulation; SMC 17G.061 – Land Use Application Procedures; SMC 17G.080 – Subdivisions; 17E Environmental Standards; SMC 17E.010 – Critical Aquifer Recharge Areas; SMC 17E.020 – Fish and Wildlife Conservation Area; SMC 17E.040 – Spokane Geologically Hazardous Areas; SMC 17E.050 – SEPA; and 17E.070 – Wetlands

Community Meeting:	November 14, 2023
Notice of Application/Public Hearing and Notice of SEPA Application:	Mailed: January 29, 2025 Posted: January 31, 2025 Publication: January 28 and February 4, 2025
Site Visit:	April 9, 2025
Public Hearing Date:	April 16 & 17, 2025

SEPA: A Determination of Non-Significance (DNS) was issued on February 21, 2025. The appeal deadline was March 7, 2025. An appeal was timely filed on March 7, 2025, by Dennis Flynn.

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Preliminary Plat/PUD Exhibits:

Staff Report, including:
1. Vicinity Map
2. Zoning Map
3. Land Use Map
4. Application Materials, including:
    a. General Application
    b. Supplemental Long Plat Application
    c. Project Narrative
    d. Critical Areas Checklist
    e. SEPA Checklist – revised July 2024
    f. SEPA Checklist – initial submittal
5. Preliminary Plat Maps, including:
    a. Revised January 2025
    b. Revised November 2024
    c. Revised November 2024 – Pedestrian Connections
    d. Revised October 2024
    e. Revised July 2024
    f. Initial Submittal
6. Reports, including:
    a. Geotechnical Conditions Report
    b. Trip Generation Report

c. Concept Drainage Report – updated November 2024
d. Concept Drainage Report – updated September 2024
e. Concept Drainage Report – initial submittal

7. SEPA DNS
8. Technically Complete Letter
9. Request for Comments, including:
   a. Fourth Request
   b. Third Request
   c. Second Request
   d. First Request
10. Vested Municipal Codes, including:
    a. 17C.400.010 Pilot Low-Intensity Residential Development Standards
    b. 17C.400.020 Pilot Density
    c. 17C.400.030 Pilot Low-Intensity Residential Design Standards
11. Comments and Noticing, including:
    a. Comments
    b. Notice of Application/SEPA and Hearing
    c. Affidavits and Mailing List
12. Community Meeting Materials, including:
    a. Public Notice Package
    b. Public Notice Letter and Meeting Materials
13. Predevelopment Comments
14. Staff Presentation
15. Applicant Presentation
16. Applicant Letter to the Hearing Examiner

SEPA Appeal Exhibits:

A. Request for Appeal
B. Receipt of Fees Paid
C. Notice of Appearance
D. Continuance Discussion
E. Order of Continuance and Briefing Schedule
F. Further Input regarding Hearing Date
G. Second Order of Continuance and Briefing Schedule
H. Appellant Briefing
I. Applicant Briefing
J. City Briefing
K. Appellant Reply

4 FINDINGS AND CONCLUSIONS

4.1 SEPA Appeal

4.1.1 Background Facts re: SEPA Appeal

On December 15, 2023, the Applicant submitted a SEPA Checklist to the City of Spokane in support of the project. On July 18, 2024, the Applicant submitted a revised SEPA Checklist to the City of Spokane in support of the project. *See* Exhibits 4e and 4f.

On January 16, 2025, the City of Spokane issued the Notice of Application and Public Hearing and Notice of SEPA Application for this project. *See* Exhibit 11.b. The Notice of SEPA Application states that the comment period on this application ends at 5:00 PM on February 18, 2025. *Id*. With respect to the environmental review under SEPA, the Notice of SEPA Application provides as follows:

> *The City anticipates using a Determination of Non-significance (DNS) under **WAC 197-11-355**. See enclosed SEPA Notice of Application. A copy of the subsequent threshold determination will be sent to those who provide comment and will be made available on the project website.*

Id. On February 21, 2025, the City of Spokane issued the DNS for the project. *See* Exhibit 7.

On March 8, 2025, Dennis Flynn timely submitted an appeal of the SEPA determination. See Exhibit A. In the application for appeal hearing, Mr. Flynn included a description of the issues on appeal. *Id.*

In pre-hearing briefing the Applicant and Respondent both raised issues regarding the Appellant's standing. *See* Exhibits H & I. The Respondent also moved to dismiss non-SEPA issues, namely the alleged building and land use code violations. *See* Exhibit I, p. 3-4.

On April 16 & 17, 2025, the Hearing Examiner conducted a public hearing on the subdivision application and the SEPA appeal, with the substantive SEPA arguments taking place on the April 17. At the hearing, the Hearing Examiner made a ruling on the Respondent's motion to dismiss. The Appellant's arguments related to alleged code violations were dismissed, and the Hearing Examiner directed the Appellant to limit their arguments to the City's threshold determination of no significant adverse impact on the environment.

4.1.2 Standing

Under SMC 17G.050.310, an "applicant or a person with standing as defined in chapter 17A.020 SMC may appeal" a SEPA determination. SMC 17A.020.010(AD) provides this further definition, which is a direct codification of RCW 36.70C.060, the standing subsection of the Land Use Petition Act (LUPA). This statutory definition provides that an "aggrieved or adversely affected" party has standing to appeal only when "all of the following conditions are present:

> (a) The land use decision has prejudiced or is likely to prejudice that person;
> (b) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;
> (c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and
> (d) The petitioner has exhausted his or her administrative remedies to the extent required by law.

See SMC 17A.020.010(AD)(2) and RCW 36.70C.060(2). As the statutory imperative is for *"*all of the following*"* to be present, the absence of any one condition is enough to destroy standing.

Though this statutory language calls for an examination of all four criteria, much of the case law with regards to SEPA determinations focuses on a two-part test. A party wishing to challenge actions under SEPA must meet a two-part standing test: (1) the alleged endangered interest must fall within the zone of interests protected by SEPA, and (2) the party must allege an injury in fact. *Kucera v. State, Dep't of Transp.,* 140 Wash. 2d 200, 995 P.2d 63 (2000).

The Applicant and Respondent allege that the Appellant has failed to allege an injury-in-fact. The Hearing Examiner agrees that the Appellant has not alleged an injury-in-fact.

The case law language of "injury-in-fact" is understood to be contained within the first criterion for a decision to "prejudice" the party. Typically, this line of inquiry only requires a minimum showing that need not be substantiated for the purposes of standing.

> Observing that there is no case law interpreting the "prejudice or is likely to prejudice" requirement in LUPA, the Court of Appeals, Division One, compared the LUPA standing provision to the Administrative Procedure Act (APA) provision concerning standing. The prejudice requirement in the APA is a codification of the injury-in-fact requirement. After review of Washington land use cases, the court derived some general principles that seem applicable in this case. "In general, parties owning property adjacent to a proposed project and who allege that the project will injure their property have standing." "[A] party need not show a particular level of injury in order to establish standing" to bring an action under LUPA."

Chelan Cnty. v. Nykreim, 146 Wash. 2d 904, 934–35, 52 P.3d 1, 15–16 (2002) (citing *Suquamish Indian Tribe v. Kitsap County,* 92 Wash.App. 816, 965 P.2d 636 (1998)). A party need not show a particular level of injury in order to establish standing to bring action under LUPA. *Suquamish Indian Tribe v. Kitsap Cnty.,* 92 Wash. App. 816, 965 P.2d 636 (1998). In general, parties owning property adjacent to a proposed project and who allege that the project will injure their property have standing. *Id. At 829-30, 643*.; *See also Kucera v. State, Dep't of Transp.,* 140 Wash. 2d 200, 995 P.2d 63 (2000) ("Sufficient injury in fact, for standing purposes, is properly pleaded when a property owner alleges immediate, concrete, and specific damage to property, even though the allegations may be speculative and undocumented."). For standing purposes, this alleged harm can be de minimis. Evidence that a planned unit development approved by the county would increase traffic passing by property owners' houses was sufficient to show injury-in-fact, as necessary to establish that citizens' group to which those owners belonged had standing to challenge decision under LUPA. *Suquamish,* supra. Nonetheless, it is well established in Washington case law that SEPA appellants must allege some specific harm to them or their property, and not rely on some abstract principle of general public interest. *See, e.g., Chelan County v. Nykreim, 146 Wn.2d 904, 933 (2002); Bierman v. City of Spokane, 90 Wn.App. 816, 820 (1998)*.

In this case, Appellants alleged that 1) The use of an alley/driveway is prohibited by city code; 2) Development Bonuses do not apply to the proposed development; 3) The development does not provide appropriate pedestrian access to internal subdivision lots; and 4) There will be significant adverse impacts on multiple critical areas on or near the proposed site.

The first three allegations were dismissed from the SEPA appeal portion of the hearing as they were outside the scope of City's DNS decision. The fourth allegation is conceivably within the scope of SEPA review, but the Appellant failed to allege how purported effects to critical areas would cause specific damage to their property. Likewise, issues raised for the first time in briefing, such as the existence of protected species, were not alleged to cause specific harm to the Appellant.

The briefing for the Appellant focused primarily on the perceived deficiencies with development code interpretation/application. As to substantive SEPA issues, the Appellant focused primarily on the proximity of the Drumheller Conservation Area, the historical significance of the area, and the existence of two protected wildlife species. Nonetheless, a particular harm to the Appellant or their property was never specifically alleged, but instead focused on perceived harm to the area and/or animals that inhabit the area. The Appellant also speculated that harm could befall the year-round spring located to the south of the project site (and not on the Appellant's property). The Appellant does not live adjacent to the proposed project site. Their residence is approximately a quarter of a mile (as the crow flies) to the southwest of the project site, and no traffic from the project will pass their property.

The Hearing Examiner finds that the Appellants failed to allege an injury-in-fact and, instead, relied on allegations and arguments that are either of more general public interest (such as preservation of the conservation area and the existence of certain protected species), or were not connected to alleged harm to the Appellant (such as underwater water flows). As such, the SEPA appeal is dismissed for lack of standing.

4.1.3 Appeal Topics

The Hearing Examiner will not perform an exhaustive analysis of all the Appellants alleged impacts on the environment, including those that were introduced for the first time in briefing. Nonetheless, in the event that later review was to find that Appellant satisfied standing, a brief analysis of the evidence presented will discussed.

4.1.3.1 Standard of Review

Standards for review by the Hearing Examiner are pronounced in SMC 17G.050.320, which includes in pertinent part:

> C. The original decision being appealed is ***presumptively correct***. The burden of persuasion is upon the appellant to show that the original decision was in error and the relief sought in the appeal should be granted.

> D. If the findings of fact upon which the original decision was based are ***supported by substantial evidence***, the hearing examiner must accept those findings.

Emphasis added. This language is understood to align with the judicial standards for review, especially the standard established for review of a determination of nonsignificance, such as the DNS under review in this case.

The standard of review for an DNS is the "clearly erroneous" standard, and has been stated and elaborated upon as follows:

> An agency's decision under State Environmental Policy Act (SEPA) to issue a mitigated determination of non-significance (MDNS) may be reviewed under the clearly erroneous standard; MDNS is clearly erroneous when, although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed. *Wenatchee Sportsmen Ass'n v. Chelan Cnty.,* 141 Wash. 2d 169, 4 P.3d 123 (2000).
>
> Governmental agency's decision to issue Mitigated Determination of Non-Significance (MDNS) pursuant to State Environmental Policy Act (SEPA), and not to require environmental impact statement (EIS), must be accorded substantial weight on review. *Anderson v. Pierce Cnty*., 86 Wash. App. 290, 936 P.2d 432 (1997).
>
> To satisfy their burden to challenge the MDNS, an appellant must present actual evidence of probable significant adverse impacts of the project. *Boehm v. City of Vancouver, 111 Wn.App. 711, 718-719, 47 P.3d 137 (2002).*

4.1.3.2 Substantive Review

First and foremost, the Hearing Examiner finds that the Appellant has not presented actual evidence of probable significant adverse impacts of the project. Instead, the Appellants pointed to the existence of critical areas and that some protected animal species do or may inhabit the parcel. It was not established how or why the development would create probable significant adverse effects on these items.

Numerous jurisdictional agencies, departments, and City experts opined on the effects of this proposal. These recognized experts provided their opinions as to the proposal's expected effects on the environment. No issues or requested mitigation measures were identified by these experts. Appellants provide no substantial evidence, including no expert testimony, to counter the City's relied upon expert opinions.

4.1.3.3 Conclusion

Based upon the full record now established, there is a substantial basis for the finding of no significant adverse effects. The City had sufficient information to evaluate the proposal's

environmental impacts and dutifully investigated possible effects when new information became available. The Appellant failed to present actual evidence of probable adverse impacts. The City's findings were supported by substantial evidence. Upon review of the record, the Hearing Examiner is not left with a firm conviction that a mistake has been made. The City's DNS is affirmed.

4.2 Preliminary Plat

This application for subdivision is denied primarily for the City's failure to properly classify the internal roadway as a street and apply appropriate processes and standards associated with that classification. Interrelatedly, the Block 3 lots fail to meet the dimensional standards, as 16-foot-wide lots are only permitted when there is alley (or acceptable driveway) access to the rear of the lots. The Block 3 lots do not front Ash Street and/or they are not accessed from the rear. In the case that Toyon Lane is correctly classified as a private street, they front Toyon Lane and do not qualify for the lower dimensional standard. In the hypothetical scenario wherein Toyon were to be deemed a driveway, then the Block 3 lots would still front on their western edges and likewise not qualify for the lower dimensional standard associated with rear access. In any event, the primary reason for denial is the lack of compliance with the City's street standards and requirement to seek a PUD when proposing a private road.

To be approved, the proposed preliminary plat must comply with the criteria set forth in the SMC and demonstrate consistency with the CP. The Hearing Examiner has reviewed the plat application and the evidence of record regarding the application and makes the following findings and conclusions:

4.2.1 The proposal is not allowed under the provisions of the land use codes. *See SMC 17G.060.170(C)(1).*

The proposal is for 20 lots for residential single-family development (attached homes) and four tracts on 1.32 acres of land using the City's interim zoning ordinance 17C.400. The proposed use is allowed in the R1 zone (formally RSF at time of permit). *See* Staff Report, p. 5. While the proposal is generally permitted in accordance with SMC 17G.080.050 (Subdivisions), SMC 17C.110 Residential Zones, and 17G.400 Interim Zoning Regulations, the proposal fails to meet density requirements, specifically the minimum lot size, and fails to meet the procedural and substantive requirements when an application proposes the use of a private road. The Block 3 lots are not served by alley parking with no street curb cut nor are they served by a private shared driveway that provides access to the rear of the proposed units. As will be discussed at more length below, the proper designation for the internal subdivision roadway is a "private street," and the Block 3 lots do not have rear access. The Hearing Examiner finds that this criterion is not satisfied.

4.2.1.1 The access from Ash Place is a private street.

The sheer weight of the evidence supports a finding that the internal roadways are private streets. There is little or no evidence to the contrary, other than conclusory assertions.

For ease of use and reference, the Hearing Examiner will refer to the two internal road segments collectively as “Toyon Lane” or “Toyon”, acknowledging that the first connecting leg entering the subdivision would have its own separate name.

The City attempts to classify the subdivision’s internal roadways as a “private driveway access.” This is a designation found nowhere in the City’s code. The Applicant’s initial submittal sought to consider the access an alley. *See* Exhibit 4.c. *See also* Exhibit 9.d.iii. It was determined that the “alley” does not meet city standards for a public alley. *See* Exhibit 9.c.ii p. 14-16. Additionally, it was determined in the first round of agency comments that the “alleys” would need to be constructed for fire access per Fire Code requirements. *See* Exhibit 9.d.ii p. 12. This would essentially require Toyon to be built to physical road standards. In the subsequent rounds of comments and communications, there seems to be much confusion throughout the record about what to call the roadways, and there were some efforts by the City to edit/alter agencies comments that refer to the access as a “street.” *See, for example,* Exhibit 9.c.ii p. 18. In the end, the City took the position that Toyon should be considered a “private driveway” or “private driveway access.”

The City’s street classification code provides a classification system for their public streets, and states that private streets “are not classified but are defined under SMC 17A.020.160, ‘P’ Definitions.” *See* SMC 17A.020.190. Private Street is defined as a “***[r]oadway*** which is not controlled or maintained by a public authority, and which ***serve two or more properties***.” *See* SMC 17A.020.160(TT) (emphasis added). Driveway is only defined as an “all-weather surface driveway structure as shown in the standard plans.” *See* SMC 17A.020.040(AQ).

“’Roadway’ means a public or private way on which vehicles travel, encompassing all roadway types.” *See* SMC 17D.050A.040(S). Other code provisions state that “[c]urbed roadways within the City limits and other urbanized areas are commonly and generically referred to as ‘streets.’ … Within the context of this code, ‘roadway’ refers to any traveled way, either public or private, that has been platted or otherwise specifically dedicated for the purpose of circulation and ***will require a name in accordance with chapter 17D.050A SMC***.” *See* SMC 17A.020.180(AA) (emphasis added).

“’Roadway Name’” means the word or words either existing, or in the case of new or renamed roadways, which are approved by the Development Services Center, used in conjunction with a directional prefix, and/or a roadway type ***to identify a public or private roadway***.” *See* SMC 17D.050A.040(T) (emphasis added). ***Driveways***, access to parking areas and other traveled surfaces that are not considered roadways ***may not be named***… *See* SMC 17D.050A.050(F) (emphasis added). “Lane” is defined as “a roadway used as a private local access within a development.” *See* SMC 17D.050A.040(U)(8).

The Hearing Examiner also has considerable concern over whether the proposal would even meet the standards associated with City’s driveway standards in 17H.010.200. This includes setback implications based on the finding outlined below that the Block 3 lots front on their western lot lines.

The Hearing Examiner is simply flummoxed by City's position to put so much strenuous effort into not considering Toyon to be a private street and not enforce the procedural and substantive requirements for subdivisions using a private internal roadway. The subdivision roadway will be appropriately named with "Lane" because it is a roadway created only for the purposes of serving this subdivision without other connectivity. Roadways (or in the urban area, "streets") require a name in accordance with the naming provisions, while driveways may not be named.

Simply put, the Hearing Examiner cannot find a basis to create an entirely new definitional entity such as "shared access driveway" when the code already provides guidance on alleys, driveways, and private streets. A first blush look at this application (in its final form) should lead a reasonable reviewer to conclude that Toyon is a street, whether public or private. Toyon is being built to physical street standards so that it can accommodate emergency vehicles and waste removal, but is proposed without City requirements for sidewalks, street trees, etc. There is no other access to the Block 3 parcels, which front to the west, not Ash Street (which will be discussed below). Toyon will be named with "Lane," denoting their proper consideration as a roadway used as a private local access within a development. Toyon is a private street.

"Residential private streets are allowed only in conjunction with an approved planned unit development, binding site plan or mobile home park." *See* SMC 17H.010.090(A). This proposal is only allowed in conjunction with an approved planned unit development (PUD). There is insufficient evidence in the record to support a finding that Toyon complies with SMC 17G.080.070(A) Street Design and Improvements, including the therein referenced SMC 17H.010 and 17E.030. This proposal does not comply with numerous provisions within the SMC, including the requirement that subdivisions with a private street must seek a PUD and is, therefore, not allowed under the provisions of the land use codes.

4.2.1.2 The Block 3 lots front Toyon Lane or Ash Place.

The attempt to designate the Block 3 lots as fronting Ash Street is incorrect. First, and primarily, is the fact that Toyon Lane is a private street, and therefore the Block 3 lots front that street. In the hypothetical driveway alternative, the Block 3 lots' front lot lines are still the western edges of the parcels. In either scenario, Toyon is the sole direct access to the Block 3 lots and, therefore, there is no rear access to these lots.

To the Hearing Examiner's knowledge, there is no longer a statewide definition of "front" in either the RCWs or WACs (it appears there was a definition within the since-repealed RCW 24.04.395). Therefore, they are typically left to local code provisions. The SMC states: "'Front lot line' means a lot line, or segment of a lot line, that abuts a street." *See* SMC 17A.020.120(T)(1). Other considerations apply to corner lots and through lots. *Id.* There is an option for a property owner to choose which lot line is the front, but only for corner lots with street lot lines of equal length. *Id.* For through lots, which these Block 3 lots appear to be, the SMC states that "a through lot has two front lot lines regardless of whether the street lot lines are of equal or unequal length." *Id.* A "through lot" is a lot bounded on opposite sides by parallel or approximately parallel public streets. *See* SMC 17A.020.120(R)(5). There is little to no evidence in the record as to how the City applied these code provisions.

The Hearing Examiner has also had difficulty finding extensive guidance within the State's established case law. The Hearing Examiner can surmise that determining which side of a lot is the front is rarely at issue, as common sense usually dictates. Still, this is a unique scenario where the Block 3 lots technically abut Ash Street on their eastern edges. Nonetheless, there is at least one illustrative case that puts weight behind the conclusion that the Block 3 lots do not front Ash Street.

"The way of access is the reference point from which the location of the front lot line must be deduced. We see no material significance in whether the way of access is a public street or an easement shared by all occupants of an area, as in the present case." *Dougherty v. Quality Pac. Homes, Inc.,* 6 Wash. App. 64, 67, 491 P.2d 1331, 1333 (1971). This case presented an analogous scenario wherein the lot at issue in the dispute had considerable slopes down to a technically abutting major thoroughfare. *Id.* at 65, 1332.

It is incorrect to consider the Block 3 lots as having their front lot lines along Ash Street, and it defies common sense. The Block 3 lots have no direct access to Ash Street, due to the steepness of the terrain, a geologically hazardous area. The existence of these critical areas on the eastern portion of the plat is significant. Say, for example, that the critical area on the site was a wetland that separated the units from the thoroughfare. It would likewise defy common sense to allege that the front of the parcel was the wetland as opposed to their sole access from the opposite side of the lot. The only access to the Block 3 lots is via Toyon Lane and/or the supposed "driveway" and, therefore, the front lot lines for the Block 3 lots are their western edges. In no scenario can the western lot lines of the Block 3 lots be considered their rear lot lines.

The Hearing Examiner concedes that, hypothetically, if this proposed development consisted of only Blocks 1 and 2, that the "shared driveway" with rear access to these parcels fronting Ash Place would likely conform to the lot dimensional standards. It is particularly the Block 3 lots, and the use of the private road to their front lot lines along this private road, that preclude them from enjoying the opportunity for 16-footwide parcels denoted in SMC Table 17C.400-1. This includes the relied upon footnote 2 therein that states that a "private shared driveway providing access to the ***rear*** of a grouping of attached houses also meets the requirement for alley parking." *See* SMC Table 17C.400-1.

In total, the evidence supports the conclusion that the Block 3 lots have their front lot lines on their western edges. Whether Toyon is properly designated as a private street or not, and whether the Block 3 lots are technically through lots or not, the sole access to Block 3 is via Toyon, the proper reference point from which the location of the front lot line must be deduced. As such, these Block 3 lots do not meet the code requirements for rear access that affords them the opportunity for 16-footwide lots. Therefore, the proposed use of 16-foot lots in Block 3 is not allowed under the provisions of the land use codes.

4.2.2 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 Comprehensive Plan includes several goals, objectives, and policies that are relevant to the proposal, which are outlined in the Staff Report (*see* pp. 7-8):

- Policy LU 1.3 – Lower Intensity Residential Area
- Policy LU 1.12 – Public Facilities and Services
- Policy LU 3.7 – Maximum and Minimum Lot Sizes
- Policy LU 4.1 – Land Use and Transportation
- Goal LU 5 – Development Character
- Policy LU 5.1 – Built and Natural Environment
- Policy LU 5.4 – Natural Features and Habitat Protection
- Policy LU 5.5 – Compatible Development
- Policy LU 8.1 – Role of Urban Growth Areas
- Policy H 1.4 – Use of Existing Infrastructure
- Policy H 1.11 – Access to Transportation
- Policy H 2.4 – Linking Housing with Other Uses.

The proposed platting action would allow for additional single-family housing with access to existing infrastructure, transportation, and open space. The Comprehensive Plan designates the subject property as "Residential Low," which allows detached and attached single-family residences and the interim zoning ordinance permits the proposed density as described above pursuant to 17C.400.010(C)(5) Applicability. *See* Staff Report, pp. 8-9.

The proposal is consistent with multiple goals and policies of the Comprehensive Plan including Land Use and Housing. The proposal implements the interim zoning code, which was identified at time of adoption as aligning with many City policies to support housing variety and affordability so that all community residents have access to housing that is safe, clean, and healthy. At time of adoption the interim zoning code was stated as supporting the City's Comprehensive Plan (land use and housing chapters), the Housing Action Plan, the Mayor's Proclamation for Housing Emergency, and the City Council/Plan Commission 2021-2022 Joint Work Plan. *See* Staff Report, p. 9.

For these reasons, the Hearing Examiner finds this criterion is satisfied.

4.2.3 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)(3).*

This site has been reviewed for compliance with applicable codes, and agencies had the opportunity to address any site constraints or concerns. The site is suitable for development according to all City departments and agencies that commented. Comments from agencies are included in the report exhibits. *See* Exhibits 8 and 9.

City departments and agencies reviewed the SEPA checklist, technical documents, and other application material for physical characteristics of the property and no comments were received indicating that the site is unsuitable for development.

A cultural resource survey was conducted and reviewed by Washington Department of Archeology and Historic Preservation, the Spokane Tribe of Indians Tribal Historic Preservation Office, and the City/County Historic Preservation Office. No cultural resources were found. As such each of these agencies recommended as a condition of approval that an Inadvertent Discover Plan be implemented into scope of work. This condition would need to be met prior to any ground disturbing activities.

Due to proposed construction on steep lots International Residential Code, Sec. R403.1.7 would apply for setbacks to slopes greater than 33%. If compliance with this section of the building code cannot be attained by placing the structures in accordance with the setbacks as per this section, then Geotech/Engineering will be required. The building department staff provided comments associated with construction on steep slopes and code compliance is represented in the recommendation sections of this report as conditions of approval.

Any development on the parcels created via the platting action would be reviewed by the Spokane Development Services Department to ensure that each new residential unit meets all required development standards. These standards include, but are not limited to, land use standards, stormwater standards, utility standards, building and fire code standards, and Spokane geologically hazardous area standards, etc.

In total, the project is technically feasible given the physical characteristics and conditions of the site. The Hearing Examiner finds this criterion satisfied.

4.2.4 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 effects or interference with the use of neighboring properties or the surrounding area, considering the design and intensity of the proposed use. *See SMC 17G.060.170(C)(4).*

An Environmental Checklist and other technical documents were routed for review by the staff and agencies with jurisdiction. Applicable findings and recommendations were incorporated into the proposed conditions for this proposal. No comments resulted in the need for mitigation above and beyond that already provided with implementation of the City's adopted codes. *See* Staff Report, p. 10. If the owner proposes development that exceeds that described in the proposal the development would be required to complete SEPA specific to that development. *See* Staff Report, p. 11.

A final DNS was issued on February 21, 2025, following distribution of an Environmental Checklist both as part of the request for comment by City departments and outside agencies as part of the combine Notice of Application, Notice of SEPA Application, and Public Hearing. An appeal was timely filed on March 7, 2025, by Dennis Flynn.

Residents nearby the subject site submitted comments specific to the historic context of Drumheller Springs Conservation Area, the wetlands located in Drumheller Springs Park, Wildlife, protection of the basalt bluff and geotechnical-related concerns. While historic resources were addressed in Section 4.2.3 above, this specific criterion is related to environmental-specific code compliance, not the full sweep of SEPA.

Staff provided detailed evaluations of the issues raised in the public comments regarding wetlands, wildlife, geologically hazardous zones, and stormwater. The Hearing Examiner adopts that analysis by reference. *See* Staff Report, pp. 11-12. The SEPA Appeal is discussed above in Section 4.1, with an ultimate finding that the City's decision should be affirmed. The Hearing Examiner finds this criterion satisfied.

4.2.5 Subdivision Decision Criteria. *See SMC 17G.080.025 (formerly SMC 17G.060.170(D)(5).*

The proposed subdivision makes appropriate (in terms of capacity and concurrence) provisions for public health, safety, and welfare; open spaces; drainage ways; streets, roads, alleys, and other public ways; transit stops; potable water supplies; sanitary wastes; schools and school grounds; sidewalks, pathways and other features that assure safe walking conditions. *See* Staff Report, pp. 13-15. However, the proposed subdivision does not make appropriate provisions for streets, roads, alleys, and other public ways; nor sidewalks, pathways and other features that assure safe walking conditions. *See* Section 4.2.1 supra.

The Hearing Examiner, therefore, finds these criteria not satisfied.

5 DECISION

5.1 SEPA Appeal

Based on the findings and conclusions above, it is the decision of the Hearing Examiner that the DNS is affirmed. The appellant lacks standing due a failure to plead an injury in fact. On the merits, the preponderance of the evidence supports affirmation of the DNS.

5.2 Preliminary Plat

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to deny the proposed preliminary plat.

SIGNED this 14th day of May 2025.

Karl J. Granrath
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.061.340 and 17G.050. Appeals of decisions by the Hearing Examiner are also governed by applicable provisions of RCW 36.70C and RCW 43.21C.

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 14th day of May 2025. **THE DATE OF THE LAST DAY TO APPEAL IS THE 28TH DAY OF MAY 2025, AT 5:00 P.M.**

Decisions by the Hearing Examiner regarding appeals of department official decisions (in this case the Determination of Non-Significance) are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is three days after a written decision is mailed by the local jurisdiction. This decision was emailed to the appeal parties (as stipulated) on May 14, 2025. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 9TH DAY OF JUNE 2025, AT 5:00 P.M.**

Aside from appeal fees, the Appellant also bears the cost of providing a certified transcript of the recording and preparation of the record in the matter (excluding the transcript of the recording). Appellant is responsible for obtaining a certified transcriptionist. The Hearing Examiner's office prepares the record in the matter, and Appellant is billed for that effort. The record in the matter is released after Appellant provides the certified transcript and full payment for preparation of the record in the matter.