

CITY OF SPOKANE HEARING EXAMINER

Re: Request for Approval of Kendall) FINDINGS, CONCLUSIONS,
Yards Design Guidelines by North) AND DECISION
Gorge Residential Properties, LLC)
) FILE NO. Z2006-06-PP/PUD

SUMMARY OF PROPOSAL AND DECISION

Hearing Matter: Request for approval of design guidelines in accordance with the conditions of the Hearing Examiner’s decision dated March 27, 2010, which approved the amended preliminary plat and PUD for Kendall Yards, File No. Z2006-06-PP/PUD.

Summary of Decision: Approval of Design Guidelines and Appendix #4.

**FINDINGS OF FACT -
BACKGROUND INFORMATION**

On September 21, 2006, the Hearing Examiner approved the preliminary plat and PUD for Kendall Yards, subject to certain conditions.

On May 27, 2010, the Hearing Examiner approved a request to amend the preliminary plat and PUD for Kendall Yards. The decision approving the revised plat/PUD includes Condition No. 4, which states in relevant part as follows:

The applicant shall also submit to Design Review for review and comment, the overall project design guidelines of the PUD Master Plan including the signage standards as well as the design of all public plazas and public spaces within each phase of the PUD at the time each PUD phase is finalized.

Pursuant to Condition No. 4, the Design Review Board undertook a review of the Kendall Yards Design Guidelines. See e.g. Exhibit 2A. On December 10, 2014, the Design Review Board passed a motion stating in pertinent part as follows:

The DRB recommends the Hearing Examiner approve the Kendall Yards Design Guidelines with the modifications presented at the Dec. 10, 2014 DRB meeting provided that the applicant has worked further with City staff to address specific staff concerns, as identified in the staff report, with the signage standards.

See Exhibit 2B. The DRB also recommended that exterior electronic reader-boards and other dynamic signs be restricted in Kendall Yards. See *id.*

Since the DRB issued its recommendations, the City and the Applicant have been working together to finalize the various elements of the Kendall Yards Design Guidelines (the “Design Guidelines”). *Testimony of T. Palmquist; Testimony of J. Neff.*

On September 1, 2015, the Applicant requested a hearing before the Hearing Examiner to review and approve the Design Guidelines.

On September 22, 2015, the Applicant posted, mailed, and published the Notice of Public Hearing for this matter. See Exhibits 6, 7, & 8A-8C.

On September 28, 2015, the Staff submitted the city's comments and recommendations regarding the Design Guidelines. See Exhibit 1.

The public hearing was conducted on October 8, 2015, at approximately 9:00 a.m., in the City Council Briefing Center on the lower level of City Hall, 808 W. Spokane Falls Boulevard, Spokane, WA, 99201.

The follow individuals testified at the hearing:

Kay Howard
2725 N. College
Spokane, WA 99201

Melodi Wynne
2718 W. Bridge Ave.
Spokane, WA 99201

Jim Frank
North Gorge Residential Properties, LLC
1421 North Meadowwood Lane, Ste 200
Liberty Lake, WA 99019

Mike Terrell
Mike Terrell Landscape Architecture, PLLC
1421 North Meadowwood Lane, Ste 150
Liberty Lake, WA 99019

Bonnie McInnis
1523 W. Gardner
Spokane, WA 99201

Sharon Bedard
704 N. Summit Boulevard
Spokane, WA 99201

Kelly Cruz
2112 W Bridge Ave
Spokane, WA 99201

Annie Combelic
716 N. Summit Boulevard
Spokane, WA 99201

Patricia Rose Matisse
N. 722 Summit Boulevard
Spokane, WA 99201

Stacy Geist
1518 W. Chelan
Spokane, WA 99205

Tami Palmquist, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Julie Neff, Associate Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

On the morning of the hearing, the Staff submitted a revised memorandum of comments on the Designs Guidelines. See Exhibit 1B. The revised memorandum incorporated discussions between the Staff and the Applicant leading up to the hearing, and was intended to replace the Staff's memorandum dated September 28, 2015. See Exhibits 1A & 1B.

During its presentation at the hearing, the Applicant proposed further modifications to the Design Guidelines. This prompted the Staff to request additional time to review and comment upon the proposed changes to the Design Guidelines. As a result, the Hearing Examiner left the

record open for the receipt of additional comments. The Hearing Examiner established October 22, 2015, as the deadline for Staff comments. The Hearing Examiner also established November 4, 2015, as the deadline for any public comments on the Staff's post-hearing submittals.

On October 12, 2015, the Applicant submitted to the Staff a revised copy of the Design Guidelines, incorporating comments made by the Staff. See Exhibit B-1. The following day, the Staff confirmed to the Hearing Examiner that the Applicant's changes were acceptable to the city. See *id.* The comment period allowed to the Staff expired without further comments being submitted by the Staff.

On or about October 14, 2015, the Staff sent all attendees of the hearing a notice which included an excerpt of the Design Guidelines (which included the revised portions of the documents) and a link to the complete, revised draft of the Design Guidelines. The notice reminded attendees that the deadline for public comment on the revised Design Guidelines was the close of business on November 4, 2015.

The Hearing Examiner's office did not receive any further submissions from the public regarding the Design Guidelines on or before the deadline. Thus, the public comment period expired and the record was closed.

The following items have been incorporated into the record as Exhibits:

1. Planning Services Comments dated 09-28-15
 - 1A Email dated 10-07-15 from Mike Nilsson amending comments dated 09-28-15
 - 1B Memo dated 10-08-15 from Tami Palmquist amending previous comments
2. Design Review Comments:
 - 2A dated 11-19-14
 - 2B dated 12-15-14
3. Kendall Yards Design Guidelines:
 - 3A dated 11-26-14
 - 3B dated 09-01-15
4. Notice map
5. Parcel listing
6. Notice of Public Hearing
7. Affidavit of mailing dated 09-22-15
8. Affidavit of postings:
 - 8A 09-22-15 (Notice in Spokesman)
 - 8B undated photo copy of sign posting
 - 8C dated (Sign Posting)
9. Letter dated 09-16-15 to Michael Terrell from Tami Palmquist
re: notice of public hearing instructions
10. Email dated 09-28-15 to Hearing Examiner from Tami Palmquist
re: documentation
11. Email dated 10-02-15 to Tami Palmquist from Sharon Bedard
re: concerns granting Kendall Yards special exceptions
12. Letter dated 10-05-15 to Greenstone Corporation from Trindera Engineering
re: lighting ordinance as it relates to signage
13. Email dated 10-08-15 to Tami Palmquist from Annabelle Combelic
re: oversized buildings and habitat concerns
- A. Exhibits received at hearing

- A-1 Planning's PowerPoint presentation
- A-2 Design Review Board presentation by Julie Neff
- A-3 Kendall Yards Design Guidelines, presented by Mike Terrell representing the applicant.
- A-4 Letter dated 10-08-15 to Hearing Examiner from Greg Casey
- A-5 5 photos submitted by Bonnie McInnis gates at the end of Summit Blvd and public using walking trail to access Spokane River
- B. Exhibits received during open record period ending on 11-04-15
 - B-1 City's incorporated comments into the Kendall Yards Design Guidelines dated 10-12-15
 - B-2 Distribution of City's comments to attendees at the 10-08-15 hearing

FINDINGS AND CONCLUSIONS

The Applicant has requested that the proposed Design Guidelines for the preliminary plat and PUD of Kendall Yards be approved, in fulfillment of Condition No. 4 of the May 27, 2010 decision approving the project. The Hearing Examiner has reviewed the proposed Design Guidelines and the evidence of record with regard to this matter and makes the following findings and conclusions:

1. *The matter to be decided is limited to the approval, modification, or denial of the Design Review Guidelines (including Appendix #4), in accordance with Condition No. 4 of the project approval.*

The Staff introduced this matter at the hearing by emphasizing that the only issue to be resolved at the hearing is whether or not the Design Guidelines for Kendall Yards, including Appendix #4, should be approved. *Testimony of T. Palmquist.* The Applicant also pointed out that the plat and PUD for Kendall Yards was approved approximately five years prior to this hearing, and that approval addressed the vast majority of the design standards for the project. *Testimony of J. Frank.* The Hearing Examiner agrees with these contentions. Thus, the decision in this matter has a limited scope. The only matter properly before the Hearing Examiner is whether the Design Guidelines and the revisions to Appendix #4 should be approved as consistent with Condition No. 4 of the decision approving the plat/PUD.

2. *The Hearing Examiner finds that the revised and updated Design Guidelines (including Appendix #4) are proper and should be approved.*

The hearing in this matter is the culmination of a process established by the Hearing Examiner when he approved the plat and PUD for Kendall Yards in 2010. In accordance with that process, the Staff and the Applicant were charged to work together to devise appropriate guidelines for the design of the project. In addition to formulating the broad guidelines governing the project, the Hearing Examiner set aside two specific development standards that needed to be addressed, i.e. signage (and associated concerns about lighting) and landscaping. The Hearing Examiner's decision included a condition that the Design Guidelines must be reviewed by the Design Review Board (the "DRB"). The DRB completed its review, and recommended that the Hearing Examiner approve the Design Guidelines, with certain modifications.

The Hearing Examiner finds that the Design Guidelines, including the updates to Appendix #4, should be approved, for a number of reasons. Initially, it should be noted that the

Design Guidelines are well-drafted, comprehensive, and properly set forth the broad vision underlying the Kendall Yards project. It is clear that a great deal of thought and effort went into drafting the guidelines. The Applicant and the Staff have been working through the more complicated and difficult issues presented for the past 4 years or so. *Testimony of J. Neff.* In addition, the Applicant has been diligently meeting with the Staff throughout 2015 to resolve the remaining questions regarding the Design Guidelines and Appendix #4. *Testimony of M. Terrell.* The discussions concerning signage, lighting, and landscape issues continued up to, during, and following the hearing.

When the Staff and the Applicant agreed on a particular standard, appropriate changes were implemented in the Design Guidelines and Appendix #4. For example, there was agreement that responsibility for maintenance and replacement of wayfinding signage should be explicitly stated; that signage should be coordinated with the Regional Wayfinding Plan; and that driveway connections to public streets should adhere to the clear-view triangle ordinance. *Compare Exhibits 1B & A-3.* In the Applicant's post-hearing revisions to the Design Guidelines and Appendix #4, all of the agreed changes were incorporated. See Exhibit B-1, pp. 24, 60, & 64.

When there was disagreement over the standards, a sensible and balanced solution was eventually negotiated. Sometimes, all that was needed was to make the applicable standard explicit in the guidelines, such as the additional language ensuring that on-street parking would be designed to allow for adequate maintenance, including sweeping and snow removal. See Exhibit B-1, p. 25. Other times, the Staff and the Applicant set a standard that represented the middle ground in their respective positions. This was true for the terms governing Surface Mounted Advertising Signs and Environmental Art. See Exhibit B-1, pp. 50 & 66. In any event, the Hearing Examiner agrees with the approach taken, which tended to err on the side of adopting an objective, measurable standard of performance. See *e.g.* Exhibit B-1, pp. 50, 61-62, & 66 (prohibiting certain types of signage within 100', measured horizontally, from the north property line of the Centennial Trail.)

One issue that received considerable attention at the hearing was lighting. The Hearing Examiner finds that the Design Guidelines and Appendix #4 are properly sensitive to the potential impacts of fugitive light. For example, the guidelines incorporate the terms of the Habitat Management Plan, thus ensuring that illumination will be limited to the minimum needed for safety and reasonable functionality. See Exhibit B-1, pp. 26. In addition, no electronic message center, flashing, animated or other dynamic tenant sign can be installed facing out in a window within 100' of the north edge of the Centennial Trail, or be apparently visible from the trail or the gorge. See Exhibit B-1, p. 51. Similarly, surface mounted advertising signs and environmental art cannot be lighted or located within that same 100' setback. See Exhibit B-1, pp. 50 & 66. These are just a few illustrative examples of how the guidelines mitigate against the potential impacts of fugitive light. The Hearing Examiner concludes the light mitigation measures incorporated into the Design Guidelines and Appendix #4 are proper and reasonable under the circumstances of this case.

The review process utilized for the design of this project has been detailed and extensive. The Applicant has been working with the city to address the issues for years. With the latest set of changes implemented, the Staff has given its blessing to the Design Guidelines and Appendix #4. The Design Review Board has also conducted its own review, and has recommended that the Design Guidelines and Appendix #4 be approved by the Hearing Examiner. Given the extensive vetting of this project, and based upon his own review of the

record, the Hearing Examiner is convinced that the Design Guidelines and Appendix #4 should be approved.

3. *The Hearing Examiner concludes that the Design Guidelines and Appendix #4 should be approved, even though area residents raised a number of concerns about the project.*

Area residents, both in their testimony and written comments, raised understandable concerns about the project. However, the vast majority of the questions and objections lodged by area residents were not germane to the subject matter of this hearing. As stated above, this hearing concerned the propriety of the Design Guidelines and the revisions to Appendix #4, not to whether the plat/PUD as a whole should be approved or not. The decision approving the development was made long ago. That decision was not appealed, and has been final for some time. The Hearing Examiner cannot revisit the issues that were or should have been addressed in 2010 as part of the process for determining whether or not to approve the proposed development.

The objections to the plat/PUD generally fell within one or more of the following categories: building height; setbacks; impacts to habitat; location of parking or buildings; and traffic impacts. The testimony and comments on these subjects can be summarized as follows.

Some neighbors contended that the neighborhood would be “destroyed” by the presence of tall buildings. *Testimony of K. Howard & S. Bedard.* Ms. Wynne also suggested that the project would result in a loss of views. *Testimony of M. Wynne.* Mr. Cruz similarly questioned the wisdom of allowing tall structures along the gorge. *Testimony of K. Cruz.*

There were various objections to the layout of the project, including the locations of structures and the alleged lack of proper setbacks. There was testimony opposing the proposed location of certain buildings, in particular given the proposed height of the structures. There were also questions raised about the location of parking. *Testimony of K. Howard & B. McInnis.* Others objected to the use of zero setbacks in the development. *Testimony of K. Howard & S. Bedard.*

Area residents expressed grave concerns about the impacts of the project on wildlife habitat. There was testimony that natural habitat would be destroyed by the density of the project. *Testimony of A. Combelic & M. Wynne.* One resident also suggested that the site had historical or cultural significance. *Testimony of M. Wynne.*

Traffic impacts of the project were also highlighted in the testimony. For example, one area resident stated that the project results a large amount of traffic turning off Maple and onto Gardner Avenue. *Testimony of B. McInnis.* Another resident commented that the project would generally result in traffic and parking issues. See Letter of G. Casey 10-8-15. There was also a suggestion that headlights from the added traffic would contribute to the light impacts of the project. *Testimony of A. Combelic.*

The Hearing Examiner does not believe that the foregoing objections warrant disapproval of the Design Guidelines or Appendix #4. First, the development standards that apply to this development were established long ago. When the plat/PUD was approved in 2010, the general layout of the project was determined. The allowed height in particular parts of the project was established. The setback standards were also determined. The Hearing Examiner cannot start the plat/PUD approval process over again, merely because some design issues were left for subsequent consideration. Second, the impacts of the project were also considered prior to and during a public hearing for the plat/PUD. A Habitat Management Plan was considered and

approved. The potential environmental impacts of the project were considered during the SEPA process, and those impacts include matters such as traffic impacts and habitat protection. Again, the impacts being raised have already been considered, and the project was already conditioned to address the impacts as deemed necessary by the Hearing Examiner. That happened when the plat/PUD was approved in 2010. It is not proper to revisit those conclusions at this stage.

Two individuals testified that notice regarding the project was insufficient. Mr. Casey asserted, through his letter submitted at the hearing, that the Kendall Yards project changed from residential to commercial over time without adequate notice to the public. See Letter of G. Casey 10-8-15. Ms. Wynne, meanwhile, requested that the whole project be placed “on hold” until the problems with public notice were sorted out. *Testimony of M. Wynne.*

The Hearing Examiner does not accept these contentions. The comments and testimony fail to specifically identify any defects in the notice procedures followed with respect to Kendall Yards. Mr. Casey’s argument clearly concerns the whole plat process, not the recent hearing on the Design Guidelines. If there was an objection to how notice was given regarding the plat decision, it is far too late to raise it now. We have already reached the five-year anniversary of the decision approving the plat. Like Mr. Casey, Ms. Wynne does not explain what she means by the “problems with public notice.” To the Hearing Examiner’s knowledge, proper notice was given prior to the both the hearing in 2010 and the hearing on the guidelines. The Hearing Examiner can find no evidence of discrepancies in the notice procedures followed in this case. Without such evidence, there is no justification for attempting to halt further development of the plat or deferring a decision regarding the Design Guidelines and Appendix #4.

DECISION

Based upon the findings and conclusions above, the Hearing Examiner hereby approves the Design Guidelines for Kendall Yards, including Appendix #4, in the form and incorporating the revisions shown in Exhibit B-1, dated October 12, 2015, of this record.

DATED this 18th day of November 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 matters are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is the date the decision is entered into the public record. This decision was entered into the public record on November 18, 2015. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 9th DAY OF DECEMBER 2015 AT 5:00 P.M.**

In addition to paying any Court costs to appeal the decision, the ordinance requires payment of 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.

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