

1 **SPOKANE COUNTY HEARING EXAMINER**

2
3 ALTERATION TO LOT 1 OF THE FINAL
4 PLAT OF KRIGER ADDITION, PN-1865-
5 99 TO REMOVE FUTURE
6 ACQUISITION AREA AND 25-FOOT
7 BUILDING SETBACK, REPLACING
8 THEM WITH 12' RIGHT-OF-WAY

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

6 APPLICANT: BRIAN STEWART

7 FILE NO. ALT-0001-2021/PN-1865A-99

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9 **I. SUMMARY OF DECISION**

10 **Hearing Matter:** On June 30th, 2021, an application for alteration to the final
11 Plat of Kriger Addition, PN-1865-99 came before the Hearing Examiner for hearing
12 pursuant to Spokane County Code (SCC) 12.400.114.

13 **Summary of Decision:** Application approved, subject to revised conditions.

14 **II. FINDINGS OF FACT**

15 **A. Procedural Matters:**

16 The single-phase final Plat of Kriger Addition was recorded on April 5th, 2001
17 following approval of the preliminary plat on June 13, 2000, by the Spokane County
18 Hearing Examiner which approval was not appealed.

19 The final Plat of Kriger Addition contained seven lots and plat dedication
20 language affecting how close structures could be to Waikiki Road as follows:

- 21 • A future acquisition area along the road frontage that varied between 18 to
22 20 feet
- 23 • A 25-foot building setback line which was based upon the future acquisition
24 area lines

21 An application for an alteration to Lot 1, Block 1 of the final Plat of Kriger
22 Addition, proposing to remove from the plat dedication language the future
23 acquisition area located within Lot 1 (varying from 18' to 20') and the 25-foot building
24 setback line that was based upon the future acquisition areas, and replace the future
acquisition area with a 12' right-of-way suggested by Spokane County, was accepted
by the Spokane County Building and Planning Department ("Department") on March
24, 2021, and assigned the file number ALT-0001-2021/PN-1865A-99. Upon public

1 notice of the application for alteration of the final plat, a request for hearing on the
2 application was received by the Department and a hearing scheduled to be held on
June 30, 2021, at 9:00 a.m. before the Spokane County Hearing Examiner.

3 The applicant for the alteration is Brian Stewart, PO Box 2741 San Anselmo,
4 CA 94960 who is also the owner of Lot 1 and of two other lots within the plat.

5 Testimony of Brian Stewart.

6 Pursuant to SCC Section 12.100.122 the following notices were properly
prepared, mailed, and posted:

7 Notice of Application – mailed by the Department on March 24, 2021.
8 Certification of Mailing by Martha Thornton dated March 24, 2021.

9 Notice of Application – published in the Spokesman-Review, a recognized legal
10 newspaper for the publication of notices, on March 24, 2021. Affidavit of
11 Publication by E. Jean Robinson dated March 24, 2021.

12 Notice of Public Hearing – mailed by the Department on June 07, 2021, mailed
13 to Five Mile Prairie Neighborhood Council and Waikiki-Rutter Parkway
14 Neighborhood. Declaration of Mailing signed by Martha Thornton dated June
07, 2021.

15 Notice of Public Hearing – posted at the site on 11308 N. Waikiki Road dated
16 June 10, 2021, by the applicant. SCC Section 13.500.108. Affidavit of Posting
17 signed by Brian Stewart dated June 10, 2021.

18 Notice of Hearing – mailed on June 10, 2021, Affidavit of Mailing signed by
19 Brian Stewart dated June 10, 2021.

20 Notice of Hearing – published in the Spokesman-Review, a recognized legal
21 newspaper for the publication of notices, on June 15, 2021. Affidavit of
22 Publication by E. Jean Robinson dated June 15, 2021.

23 The Hearing Examiner conducted a site visit on June 28, 2021.

24 The hearing for this matter was held as noted in the Notice of Hearing, at 9:00
a.m. on June 30, 2021, via Zoom internet conferencing platform pursuant to the
Spokane County Hearing Examiner Ordinance, codified in SCZC Chapter 1.46; the
County Hearing Examiner Rules of Procedure, Spokane County Code Chapter
12.400, and SCZC Section 14.606.

The following persons were present at and/or testified at the hearing under an
oath administered by the Hearing Examiner:

Robert Brock
1026 W. Broadway Avenue
Spokane, WA 99260

Brian Stewart
PO Box 2741,
San Anselmo, CA 94960

1 WBROCK@spokanecounty.org

bmstewartemail@gmail.com

2 David Istrate
3 1026 W. Broadway Avenue
4 Spokane, WA 99260

Robert L. Allen
1319 W. Cliffwood Ct.
Spokane, WA 99218

5 DCISTRATE@spokanecounty.org

roballen@myrangemaster.com

6 The following exhibits were submitted at the hearing, by the Department; and
7 was made part of the record by the Hearing Examiner:

8 Exhibit 1: Building & Planning_01_Zoning Map (1 page.)

9 Exhibit 2: Building & Planning_02_Air Photo (1 page.)

10 Exhibit 3: Building & Planning_03_Existing Final Plat of Kriger Addition
(1 page.)

11 Exhibit 4: Building & Planning_04_Proposed Plat Alteration (1 page.)

12 **B. Public Comment:**

13 A comment letter was received from a neighboring property owner requesting
14 a public hearing for the subject alteration. The concerns expressed include size of the
15 round-about, future traffic needs, and landscaping.

16 Mr. Rob Allen, commented at the hearing that the vacant land in the vicinity
17 of the round-about intersection of Waikiki Road and Mill Road is rapidly being
18 developed into single and multi-family housing projects that will likely increase the
19 volume of traffic at the intersection, thus presenting the probability that the
20 roundabout would need to be redesigned and enlarged in the future. He also
21 explained that a neighborhood group had raised funds and was in the process of
22 providing irrigation and landscaping on and around the round-about intersection.
23 The possibility of future alterations to the intersection would impact the planned
24 landscaping. Thus, Mr. Allen raised the question of whether it was prudent to give
up the current "future acquisition" area within Lot 1 of the final plat if the "future
acquisition area" may be necessary at some point in the future.

Mr. Istrate, of the Spokane County Public Works Department, in answer to
questions from the Hearing Examiner, explained that the existing round-about
intersection at Waikiki Road and Mill Road was constructed at approximately 2014
and was anticipated in some form in 2000. There is a recognized need for and plans
for an additional "slip lane" for northbound traffic at the intersection that would
deflect northbound traffic from entering the round-about and merely "slip" passed the
round-about on the east side. The schedule for the construction of the "slip lane" is

1 approximately 5 – 6 years in the future. Mr. Istrate explained that the reason for the
2 12' right-of-way proposed in the application for alteration of the final plat is to
accommodate the anticipated “slip lane”. Testimony of David Istrate.

3 **C. Agency Comments:**

4 Prior to the hearing on June 30, 2021, the Department received comments
5 from Spokane County Public Works stating no objections to the proposed alteration of
the final plat.

6 **D. Description of Site and Proposed Project:**

7 The applicant for the alteration is the owner of Lot 1 of the final plat. The
8 proposed alteration is intended to allow a larger buildable area within Lot 1 by
allowing construction of buildings closer to Waikiki Road.

9 The final plat is a roughly triangular shaped parcel, divided into seven lots,
10 located generally at the east of and adjacent to Waikiki Road, in the SW¼ of Section
07, Township 26 North, Range 43 EWM, Spokane County, WA.

11 The proposed alteration to the final plat is located within Lot 1 of Block 1 of
12 the Final Plat of Kriger Addition. Lot 1 is triangular in shape, 0.79-acre in area,
13 with the broad side of the triangle at the south boundary. The west side of the lot
14 borders on Waikiki Road to Mill Road while the east boundary approaches the west
15 boundary as it runs north and is bounded by residential lots to the east. The
16 topography of Lot 1 is generally flat, sloping slightly to the north from the south
17 border of the lot and sloping steeply to the east from the southeast corner of the lot
18 forming a coulee on the east side of the lot that widens to the west as it progresses
19 north until it meets the western boundary of the lot at the north corner. A large
culvert enters the lot from under Mill Road (just north of the round-about
intersection with Waikiki Road) at the north corner of the lot. Fresh vegetation
growth through the bottom of the coulee indicates that some water is present in the
coulee though no flowing water was observed by the Hearing Examiner during his
visit to the site.

20 The west boundary of the lot is level with Waikiki Road then sloping steeply
for approximately 2 to 2.5 feet to the level area of the lot as described above.

21 There is very little vegetation on the level area of the lot, some vegetation
22 exists in the coulee, as noted above, and mature trees are growing along the east
border of the lot and on the neighboring residential lots to the east.

1 **E. Consistency of Application with Approval Criteria:**

2 RCW 58.17.215 requires an application for a plat alteration to contain the
3 signatures of a majority of persons having an ownership in the lots and tracts in the
4 final plat or of that portion of the plat that is proposed to be altered. RCW 64.04.175
5 and RCW 58.17.218 provide that easements established by dedication in a final plat
are a property right that cannot be altered or extinguished without the approval of the
easement owner(s).

6 The applicant is the owner of Lot 1, Block 1 of the Final Plat of Kriger Addition,
7 which is the only portion of the plat that is proposed to be altered, and who submitted
8 a plat alteration application which he had signed. The application was submitted to
9 Spokane County Building and Planning Department. Spokane County is the
beneficiary of the dedication language of the plat regarding the “future acquisition
area” described above.

10 The plat alteration application complies with the submittal requirements of
11 RCW 58.17.215, RCW 64.04.175 and RCW 58.17.218; since 100% of the ownership of
the portion of the plat to be altered, the applicant and Spokane County, joined in the
application.

12 SCC 12.100.122 and RCW 58.17.215 authorizes the Hearing Examiner to
13 approve a plat alteration if the Examiner determines that the “public use and interest”
14 will be served by the alteration; and require the applicant, following approval of the
alteration, to produce a revised drawing of the approved alteration to be signed by the
15 Board of County Commissioners and filed with the County Auditor.

16 The public use and interest are embodied in the policies of the Comprehensive
Plan and applicable development regulations.

17 The improvements to the intersection of Waikiki Road and Mill Road that were
18 anticipated at the time of the approval and acceptance of the preliminary plat and final
19 plat have now been completed and future improvements to the intersection (round-
20 about) are known and planned for at this point in time. The proposed 12 foot right-of-
21 way that is intended as an alternative to the original dedication of “future acquisition
22 areas” in the final plat has been reviewed by the Spokane County Public Works
Department and is deemed sufficient to accommodate the planned “slip lane” to be
23 built at the intersection in the future. Testimony of David Istrate. With the exception
24 of the removal of the dedication language in the final plat regarding the “future
acquisition areas” and the requirement that building setbacks be measured from the
boundary of the “future acquisition areas” within the boundary of the final plat, the
final plat is subject to all the conditions of approval previously imposed on the final
plat.

1 The application, as conditioned, is consistent with SCC 12.100.122, RCW
2 58.17.215, RCW 58.17.218, and RCW 64.04.175; is not detrimental to the public health,
3 safety and general welfare; and serves the public use and interest.

4 Based on the above findings of fact, the Hearing Examiner enters the following:

5 III. CONCLUSIONS OF LAW

- 6 1. Any finding of fact above that is a conclusion of law is deemed a conclusion of
7 law.
- 8 2. Minor revisions should be made to the conditions of approval; to assure proper
9 formatting, clarity and consistency with the findings of fact above.
- 10 3. The application, as conditioned, generally conforms makes appropriate
11 provision for the public health, safety, and welfare; makes appropriate provision
12 for the factors set forth in RCW 58.17.110 and other relevant regulations; serves
13 the public use and interest; and complies with the SCZC and other application
14 development regulations.
- 15 4. The approval of the alteration to the final plat as proposed is appropriate under
16 SCC 1.46.110 (Hearing Examiner Ordinance), the SCC 12.400 (Subdivision
17 Ordinance), and RCW Chapter 58.17.
- 18 5. Any conclusion of law above that is a finding of fact is deemed a finding of fact.

19 IV. DECISION

20 Based on the Findings of Fact and Conclusions of Law above, the application for
21 an alteration to Lot 1, Block 1 of the Final Plat of Kriger Addition, to remove the
22 language in the dedication of the plat referring to the “future acquisition areas” of 18’
23 to 20’ and the requirement that the 25 foot building setback be measured from the
24 boundary of the “future acquisition area” within Lot 1 of the plat, is hereby approved,
subject to compliance with the conditions of approval specified below.

Any conditions of approval of public agencies that have been added or
significantly altered by the Hearing Examiner are *italicized*. This approval does not
waive the applicant’s obligation to comply with all other requirements of other public
agencies with jurisdiction over land development.

Minor revisions should be made to the conditions of approval to ensure proper
formatting, clarity, and consistency with the findings of fact above.

A. Conditions of Approval:

1. All conditions imposed by the Hearing Examiner shall be binding on the
“Applicant”, which term shall include the owner and developer of the property, and
their agents, heirs, assigns, and successors.

1 2. The revised drawing and dedication submitted by the applicant shall be
2 submitted to the Board of County Commissioners for signature, and filed with the
3 Spokane County Auditor.

3 3. All conditions of approval imposed on and all regulations, codes, and statutes
4 applicable to the final plat are still valid and are binding on the final plat as altered
5 hereby.

6 DATED this 14th day of July, 2021.

7
8 SPOKANE COUNTY HEARING
9 EXAMINER

10 

11 David W. Hubert, WSBA #16488

12 **NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL**

13 Pursuant to SCC Chapter 1.46 (Hearing Examiner), the decision of the
14 Hearing Examiner on an application for a preliminary plat is final and conclusive
15 unless within twenty-one (21) calendar days from the issuance of the Examiner's
16 decision, a party with standing files a land use petition in Superior Court pursuant to
17 RCW Chapter 36.70C.

18 Pursuant to RCW Chapter 36.70C, the date of issuance of the Hearing
19 Examiner's decision is three (3) days after it is mailed, counting to the next business
20 day when the last day for mailing falls on a weekend or holiday.

21 On July 15, 2021 a copy of this decision will be mailed by first class mail to the
22 Applicant, and by e-mail to other parties of record. The date of issuance of the
23 Hearing Examiner's decision is July 20, 2021.

24 **THE LAST DAY FOR APPEAL OF THIS DECISION TO SUPERIOR COURT
BY LAND USE PETITION IS AUGUST 10, 2021.**

The complete record in this matter, including this decision, is on file during
the appeal period with the Office of the Hearing Examiner, Third Floor, Public Works
Building, 1026 W. Broadway Avenue, Spokane, Washington, 99260-0245, (509) 477-
7490. The file may be inspected Monday through Friday of each week, except

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holidays, between the hours of 8:00 a.m. and 4:00 p.m. Copies of the documents in the record will be made available at the cost set by Spokane County.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.