

**CITY OF SPOKANE HEARING EXAMINER**

**DENNIS FLYNN,**  
Appellant

**FILE NO. Z23-587PPLT**

**CITY OF SPOKANE**  
Respondent

**APPELLANT'S LEGAL BRIEF**

---

**INTRODUCTION**

The proposed development is situated on a site entirely comprised of four critical areas, and is located directly across from Drumheller Conservation Areas, a 12-acre naturalistic park classified by the City of Spokane in 1950 with the intent to preserve its environmentally sensitive features, wildlife habitats and corridors, and significant historical value. Drumheller is where Spokane Garry established the first school in 1835 decades before Washington became a Territory. 600 feet from project site, a historical marker commemorates this event.

The project site is what remains of the eastern boundary of a large encampment site of Native Americans. For centuries Spokane Indians made Drumheller its winter quarters with longhouse and, consequently, numerous Indian burials occurred in the immediate area. The site may contain burial artifacts.

Drumheller was particularly important because it contained the only available water on North Hill for miles. The water provided sustenance for Indians, first settlers, and for abundant diverse wildlife and native plants. The project site is 400 feet north of Drumheller Springs Indian Historical Park, with its year-round artesian spring once used for spiritual rituals and drink by Spokane Indians. The freshwater spring feeds two remaining wetlands in the adjacent Drumheller Conservation Area, which in turn supports rare and diverse wildlife species and flora. The

Upper Columbia United Tribes adopted the conservation areas in 2005 and provide bi-annual maintenance to preserve its natural state. <https://ucut.org/habitat/drumheller-springs-natural-park/>

Proposed development threatens to disrupt certain environmental features of this unique and irreplaceable conservation area. The City must require strict adherence to SEPA rules and guidelines, building codes, and design standards regarding the development of the historically significant site. **App. Ex. 1** (*Drumheller US NPS Nomination National Register of Historic Places*). See also <https://spokanehistorical.org/items/show/102>  
<https://www.spokesman.com/stories/2007/jun/14/landmarks-drumheller-springs-park-once-site-of/>  
<https://properties.historicspokane.org/property/?PropertyID=1782#:~:text=Historic%20Properties%20of%20Spokane&text=The%20springs%20were%20historically%20known,in%20the%20late%20nineteenth%20century.>

#### **I. DETERMINATION OF NON-SIGNIFICANCE SHOULD BE RESCINDED.**

Proposed development will have probable significant adverse impact on the environment. City's issuance of DNS should be rescinded, and City should conduct supplemental studies pursuant to WAC 197-11-600 to adequately address environmental impact and ensure compliance to State Environmental Protection Act (SEPA).

Critical Areas are defined as "any areas of frequent flooding, geologic hazard, fish and wildlife habitat, aquifer sensitive areas, or wetlands". 17A.020.030. Applicant Whipple Consulting Engineers (hereafter WCE) identified five critical areas on the site itself or within 300 feet: Fish and Wildlife Habitat, Wetlands, Geological Hazard, Floodplain, and Critical Aquifer Recharge. *WCE Shoreline/ Critical Areas Checklist 12/11/2023*. City confirmed the site contains multiple critical areas and

stated its intent to ongoing review of site compliance with Title 17E despite not requesting any additional reports or specific mitigation plans. *WCE Ash Place Response to Determination letter p.3 dated October 10, 2024.*

Any use, modification or development within two or more critical area types shall be required to adhere to standards that are most protective of the ecological function of subject critical area. *17E.060.170(C)(5)*. The entire project site sits on a critical aquifer recharge area and is a geologic hazard area with high potential for landslides and severe erosion. The site is designated as a *Sensitive Location/Priority Habitat* by WDFW for three identified protected animal species, and a portion of the site encroaches a Category 1 Wetland Buffer. City erred by not requesting additional information or supplemental reports to adequately address environmental impacts clearly revealed by numerous public comments and state/ local resources prior to issuance of DNS. It is precisely the combined, incremental effects of human activity on critical area functions ("cumulative impacts") that require focused "cumulative impacts analysis" and protective permitting decisions. *17A.020.030(BL)*.

### **1. Geological Hazard Area**

A Geotechnical Conditions Report was prepared by Budinger & Associates for WCE in June 2024 to address engineering and construction concerns on the notably precarious site. The last page of this report explicitly states that *environmental concerns* are not covered in the report and cautions as follows: *"The equipment, techniques, and personnel used to perform an environmental study differ significantly from those used to perform a geotechnical study. For that reason, a geotechnical-engineering report does not usually relate any environmental*

findings, conclusions or recommendations". See Budinger Report, Environmental Concerns Are Not Covered, last page (emphasis added). Budinger emphasized that a geotechnical analysis will not reveal environmental impacts that can disrupt a project.

The site here is set entirely on basalt rock. The west three-quarters of project site is composed of rock outcroppings with shallow soils on top of (basalt) bedrock, and the east one-quarter of site is characterized by a steep drop in elevation down to N Ash St so severe that no roadway or pedestrian walkway is feasible. See Larry Dawes email to WCE dated 09/09/2024 attached hereon and incorporated herein by reference, **App. Ex. 2** (Google Earth Slope, ArcGIS Topography Maps). Budinger confirmed that basalt is observed on ground surface ranges from .6 to 6 ft in depth, and noted that heavy ripping, chipping, and blasting may be needed to establish foundational grades. *Budinger p.5.*

Budinger concluded that its site observations show four geologically hazardous areas: slopes greater than 30 percent, soils with severe potential for erosion, landslide hazards, and uncompacted fill. *Budinger p.4.*

Although Budinger did not observe surface water on site at the time of their exploration, adjacent resident Ted Teske states "there is water moving not too far underground on the site along the various basalt strata" with visible "evidence of regular seepage year-round along the cliffs on the east side of property adjacent to Ash Street" where "mossy areas" and "visible water sheens . . . that turn to frost and ice" are seen in winter. *Teske comment dated 1/15/2024 attached hereon and incorporated herein by reference.* Other residents attest to steady water seepage on the basalt cliffs. **App. Ex.3** (Cliff Water Photos).

Evidence of perennial or intermittent springs or ground water seepage is identified as another factor that classifies landslide hazard areas. *17E.040.030(B)(c)*. About 400 ft directly south and downhill of site is Drumheller Springs, a year-round, artesian spring now piped for its continual flow of water. **App. Ex. 4** (*Drumheller Conservation Areas Map*). Artesian springs are groundwater, under pressure, which makes it way to the surface. <https://www.artesianspringwaters.com/spring-water/artesian-spring-water/what-is-an-artesian-spring/index.php>

Teske stated in his January 2024 comment his observation that "Drumheller springs does drain through basalt strata to the south of the development site" and "there is evidence of "sub-surface water movement through the project site and coming out along Ash Street". See *Teske above*. Artesian springs occur at the base of a mountain or hill as water flows downhill from rainwater absorbed in elevated ground surfaces and later filters down into the aquifer. See *above re Artesian Spring Waters*.

Project site sits entirely on basalt bedrock, an integral aspect of the Spokane Aquifer, and is designated as Moderately Critical Aquifer Recharging Area. Any area constituting a critical aquifer recharge area that is adjoined by another type of critical area shall meet the requirements that provide the most protection to the critical areas involved. *17E.010.010(F)(2)*.

The heavy ripping, chipping and blasting of the basalt on the project site could disrupt sub-surface water flow, impact the natural spring, and increase landslide potential. Note that a landslide would collapse onto Ash Street, a principal southbound arterial carrying thousands of vehicles daily. Disrupting sub-

surface water flow could also create water leakage onto Ash Street. This very event occurred when a sub-surface natural spring was disturbed during road construction on Bigelow Gulch in 2021. **App. Ex. 5** (*Spokesman Review Bigelow Gulch Problems Feb 21, 2021*). Development shall not create adverse impacts on surrounding properties which increase or decrease water characteristics and shall not adversely impact critical areas occurring *on or off site*. 17E.040.100(B)(C) (*emphasis added*).

Any use, modification, or development within geologically hazardous areas shall comply with the requirements in critical areas ordinance and "new development or the creation of new lots that would cause *foreseeable risk* from geological conditions to people or improvements during life of development shall not be allowed." 17E.060.170(D)(1) (*emphasis added*).

SEPA defines "significant" as a "reasonable likelihood of more than a moderate adverse effect on environmental quality" and what is significant can vary from one site to another. WAC 197-11-794. The geological hazard here is heightened due to apparent but unknown sub-surface water flow. An environmental study must evaluate the nature and direction of the sub-surface water flow.

## **2. Site is Priority Habitat to Three Priority Wildlife Species.**

Applicant's SEPA checklist stated its review of site "did not reveal any critical habitat". WCE SEPA Checklist p.11, para.5. This is error in fact. WDFW Priority Habitats and Species list two distinct bat species occurring on all three parcels of site: Townsend's Big Eared Bat and the Big Brown Bat. **App. Ex. 6** (*PHS Species/Habitats Overview Parcel IDs 25014.4207,.4701,.4702*).

A twelve-to-fifteen-member herd of Rocky Mountain Mule Deer also inhabit conservation areas adjacent to and south of site and are often seen foraging and migrating on the site. It is not unusual to find deer antlers after spring rut. The area has for many years been the herd's preferred habitat. These deer are listed as Priority Species. **App. Ex. 7** (*Deer Photos, PHS Document*).

Priority Species wildlife requires protective measures due to their population status and sensitivity to habitat alteration. 17A.020.160(SS). Priority Habitat areas have significant and unique value as important wildlife breeding habitats and/or have high vulnerability to habitat alteration. 17A.020.160(RR).

There are 47 bat species in the United States; 15 bat species occur in Washington, only 2 of which are Candidate species; one Candidate species occurs on project site: the rare Townsend's Big Eared Bat. *WDFW Washington Bat Conservation Plan, Executive Summary p. vii (2013)*. A Candidate species is a species of wildlife reviewed for designation as threatened or endangered. 17A.020.030. Notably Townsend's bat is the only bat species in Washington to have its conservation status listed on both federal and state reports: US Fish and Wildlife Service as *Species of Concern Statewide*; US Forest Service as *Sensitive*; Bureau of Land Management as *Sensitive*; WDFW as *State Candidate Species, Priority Habitats and Species*, and *Species of Greatest Conservation Need*; and WDNR Natural Heritage listing as *S2 State Imperiled* and *S3 State Vulnerable to Extirpation or Extinction* categories. *Id, p.21. 17E.020.030 Table-1 (attached hereon and incorporated herein by reference)*. Clearly these bats require protection. **App. Ex. 8** (*Townsend's Big Eared Bat PHS Document*).

Townsend's bats are highly sensitive to human disturbance and are in decline due to chronic disruption of their roosts. *Id,*

pp.78-81. In Washington, Townsend's bats are found in lowland ponderosa pine forests, shrub-steppe, riparian habitats, and open fields— a true description of the project site and adjacent conservation areas. Eastern Washington bat maternity colonies are often located near water. Townsend's bats roost in rock crevices, cliffs, trees and tree snags, and exhibit remarkable fidelity to their roosts, often returning to the same sites year after year. Big Brown Bats roost in crevices or rock fractures on cliff faces. *Id*, p.11. This describes with near total accuracy the project site and adjacent conservation areas: the rock outcroppings, basalt cliffs, talus, open fields, year-round spring, and wetland riparian habitat directly across from site.

The basalt cliffs that comprise one-quarter of the site are greater than twenty-five feet high despite the City's claims to the contrary. *Staff Rept. p.12, para.4.; App. Ex.2 (Google Earth Sloping), App. Ex.9 (Ash St Cliff photos)*. The cliffs and talus located in the east quarter and the rock outcroppings throughout the site are important breeding and roosting habitat for these bats, especially as these unique environmental features are extremely limited in urban areas. *17E.020.030(B)(6), (7)*.

City's Melissa Owen contacted WDFW Habitat Biologist Kile Westerman about a mitigation plan for the bat habitat, but Westerman dismissed Owen's concerns because he did "not see any buildings. . . we are mainly concerned about. . . maternity roosts which take place in old buildings or attics, etc." See *Westerman email to Owens 8/26/2024 re bat polygons, attached hereon and incorporated by reference*. Existing map sources provide only general information and are not intended to pinpoint wildlife conservation areas on individual sites or properties. *17.020.040(B)*. Because Westerman did not physically



investigate the site and did not access the many comments of frequent bat sightings, his remarks are factually deficient. See *Bat Conservation p.10 attached hereon and incorporated by reference*. Information on significant adverse impacts essential to a reasoned choice, if not exorbitant in cost, shall be obtained by agencies. WAC 197-11-080. Here further investigation is required to accurately assess whether a Habitat Management Plan is needed to preserve these bat habitats. 17E.020.090(A).

Drumheller Conservation Area is an *Urban Natural Open Space* wherein priority species reside, use for breeding, feeding, and as movement corridors. 17E.020.030(12). Because Drumheller is surrounded by urban development, it is particularly important to wildlife density and diversity, especially those species which have high vulnerability to habitat alteration. City may restrict regulated uses and activities that lie within a priority habitat, by definition, or within one-quarter mile of a priority species point location (den or nest). 17E.020.050(A)(1). The City shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation *in, over, or on a potential wildlife habitat conservation area or associated buffer*, without first ensuring compliance with this chapter. 17E.020.050(A)(3) (*emphasis added*). Here strong evidence shows bat maternal roosting habitats of two priority species on proposed site. City erroneously relied on deficient information to assess site prior to issuing its DNS.

### **3. Drumheller Wetland and Buffer Zone**

WCE Critical Areas Checklist (12/11/2023) identified Wetlands within 300 feet of site, and its SEPA Environmental Checklist (7/18/2024) states there are "two waterbodies" on Drumheller that "are seasonal in nature." EC p.8. This is erroneous. Both

wetlands are year-round and spring fed. Native Americans encamped at Drumheller because it contains the only year-round, freshwater spring in Spokane. **App. Ex.10** (*Spokesman Review Landmarks: Drumheller June 2007*). Both wetlands are very close to site and proposed development in fact encroaches onto buffer zone of upper Wetland. **App. Ex.11** (*Spokane County Interactive Map View re Wetland Mapping*).

Drumheller Wetlands are *Wetlands with Special Characteristics for Eastern Washington* and are classified as Wetlands of High Conservation Value with *Category 1* rating. *17E.070.100(B)(2)*. See also *Wetland Guidance for Critical Areas Ordinance (CAO) Updates Publication 22-06-014 p.B-10 (October 2022)*. Spring-fed Drumheller Wetlands create a thriving Riparian Habitat Area with high wildlife and species diversity. *17E.020.030(B)(5)*. Wetlands within Riparian Habitat Areas are rated as *Category 1*.

Drumheller Wetlands are Wetlands of Local Significance which also qualify them as *Category I* rating per WA Wetlands Rating System for Eastern Washington. *17A.020.230(U)*. Drumheller Wetlands have three distinguishing characteristics which assign these wetlands the highest *Category 1* rating. The City's attempt to discredit the existence and significance of Drumheller Wetlands based on an outdated federal study is deceptive.

Current Spokane County mapping systems show the size and location of Drumheller wetlands. **App. Ex.11** (above). See also <https://www.spokanecounty.org/DocumentCenter/View/124/Wetlands-Map-PDF?bidId=> <https://spokanecounty.maps.arcgis.com/>;

City cites Budinger Report and Habitat Biologist Dawes' comments to indicate no wetland is present on project site. Appellant does not dispute that no wetland is present on project site. The

problem here is that Drumheller's upper Wetland Buffer Zone encroaches onto the lower south parcel of the project site.

The Buffer Zone assigned to Category I Wetland is 250 feet. 17E.070.110(B)(1). Buffer width is measured outward from a wetland boundary and protects the wetland from adverse impacts to its functions and value. 17A.020.230(N). The Wetland Protection Act requires Wetland Buffer Zones "shall be retained in their natural condition". 17E.070.110(F) (emphasis added).

WCE has the burden to disprove the encroachment on the Wetland Buffer by performing a field investigation conducted by a wetland scientist as provided in 17E.070 and as defined in 17A.020.030. 17E.070.180(B). Thereafter City must verify the accuracy of, and adjust, if necessary, the wetland boundary delineation. 17E.070.050(B)(1), (2). In general, changes in land use that adversely affect wetland functions or established buffers or eliminate portions thereof as the result of grading are the most significant impacts to ecological functions. Wetland Guidance p.13(emphasis added).

Where a regulated activity is proposed that is partly inside and partly outside a wetland or wetland buffer, a wetland permit shall be required for entire regulated activity. 17E.070.040(A). The standards of SMC 17E.070 Wetland Protection Act apply only to that part of the regulated activity which occurs inside the delineated boundaries of wetland or a wetland buffer; provided, all activities that occur outside a wetland or wetland buffer are prohibited from negatively impacting a wetland or the wetland buffer. 17E.070.040(B) (emphasis added).

Wetland protection and preservation means removing a threat to, or preventing the decline of, wetland conditions by an action in

or near a wetland. Here proposed development is in fact "partly inside" Drumheller's wetland buffer and "partly outside" not one but two Category 1 Wetlands and their Buffer Zones.

## **II. PRELIMINARY PLAT CONTAINS MULTIPLE MUNICIPAL CODE VIOLATIONS**

Applicant WCE show in their original *Preliminary Plat re Ash Place* a single, "T" shaped roadway as the only internal access of proposed development. WCE stated in its application their intent to create "one public alley to access proposed lots". See *WCE 2023 Preliminary Long Plat Application p.4, para 6(d)*. In February 2025, City designated the alley a "driveway" and named it Toyon Lane (hereafter Toyon). This is a misinterpretation and misapplication of Title 17 and City of Spokane Design Standards concerning types of roadways, their design, purpose, and placement. WCE has the burden to provide sufficient evidence to support its application. *17G.080.025(B)*.

### **1. Toyon Is an Alley by Design.**

Alleys shall be constructed in accordance with 17H.010.130 and City of Spokane Design Standards. New alleys shall have a paved width of at least twelve feet and a clear width of at least twenty feet. The twenty-foot width shall not be obstructed in any manner including the parking of vehicles, fences or utility structures. *17H.010.130(G)*. An alley is a narrow service roadway that serves rear lots and where width is less than twenty feet. *17D.050A.040(U)(1)*. Here WCE specified in its 2023 preliminary application its intent to create one public alley, identified Toyon as an alley until 2025, plats its width as an alley, and shows it as a roadway serving the rear of lots. It is an alley.

Dead end alleys shall be avoided whenever possible, but if unavoidable, shall be designed with adequate turn-around facilities or alternative connections acceptable to the director of engineering at the dead end. *17H.010.130(B)*. Here Toyon has not one but two, arguably three, dead ends if one considers the "hammerhead" turnaround at the end of entrance portion of Toyon. Hammerhead termination is primarily intended for use in dead end residential alleys. *Spokane Design Standards V13, p.33 (2020) (hereafter Design Standards)*. At the Toyon entrance hammerhead, vehicles must turn either left onto a dead-end north alley or right onto dead-end south alley, neither having any turnaround (hammerhead or otherwise). Indeed, City planning recognized both dead-ends and recommended a tall fence on each to obscure glare from headlights to adjacent properties. *See Developmental Services Center General Comments Third RFC(k) and Fourth RFC(k)*. WCE does not provide a turnaround at either dead end, and vehicles arriving at either dead-end cannot turn around except to use private driveways, a single-sided narrow pathway, or execute a 3-point turn on the narrow alley.

On 07/18/2024 WCE corrected its roadway designation from "alley" to "alley-like vehicle access" on its amended SEPA EC. However, changing its designation did not change its fundamental design as an alley. City agents in multiple emails discussed the fact that the proposed alley does not meet city standard for a public alley. City planner Melissa Owen noted on 08/30/2024: "While the applicant has stated that they want the alley-like access to be a public alley, comments from reviewing city staff stated the access should be a private access tract as the configuration does not meet city standards for a public alley." *See email dated 8/30/2024 from M. Owen to D. Studer attached hereon and incorporated by reference.*

A "private access tract" is a portion of land reserved for vehicular travel; here it is an alley by design, purpose, and platting. Joe Sacco, GIS Manager for Emergency Communications, correctly stated "Alleys should not be named or assigned addresses, except as permitted in the downtown" (referencing Road Naming Standards) and noted "This makes the alleys {here} the only access, and per my previous comments, as that access is to 4 or more lots/units, the roadway needs to be named. All roadways within a plat need to be named. A named roadway cannot be an alley." See Sacco email to Melissa Owen dated 08/5/2024 attached hereon and incorporated herein by reference.

## **2. Toyon Is Not a Driveway by Statutory Definition or Design.**

Then, on January 16, 2025, City Engineer Eric Johnson stated that the Toyon alleys "shall be a private driveway" and directed WCE to 17D.050A.060 (Roadway Naming Statute). But this statute specifically does not include "driveways" as "driveways" are not by definition roadways. 17D.050A.040.

Driveway is legally defined as "an all-weather surface driveway structure as shown in the standard plans." 17A.020.040(QQ). City Standards define a driveway as "a cement concrete driveway structure as shown in the Standard Plans. Design Standards p.2. Design Standards also indicate driveway design and purpose is to facilitate safe operations and minimal disruption of traffic flow and specifically states that "multiple unshared driveways with minimal separation between them are discouraged." Design Standards p.28 (emphasis added). WCE's plat drawing shows each individual unit having its own private (unshared) driveway (as properly understood) but with minimal separation (if any) as proposed units are attached townhouses. WCE's driveway design violates City Design Standards (minimal separation between each

unit's driveway) while illustrating, at the same time, the proper understanding of a "driveway"— a surface structure from an individual property which abuts a public (here private) right-of-way. See 17A.020.040(RR) ("*Driveway Approach is the edge of a driveway where it abuts public right-of-way*"). See *Design Standards* p.28-32.

*Developmental Standards for Residential Uses* provide a useful illustration of a driveway abutting a street and notes that vehicles may use a residential driveway as a parking location. 17C.230.145(A)(C). See also 17C.111.335-B *Driveway Illustration attached hereon and incorporated by reference*. As noted above, parking is prohibited in alleys. 17H.010.130(G). Despite its new name, Toyon retains its alley characteristics: narrow width, rear service entry, and parking prohibitions—thus rendering its new designation as "driveway" in contradiction to statutory definition of "driveway." Simply put, a driveway is not a roadway for vehicle travel. It is an alley.

### **3. Roadway Naming Statute Prohibits Alley or Driveway Naming.**

Street names must comply with the requirements of the Roadway Naming statute. 17H.010.030(E). Any project permit created to identify a new roadway, public or private, shall comply with the requirements of this chapter; without limitation this includes all roadways created within a plat. See *Roadway Naming* 17D.050A.

"Roadway" means a public or private way on which vehicles travel, encompassing all roadway types. 17D.050A.040(S). New or unnamed roadways providing access to four or more addressable structures or units shall be named. 17D.050A.050(A). Only traveled ways that qualify as roadways may be named, except that alleys in the downtown zones may be named. 17D.050A.050(D). The

project site is not downtown. "Lane" is defined as a private local access roadway within a development. 17D.050A.040 (U) (8).

Late communication from GIS Emergency Communication Manager Joe Sacco, repeated his objection that neither an alley nor a driveway quality as roadways per Roadway Naming Statute, and therefore Toyon cannot be named a Lane. See Sacco Email dated 02/4/2025 to Melissa Owen attached hereon and incorporated by reference. Ms. Owen mistakenly allows Toyon "alley" to morph into a "driveway" without first understanding the legal definition and statutes that regulate the design, purpose and placement of either. Owen admits said revision is "staff driven" specifically to ensure EMS access to site, despite the serious design flaws noted above. See WCE 12/2/2024 Letter to M. Owen p.1 Re Engineering, Joeline Eliason Revisions Required, attached hereon and incorporated herein by reference.

Roadways such as Toyon cannot avoid statutory street design compliance by simply changing the name of the roadway. Here WCE renames their alley as Toyon Lane in violation of explicit statutory mandates. Naming an alley "a lane" does not alter its fundamental characteristic as a *narrow rear roadway whereon the parking of vehicles is expressly prohibited*. The problem is WCE wants to use the narrowest possible permitted roadway (an alley) and designate it a "lane" to ostensibly avoid providing a wider, safer, and code compliant private street. It is still an alley.

#### **4. Toyon Is a Street and Must Comply with Codes in R1 zones.**

Roadways within City limits are commonly referred to as "streets." 17A.020.180(AA). Except in unusual cases, plat must dedicate a *full width street*. 17G.080.070(A)(2). A private



street is a roadway not controlled by public authority which serves two or more properties. 17A.020.160(TT). The local access residential street standard shall be thirty-two feet with parking on both sides and is intended for use in areas with street-facing garages and driveways where on-street parking is primarily used by visitors and extra vehicles. The on-street parking lanes should be eight feet wide. 17H.010.070(A)(B).

#### **A. Street Widths/ On Street Parking**

The street width may be reduced to twenty-seven feet on local access streets in low density (four to ten units per acre) if parking is limited to one side of the street. 17H.010.070(A). The turning movements of service and emergency vehicles (on approved twenty-seven feet reduced street width) must be evaluated to ensure on-street parking does not interfere with access. 17H.010.070(D). This does not apply here because plat show development is high density (twenty units on 1.32 acres).

#### **B. Street and Sidewalks**

Sidewalks are the basic element of walkability and shall be designed in accord with Standard Plans and Spokane GSPs. *Design Standards p.12 (citing 17C.110.140, 17C.120.230, 17C.130.230)*. Sidewalks are required on both sides of a private street with a pedestrian buffer between curb and sidewalk. 17H.010.180(A). The width and type of pedestrian buffer strip shall comply with city design standards. 17H.010.190(A). Urban local access street in RSF/R1 zone requires sidewalks of 5 feet with buffer of 6 feet. See *Design Standards Table 1 Street Dimensions p.51, attached hereon and incorporated by reference*.

Here there are no on-street parking lanes and only one 4-foot sidewalk on the east side of Toyon roadway. The lack of on-

street parking, the single 48" sidewalk without buffer, the lack of turnaround facility at north and south dead ends, and the narrow 20 ft alley width renders this plat inherently dangerous, hinders the turning movements of all vehicles, including emergency, delivery, and utility trucks, and disregards the safety of pedestrians, residents and their visitors.

Private streets require the approval of the director of engineering services and shall be constructed in accordance with design standards for public streets. *17H.010.090(B), (F) (3)*.

### **C. Dead End Street Requirements**

Turnarounds designed to meet city standards are required at all street dead ends to allow emergency and service vehicles to turn around. *17H.010.080(B)*. Deviations from the standards in this section must be submitted in writing to the city engineer and be approved. *17H.010.020.(A)*. No variance was issued here.

Dead-end streets shall be not less than 142 feet or more than 600 feet long. *17H.010.080(C)*. Here Toyon's left lane (at hammerhead) measures approximately 72 feet to its north dead-end; Toyon's right lane (at hammerhead) measures 142 feet to its south dead-end. Toyon's short left lane at 72 feet is one-half the 140 ft minimum distance required for dead-end streets.

At the end of every dead-end street there shall be provided a hard surface public pathway connecting it to a roadway or public pathway. *17H.010.080(D)*. No such pathway is apparent on plat drawing. This is a critical safety issue here because absent this mandated pathway, there is no alternative pedestrian route in the development except for a single, eastside 4-foot-wide pathway, private driveways, or on the roadway itself.

A new dead-end street requires the approval of the director of engineering services and is only allowed if street connectivity is unachievable. *17H.010.080(A)*. Permanent dead-end streets must be reviewed in every case for connectivity. *17H.010.030(P)*. Here street connectivity is achievable by reducing the number of townhouses to allow appropriate street design connectivity. For example, by constructing an inverted "U" shaped street with dual exits connecting to the local access road (N. Ash Pl) instead of "T" shaped alley with three dead-ends.

Because the plat design is that of an alley rather than a lawful street, the current plat violates multiple city codes and standards for street design. The plat is inherently dangerous for residents, their guests, and all members of the public (emergency vehicles, waste management, delivery/ service trucks, visitors, etc.) who travel this unsafe bottleneck roadway. Where will the children play or ride their bikes or walk to school—or the elderly or disabled—as multiple vehicles of all types and sizes congest their small neighborhood on its unsafe roadway?

#### **5. Proposed Development Exceeds Low Density Land Use Standards**

The purpose of Ordinance No. C36232 (effected 08/27/2022) was to implement actions specified in RCW 36.70A.600(1). *17C.400.010*. This ordinance adopted SMC Chapter 17.C.400 and is the ordinance vesting the current WCE application. Developments approved under 17C.400 shall comply with all standards and regulations found therein. *17C.400.010(C)(2)*.

*Lot development standards* given in Table 17C.110-3 shall govern unless provided in Table 17C.400-1. *17C.400.010(C)(e)*. Table 17C.110-3 makes clear the distinction between "lot development

*standards*" and *"maximum density standard"*. Table 17C.400-1 amends only *"lot development standards"* and does not alter either minimum or maximum density standards.

Table 17C.110.3 sets *maximum density standard* of 10 units per acre for RSF/R1 residential zone. *See Table 17C.110.3 attached hereon and incorporated herein by reference.* This corresponds to Land Use Residential Low Designation of Assumed Density (units per acre) for middle housing types. *See Land Use Designations Table LU-2 City of Spokane Comprehensive Plan amended 9/07/2023.*

17C.400.020(B) (1) provides the maximum number of units allowed on a site are stated in Table C.110-3, and provides that *maximum density is based on the zone and size of site* and is controlled by site development standards. Appellant argues that "zone" here refers to "base zone" as the same code applies "base zone" to minimum density requirements. *17C.400.020(B) (2) (c)*. This same analysis is in fact applied to PUDs which "shall develop the site subject to minimum and maximum density provisions of the base zone". *17G.070.030(B) (1)*. Note City assigned PUD/ long plat designation to proposed development and specified that "All PUD and Subdivision standards apply per 17G.070 & 17G.080." *See Pre-Development Conference Notes Section 2, p.3 re Comments Specific to Site of Associate Planner II Donna deBit.*

Notwithstanding maximum density standards in Table 17C.110-3, lots that conform to applicable development standards of this section shall be considered to meet maximum density standards. *17C.400.010(C) (5) (Low Intensity Residential Development Standards)*. Careful reading of this section does not permit lot development more than the maximum density standard stated in Table 17C.110-3 and as set forth in Spokane Comprehensive Plan

as amended Sept 2023. The imperative verb "Meet" means "conform to" not "to exceed". <https://www.vocabulary.com/dictionary/meet>

Here the base zone per Land Use R1 designation is Residential Low with assumed density of 10 units per acre. City interprets 17C.400.020 (C) (5) to supersede the maximum density standard set forth in Table 17C.110-3 to allow 20 units on 1.32 acres because minimum lot dimensions decreased for attached houses. Notably the descriptive "Assumed" was added to Density classification in amended Spokane Comprehensive Plan (2023). *See above Land Use Designations Table LU-2.* Therefore, Appellant argues that 17C.400.020(C) (5) is properly interpreted to mean that an aggregate of smaller lots *shall be considered to meet* (i.e. conform to) maximum density base zone requirement of 10 units per acre, not to supersede maximum density.

Appellant's argument is strongly supported by city statements regarding *density* in Staff Report which recommended approval of 2023 Land Use Designation changes: "The proposal does include significant text amendments to the names and descriptions of various residential land uses. However, while the naming conventions for the residential land use plan map would be changed by the proposal, *the assumed density for those designations remain.* The descriptions added for the various residential land uses are more in line with existing policy in the Comprehensive Plan calling for diversity and choice in all parts of the City, and *do not represent a new paradigm in land uses or their preferred development types*". *Staff Report for File Z23-112COMP, pp.1, 16-17, (emphasis added) attached hereon and incorporated by reference.*

Residential Low is a low-intensity zone which allows for a range of housing choices, including both detached and middle housing homes. Twenty units on 1.32 acres are by any measure high intensity, falling properly to Residential Plus or Residential Moderate land use designation. Building Opportunity for Housing- Comprehensive Plan Amendment which incorporated "middle housing types" to Residential Low land use noted that said housing is "typically defined as between 2 and 6 units per site." See <https://my.spokanecity.org/projects/shaping-spokane-housing/building-opportunity-for-housing/2023-comprehensive-plan-amendment/>

## **6. Modified Maximum Density Calculations**

The calculation of density for subdivision residential development is the net area, which is the square footage of project site minus tracts of land set aside for right-of-way and other development purposes. 17C.400.020(B)(1). Critical areas on site may further reduce net area. 17E.060.170.

Appellant argues at minimum the east quarter of project site (basalt cliffs with bat habitat) should be reserved or **14,397.5 sq ft**. Using WCE alley length of 300 ft, appellant calculates roadway tract as **16,200 sq ft** using code compliant 32 ft wide street and code compliant 5 ft sidewalk with pedestrian buffers on both sides; and using WCE land tract measure at **5007 sq ft**. Net area is **21,985.5** (from WCE gross area of 57,590).

The maximum densities for residential zones are stated in Table 17C.110-3. Maximum density is based on the (base) zone and size of site, and maximum units allowed are controlled by site

development standards. 17C.400.020(B)(1). Residential Low Land Use Assumed Density is 4-10 units per acre. Using Appellant's adjusted calculations to Table 17C.110-3 Maximum Density Standard to net area results in 5.05 (rounded to 6) units.

### **CONCLUSION**

WCE and the City identified four critical areas comprising the entire site: Geological Hazardous Area, Critical Aquifer Recharge Area; Priority Habitat/ Species Area; and Historically Significant Area. Budinger Geotechnical Report explicitly did not address any environmental impact associated with the site, including clear and convincing evidence of sub-surface water movement which produces Drumheller Springs, an artesian spring of unique historical significance located directly downhill from site. Budinger concluded heavy ripping, chipping and blasting of extensive basalt bedrock and outcroppings may be required to grade site, which has severe slopping and is a landslide hazard area. Despite probable impact on sub-surface water flow to adjacent properties, including a principal arterial street and unique historical spring, no site environmental study was done.

Substantial evidence shows three priority wildlife species occur and habituate on site. Two short, perfunctory emails from the Habitat Biologist dismissed habitat concerns without any field investigation or personal review of very credible testimony from numerous neighbors of site. City erroneously concluded that two Category 1 Wetlands and respective Buffer Zones did not exist because an outdated federal report did not refer to the visible waterbodies as "wetlands" despite numerous mapping, ordinances, and city codes that determined otherwise. Nor did City fully investigate the true environmental importance and historical

significance of the unique Drumheller Conservation Areas that the site is adjacent to and was, at one time, part of.

A determination of DNS is clearly erroneous when the reviewing body is left with the definite and firm conviction that a mistake has been committed. *Association of Rural Residents v. Kitsap County* 141 Wn.2d 185,196, 4P.3d 115 (2000). A DNS will survive scrutiny under the clearly erroneous standard when the record demonstrates that environmental factors were considered in a manner sufficient to amount to a prima facie compliance with procedural requirements of SEPA and the decision to issue DNS was based on sufficient information to evaluate the proposal's environmental impact. *Wenatchee Sportsman Association v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). Here the record shows important environmental factors were either insufficiently considered (priority habitat/species, wetlands/buffers, Drumheller Conservation Areas) or not considered at all (sub-surface water flow/ artesian spring environmental impact).

Appellant has also methodically demonstrated that WCE'S plat contains multiple violations of city code regarding street design and naming, dead ends and turnarounds, sidewalks and pedestrian buffers, and land use density limitations. These violations render project site design fundamentally flawed and inherently dangerous. Affirmative findings of fact relative to each application criterion are mandated or application must be denied. 17G.080.025(B), (C). This application should be denied.

Respectfully submitted this 2<sup>nd</sup> day of April 2025.

Anne Marie Liebhaber

---

ANNE MARIE LIEBHABER WSBA #22617  
Attorney for Appellant