

CITY OF SPOKANE HEARING EXAMINER

Re: Appeal by Claire Eastlund of the) FINDINGS, CONCLUSIONS,
Planning Director’s approval of a) AND DECISION
Conditional Use Permit (Type II))
authorizing a building addition)
and expanded parking at 1801 E.)
29th Avenue) FILE NO. 14-70-CUP2-AP

SUMMARY OF APPEAL AND DECISION

Summary of Appeal: Claire Eastlund filed an appeal of a decision by the City's Planning Director approving the application of International Church of 4Square Gospel (“Summit Church”) for a Type II Conditional Use Permit (the “CUP”), under File No. Z1400070-CUP2, related to real estate located at 1801 E. 29th Avenue, Spokane, Washington. The CUP authorizes an addition to an existing building and an expansion of related parking.

Decision: The decision of the Planning Director is upheld. The Hearing Examiner also modifies the Planning Director’s decision to correct certain clerical errors, as specified below.

**FINDINGS OF FACT
BACKGROUND INFORMATION**

Appellant: Claire Eastlund
1829 E. Pinecrest Rd.
Spokane, WA 99203

Respondent: International Church of 4Square Gospel
1801 E. 29th Avenue
Spokane, WA 99203

Represented by: Stacy Bjordahl, Attorney at Law
Parsons/Burnett/Bjordahl/Hume, LLP
505 W. Riverside Avenue, Suite 500
Spokane, WA 99201

Respondent: Planning & Developer Services
City of Spokane
808 West Spokane Falls Boulevard
Spokane, WA 99201

Represented by: James Richman, Attorney at Law
City of Spokane, Legal Department
808 West Spokane Falls Boulevard
Spokane, WA 99201

Authorizing Ordinances: SMC 17G.050.010 et seq.; SMC 17G.060.010 et seq.; SMC 17C.320.010 et seq.; SMC 17C.110.010 et seq.

Zoning: The zoning is RSF (Residential Single Family).

Comprehensive Plan Land Use Designation: The property is designated as Residential 4-10 in the City's 2012 Comprehensive Plan.

Date of Decision being Appealed: January 30, 2015

Date of Appeal: February 13, 2015

Hearing Date: April 2, 2015

Testimony:

Claire Eastlund
1829 E. Pinecrest Road
Spokane, WA 99203

Nick Kimmet
1801 E. 29th Avenue
Spokane, WA 99203

James Richman, Attorney at Law
City of Spokane, Legal Department
808 West Spokane Falls Blvd.
Spokane, WA 99201

Stacy Bjordahl, Attorney at Law
Parsons/Burnett/Bjordahl/Hume, LLP
505 W. Riverside Avenue, Suite 500
Spokane, WA 99201

Richard Cunningham
1604 E. Pinecrest Road
Spokane, WA 99203

Kate Burns
2336 S. Pittsburgh Street
Spokane, WA 99203

Brad Williams
1801 E. 29th Avenue
Spokane, WA 99203

Laura Brunell
2338 S. Pittsburgh Street
Spokane, WA 99203

Martha Schmauch
1830 E. Pinecrest Road
Spokane, WA 99203

Kathy Miotke
3309 W. Lincoln Road
Spokane, WA 99208

Exhibits:

1. Appeal filed by Clare Eastlund
2. Decision by Interim Planning Director being appealed
3. Application, including:
 - 3A General Application
 - 3B Administrative Conditional Use Permit
 - 3C Application Narrative
 - 3D Site Plan
 - 3E Building Elevation Plan
 - 3F Floor Plan
 - 3G Submittal Sheet
 - 3H Conditional Use Permit Counter Complete Checklist

4. Pre-Development Conference notes
5. Engineering Services comments
6. Wastewater comments
7. Washington State Department of Ecology comments
 - 7A Dated 12-18-14
 - 7B Dated 12-29-14
8. Spokane Tribe of Indians comments
9. Williams Pipeline comments
10. Notice map
11. Parcel listing
12. Notice of Community Meetings:
 - 12A For meeting of 08-28-14
 - 12B For meeting of 10-24-14
13. Affidavit of mailings:
 - 13A Community Meeting dated 08-08-14
 - 13B Community Meeting dated 10-06-14
 - 13C Notice of Application dated 12-29-14
14. Affidavit of posting:
 - 14A Community Meeting dated 08-08-14
 - 14B Community Meeting dated 10-07-14
 - 14C Notice of Application dated 12-29 and 12-31-14
15. Affidavit of sign removals:
 - 15A dated 10-24-14
 - 15B dated 01-20-15
16. SEPA Determination of Nonsignificance "DNS" issued 01-30-15
17. Environmental checklist dated 11-25-14
18. Community Meeting sign in sheets:
 - 18A Meeting held 08-28-14
 - 18B Meeting held 10-24-14
19. Letter dated 05-22-14 to Jay Bonnet from Ali Brast
re: community meeting instructions
20. Emails dated 08-22 to 26 to/from Laura Brunell, Dean Lynch and Ali Brast
re: questions regarding community meeting and project
21. Emails dated 08-26-14 to/from Brad Williams and Ali Brast
re: questions regarding owners of property within 400'
22. Letter dated 12-05-14 to Interested Parties from Ali Brast
re: requesting comments
23. Emails dated 01-08 & 09-15 to/from Paula Darling and Claire Eastlund
re: receipt of notice of application
24. Hearing Notices, Communication regarding procedure and continuances:
 - 24A Hearing notice dated 02-16-15
 - 24B Emails requesting and granting continuance requested by Respondent dated 02-18/19-15
 - 24C Email providing FAQ references to Appellant dated 02-19-15
 - 24D Emails requesting and granting continuance requested by Appellant dated 03-10/11-15
 - 24E Email Notice of Appearance from Stacy Bjordahl, Attorney at Law, representing Summit Church and response from the Hearing Examiner's office dated 03-11-15
 - 24F Emails from Appellant with procedural questions and response from Hearing Examiner's office, dated 03-17-15

- 24G Email from Kathy Miotke with comments and response from Hearing Examiner's office dated 03-18-15
- 24H Email with recap of phone conversation between Appellant and Hearing Examiner's office dated 03-19-15
re: receipt of notice of application
- 25. Historic Public Comment letters opposing project (submitted by Planning as Part of the original record)
 - 25A Laura Brunell
 - 25A.1 dated 08-22-14, with response from Ali Brast
 - 25A.2 dated 01-14-15
 - 25B Kate Burns
 - 25C Richard Cunningham
 - 25D Claire Eastlund
 - 25D.1 dated 10-21-14
 - 25D.2 dated 01-20-15
 - 25E Jenny Ellingson
 - 25F Kelly Ether
 - 25G Ed. Jones. MD
 - 25H Michael and Dale Lenski
 - 25I Dean Lynch
 - 25J Megan and Brian Read
 - 25K Dr. Samuel Schneider
 - 25L Jennifer Schneider
 - 25M Glenn Ward
- 26. Appellant's brief in support of appeal, filed by Claire Eastlund.
- 27. Respondent's briefs
 - 27A Brief filed by Assistant City Attorney, James Richman
 - 27B Brief filed by Stacy Bjordahl, Attorney at Law, on behalf of Summit Church
- 28. Email dated 03-31-15 to Parties of the Appeal from Hearing Examiner's Office
re: general information regarding parking, security, procedures
- A Exhibits received at the hearing:
 - A-1 PowerPoint presentation presented by Appellant
 - A-2 CD of traffic flow Pittsburg/Pinecrest submitted by Appellant
 - A-3 Trip generation calculation sheet for Church (560) submitted by City
 - A-4 Summit Church Addition, Notice of Application submitted by City
 - A-5 Intent letter regarding reciprocal parking agreement submitted by Summit Church
 - A-6 Pre-Development Conference Notes dated 08-21-14 submitted by Summit Church

FINDINGS AND CONCLUSIONS

A. Introduction

This appeal concerns the Planning Director's approval of a conditional use permit pertaining to the real property located at 1801 E. 29th Avenue. The application for the conditional use permit was made on behalf of the property owner, International Church of 4Square Gospel, operating as "Summit Church."

The conditional use permit authorizes Summit Church to construct a 3,515 square foot addition to the existing building on the site. The addition will expand the church sanctuary and provide space for administrative offices. Other authorized improvements include the addition of 24 parking stalls to the existing parking lot, perimeter landscaping, and a new curb cut to provide access from the parking lot directly onto 29th Avenue.

Claire Eastlund, a nearby resident, objected to the proposed church expansion. She filed an appeal of the Planning Director's decision to approval the conditional use permit. She contends that the project will negatively affect the neighborhood, primarily as a result of increased traffic, on-street parking, and noise. The appeal was timely filed, and therefore a hearing on the appeal was scheduled.

A hearing was held on the appeal on April 2, 2015, in the City Council Briefing Center on the Lower Level of Spokane City Hall. At that time testimony and arguments were presented and exhibits were entered into the record. Ms. Eastlund, the Appellant, presented her case in support of the appeal. The respondents were Summit Church and the City of Spokane. Summit Church was represented by Stacy Bjordahl, Attorney at Law. The City was represented by James Richman, Attorney at Law.

Based upon the record, the testimony at the hearing, and the appeal statements submitted by the Appellant with responses by the City and Summit Church, the Hearing Examiner by this decision makes the following findings and conclusions.

B. Standard of Review

Review of an administrative decision by the Hearing Examiner is governed by SMC 17G.050.320. Subsections B and C of that section state:

... The Hearing Examiner may affirm, modify, remand or reverse the decision being appealed. In considering the appeal, the Examiner must act in a manner that is consistent with the criteria for the appropriate category of action being appealed.

... 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 relief sought in the appeal should be granted.

C. Background Facts

On January 30, 2015, the Planning Director issued his decision approving the conditional use permit for the church expansion. At the same time, a determination of nonsignificance ("DNS") was issued for the project.

On February 13, 2015, Ms. Eastlund filed an appeal of the Planning Director's decision approving the CUP. However, the DNS was not appealed by Ms. Eastlund or any other party.

D. Discussion of Facts and Law

The Appellant and the witnesses testifying in support of the appeal raised a myriad of objections to the conditional use permit granted to Summit Church. Even so, the primary arguments on appeal fall into one of three categories: traffic, parking, and noise. Each of these categories will be discussed in turn. A number of other concerns raised in the appeal will also be considered, but only briefly and after the primary issues have been addressed.

1. *The conditional use permit was properly approved despite additional traffic that will be associated with the church expansion. The traffic impacts of the project are nominal and will not compromise public safety.*

The Appellant contends that the church expansion causes serious traffic impacts that are not properly addressed by the conditional use permit. The Appellant makes several arguments in this regard. First, the Appellant contends that the traffic from the church has an excessive impact on the residential roads. She claims that these roads are not designed for the volume of traffic being generated. Second, the Appellant asserts that traffic from the church creates public safety hazards. The Appellant placed special emphasis on the hazards present for pedestrians, cyclists, children, and the elderly. Third, the Appellant made the broad argument that the increased traffic will negatively affect the "livability" of the neighborhood. The Hearing Examiner will consider each of these contentions below.

The Appellant claims that the residential roads are not designed to handle the amount of traffic to and from the church. The Hearing Examiner does not agree. In order to determine whether the transportation system is capable of supporting the proposed use, the municipal code calls for an evaluation of objective factors, such as street capacity, level of service, or other performance measures. See SMC 17C.320.080(F)(4)(b)(i). There is no evidence that the residential roads do not have sufficient capacity to handle the traffic from the church, either presently or after the proposed expansion. There was no expert testimony, such as from a traffic engineer, suggesting that the residential roads lacked the requisite capacity. There was no evidence that the additional traffic arising from the church expansion would cause the nearby roads to drop below the required levels of service. The Planning Director reached this same conclusion, stating: "The proposal does not decrease the level of service on any adjacent street." See Exhibit 2. The Appellant did not demonstrate, based upon any performance measure, that the residential roads were inadequate to support the church project.

The Appellant was also unable to prove that the road system was not designed to handle the anticipated traffic. The contrary appeared to be true, on this record. The respondents contended, and the Hearing Examiner agrees, that the residential roads in question are unusually wide. These roads appear to be designed to handle far more traffic than currently exists or would be generated from the church expansion. In addition, the traffic from this project was too low to require a detailed analysis, according to the city staff. At the hearing, the city submitted a calculation, prepared by one of its traffic engineers, showing that a 3,500 square foot expansion would only result in 1.9 trips per day (PM peak hour). See Exhibit A-3. This is not enough traffic to warrant a traffic study or specific mitigation measures.

The Appellant submitted a series of videos, showing vehicles traveling to and from the church. The videos were certainly helpful to illustrate the Appellant's

arguments. However, the video evidence¹ was ultimately of limited assistance to the Hearing Examiner. The Hearing Examiner could not make any substantive judgments about the quantity of traffic, the capacity of the roads, or public safety based upon these videos. There was no evidence of the acceptable level of traffic, to establish a baseline. There was no way to know whether the baseline was being exceeded. There was no way to know whether the traffic measured on the days the video were taken were typical or atypical, or whether the impacts were caused by traffic which exceeded any applicable thresholds. The Hearing Examiner did get a sense for the predominant pattern of the traffic through the neighborhood, at least on the days when the video was taken. The video tended to show that the pattern of traffic matched the traffic patterns depicted on Appellant's map. However, this is not enough to sustain the appeal. Increased traffic in the neighborhood during church events would seem to be inevitable. The question is whether that traffic exceeds the capacity of the system, or is of such volume that safety is compromised and thus design changes are required. In the Hearing Examiner's judgment, the traffic from the proposed expansion does not warrant further conditions on this project.

The Appellant objects that the increased traffic from the expanded church will create safety hazards. The Hearing Examiner does not agree that this project compromises public safety, for numerous reasons.

It should first be reiterated that the roads in question are designed to handle vehicle traffic, whether or not the church is expanded, as noted above. The church is not adding enough traffic to the existing load to undermine the design of the road system. Therefore, the project does not create any safety hazards by taxing the infrastructure beyond its design limits. That said, the project includes one design change that is intended to alleviate some of the concerns about traffic, namely the installation of a new driveway access from the parking area directly onto 29th Avenue. Because this access is restricted to right-in/right-out², the Hearing Examiner agrees with the Appellant that it is unlikely that the new driveway will substantially decrease traffic through the neighborhood. However, the new driveway will have some positive effect.

The reality is that local roads are shared by motorists, bicyclists, and pedestrians. There is a certain degree of risk that will always exist in the use of public roads. In the Hearing Examiner's view, the church expansion does not create any hazard that does not already exist inherently, due to the nature of local roads.

There was no evidence presented that established that the church expansion resulted in a material increase in risk to the neighborhood residents. The Appellant did not identify a specific safety hazard that will be created by the expansion of the church. Certainly, the Appellant and witnesses in support of the appeal expressed fears about greater traffic in the neighborhood and the potential for accidents, in particular with

¹ As requested by the Appellant, the Hearing Examiner reviewed the videos on a computer after the hearing. Thus, the Hearing Examiner watched the video evidence both during the hearing and afterwards.

² The right-in/right-out restriction is squarely a design and safety issue, and is a matter within the discretion of the City's traffic engineers. The suggestion to allow access to church parking from both directions on 29th Avenue, by employing a traffic officer, is a potential solution that would have to be discussed and agreed up between the church and the City. This is not a solution that the Hearing Examiner would agree should be mandated as a condition of approval of the permit.

children or the elderly. However, the expression of general fear by a community is not the proper basis to condition or deny a project. See *Maranatha Mining v. Pierce County*, 59 Wn.App. 795, 803, 810 P.2d 985 (1990) (noting that community displeasure is not a proper basis to deny a permit).

The primary safety issue raised concerns the lack of sidewalks on Pittsburgh. The Hearing Examiner agrees that it is unfortunate that sidewalks have not been installed along this street previously. However, the fact that safety would be improved by the installation of sidewalks does not demonstrate that the church, which is just one property owner, is responsible to improve the neighborhood's infrastructure.

Whether technically required or not, the church has already committed to install sidewalks on the east side of Pittsburgh along the church property. This will improve safety to some degree, as the Planning Director suggested. See Exhibit 2. Project opponents were not satisfied with this commitment, however, insisting that the church should install sidewalks on the west side of Pittsburgh as well. They point to safety concerns to justify this position. The Hearing Examiner disagrees, however, for numerous reasons.

The absence of sidewalks is a pre-existing condition. Sidewalks have been lacking along this street for many years. There is no basis to mandate that the church create amenities that should have been installed previously. Requiring the church to install sidewalks would simply be requiring one owner to pay for a public benefit when the community as a whole should bear that responsibility. In addition, the church does not own the property on the west side of Pittsburgh. It is not proper to require a property owner to create amenities for neighboring property owners as a condition of approval of the owner's project. See *Luxembourg Group v. Snohomish County*, 76 Wn. App. 502, 887 P.2d 446 (1995) (holding that county could not require developer to dedicate an access road to a landlocked neighboring property as a condition of a subdivision approval). Further, it is not proper to require a project sponsor to make off-site improvements without demonstrating that those improvements were necessitated by the proposed development. See *id.* at 505. In the Hearing Examiner's opinion, under Washington law it is not proper to condition approval of the church expansion on the installation of sidewalks on the west side of Pittsburgh.

Finally, the Appellant asserts that the additional traffic from the project generally detracts from the "livability" of the neighborhood. Under the municipal code, the concept of "livability" is tied to particular impacts, such as noise, glare, late-night operations, odor, litter, privacy and safety. See SMC 17C.320.080(F)(3). With respect to traffic impacts, the only issue substantively addressed was safety. The Hearing Examiner has already concluded that the project does not compromise safety. There was no evidence that there were other traffic impacts related to livability, such as noise, glare, or odor. The concept of "livability" cannot be considered in isolation. The concept of livability must be connected to the impacts listed in the municipal code. Therefore, the Hearing Examiner concludes that the Planning Director's decision should be sustained.

2. *The Planning Director did not err in concluding that the church expansion was supported by the appropriate amount of off-street parking.*

The Appellant contended that there was insufficient off-street parking to support the use. According to the Appellant, the resulting use of on-street parking exceeded

capacity of neighborhood streets. The Appellant requested that the Hearing Examiner impose a condition mandating that the church provide more off-street parking in support of its use.

The Hearing Examiner concludes that the off-street parking facilities provided by the church are sufficient. The church property is zoned RSF. According to the municipal code, the church must provide a minimum of 1 parking stall for every 100 square feet of main assembly area. See SMC Table 17C.320-2. The maximum off-street parking allowed at this site is 1 parking stall for every 60 square feet of main assembly area. See SMC Table 17C.320-2.

The church currently has 148 parking stalls on site, and this complies with the municipal code. See Exhibit 27B, p. 4. The church expansion will add 1,646 square feet of space to the sanctuary. See *id.* With that expansion, the code requires the church to have a minimum of 102 spaces (1 per 100 square feet of main assembly area) and a maximum of 171 spaces (1 per 60 square feet of main assembly area). Thus, the existing parking lot easily satisfies the minimum parking requirements, including the expansion. In addition, the church's plans will raise the amount of parking to at least the maximum, according to the site plan. See Exhibit 3D. The Planning Director's decision also includes conditions of approval in the event the church seeks to install parking above the code maximum. The Appellant does not challenge these figures, or provide an alternative calculation. Instead, the Appellant requests that the church be *required* to provide parking over the maximum amount normally allowed. The Hearing Examiner, however, is not inclined to do so.

The Hearing Examiner concludes that a property owner may be allowed to exceed the maximum amount of parking, in certain circumstances. While a property owner *may* be permitted to exceed the maximum parking figure, the property owner is not *required* to do so. In addition, exceeding the maximum parking amount is an exception to the rule which is within the discretion of the Planning Director. See SMC 17C.230.130(B). The Hearing Examiner does not believe, given the posture of this appeal, that he should dictate how that discretion should be exercised by the Planning Director. Certainly, there is no evidence that the Planning Director abused his discretion with respect to parking requirements.

The parking exception under SMC 17C.230.130(B) provides that that "applicant" has the burden of proof to substantiate the need, and that the standard can only be exceeded when justified by "sufficient factual data." The Hearing Examiner concludes that this section does not apply to a request for more parking by the Appellant. The Appellant is not the "applicant" on this project. Even setting that aside, the Hearing Examiner does not believe the Appellant submitted "sufficient factual data" to meet the burden of proof. The Appellant did not calculate the specific amount of parking that would be considered satisfactory. The Appellant did not demonstrate that the church had enough property to provide the desired amount of off-street parking. The Appellant did not demonstrate that the church had enough property to provide required landscaping in the event the parking maximum was exceeded. See SMC 17C.230.130(B) (stating that a 30% increase in landscaping is a condition to exceeding the maximum parking). Ultimately, the Hearing Examiner concludes that there is insufficient legal or factual support for imposing a condition requiring the church to install parking facilities that exceed the code maximum.

It is understandable that some neighborhood residents would prefer that all church patrons park on church property. However, it should be noted that the on-street parking is taking place in the public right-of-way. The use of public right-of-way for parking is allowed. In addition, in this case, there is plenty of room for parking on both sides of the residential streets while still maintaining a sufficient travel lane in both directions. The Hearing Examiner disagrees with the suggestion that the on-street parking has any substantive effect on the capacity of the local roads. There is no evidence demonstrating that the local roads are of inadequate design or lack capacity. In addition, the parking impacts are somewhat lessened by the nature of the use. The use of residential streets for parking occurs on a relatively limited basis, when larger church events take place. Significantly expanding the parking lot would have a permanent effect and would not necessarily be beneficial to the neighborhood. The Hearing Examiner recognizes there are necessarily tradeoffs in cases like these. On balance, however, the Hearing Examiner believes that the parking requirements are properly addressed, both legally and practically. Therefore, the Hearing Examiner concludes that there is no basis to reverse or modify the Planning Director on this issue.

3. *Potential impacts from noise do not warrant reversal of the Planning Director's decision to approve the conditional use permit.*

The Appellant contended that noise from church events seriously impacted the neighborhood, and that such disturbances would only get worse with the church expansion. The Appellant noted that the police and the church were unresponsive to neighborhood complaints. The Appellant alleged that there was no viable means to address noise violations by the church, and therefore some enforceable condition needed to be imposed.

There were multiple witnesses who described the excessive noise emanating from the church grounds. The noise came from outdoor events with amplified, live music. Neighbors testified that about rattling windows, the inability to hold conversations on their property, excessive noise inside homes, and similar issues. *Testimony of Martha Schmauch; Dr. Samuel Snyder; and Kate Burns.* The Hearing Examiner was convinced by this testimony that the noise levels from the church were excessive, on more than one occasion. However, there are some mitigating factors to consider.

First, the church held only three events with outdoor music. At the hearing, the church testified that it did not know³ that its activities were disturbing the neighbors for the first two events. *Testimony of B. Williams.* According to the church, the only complaint received was lodged by Mrs. Schmauch, and that occurred during the third event. *See id.* Within a week of the last event, the church decided that it would no longer conduct similar events. *See id.* At the hearing, the church acknowledged the concerns and advised that it was no longer holding outdoor events with live music. The church acknowledged that it continued to advertise events with live music, but those events were now being held indoors. *Testimony of Nick Kimmet.* The church also stated that the live music, when conducted indoors, could not be heard at its property boundary. *See id.* Thus, the church has adjusted its activities to alleviate the disturbance of neighbors.

³ The Hearing Examiner acknowledges that this testimony was apparently disputed, at least in part, by Mrs. Schmauch.

Second, the Spokane Municipal Code already contains an ordinance restricting noise in a residential neighborhood. See SMC 10.08D.010 *et seq.* For residential properties, the maximum sound level is 55 dBA. See SMC 10.08D.070. The municipal code further provides:

It is unlawful for any person to cause or permit sound, or for any person in possession or control of real or personal property to permit sound to intrude into the real property of another person whenever the sound exceeds the maximum permissible sound levels set forth in this chapter.

See SMC 10.08D.050. Similarly, it is unlawful to knowingly cause or permit a “public disturbance noise” and refuse or intentionally fail to cease the noise when ordered to do so by a law enforcement officer. See SMC 10.08D.090(A). The violation of the noise ordinance may result in civil and criminal penalties. See SMC 10.08D.140.

The operation of a church is not an inherently loud activity. The complaints regarding noise concerned past outdoor events involving live music. Conducting similar events in the future is not necessary to the church’s operation or mission. When the church learned that these events were unduly disturbing to the neighbors, the church decided to forgo such activities. If the church engages in activities that are excessively loud in the future, the neighbors can lodge a complaint with the Code Enforcement Department of the City of Spokane. In the normal course, Code Enforcement would then investigate the matter to determine if the matter could be resolved. In appropriate cases, a civil infraction and other enforcement measures could be pursued. This process is the appropriate manner to enforce the requirements regarding noise. There is no need for a condition of approval in this regard because the church is required to adhere to this law in any event.

The Appellant maintained that the neighbors needed a better mechanism than calling 9-1-1 when faced with noise violations. However, the Appellant did not suggest a specific condition that should be imposed. The Appellant also did not explain specifically how the Planning Director erred by not providing a “better mechanism,” whatever that might be. In the end, the Hearing Examiner believes the best option for the neighbors is to utilize the code enforcement process to pursue future complaints about sound disturbances. The noise ordinance appears to fully address the issue, including providing for civil and criminal penalties. Ultimately, the church is required to adhere to the noise ordinance whether there is a condition stating as much or not.

4. The Hearing Examiner concludes that the Planning Director’s decision should be upheld, despite the other arguments raised in this appeal.

The Appellant raised a number of other arguments in this appeal. The Hearing Examiner believes that none of these arguments warrant a reversal of the Planning Director’s decision, for the reasons that follow.

a) The proposed expansion of the church does not create an institutional use that displaces or undermines the residential character of the neighborhood.

The Appellant contended that the church, an institutional use, had undue impacts on the neighborhood. Because the church was significantly expanding, the Appellant

anticipated that the impacts upon the neighborhood would proportionally increase. In support of this argument, the Appellants sites to the conditional use approval criteria found in SMC 17C.320.080(F)(1)(b), which states in pertinent part as follows:

The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the residential household living category in the residential area. Consideration...is specifically based on the: (b) intensity and scale of the proposed use...

The Hearing Examiner concludes that the church project does not create undue burdens on the neighborhood. The church is an established institutional use in this neighborhood. The existing church is approximately 18,631 square feet in size. See Exhibit 3D. The proposed addition will add 3,515 square feet to the existing building. *Testimony of S. Bjordahl*. Of that addition, approximately 1,869 square feet will be office space, leaving 1,646 feet of additional space for the sanctuary. There is a large, existing parking lot at the premises, which will be expanded.

In the Hearing Examiner's opinion, these modifications to the existing structure and grounds will not create a use or structure that is out of proportion with the neighborhood. The impacts of the project are discussed elsewhere in this decision, but in general those impacts are not extraordinary and are sufficiently mitigated by the Planning Director's conditions of approval. The intensity and scale of the proposed use is not substantially different than the existing use, and the proposal does not create a use that will overwhelm or dominate the neighborhood. The residential appearance of the neighborhood remains the same. No residential uses are displaced by the proposal. The Hearing Examiner agrees with the Planning Director that this criterion for approval is satisfied.

b) The Hearing Examiner rejects the Appellant's claim that the Planning Director made "false claims" regarding the mixed-use benefits of the church expansion.

The Appellant criticizes the Planning Director's finding that the proposal provides services close to neighborhood residents and decreases the need for driving. The Appellant asserts that the Planning Director makes the "false claim" that the church constitutes a mixed use that provides services "where neighbors live."

It is true that the church predominantly serves people who live outside of the immediate neighborhood. The church acknowledged as much, noting that its patrons include individuals and families from all over Spokane. *Testimony of Brad Williams*. The Appellant is likely correct that there is only a nominal benefit in the form of reduced driving. However, it is going too far to assert that the Planning Director was making a "false claim" to justify his decision. At least one witness stated that "no one" from the neighborhood attended the church. *Testimony of Laura Brunell*. However, there was testimony that some neighborhood residents attend the church, and that they sometimes walk to the services. *Testimony of Brad Williams*. The Hearing Examiner believes that there are services being provided to residents nearby, at least to some degree. It is also not clear to the Hearing Examiner precisely how the "neighborhood" is being defined by the witnesses.

That said, the Planning Director's decision does not turn on this issue. The Planning Director's finding was made in support of the conclusion that the proposal was consistent with the comprehensive plan. The Planning Director sited to several goals and policies of the comprehensive plan, before concluding that this specific approval criterion was satisfied. Even if the reference to neighborhood services were removed, there were several other goals and policies supporting the Planning Director's conclusion. There is no reversible error by the Planning Director.

- c) *The Hearing Examiner declines to adopt conditions regarding Slavic Baptist Church as conditions of approval for Summit Church.*

The Hearing Examiner declines to adopt the conditions for Slavic Baptist Church as conditions of the CUP issued to Summit Church. The Summit Church project is significantly different in scope and character from the project at Slavic Baptist Church. The two churches are in materially distinct locations. The two sites are not similar. As the foregoing discussion illustrates, the location of a project can be critical to the analysis of the decision criteria. In addition, it should not be assumed that the conditions imposed on the Slavic Baptist church have application to other churches, for at least two other reasons. First, the Slavic Baptist Church made *voluntary* concessions that were not necessarily mandated by the code. There is no basis to require Summit Church to also make the same concessions. Second, an appeal of the Slavic Baptist Church decision is still pending. Thus, it is not known whether those conditions will be modified, in whole or in part, or even whether they will remain in effect. In the end, the Planning Director imposed conditions based upon the project that was before him. He did not err by declining to adopt conditions from some other project, assuming he was invited to do so.

5. *The Planning Director's decision should be modified to correct certain clerical errors.*

The application materials submitted by Summit Church erroneously included Pre-Development notes from a meeting in 2012 which indicated that the proposed addition to the church is 2,784 square feet. See Memorandum in Opposition to Appeal, p. 1; see also Exhibit 4. The applicant should have submitted the Pre-Development notes from a meeting in 2014, which state that the proposed addition is 3,598 square feet. See *id.* The SEPA checklist also indicates an incorrect square footage. See *id.* In light of the foregoing, Summit Church requested a modification of the Planning Director's decision to correct the erroneous references. See *id.*, p. 2. The church also submitted a copy of the 2014 Pre-Development notes for inclusion in the record of this appeal. See Exhibit A-6. The church confirmed at the hearing that the accurate square footage of the proposed addition is 3,515 square feet. *Testimony of S. Bjordahl.*

The Hearing Examiner agrees that clerical errors in a decision below may be corrected pursuant to SMC 17G.050.320(B). The Hearing Examiner concludes that the Planning Director's decision should be corrected state that the square footage of the proposed addition is 3,515 square feet, rather than 2,784 square feet.

DECISION

Based upon the findings and conclusions above, as well as the fact that the Director's decision is presumptively correct, the Hearing Examiner finds that the Planning Director's decision was correct and therefore should stand. In addition, the Hearing Examiner hereby modifies the Planning Director's decision, in all appropriate places, to state that the proposed addition to Summit Church is 3,515 square feet.

DATED this 23rd day of April 2015.



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 by the Hearing Examiner regarding administrative appeals 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 DECISION SET OUT ABOVE.** The date of the decision is the 23rd day of April 2015. **THE DATE OF THE LAST DAY TO APPEAL IS THE 14th DAY OF MAY 2015.**

In addition to paying any Court costs to appeal the decision, you may be required to pay 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 Court.