IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF LINCOLN

THE GLENROSE ASSOCIATION, Petitioner, v. SPOKANE COUNTY AND SPOKANE YOUTH SPORTS ASSOCIATION, Respondents.	CASE NO. 21-2-00023-22 **RESPONDENT SPOKANE COUNTY'S RESPONSE TO GLENROSE ASSOCIATION'S OPENING BRIEF**

COMES NOW, Respondent Spokane County, by and through its undersigned attorney of record, and hereby submits this reply to The Glenrose Association's Opening Brief.

I. INTRODUCTION

This matter concerns land owned by Spokane Youth Sports Association (SYSA), a 501-C3 nonprofit organization that provides youth sports activities for youth ages 4–18, and land SYSA owns in southern Spokane County zoned Urban Reserve (UR). Administrative Record (AR) 122.

The question before this Court is whether the Hearing Examiner erred when he upheld the director's administrative decision that SYSA's proposed use of the site for youth athletics fields qualifies as a "community recreational facility" and is therefore permitted in the UR zone.

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II. FACTS AND PROCEDURAL HISTORY

It is undisputed that the location of the proposed use is outside of the Urban Growth Area in an area designated "Urban Reserve" on both the Comprehensive Plan and Zoning maps and that the proposed use is for youth sports fields.

On June 17, 2008, at a pre-application meeting regarding the proposed use as a youth sports field, the Planning Department classified the proposed use as a "community recreation facility." AR 144. Eleven years later, on July 9, 2019, Petitioner filed a request for an administrative interpretation pursuant to SCZC 14.504 with the Planning Director regarding the "meaning, intent and impact of certain definitions in the zoning code (SCZC 14.300.100) as they relate to Spokane Youth Sports Association's (SYSA) proposed sports field complex in the Glenrose neighborhood". AR 117. Petitioner asserted that the previous classification of "community recreation facility" was inappropriate and that the use instead should have been classified as "participant sports and recreation." AR 118. As a result, Petitioner sought interpretations of the definitions of "community recreation facility" and "participant sports and recreation" classifications, as they related to SYSA's proposed use. AR 118.[1]

The Planning Director initially declined to provide an interpretation for the proposed site in response to Petitioner's request, finding instead that the earlier determination in 2008 in the pre-application meeting that the proposed use was a "community recreation facility" went unchallenged and was thus binding. AR 142, 144. Petitioner filed a Peremptory Writ of Mandamus with the

[1] It is noteworthy that Petitioners here likely created a false dichotomy as the proposed use could fit into other use categories recognized by the Code more readily than Petitioner's proposed "participant sports and recreation"; for example "youth camp" which is a Conditional Use in the UR zone and defined as: "The use of a site for indoor or outdoor activities for children, including sports, arts and crafts, entertainment, recreation, educational activities, swimming, fishing, horseback riding, and incidental food service. SZCC 14.30.100 available at https://www.spokanecounty.org/DocumentCenter/View/47247/Spokane-County-Zoning-Code-2022?bidId= at page 300-26.

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Spokane County Superior Court to compel the Planning Director to provide an administrative interpretation as requested. See AR 156–159. The Superior Court found in pertinent part that:

> The record before the Court does not establish that the Planning Department's June 17, 2008 pre-application notes relied upon by [the Planning Director] were a prior binding administrative determination under SCC 14.504.200 because the notes were not issued by the Planning Director. In addition, there is no evidence the notes could have been appealed when they were created because the Spokane County Code does not identify notes prepared during a pre-application conference as a final, binding decision.

AR 158, ¶8. The Court, therefore, ordered the Planning Director to provide an administrative interpretation in response to Petitioner's July 19, 2019, request for an administrative interpretation within thirty (30) days of issuing the Court's Order. AR 159.

The Planning Director did as Ordered. On August 25, 2020, reviewing Petitioner's original request, Petitioner specifically requested "an administrative interpretation of the meaning, intent, and impact of the "community recreation facility" and the "participant sports and recreation" classifications as they relate to this proposal." AR 117–118. As a result, the Planning Director considered both of the definitions proffered by Petitioner and determined that the SYSA use was not the commercial use of Participant Sports and Recreation but instead more nearly resembled the institutional use of a Community Recreational Facility. AR 89–94. The primary distinction relied upon by the director to determine which of the two categories SYSA's proposed use more nearly resembled was the commercial (for profit) versus institutional (not for profit) nature of the uses and SYSA's operation as a non-profit entity. *See* AR 91–94. The director implicitly found that because SYSA is a non-profit entity, its operations would not be for pecuniary gain. *Id*. Participant Sports and Recreation, the director, reasoned, is a commercial use in the Code. AR 92. "Commercial Use" is defined by the Code as "[a]ny activity carried out for pecuniary gain or loss." *Id*. The director determined that because SYSA would not be operating for profit, their use would not be a

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commercial use, but instead would be institutional. AR 92–93. Thus, the director determined the proposed use more closely resembled a Community Recreational Facility than a Participant Sports and Recreation use. AR 94.

On September 1, 2020, Petitioner appealed the director's interpretation to the Hearing Examiner. AR 96–105. Before the Hearing Examiner, Petitioner asserted that the Planning Director erred in finding that the proposed use most nearly resembles the zoning code designation of "Community Recreation Facility" instead of a "Participant Sports and Recreation" use. AR 99.

The Hearing Examiner divided his decision into two parts to address the Petitioner's argument. AR 15–17, 17–22. The Hearing Examiner framed the first issue as to whether the director used the correct standard in determining the proposed use was a Community Recreational Facility. AR 15. The second was framed as whether the director erroneously interpreted the definition of the uses—Community Recreational Facility and Participant sports and recreation (outdoors only). AR 17.

With respect to the first issue, the Hearing Examiner determined that the Director *and* the Petitioner misapplied SCZC 14.604.300 regarding how to make an administrative determination in cases such as this. The Hearing Examiner determined that while the Petitioner and the Director had cited the correct Code with respect to issuing an Administrative Determination—SCZC 14.604.300, he determined both the Petitioner and the director misinterpreted the application of SCZC 14.604.300. AR 16, l. 11. The Hearing Examiner implied that the director did not have to consider both definitions "participant sports and recreation" and "community recreation facility" as he had done, but instead, should have constrained his review to just the Zone in which he was considering the use, here the Rural Zone. AR 16–17. In other words, the Hearing Examiner determined that when a new term or use is proposed in a certain zone, the director only looks at the zone in which

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the use is proposed to determine whether "the proposed use resembles identified uses in terms of intensity and character, and is consistent with the purpose of this code and the individual zones classification it shall be considered as a permitted/nonpermitted use within a general zone classification, matrix or zone. . ." *See* AR 17. Thus, because the "sports complex" was proposed within the rural zone, the director would consider only those uses listed in the rural zone matrix and no other matrices. AR 17.. Under this proposed reading, the Hearing Examiner suggests that the director would only have considered "community recreation facility" and not "participant sports and recreation" since "participant sports and recreation" does not appear in the rural matrix. AR 17.

The Hearing Examiner then reached the next issue: whether the director erroneously interpreted the definition of the uses of "Community Recreational Facility" and "Participant sports and recreation (outdoors only)." AR 17. Because of his earlier determination that he did not have to consider terms outside of the Rural Zone, the Hearing Examiner considered only whether the director erred when he determined that SYSA's use was a "community recreation facility" and did not compare that use against "participant sports and recreation." AR 17–19. Ultimately, the Hearing Examiner determined that "[t]he Director's interpretation that the proposed sports field complex could resemble a Community Recreational Facility [was] not error." AR 21, l. 6.

Petitioners timely appealed the Hearing Examiner's decision to this Court under LUPA, Chapter 36.70C RCW. AR 01.

III. ARGUMENT

Petitioners assert that the Hearing Examiner erred when he upheld the director's interpretation that the use proposed by SYSA was a Community Recreation Facility permitted in the Urban Reserve Zone as opposed to a Participant Sports and Recreation Facility prohibited in the Urban Reserve Zone. More specifically, Petitioner asserts that the Hearing Examiner and

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the Director failed to consider which of Petitioner's two proposed use categories—Community Recreation Facility or Participant Sports and Recreation—SYSA's proposed use *most nearly resembled*. Petitioner's argument fails because, as between the two definitions presented by Petitioners, the Planning Director clearly did consider which of the two SYSA's proposed use "most nearly resembled," given the director's weighing and consideration of both, and the articulation of the adoption of one over the other. Additionally, even if the Hearing Examiner did err in his interpretation and application of SCZC 14.604.300(2), *de novo* review and application of SCZC 14.604.300(2) as between the false dichotomy presented by the Petitioner would provide the same result. Therefore, this Court should uphold the director and Hearing Examiner's finding that SYSA's proposed youth sports field complex use is a "Community Sports and Recreation Facility" and not a "Participant Sports and Recreation" use. In the alternative, to the extent that this Court should disagree with this proposed remedy, the Court should remand the matter to the Hearing Examiner to consider the Director's Decision under SCZC 14.604.300(2) with instruction for its appropriate application and to consider all possible uses under the code, as opposed to just Petitioner's proffered two options or limitation to just those uses listed in the Rural Zone.

A. *Standard of Review under LUPA*

The Land Use Petition Act ("LUPA") in Chapter 36.70C RCW permits timely appeals of land use decisions. Land use decisions are those final determinations issued "by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on. . . interpretative or declaratory decisions regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of the real property." RCW

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36.70C.020(2)(b). The Director of Building and Planning issued an administrative interpretation of the Spokane County Zoning Code; that decision was appealed to the Spokane County Hearing Examiner, who issued a decision on March 25, 2021. AR 89–94, 10–23 (respectively). The Hearing Examiner is Spokane County's officer with the highest level of authority to hear and make a decision on an appeal of this nature; accordingly, this Court reviews the decision of the Hearing Examiner and not that of the Director of Building and Planning. *Quality Rock Prods., Inc. v. Thurston County*, 139 Wn. App. 125, 132, 159 P.3d 1 (2007).

The petitioner in a LUPA appeal bears the burden of establishing one of the six standards set forth in RCW 36.70C.130 has been met. RCW 36.70C.130(1). Petitioner in this appeal alleges error under 36.70C.130(b) and (d). Petitioner's Opening Brief at 2. Thus, the question before this Court is whether the Petitioner has met the burden of proving that the Hearing Examiner's decision was an erroneous interpretation of the law or a clearly erroneous application of law to the facts. 36.70C.130(b) and (d). Under LUPA, the reviewing Court may affirm, reverse, or remand the decision of the Hearing Examiner for modification or further proceedings. RCW 36.70A.140.

This Court should affirm the Hearing Examiner's decision upholding the director's interpretation that the proposed sports complex here is a Community Recreational Facility because the director's decision was sound and substantial evidence existed to support it, even if the Hearing Examiner's review and determination was probably based on an erroneous interpretation and application of the methodology in SCZC 14.604.300(2). In the alternative, this Court should remand to the Hearing Examiner with instructions to review the director's interpretation anew with the correct application of SCZC 14.604.300(2) and not limited to the

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Petitioner's proposed false dichotomy. The Petitioner's arguments under RCW 36.70C.130(1)(b) and (d) are taken up in turn below.

A. The Hearing Examiner did not err when he affirmed the director's decision, although the Hearing Examiner's decision was probably based on an erroneous interpretation and application of the methodology in SCZC 14.604.300(2).

Petitioner first argues that the Hearing Examiner's decision was an erroneous interpretation of SCZC 14.604.300(2). This argument falls under RCW 36.70C.130(b), which allows relief where Petitioner has met their burden of proving that "[t]he land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise." Errors claimed under RCW 36.70C.130(1)(b) are reviewed de novo. *JZ Knight v. City of Yelm, et al.*, 173 Wn.2d 325, 336, 267 P.3d 973 (2011); *accord Phoenix Development, Inc. v. City of Woodinville*, 171 Wn.d2d 820, 828, 256 P.3d 1150 (2011).[2]

The Spokane County Zoning Code is broken into several types of zone classifications: Residential, Commercial, Industrial, Resource Lands, Rural, Mineral Lands, and Mixed Use Zones. SCZC 14.604-100, .210–.270. Each zone's section of the Code contains within matrices of the various permitted uses in specific zones. SCZC 14.604.300(1). Many matrices are further divided into types of uses: Agricultural, Residential, Business/Commercial, Utilities/Facilities, Industrial, and Institutional. *See, e.g.,* SCZC 14.606.220, Table 606-1 (Residential Zone Matrix); SCZC 14.612.220, Table 612-1 (Commercial Zones Matrix); SCZC 14.614.220, Table 614-1 (Industrial Zones Matrix); SCZC 14.616.220, Table 616-1 (Resource Lands Matrix); 14.618.220, Table 618-1 (Rural Zones Matrix). Beneath the *types* of uses are *specific* uses—e.g.,

[2] "Standards [under RCW 36.70C.130(1)] (a), (b), (e) and (f) present questions of law that we review de novo." *Phoenix Development, Inc. v. City of Woodinville*, 171 Wn.d2d 820, 828, 256 P.3d 1150 (2011).

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"church," "small cell facility," "neighborhood business." *Id*. Some of these types of uses encompass several even more specific uses. For example, "participant sports and recreation—indoor" includes the more specific uses of "bowling alleys, roller and ice-skating rings, dance halls, racquetball courts, physical fitness centers and gyms, and video game parlors." SCZC 14.300.100 ("participant sports and recreation—indoor" defined). If a specific use is outright permitted or authorized, a "P" appears in the corresponding column; if a use is not permitted, an "N" appears in the corresponding column.[3] If the Code does not specifically authorize a use—i.e., it does not appear in the applicable matrix—it is deemed prohibited. SCZC 14.618.210(4). However, omitting a specific type of use does not *always* mean it is prohibited. The Spokane County Zoning Code recognizes that "all possible uses and variations of uses that might arise cannot reasonably be listed or categorized." SCZC 14.604.300(2). Where this occurs, the code provides:

> [m]ixed uses/sites or any use *not specifically mentioned* or *about which there is any question* shall be administratively classified by comparison with other uses identified in the matrices. If the proposed use resembles identified uses in terms of intensity and character, and is consistent with the purpose of this code and the individual zones classification it shall be considered as a permitted/nonpermitted use within a general zone classification, matrix or zone, subject to the development standards for the use it most nearly resembles. If a use does not resemble other identified allowable uses within a matrix, it may be permitted as determined by an amendment to this code pursuant to chapter 14.402.

SCZC 14.604.300(2) (emphasis added).

In the present case, it is undisputed that the proposed use at issue here is within the Urban Reserve zone and the Urban Reserve zone is a type of Rural Zone. SCZC 14.618.100. It is also largely undisputed that the specific type of use here—a youth sports complex operated by a non-

[3] Other variations of permissible use exist, including "limited use" (L) and "conditional use" (CU).

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profit organization—is not a separate, specific use listed under any of the matrices. Where this occurs the Code suggests the use be administratively classified by comparison with other uses identified in the matrices. Petitioners contend the alleged errors in this case arose from the Hearing Examiner's interpretation and application of SCZC 14.604.300(2) governing the administrative categorization of an otherwise unidentified specific use.

Petitioners' first allegation is that the Hearing Examiner's decision is an erroneous interpretation of the law under RCW 36.70C.130(1)(b). The County concedes that the Hearing Examiner probably erred when he determined that a use that does not appear anywhere in the Code should be administratively classified by comparison with other uses within *only* that zone the use is proposed in (e.g., Rural, Residential, etc.) as opposed to looking at all of the uses included in the many matrices. *See* AR 17. However, notwithstanding this error, as explained further below, the Hearing Examiner did not err when he found that the director—who did apply the correct standard—did not err in his determination that the proposed use more closely resembled the Community Recreational Facility over Participant Sports and Recreation (outdoor only) use.

B. The Hearing Examiner's decision upholding the director's decision that SYSA's proposed use is a Community Recreational Facility was sound; the Petitioner has failed to meet their burden of proving that the land use decision is a clearly erroneous application of the law to the facts.

Petitioner next seeks relief under RCW 36.70C.130(d). This provision permits relief where the Petitioner meets their burden of proving that "[t]he land use decision is a clearly erroneous application of the law to the facts." "A finding is clearly erroneous under subsection (d) when, although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed." *Wenatchee Sportsmen Assoc.*

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v. Chelan County, 141 Wn.2d 169, 176, 4 P.3d 123 (2000) (citing *Norway Hill Pres. & Prot. Ass'n v. King County Council,* 87 Wn.2d 267, 274, 552 P.2d 674 (1976)). Although it is true the Hearing Examiner likely misapplied SCZC 14.604.300(2), the Planning Director did not, and a de novo review and correct application of SCZC 14.604.300(2) would be applied in the same manner the Planning Director applied it, with the same outcome and result of the Hearing Examiner and the Planning Director: SYSA's proposed use more closely resembles the Community Recreation Facility than Participant Sports and Recreation.

Petitioners argue that the proposed use more nearly resembles a "Participant Sports and Recreation—outdoor" use than "Community Recreation Facility."[4] The director disagreed. The director considered both uses and determined SYSA's proposed use most nearly resembled "Participant Sports and Recreation." AR 89–94. The analysis and outcome were correct. The director determined that because "Participant Sports and Recreation" uses are commercial uses—i.e., operated for profit, and because the proposed use here was instead to be operated by a non-profit organization, it more nearly resembled the Institutional use of a "Community Recreational Facility" than the commercial operation of "Participant Sports and Recreation." AR 91–93. The Hearing Examiner ultimately found, after granting deference to the director's decision, the determination that the proposed sports field complex could resemble a Community Recreational Facility and therefore was not an erroneous interpretation of the law. AR 20–21.

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[4] As earlier mentioned, the Petitioner created a false dichotomy at the start of this matter. Petitioner's request for an administrative interpretation was limited to considering SYSA's use as between only two options "Participant Sports and Recreation" or "Community Recreation Facility." However, other uses could have been considered that SYSA's use might have also fit within, for example "Youth Camp" which is a Conditional Use in the Urban Reserve Zone. SCZC 14.6189.220; Table 618-1. "Youth Camp" is defined as "The use of a site for indoor or outdoor activities for children, including sports, arts and crafts, entertainment, recreation, educational activities, swimming, fishing, horseback riding, and incidental food service." SCZC 14.300.100. This omission, however, might be invited error on behalf of the Petitioner, but would be a reason to remand the matter as opposed to the Petitioner's proposed reversal of the Hearing Examiner's decision.

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The ultimate decision that the non-profit sports complex here qualifies as a "Community Recreation Facility" was not an erroneous interpretation of the Spokane County Zoning Code nor a clearly erroneous application of the law to the facts. As the director explained in his administrative interpretation, "Participant Sports and Recreation" is consistently listed as a Business/Commercial Use. AR 92; *see also*, SCZC 14.606.220, Table 606-1 (listed as a Commercial Use in the Residential Zones Matrix), SCZC 14.612.220, Table 612-1 (listed as a Commercial Use in the Commercial Zone Matrix); SCZC 14.614.220, Table 614-1 (listed as a Commercial Business in the Industrial Zones Matrix). "Commercial Use" is defined in the Code as "[a]ny activity carried out for pecuniary gain or loss." AR 92 (citing SCZC 14.300.100). On the other hand, "Community Recreation Facility" expressly provides that it *cannot* be "operated for profit." AR 91 (citing SCZC 14.300.100). This, in turn, is consistent with the fact that "Community Recreation Facility" is not listed as a Commercial Use but is instead consistently identified as an Institutional Use. AR 91; *see also* SCZC 14.606.220, Table 606-1 (listed as an Institutional Use under the Residential Zones Matrix); SCZC 14.618.220, Table 618-1 (listed as an Institutional Use under the Rural Zones Matrix). Spokane Youth Sports Association is a Non-profit Organization. AR 90. Therefore, the proposed use will not be one operated for profit. Thus, the proposed use more closely resembles a "Community Recreation Facility" than a "Participant Sports and Recreation."

Petitioners next argue that "[t]he county circumvented the neighborhood character of the 'Community Recreational Facility' use category by construing the 'area in which it is located' to include all of Spokane County." Petitioner's Opening Brief at 8. Petitioners conflate use of the word "community" in "Community Recreational Facility" with "area in which it is used" in order to arrive at their interpretation that "Community Recreational Facility" can only be a facility that

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serves a neighborhood, thereby ignoring any distinction between "community" and "neighborhood."

To begin with, interpreting "Community Recreational Facility" the way Petitioner does would render superfluous any distinction between "neighborhood" and "community." "Neighborhood" is defined by the zoning code as:

> A neighborhood generally ranges in size from ½ to 1 square mile, with populations ranging from approximately 3,500 to 8,000 people. Neighborhoods often contain a civic green or part, a transit stop, neighborhood businesses and services, a day care center and perhaps a church or school. They are often defined by elementary school attendance area boundaries.

"Community" is not defined in the Code. Where a phrase is not defined in a code or statute, the Court gives the term its plain and ordinary meaning ascertained from a dictionary. *State v. Valdiglesias LaValle*, 2 Wn.3d 10, 319, 535 P.3d 856 (2023). This was the analysis the Hearing Examiner undertook. AR 20. The Hearing Examiner found that the Merriam-Webster Dictionary defined "community" as "1. A body of people living in the same place under the same laws, 2. Society at large, 3. Joint ownership, 4. Similarity, likeness (`of interests)." AR 20. The Hearing Examiner, therefore, deduced that under the dictionary definition, "community could be interpreted to mean a group who share a common interest, such as youth sports, or soccer, or athletics." AR 20. With respect to the phrase "area in which it is located," the Hearing Examiner gave deference to the director's interpretation and found that the phrase could reasonably be interpreted to mean the area around the proposed site, "to include the City of Spokane, Spokane Valley, Liberty Lake, Cheney, Medical Lake, Deer Park, etc." AR 20. The Hearing Examiner found that this interpretation was reasonable. And indeed, it is. Petitioners have failed to meet their burden of proving that "[t]he land use decision is a clearly erroneous application of the law

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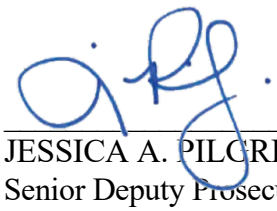
to the facts." There is no "definite and firm conviction that a mistake has been committed" here. This Court should affirm the decision of the Hearing Examiner.

CONCLUSION

In the present case, this Court should affirm the decision of the Hearing Examiner because the result was correct, even if the methodology was incorrect. In the alternative, this Court should remand the matter to the Hearing Examiner for re-consideration of the director's interpretation with instruction on the correct methodology.

DATED this 8th day of January 2025.

LAWRENCE H. HASKELL
Spokane County Prosecuting Attorney



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CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

On the 8th day of January 2025, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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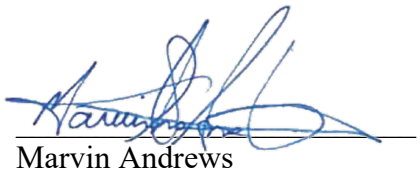
Dated this 8th day of January 2025, in Spokane, Washington.



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