

**CITY OF SPOKANE HEARING EXAMINER**

**Re:** Preliminary Plat and Planned Unit ) FINDINGS, CONCLUSIONS,  
Development application by ) AND DECISION  
Riverfront Properties LLC for a )  
78 acre Preliminary Plat to be known as )  
Kendall Yards )  
) FILE NO. Z2006-06-PP/PUD

**SUMMARY OF PROPOSAL AND DECISION**

**Proposal:** The applicant seeks a preliminary plat and planned unit development (PUD) approval in order to allow the subdivision and mixed-use development of approximately 78 acres of land on the north bank of the Spokane River. New public streets, public plazas and the extension of the Centennial Trail through the site are also proposed.

**Decision:** Approval, subject to conditions.

**FINDINGS OF FACT**  
**BACKGROUND INFORMATION**

**Applicant:** Riverfront Properties L. L. C.  
P. O. Box 3070  
Coeur d'Alene, ID 83816

**Represented by:** Tom Reese  
Black Rock Development  
211 North Wall St., Suite 300  
Spokane, WA 99201

John Layman, Attorney at Law  
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Spokane, WA 99202

**Property Address:** Not assigned

**Property Location:** The site is bounded by Monroe Street on the east, Ide Avenue and Ohio Avenue on the south, Summit Boulevard on the west and Bridge Avenue and College Avenue on the north.

**Legal Description:** A full legal description is in the record attached to Exhibit #1B.

**Zoning:** West of Maple Street the property is now zoned RMF (Residential Multifamily) it was zoned R3-L (Limited Medium Density Residential) at the time of application. The property east of Maple Street is zoned CC3 (Centers and Corridors 3) and CB-150 (Community Business 150).

**Comprehensive Plan Map Designation:** The property is designated Residential 15-30 west of Maple Street and Centers and Corridors-Core, and Commercial East of Maple Street to Monroe Street.

**Site Description:** The site is irregular in shape and contains 78 acres in area. East of Cedar Street, there are concrete foundations and slabs, paved areas and the remnants of former buildings and the site is reasonably flat. To the west of Maple Street, the site is rolling and devoid of vegetation because of a Brownfields cleanup that took place in 2005 and 2006. The cleanup resulted in a large amount of contaminated soil being removed from the site. West of Maple Street the only structures remaining are a few concrete rail bridges, which the applicant states may be preserved and integrated into the open space network. There is also a significant concrete promontory at the far west end of the site, which the applicant also intends to preserve.

**Surrounding Conditions:** Adjacent to the site at the east end is the Spokane County Government Center including the County Health building, the Courthouse and the Public Safety building. Further to the west, properties to the north of the site are developed with some multifamily residential uses but primarily with single-family residential uses all the way to Summit Boulevard. To the south and west of the site there is a steep bank leading down to the Spokane River. On the south bluff there are a few single-family homes and more single-family homes are located further down the slope in an area known as Lower Crossing. The rest of the slopes are owned by the City's Parks Department and are designated as open space. To the east of the site is the commercial area along Monroe Street leading to the Monroe Street Bridge at the southeast corner. The site was for many years used by various railroads and was zoned for industrial and commercial uses until the railroad uses were eliminated.

**Project Description:** The project is extensively described in the Kendall Yards PUD Master Plan which is in the record as Exhibit #1G. The applicant seeks an approval of a plat and PUD to subdivide the property and to develop it with a mix of residential, office and commercial uses. The portion of the site east of Maple Street will be primarily commercial development with some residential uses integrated into the commercial buildings. West of Maple Street, the applicant seeks a residential development of varying density and with varying building sizes. The buildings along Bridge Street on the north side of the property will be limited to two stories to integrate with the single-family homes to the north. The buildings will step up in size as they move to the center and southerly portions of the site. The tallest buildings are to be eight to twelve stories in height and will be adjacent to open space plazas. The applicant plans several open space areas within the site as well as the extension of the Centennial Trail along the bluff above the river from Monroe Street to the west side of the site. In all, the applicant stated that 25 acres of land

will be in public open space. This project will be built in several phases generally starting on the east side and moving to the west. A new arterial, Kendall Yards Boulevard, will extend from Monroe Street westward to the west end of the site. The north/south streets will follow the grid street pattern of the West Central Neighborhood. A lay out of the streets and open space as well as the pedestrian amenities and other features of the development are set forth in the Kendall Yards Master Plan which is in the record as Exhibit #1G.

### **PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Spokane Municipal Code Sections 11.19, 11.19.101, 11.19.1931, 11.19.361 through 3691, 17C.120, 17G.060.170, 17G.080, and 17G.080.050.

**Hearing Date:** August 3, 2006 (The record remained open until September 11, 2006, to allow the submittal of additional information).

**Notices:** Mailed: May 1, 2006  
Posted: April 28, 2006  
Published: March 8, 2006

**Site Visit:** The Hearing Examiner viewed the site on several occasions over the 30 days prior to the hearing.

**SEPA:** This project was originally approved as Summit Properties and an Environmental Impact Statement (EIS) was issued for the Summit Properties' project in 1993. The City adopted that EIS and a Draft Supplemental Environmental Impact Statement (DSEIS) was published on March 7, 2006. A Final Supplemental Environmental Impact Statement (FSEIS) was published on July 17, 2006. An appeal of the adequacy of the FSEIS was filed on August 2, 2006.

### **Testimony:**

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**Exhibits:**

1. Application, including:
  - 1A. General application
  - 1B. Preliminary long plat application with legal description
  - 1C. Planned unit development application
  - 1D. Application for notification map
  - 1E. Preliminary plat
  - 1F. Preliminary plat and PUD
  - 1G. PUD Master Plan
    - 1Gi Letter submitting additional information
    - 1Gii Phasing Plan
    - 1Giii Street Sections
    - 1Giiii Neighborhood Design Review Draft
  - 1H. PUD Master Plan Appendix
2. Engineering Services Department Plat/PUD comments
3. Engineering Services Department Supplemental EIS comments
4. Traffic Engineering Department comments
5. Fire Department comments
6. Solid Waste Department comments
7. Wastewater Department comments

8. Police Department comments
9. Air Pollution Control Authority comments
10. Spokane Regional Transportation Council comments
11. Traffic Study
12. Supplemental Traffic Study
13. Washington State Department of Transportation comments
14. Department of Ecology comments
15. Design Review Committee recommendation
16. Notice map and area map
17. Notification list
18. Notices
19. Affidavits of Mailing
20. Affidavits of Posting
21. Affidavits of Publication
22. Planning Services Staff Report
23. Supplemental Final Environmental Impact Statement
24. Planned Unit Development Counter Complete Checklist
25. Sign-in sheet from community meeting
26. Community meeting notes
27. Title Report issued by Transnation Title
28. Hearing File Preparation Checklist
29. Letter dated 01-18-05 to Roger Nelson from Roger Flint  
re: Monroe/Lincoln connector project
30. Letter dated 10-12-05 to Tom Reese from Leroy Eadie  
re: community meeting instructions
31. Spokesman-Review text of article dated 03-31-06
32. Letter dated 05-30-06 from Leroy Eadie to Interested Parties  
re: seeking comments on the proposed project
33. Letter dated 06-20-06 from Greg Smith to Mr. Chesrown  
re: extension for PUD
34. Email dated 07-04-06 from Roger Flint to Leroy Eadie  
re: comment on Public Comment Period information
35. Fax dated 07-05-06 from Leroy Eadie to Don Coon  
re: North Riverbank Design Plan
36. Letter dated 07-10-06 from Barbara Brassard to Leroy Eadie  
re: ADA accommodations for public hearing
37. Letter dated 07-14-06 from Mayor Hession to John Osborn, MD  
re: extension of the public comment period
38. Project Matrix
39. Time Lines
40. Correspondence received prior to hearing
- A. Exhibits submitted at the 06-03-06 hearing:
  - A1 Greg Baldwin – street vacation
  - A2 Jason Brantling – street vacation
  - A3 Spokane County – comment on TIA

- A4 West Central Community Center – letter of support
- A5 Kelly P Cruz – street issues
- A6 Summit Bridge Alliance – Sustainability Comments
- A7 Downtown Spokane Partnership – supporting project
- A8 Patrick Malone – comments on project
- A9 The Fox Theater – support of project
- A10 Kendall Yards Presentation – Power Point Hard Copy
- A11 Letter from Mayor Hession – support of project
- A12 Revised 08-03-06 Staff Report (also Exhibit 22)
- A13 John R. Layman – regarding staff comments on project
- A14 Summit Bridge Alliance – PUD Application comment
- A15 J White Jr. – CD of Power Point
- A16 Sierra Club – comments on project
- A17 Lewis Rumpler – supporting project
- A18 Lindell Haggin – comments on project
- A19 Ingrid Carlson – CD
- A20 Roundtable Spokesman Review, Kyle Usrey, 10-7-05 article
- A21 Jim Kolva – response to comments on issues raised during comment period

### **SEPA APPEAL**

Riverfront Properties, LLC (hereinafter “Applicant”) has submitted to the City an application for a 78-acre preliminary plat and planned unit development (PUD) to be known as Kendall Yards (hereinafter “The Project”). Once fully developed the project is to be comprised of approximately 2,600 residential dwelling units and approximately 1,000,000 square feet of nonresidential space. The property is located just north of the Spokane River, west of Monroe Street, south of Bridge Avenue and extends to the bluff above the river on its western boundary. The property had been approved in 1993 for a similar planned unit development known as the Summit PUD.

In applying for its preliminary plat and PUD the owner of the Summit Properties prepared an Environmental Impact Statement (EIS) under the State Environmental Policy Act (SEPA). It was issued by the City on July 21, 1993. In March 2006, a Draft Supplemental EIS (DSEIS) was prepared to update the 1993 EIS. The DSEIS was issued on March 7, 2006, with a thirty-day comment period. A Final Supplemental Environmental Impact Statement (FSEIS) was issued on July 19, 2006. All four documents have been submitted to the Hearing Examiner and are in the record for this appeal.

The DSEIS discussed traffic impacts beginning at page 67. It also stated that a Traffic Impact Analysis (TIA) would be completed prior to project approval. Two TIAs were completed by the Project’s traffic engineers, one in May of 2006 and one in June of 2006. The FSEIS referenced those two TIAs and incorporated them into that

document.

John and Rachel Osborn (hereinafter “Appellants”) commented extensively on the environmental documents and also on the Project itself. They filed an appeal of the adequacy of the FSEIS on August 2, 2006. The hearing on their appeal was consolidated with the hearing on the plat/PUD which took place on the evening of August 3, 2006 in the City Council Chambers in City Hall. Rachel Osborn, Attorney at Law, represented the Appellants; John Layman, Attorney at Law, Layman, Layman and Robinson represented the Applicant; and James Craven, City Attorney and James Richman, Assistant City Attorney represented the City. At the close of the hearing all sides were allowed additional time to submit memorandums, with the last submittal being made on Monday, September 11, 2006, by the Appellants.

## **Standing**

The Applicant and the City contend that this appeal should be dismissed because the Appellants lack standing to bring the appeal. They cite cases which hold that in order for a person to bring a judicial appeal under SEPA, that person must show that the interest they are trying to protect is arguably within the zone of interest protected by SEPA and that they will suffer an “injury in fact” because of the inadequacy of the SEPA analysis. *Leavitt vs. Jefferson County*, 74 Wn.App. 668, 875 P.2d 681(1984). If the injury is threatened rather than existing, it must be shown to be “immediate, concrete and specific” supra, p. 679. While the Courts have usually found that an appellant can meet the first part of the test, the injury in fact standard is more difficult.

The City has its own standing requirements for administrative appeals. In SMC 17G.050.310 it states that an administrative appeal can be filed with the Hearing Examiner by the applicant or a person with standing as defined in SMC 17A.020. The City’s requirements for standing are set forth in that chapter and mirror the requirements for bringing an action under the Land Use Petition act (LUPA), RCW 36.70C.060. In grappling with a definition of LUPA’s standing requirements, the Courts have held that a petitioner who is aggrieved or adversely affected because they are prejudiced by a land use decision, essentially has to show that they have suffered an injury in fact, the same standard as the SEPA standard. *Thornton Creek Legal Fund vs. Seattle* 113 Wn.App.34, 52 P.3d 522 (2002). In defining injury in fact, the Court stated that the plaintiffs must show that they personally “will be specifically and perceptively harmed” by the proposed action. The Court went on to note that while they did not believe the plaintiff’s showing in that case met the standard, that it would assume standing so that it could resolve the numerous issues raised in the litigation. *Thornton Creek Legal Fund*, supra, page 48.

The Applicant and the City contend that the Appellants have not established facts to show that they will suffer an injury in fact from the development of the Project. The Appellants have submitted a declaration in response to this allegation. The three primary concerns they have, as expressed in that declaration, relate to the projects



affect on the Spokane River Gorge, increased traffic on their street and the possibility that the ethnic and economic diversity of the West Central Neighborhood could be changed because of the development of the Project. The Appellants' enjoyment of the river gorge is as a member of the general public since they do not claim to own property in the river gorge although they live nearby. The gorge area referred to by the Appellants is publicly owned and accessible to all. Also, the Kendall Yards project does not extend into the river gorge. Some increase in traffic could occur on the Appellants' street but they live approximately ten blocks north of the development and the development will have many access points, some of which are to arterial streets and more likely than the Appellants' street to see major increases in traffic. The ethnic and economic diversity of a neighborhood is not an interest protected by SEPA and therefore cannot be the basis of standing.

Appellants have cited case law to advance their argument on standing. In cases where the Court held that standing was shown, however, the injury in fact was much more apparent than in the present case. In *Kucera vs. State Department of Transportation*, 140 Wn.2d 200, 995 P.2d 63 (2000), the property owners were found to have suffered an injury in fact because their shoreline property was being eroded by the large wake caused by new Washington State Ferries. Clearly their property was suffering an injury in fact in that case. In *Suquamish Indian Tribe vs. Kitsap County*, 92 Wn.App. 816, 965 P.2d 636 (1998), the standing of a citizens' organization was questioned. The Court held that standing for a community organization can be established if members of the organization can show standing. In that case, the affidavit submitted showed that one person lived 150 feet from the project and that the project would result in the traffic on the street in front of his house increasing at least 48%. Another member's property was bordered on three sides by the project and would have similar increases in traffic on the road in front of his property. The Court usually finds that property owners adjacent to a project have standing even if their injury is speculative, e.g. *Leavitt vs. Jefferson County*, supra p. 679. A third member also demonstrated large predicted increases in traffic on two roads that provided the primary access to his house. As stated above, the situation of these property owners is much different from the Appellants' situation living ten blocks from the project.

Concluding this issue, the Hearing Examiner finds little evidence that the Appellants will suffer an injury in fact and therefore have standing. However, the Hearing Examiner will address the issues in this appeal in case this matter ultimately goes forward on appeal.

### **Affordable Housing Issue**

It should be noted initially that in reviewing the legal adequacy of the EIS, the Hearing Examiner reviews under the rule of reason, which is a broad, flexible cost effectiveness standard adopted by the Washington Courts. *Citizens Alliance vs. Auburn*, 126 Wn2d 356, 362, 894 P.2d 1300 (1995). This flexibility is appropriate given the wide range of potential governmental actions and contacts for which EISs are prepared. In

addition, SEPA requires the Hearing Examiner to give substantial weight to the agency's determination that an EIS is legally adequate. In any action involving an attack on a governmental agency relative to the requirement or absence of the requirement, or the adequacy of a "detailed statement" (EIS), the decision of the governmental agency shall be accorded substantial weight. RCW 43.21C.090; see also *OPAL vs. Adams County*, 128 Wn.2d 869, 913 P.2d 793 (1996). Where an agency provides for an administrative appeal, SEPA expressly provides that the determination of the responsible official shall be entitled to substantial weight. RCW 43.21C.075 (3) (d). Accordingly, the City's determination that the FSEIS is legally adequate must be given substantial weight by the Hearing Examiner on appeal.

Under the rule of reason, as stated above, an EIS is not to be a "compendium of every conceivable effect or alternative to a proposed use". *Toandos Peninsula Ass'n vs. Jefferson County*, 32 Wn.App. 473, 483, 648 P.2d 448 (1982). Rather, an EIS is required to include a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" and provide "sufficient information to make a reasoned decision". *OPAL*, 128 Wn.2d 875. With respect to the disclosure of impacts, the EIS need only present decision makers with "a reasonably thorough discussion of the significant impacts of the probable environmental consequences of the agency's decision". *Kittitas County Citizens Against Imported Waste vs. Kittitas County*, 122 Wn.2d 619, 633, 860 P.2d 390 (1993). The rule of reason guides every aspect of the Hearing Examiner's review of the EIS, including the City's resolution of any conflicting expert opinions and its choice of the methodology used to assess impacts. *DesMoines vs. Pudget Sound Council*, 98 Wn.App. 23, 40, 988 P.2d 27 (1999).

Appellants contend that the EIS is inadequate because it did not address affordable housing issues and the possible displacement of low-income people in the adjacent West Central neighborhood. At the hearing on this matter, Appellants agreed that this was a socioeconomic issue. The SEPA rules, specifically WAC 197-11-448, states that the general welfare, social, economic and other requirements and essential considerations of policy need not be discussed in an EIS. The issue was resurrected, however, in the Appellants' initial memorandum submitted after the hearing. In that memorandum, the Appellants argued that the EIS should consider the possible displacement of low-income individuals as part of its housing element. The Hearing Examiner concludes, however, that the obligation to address housing displacement in an EIS relates to actual displacement from the project site as when housing is removed or torn down. No housing will be removed from this site.

Appellants also argue that the City's Comprehensive Plan has a policy related to affordable housing, which requires affordable housing to be included in new housing developments. Policy H1.8 of the Comprehensive Plan does state that there should be a requirement for affordable housing in new developments. That policy has not been implemented through development regulations, however, and without development regulations identifying the process or the percentage of affordable housing that will be required, the Comprehensive Plan merely acts as a guide not a rigid rule. See *Citizens*

*vs. Mt. Vernon*, 133 Wn.2d. 861, 947 P.2d 1208 (1997).

The DSEIS did discuss housing stock in the adjacent West Central Neighborhood and that there could be some displacement of low-income people as housing prices rise. As housing prices rise, fewer low-income people will be able to afford to purchase or rent houses there. See DSEIS pages 56 through 59. The Hearing Examiner finds, however, that the EIS did not have to address the affordable housing issue because it is a socioeconomic issue. Socioeconomic impacts are not “environmental” impacts recognized under SEPA. The Hearing Examiner also concludes that displacements due to rising housing costs because of the Project are speculative. Based on the evidence presented, the EIS was not legally required to discuss socioeconomic impacts and that includes impacts to affordable housing in the West Central Neighborhood. *SEAPC vs. Cammack II Orchards*, 49 Wn.App.609, 615 to 616, 744 P.2d 1101 (1987); WAC 197-11-448.

### **Impacts to the Spokane River Gorge**

The Appellants argue that the development, which will include 2,600 housing units, will have significant impacts on the river gorge, which were not addressed in the EIS documents. Primarily, the Applicants argue that bringing a large number of residents to this area overlooking the river will have impacts, primarily on wildlife. There was considerable testimony at the hearing on the Project that several different species of wildlife use the river gorge as a wildlife corridor or nesting area. Appellants state that the addition of a large number of residents to this area as well as the addition of light and glare from the Projects buildings, will have impacts on wildlife that were not addressed in the EIS.

The Project is located on top of the bluff overlooking the river. Almost all of the gorge area along the river in this location, including the steep slopes, is public property owned by the City of Spokane, managed by the City’s Park Department. The Appellants presented no evidence that the project would adversely affect water quality in the river. The project will be connected to the City’s sewer system and stormwater will have to be contained on site in accordance with the City’s Stormwater regulations. There was argument, however, that additional people using the public lands in the gorge area especially the informal trails along the slopes, could cause erosion problems, but it will be the responsibility of the City’s Parks Department, who owns the land, to insure that erosion does not cause water quality problems.

The DSEIS discusses wildlife habitat beginning at page 32. It suggests a habitat plan be prepared as mitigation, and the Hearing Examiner will require, as a condition of approval, that a wildlife habitat plan be developed as mitigation. The habitat plan must be specific in that it will address impacts to wildlife migration routes along the gorge as well as the education of users of the land through the posting of signs. It will also examine ways in which the Applicant can educate its property owners through its property owners association to issues relating to wildlife predator pets, erosion, nesting areas and other

issues. The habitat plan must also address possible adverse impacts of glare from the Project. It would seem that more light or glare will reach the gorge area from across the river than from this project but no expert testimony was submitted on that issue. The Hearing Examiner will require reasonable mitigation as recommended by the habitat plan.

According to the responsible official's decision on this issue substantial weight, as the Hearing Examiner must, and applying the rule of reason the Hearing Examiner cannot find that there will be probable significant adverse impacts to the river that have not been discussed in the EIS and which will not be mitigated through the conditions of approval.

## **Traffic Issues**

The same standard of review as set forth above applies to the consideration of Appellants' contention that transportation issues were not adequately addressed. Specifically the Appellants contend that the FSEIS was inadequate because it didn't consider increased traffic impacts on the West Central Neighborhood, morning peak hour traffic impacts on surrounding arterials and intersections, weekend traffic impacts generated by the 1,000,000 square feet of commercial space planned for the project or the impacts to intersections surrounding Interstate 90 as identified by the Washington State Department of Transportation (WSDOT). The Appellants are not traffic engineers and did not offer the opinion of a traffic engineer to support their contentions that the FSEIS was inadequate in the ways mentioned above.

The DSEIS discussed traffic impacts at various intersections near the Project and also stated that a Traffic Impact Analysis (TIA) would be prepared for the Project. A draft TIA was prepared and issued in May of 2006 and a second, revised TIA was issued in June of 2006. Both are in the record. In all, the TIAs addressed traffic impacts at approximately 90 intersections around the Project. The intersections were analyzed based on projected P.M. peak hour trips and A.M. peak hour trips weren't part of the analysis. Because the Applicant has stated that build out of the entire Project may take until the year 2025 the Project is only certified for transportation concurrency for Phase I or 2,491 adjusted P.M. peak hour trips before further traffic analysis will be required. Many improvements to surrounding intersections will be required of the Applicant. Other conditions of approval include a traffic calming study for the adjacent neighborhood and also that the City and Applicant address the concerns that WSDOT has regarding Interstate 90 and the intersections around that transportation corridor at Maple/Ash.

As stated above, the Hearing Examiner must afford substantial weight to decisions made by the responsible official. This is especially true when reviewing decisions that require special expertise. In this case, the traffic mitigation was arrived at after extensive comment on the May TIA followed by revisions which led to the June TIA. Substantial comment came from the City's Transportation Department, the Spokane Regional Transportation Council (SRTC), WSDOT's traffic engineers and Spokane County. Those are agencies with expertise on mitigating transportation

impacts from development within the City of Spokane. It is true the TIA does not have an analysis of A.M. peak traffic impacts nor does it have an analysis of weekend trips. But the Hearing Examiner must defer to the transportation experts as to the methodology they choose to use in analyzing traffic impacts from the Project. Without conflicting expert testimony on this particular issue, and giving the responsible officials decision substantial weight, as the Hearing Examiner must, the Hearing Examiner cannot find, under the rule of reason, that the decisions on traffic were inadequate. Substantial traffic mitigation will be required of the Applicant, based upon the traffic analysis, and further analysis will be required as the Project proceeds.

Finally, Appellants argue that the FSEIS has a procedural defect in its traffic analysis. The City and the Applicant dispute that there were any procedural defects in the issuance of the documents. The issue relates to the incorporation of the two TIA's into the DSEIS and the FSEIS.

The SEPA rules address the use of existing environmental documents in order to avoid duplication of work. One way an agency may use an existing document is to incorporate it by reference. WAC 197-11-635. Agencies are encouraged to use other studies and material by reference whenever appropriate but there are certain procedures that are to be followed. WAC 197-11-635 (2) states:

*Material incorporated by reference (a) shall be cited, its location identified, and its relevant content briefly described; and (b) shall be made available for public review during applicable comment periods.*

The DSEIS was issued on March 7, 2006, and contained a 30-day comment period. The cover letter to the document states that the public comment period would close on 7 April 2006. The first TIA was issued in May of 2006 and the second, revised one in June of 2006, both after the comment period had ended. There is no evidence to show that the two TIA's were circulated, as required by SEPA, and the FSEIS, in responding to comments, only responds to comments made on the DSEIS which were due by April 7, 2006. If the City and the Applicant wanted to incorporate the two TIAs into the draft document, then the comment period should have remained open through the TIA process and public comment on the TIAs should have been included in the FSEIS document. The second TIA does contain some responses to comments from the City but nothing from the public. This is an error in procedure.

Washington Courts have sometimes refused to find an EIS inadequate because of a procedural error if the error is deemed to be inconsequential and therefore harmless. *Thornton Creek Legal Fund vs. Seattle* 113 Wn.App 34, 52 P.3d 522 (2002); *Concerned Taxpayers vs. State* 90 Wn.App 225, 233, 251, P.2d 812 (1998). The Hearing Examiner finds that in this case, the procedural error amounts to harmless error. The TIAs were referenced in the DSEIS and therefore their existence could be anticipated. There is no evidence that they were not available for public review and they both had extensive review from agencies with transportation expertise such as the

City's Transportation Department, WSDOT's transportation engineers, SRTC, and the engineers representing the Applicant. There was also extensive comment on transportation issues by the public both before and during the hearing on this plat/PUD application. The Appellants submitted extensive comments on July 19, 2006, prior to the public hearing on the project referencing pages in the TIA, so it appears that they obtained copies for their comments. There was no testimony from anyone else stating that they were prevented from commenting on either TIA because of its lack of availability. The Hearing Examiner concludes, therefore, that this error in procedure was harmless.

### **Cumulative Impacts Analysis**

Appellants argue that the FSEIS is inadequate for failing to include a cumulative impacts analysis as required by WAC 197-11-060. The City and the Applicant argue that cumulative impacts as identified by the Appellant are speculative and therefore the FSEIS did not have to address them.

The most recent case on this issue is *Boehm vs. the City of Vancouver* 111 Wn.App. 711, 719, 47 P.3d 137 (2002). In that case the Court of Appeals held that cumulative impacts analysis, "need only occur where there is some evidence that the project under review will facilitate future action that will result in additional impacts" (Citation omitted) p. 720. The Court held that without a showing that the proposed project is, "dependent on subsequent proposed development", any noted impacts were speculative. *Boehm*, supra, p. 720.

In this case, the Appellants argue that the completion of the Centennial Trail through the site will add additional bicycle traffic on the trail and consequently onto Summit Boulevard near their home. Also, Appellants argue that the development of the proposed Great Gorge Park below the site of the Project will bring more people to the Spokane River Gorge area thereby increasing impacts to the river over and above what will occur with just the Project.

The Applicant did note some of the affects of the Centennial Trail construction through the site in the FSEIS along with some proposed mitigation. There was no discussion about increased bicycle traffic from the construction of the trail leading to Summit Boulevard, but no evidence was presented to suggest that such increase in traffic is both probable and adverse. Whether adverse environmental impacts will be created is speculative in that no evidence was presented that if increased bicycle traffic does occur that the results will be additional probable adverse impacts. The results of bringing more people to use the river and the public lands adjacent to the river has been discussed above. The Hearing Examiner concludes, however, that the Great Gorge Park, which is still in the planning stages, will not be facilitated by this development nor was this development dependent upon that subsequent project. Therefore, under the rules set forth in the *Boehm Case*, the Hearing Examiner cannot find that the City

errored by not examining alleged cumulative impacts within the FSEIS.

Appellants have questioned the methodologies and content supplied by the City to measure impacts of the Project. The Appellants have not offered any contradicting expert opinion, but have simply offered their own non-expert opinion that the methodologies are flawed and the content is inadequate. This was not an instance where the Hearing Examiner had to decide between one side or another because the appeal became a battle of experts. Without expert testimony to contradict the findings made by the agency's experts, the Hearing Examiner has to defer to those decisions under the rule of reason and under the rule that the findings of the City be given substantial weight.

Many of the issues raised by Appellants were also raised by Appellants as comments to the DSEIS. Those comments are found in the FSEIS on pages 56 through 72. The preparers of the FSEIS responded to all of those comments at that time. The comments and responses show a difference of opinion between the Appellants and the preparers of the document but do not necessarily show that there were probable environmental impacts that were not being adequately addressed. As stated earlier, SEPA only requires a reasonably thorough discussion of the probable environmental consequences of an agency's action. *OPAL vs. Adams County*, supra, p. 875.

### **DECISION ON SEPA APPEAL**

Based on the findings of fact and conclusions of law as set forth above as well as the administrative record and SEPA documents prepared in this matter, the Hearing Examiner determines that the FSEIS for the Project is legally adequate under the rule of reason. The appeal is denied.

### **FINDINGS AND CONCLUSIONS FOR THE PLAT/PUD**

**Reviews of Type II and III permit applications such as PUDs and plats are subject to Spokane Municipal Code Section 17G.060.170. The Hearing Examiner has reviewed the proposed plat and PUD and evidence of record with regard to this Section and makes the following findings and conclusions:**

1. The proposal is allowed under the provisions of the Land Use Codes.

Preliminary plats and planned unit developments (PUDs) are allowed in accordance with current land use regulations. Subdivisions are allowed and governed by SMC 17G.080.050. This application for a PUD is governed by SMC 11.19.361 through .3691. Therefore, this particular proposal to subdivide the land and develop it as a PUD is allowed under the provisions of the land use codes.

The codes contain certain restrictions and requirements for subdivisions and PUDs. Some of those requirements such as density, height and setbacks can be varied

through the PUD process and the applicant seeks several variations to those requirements. Those requests will be addressed under the PUD portion of this decision.

2. The proposal is consistent with the Comprehensive Plan designation and goals, objectives, and policies for the property.

The City's 2001 Comprehensive Plan was developed pursuant to the State's Growth Management Act (GMA). The overall purpose of the GMA is to intensify development in urban areas in order to prevent sprawl. This applicant seeks to create an urban village with higher density residential and commercial on a site that is located adjacent to the downtown core and where all services and transportation systems are in place. This helps to prevent sprawl and therefore advances the goals of the GMA.

The Comprehensive Plan designation for the property is Residential 15-30 to the west of Maple Street with various business designations such as Community Business 150 and Centers and Corridors-Core to the east. The applicant seeks to develop the portion from Monroe Street to Maple Street with commercial uses and seeks a mixed used residential commercial urban village on the west part of the site. With bonus densities, which will be considered in the PUD portion of the decision, the net density for the west end from Maple Street to Summit Boulevard is proposed at 28.3 units per acre, which falls within the Comprehensive Plan Density range of 15 to 30 units per acre. The commercial uses on the east end of the site will be governed by floor area ratio calculations. Some residential units may be mixed with the commercial uses, but those residential units are exempted from floor area ratio requirements. Further review will be necessary before commercial uses are allowed to be located with the residential uses on the west end of the site.

As stated, the Comprehensive Plan was developed to comply with the GMA. The goals of the GMA are set forth in Section 2.2 of the Plan. Goal #1 is to encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. Goal #2 relates to reducing sprawl. This proposal clearly is consistent with those primary goals by developing a large piece of open land in the middle of the City.

There are various other goals and policies of the City's Comprehensive Plan with which this proposal is consistent. The Hearing Examiner has reviewed the analysis set forth by the applicant in its Planned Unit Development application which is in the record as Exhibit #1C. The Hearing Examiner agrees with the analysis set forth on pages 4, 5, and 6 of that Exhibit and hereby adopts and incorporates those findings herein. There was no evidence presented in this matter which convinces the Hearing Examiner that the proposal is not consistent with the Comprehensive Plan.

3. The proposal meets the concurrency requirements of Chapter 17D.010 of the Spokane Municipal Code.



The proposal was circulated to all applicable City departments and agencies with jurisdiction over land development, and all of those departments and agencies were given the opportunity to comment. While most utilities, facilities, and services are in place and concurrency can be achieved, the Transportation Department only certified concurrency for Phase 1. More transportation analysis will be necessary before further transportation concurrency can be certified. Concurrency can be achieved for all other public services, according to the responses by the agencies that supply those services.

4. If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water, and the existence of natural, historic, or cultural features.

The site appears suitable for the proposed development. There is no topographical or other physical characteristics of the property which would preclude development nor is there any standing water or significant drainage problems. The applicant has submitted geotechnical and drainage reports, which are preliminary, to Engineering Services for review and Engineering Services found that they were satisfactory for certifying concurrency in those areas. The applicant must comply with the City's stormwater management regulations, but the drainage report states that this will be feasible.

The site has been significantly cleaned up in the last two years from prior contamination. It had been used by the railroads for over fifty years and was contaminated with heavy metals and petroleum based chemicals. These were removed from the property and the site was certified with a "No Further Action" letter from the State Department of Ecology.

The applicant has stated that an inventory of historic properties and a limited archeological survey was completed and it was determined that no identified cultural resources are on the site. There are three abandoned Union Pacific Railroad bridges, and though they are not designated as historic, they are proposed to be retained and incorporated into public spaces within the project. There is a proposal to make Nettleton's Addition, which is across Bridge Street to the north a Historic District, and the project applicant proposes two-story buildings along Bridge Street in order to be compatible with the single-family homes across the street. No other site features of this site were identified in testimony which would convince the Hearing Examiner that the site is not suitable for this proposal.

5. The proposal will not have a significant adverse impact on the environment or the surrounding properties and, necessary conditions can be placed on the proposal to avoid significant effects or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use.

Most of the testimony on this project related to its potential impacts on the

environment and the surrounding properties. The applicant has issued a SEIS to update the EIS that was done for the Summit Properties project in 1993. The purpose of the supplemental document was to identify any further adverse environmental impacts that could occur from the development of the site and which were not identified in the 1993 EIS. On pages 15 through 20 of the FSEIS there is a matrix of potential impacts and the mitigation proposed for those impacts. That mitigation will become conditions of this approval.

In addition, an appeal was filed as to the adequacy of the SEIS. That appeal was addressed previously. That appeal raised certain environmental issues and questioned the adequacy of the statement. The Hearing Examiner found in reviewing the appeal that the FSEIS was adequate under the rule of reason.

It appears that the biggest impact the project will have is traffic on adjoining streets. The applicant has completed two traffic impact analyses (TIAs) analyzing the impacts of development. There are a significant number of mitigation measures that are set forth in the TIA and which are required to be accomplished either by the applicant or the City to alleviate traffic problems. For the TIA, the applicant's engineers studied over 90 signalized intersections in the project area. In addition, the applicant will have to complete a traffic calming study for the neighborhood streets which exit the property to the north. The project has only been certified for concurrency for Phase 1 and further phases will require additional traffic study.

It is difficult to predict what traffic impacts the proposal will actually have. The applicant proposes to make the project very pedestrian and bicycle friendly and with its proximity to Downtown and other commercial areas as well as its proximity to employment centers, such as Downtown, the traffic may not impact surrounding properties to the degree some think. Also, as the project develops and there is a greater concentration of residents, an easy to use transit service could alleviate traffic impacts further. In any case, the City is requiring traffic impact studies for all phases of development of this site to insure that the impacts on surrounding properties are identified and addressed.

The impact of the project that is difficult to quantify is the impact of having larger buildings throughout the development. Some areas will be allowed buildings that are between four and eight stories in height and other areas will be allowed buildings between eight and twelve stories. Some people object to the additional height while others think they should be allowed. This issue is more of an aesthetic issue than an environmental issue. The taller buildings will have the greatest impact upon other properties within the same development. The applicant has planned the placement of buildings such that the shorter buildings, two-stories tall, will be placed across Bridge Street from existing single-family residences. The taller buildings will be placed to the south of the site and their main impact from shadowing, etc., will be to other buildings in this development. While it is true that some people who testified stated that in their opinion the taller buildings would be an eyesore on the bluff overlooking the Spokane River, the primary impacts of those buildings, light, shadowing, etc., will be felt by people residing in other buildings on site.

The applicant testified that those internal impacts can be addressed in overall site design.

With all of the mitigation that will be required along with future design review and subsequent traffic studies, the Hearing Examiner finds that the proposal should not have a significant adverse impact on the environment or the surrounding properties.

**For a preliminary long plat, the additional criteria below must also be satisfied:**

1. The proposed subdivision must make appropriate (in terms of capacity and concurrence) provisions for:

a. Public health, safety, and welfare. The Hearing Examiner finds this criterion has been met and, in so doing, hereby adopts and incorporates the Planning Services Department Findings on this criterion, set forth in the Planning Services Staff Report, Exhibit #22 page 5.

b. Open spaces. At the hearing on this matter the applicant stated that approximately 25 acres of the site will be left in public open space. That will be in the form of plazas, informal open space areas around buildings, viewpoints at the top of the old concrete bridges as well as the continuation of the Centennial Trail from Monroe Street all the way through the site to Summit Boulevard. Therefore there is adequate provision for open spaces.

c. Drainage ways. The Hearing Examiner finds this criterion has been met and, in so doing, hereby adopts and incorporates the Planning Services Department findings on this criterion, set forth in the Planning Services Staff Report, Exhibit #22, page 5.

d. Streets, roads, alleys, and other public ways. The applicant proposes a system of streets through the project which will all connect to the main arterial which is Kendall Yards Boulevard, a new street. The overall street system plan is in the PUD Master Plan Exhibit #1G (Exhibit #7). Kendall Yards Boulevard will run from its intersection with Monroe Street through to the west end of the plat where it will connect to Lindeke Street. In addition, several existing neighborhood streets will be extended southward through the plat to intersect with Kendall Yards Boulevard. This will form a grid street pattern for the neighborhood and provide connectivity. The illustrative sections for the various streets are also set forth in the Master Plan and show a 38 foot wide paved street with curb, planting strip and sidewalks. There will also be connections to Maple Street.

In addition, as stated above, the applicant has completed two TIAs which analyzed over 90 nearby signalized intersections to evaluate levels of service concerns. The mitigation recommended by the TIA and the City's Transportation Department will become conditions of this approval. In addition, staff has recommended that a traffic calming study be done to review traffic impacts in the adjacent neighborhood and recommend mitigation.

That will also be a condition of this approval.

e. Transit stops. There is transit service on Monroe Street and also along Broadway Avenue, which is two blocks to the north. Further, the increase in density on this site has the potential for increasing transit shuttle service, a future street car line, or at the very least enhanced transit service to this area. This should occur with the density proposed and the projects proximity to Downtown.

f. Potable water supplies. The Development will be connected to the City of Spokane's public water system. The construction of water mains and all costs associated with the construction of water improvements necessary to serve this plat will be the responsibility of the developer, subject to approval of plans and specifications by the City of Spokane. An overall water plan and hydraulic analysis must be submitted to Engineering Services-Developer Services for review and acceptance prior to the City Engineer signing the final plat/PUD.

g. Sanitary wastes. The development will be connected to the City's sanitary sewer system. The applicant will be responsible for all costs associated with constructing sewer improvements necessary to serve the proposed plat/PUD. Sanitary sewers necessary to serve the proposed plat/PUD shall be designed and constructed to City standards. Construction plans shall be submitted to Engineering Services-Developer Services for review and acceptance prior to the City Engineer signing the final plat/PUD.

h. Parks, recreation, and playgrounds. Besides the extension of the Centennial Trail and other open space within the PUD, the Hamblin conservation area is located to the south and High Bridge Park is located to the south and west. In addition, Riverfront Park is approximately three blocks away from the east end of the development to the southeast.

i. Schools and schoolgrounds. The site is located within School District #81. There are no provisions for public schools or schoolgrounds within the development. School District #81 did not offer comment on the proposal and it is assumed, therefore, that the district can accommodate the children from the housing within the proposed development.

j. Sidewalks, pathways and other features that assure safe walking conditions. The Hearing Examiner finds this to be a very pedestrian friendly development. Besides the extension of the Centennial Trail through the plat, all streets will have a sidewalk on both sides and there will be other pedestrian and bicycle connections throughout the plat.

**For a planned unit development (PUD), the following criteria must also be complied with:**

1. All of the criteria in SMC 11.19.361 are satisfied.

General Objective #1. Encourage a more creative approach for land development, achieving a more efficient, aesthetic and desirable use of the land in harmony with and not adversely affecting the surrounding area, but remaining within the desired population density ranges and land area coverage standards. Such land development must be consistent with the available land, transportation, utilities, public health and safety standards of the City and the goals and policies of the Comprehensive Plan.

The Hearing Examiner finds that this proposal is a creative approach for land development. That conclusion is reinforced by the unanimous positive recommendations of the Design Review Committee who have expertise in the design area. The applicant has developed a unified site plan creating a pedestrian friendly urban village master plan which should compliment both the adjacent West Central Neighborhood, the County Government center, the Centennial Trail and the central business district. All utilities and facilities are in place to serve the proposal and the Hearing Examiner has found that the proposal is consistent with the Comprehensive Plan. The density ranges are within those allowed in the Comprehensive Plan and the land area coverage standards will also have to be met. Twenty-five percent of the site will be left in open space which will be a public amenity that will benefit the whole City as well as the surrounding areas.

General Objective #2. Best utilize and protect the potential of sites characterized by special features such as size, shape, geography, topography, or some environmentally sensitive feature.

The potential of this site is characterized by its size. There is nothing in the shape, geography or topography which needs protection nor are there environmentally sensitive features on site which need protection although the applicant will have to develop a wildlife habitat plan to help protect wildlife areas located near the river and on the steep bluffs to the south and west of the site, which are public lands. It is unique to have a site of this size in the middle of an urban area adjacent to the central business district which provides a lot of opportunities for the applicant to be creative and develop the site as a master plan urban village as has been proposed in this case.

General Objective #3. Best preserve historical and cultural features.

No historical or cultural features have been identified on the site. There are existing Union Pacific Railroad bridges and the former High Bridge abutment at the west end of the site and the applicant proposes to preserve them and incorporate them into public areas in the site design. The applicant has also proposed interpretive signage to tell the story of the site. In addition, Nettleton's Addition to the north across Bridge Street has applied for Historic District Designation. The applicant has agreed to be sensitive to that and compliment that area with the scale and character of house design on the south side of Bridge Street within the project.

General Objective #4. Make possible a variety of living, working and/or

recreational environments.

The site will be developed with urban style living which provides a contrast to the alternative of typical suburban style, large lot, single family housing which is developed on the periphery of the City. The applicant seeks to provide 2,600 housing units in a variety of buildings and settings, both for sale and rental. The site provides views from the north bank of the river and the opportunity to live close to downtown with its amenities and employment opportunities. There are recreational opportunities nearby with the Centennial Trail and the various parks and public lands.

General Objective #5. Maximize opportunities to conserve energy or utilize alternative energy sources.

As a high-density urban infill development the opportunity for more transit use and pedestrian and bicycle options in the vicinity will expand. The proximity to the downtown core and other commercial areas will help conserve energy by minimizing driving times. In addition, the applicant has proposed to seek LEED's certification. Certification under the LEED's (Leadership in Energy and Environmental Design) system is a nationally recognized environmentally friendly design system, which has a Green Building Rating System insuring superior environmental design. All of this will maximize opportunities to conserve energy.

General Objective #6. Encourage economy and efficiency in the provision and maintenance of utilities and transportation routes and in the provision of quality housing at a reasonable price.

Since this is an infill project, there is an economy and efficiency in using an infill site where utilities and transportation systems already exist. In addition, the site was contaminated but has been cleaned up by the applicant so the City should encourage its development.

General Objective 7. Permit flexibility in design such as, for example, placement of buildings, common wall construction, use of open spaces, bicycle and pedestrian circulation facilities, off-street parking areas, street alignment, or other methods to achieve these objectives.

The applicant has requested flexibility in design in various areas. He has asked for bonus densities which would make the density of the project greater than allowed in the underlying R3-L Zone, but would still keep it within the density range allowed by the Residential 15-30 designation in the Comprehensive Plan. The applicant has also asked for certain nonresidential uses in the residential portion of the site as well as height deviations.

In order to allow bonus density, the Hearing Examiner must find that the proposal complies with one or more of the criteria set forth in SMC 11.19.369D (since repealed).

The Hearing Examiner finds that bonus density should be allowed under those criteria. There is no point system within the ordinance and no way to calculate the value of any criteria, but the applicant has satisfied Criteria #2, which favor sites which are within a reasonable distance of fire and police as well as medical, shopping, church, and other such amenities. This infill site is clearly benefited by proximity to many public services and shopping as well as employment centers. Criteria #3 relates to energy efficiency. In this case the proposal is south facing and the applicant has stated that it will take advantage of solar access. In addition, the applicant has stated that the project will have an improved environmental design, using the LEED standards of environmental design, which will create an energy efficient and environmentally superior project.

Criteria #4 is met in that there will be both private and public open space and recreational facilities as well as bicycle and pedestrian pathway systems including the extension of the Centennial Trail. Criteria #5 relates to environmental design and, as stated above, the applicant has proposed to seek LEED certification as part of his environmental design process. Criteria #6 is also met in that there will be a mix of housing types including townhouses, condominiums and apartments both for sale and rental within the development. The Hearing Examiner also believes that this is an innovative design and that therefore Criteria #7 has been met. Therefore, bonus densities are hereby allowed up to the 28.3 units per acre requested by the applicant.

The applicant also seeks to add some nonresidential uses within the area zoned RMF (formerly R3-L). There are requirements in the Municipal Code for adding nonresidential uses to a residential PUD and a condition of approval will be that the applicant complies with those requirements. They are set forth in SMC 11.19.363 (since repealed).

The Hearing Examiner hereby approves the increased height sought by the applicants subject to certain conditions and also subject to design review in the case of the taller buildings. The buildings in the 8 to 12 story areas must receive design review and those within the 4 to 8 story areas of the site are to have an average height of no higher than 6 stories. Buildings located in the 2 to 3 story areas are subject to the height transition requirements of SMC 17C.110.215C3.

## **DECISION**

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed preliminary plat and planned unit development application subject to the following conditions:

### **A. General Conditions:**

1. Approval is for a preliminary plat and planned unit development for the 78-acre

development to be known as Kendall Yards. It is approved for 2,600 residential units and approximately 1,000,000 square feet of non-residential commercial and office space. The property will be developed substantially in accordance with the site plans, which are in the record as Exhibit #1E. The number of lots, the layout of streets and other site features shall be substantially as depicted on the site plans, except where these conditions modify those placements. The site is to be developed also in accordance with the Kendall Yards PUD Master Plan, which in the record as Exhibit #1G. The design and location of streets, access points, pedestrian circulation, bicycle circulation, the Centennial Trail extension, and all other open space shall be substantially as depicted on the plan. The applicant is authorized to prepare a final plat and PUD plan in accordance with the preliminary plat and these conditions of approval. Any modifications to the preliminary plat/PUD shall be reviewed and approved by the City Hearing Examiner.

2. Any portion of the stormwater system, the utilities, the public plazas and other common areas which are on/in private property, shall be maintained by a homeowners association. A set of covenants, conditions, and restrictions (CC&Rs) prepared for the proposed development is subject to review and approval by the City of Spokane and shall be recorded with the Spokane County Auditors Office prior to the recording of the final plat. The CC&Rs shall address the duties and responsibilities of the homeowners association with regard to all private facilities and utilities. This includes, but is not limited to the levying and collection of assessments, the operation and maintenance of all systems and facilities and shall also provide for the administration and enforcement of these duties and responsibilities.

3. The project is planned to be constructed in phases. The Phasing Plan is in the record as Exhibit #1Gii. The current plan is to begin the phases on the east side of the property adjacent to Monroe Street and work westerly. That phasing is approved and the applicant is permitted to submit the project in phases. Each phase is to be submitted to the Design Review Committee for review and comment prior to the filing of the final plat for that phase. If the Design Review Committee determines that the phase does not comply overall with the PUD Master Plan then the plan for the phase shall be forwarded to the Hearing Examiner for review.

4. The applicant seeks modification and approval of building coverage, yards and height in this PUD. The Hearing Examiner hereby approves the requested modifications subject to the following. Buildings depicted on the plan as being located in the two to three-story area are subject to the height transition requirements of SMC 17C.110.215C3. Buildings located in the four to eight-story category must maintain an average height of six-stories. Buildings in the eight to twelve-story categories are subject to Design Review and also subject to the Plans-in-Lieu process. If Design Review finds that any proposed buildings fail to meet the overall guidelines of the PUD Master Plan then the concept plan for those buildings shall be submitted to the Hearing Examiner for review. The Design Review Committee is encouraged to use as public a process as possible in reviewing the designs. The applicant shall also submit to Design Review for review and comment, its overall project design guidelines as well as the design of all public plazas and public spaces



within the PUD.

5. The applicant's plan calls for non-residential uses within the PUD in areas zoned RMF (Residential Multifamily, formerly R3-L). Prior to any non-residential uses being allowed in that zone, the applicant must show conformance with the requirements of SMC 11.19.363 which addresses non-residential uses in a residential PUD.

6. Sanitary sewer service shall be provided by the City of Spokane. Sanitary sewers shall be designed and constructed to City standards. Sewers in public streets or public easements will be maintained by the City. The project proponent shall be responsible for all costs associated with providing sanitary sewer service throughout the plat and securing all approvals and easements necessary to serve lots within the proposed plat.

7. The proposal shows several streets being vacated which contain sanitary sewer lines and/or water lines. The applicant must either move those lines to a public right of way or grant easements to the City in order to allow for the maintenance and operation of those lines. Paved access to all sewer manholes and all water valves shall be maintained at all times. No structure may be constructed in any utility easement.

8. Water service shall be provided by the City of Spokane's water system. The water lines within the plat must be designed and constructed to City standards. Water lines existing or constructed in any public street will be operated and maintained by the City of Spokane. The design of water lines and systems shall be submitted to Engineering Services-Developer Services for review and acceptance prior to the City Engineer signing the final plat. The project proponent will be responsible for all costs associated with constructing water improvements necessary to serve the proposed plat.

9. Only City water and sanitary sewers shall serve the plat. The use of individual on-site sanitary waste disposal systems and/or private wells is prohibited, and it shall be so stated on the face of the final plat.

10. A hydraulic analysis with supporting calculations for domestic and fire flows must be submitted to Engineering Services-Developer Services for review and acceptance prior to the City Engineer signing the final plat/PUD. Because the final location, height, and construction type of all buildings is not yet known, a hydraulic analysis may be required for each structure at the time of building permit application. Pressures must meet City standards for domestic and fire flows. Any new connections to the existing sewer mains or water mains are subject to the City's Pavement Cut policy.

11. All storm water and surface drainage generated on-site shall be disposed of on-site in accordance with the City's storm water regulations. Predevelopment offsite runoff passing thru the plat/PUD shall not be increased (rate or volume) or concentrated due to development of the plat/PUD based on a 50-year design storm. A final drainage report with pre and post development rates and volumes for a 10, 50, and 100-year design storm as well as complete geotechnical support shall be submitted for review and acceptance

prior to the City Engineer signing the final plat/PUD. The geotechnical report shall discuss the location of drainage structures, verify dry well capacities and verify percolation rates to soils where drainage swales are to be constructed. Site specific stormwater drainage reports and plans will be required for each structure and parking lot as building permits are requested. Supporting technical information, discussing location of drainage structures, and drywell capacities and verification of percolation rates through soils where drainage swales are to be constructed must be included in each site specific submittal.

12. Drainage structures (pipes, catch basins, drywells, etc.) located in public streets and rights of way, shall be maintained by the City of Spokane. Drainage structures located in any private streets or private areas of the plat/PUD shall be maintained by the owners association. Swales or ponds in the public right of way shall be maintained by the adjacent property owner or the homeowners association. All swales and ponds shall be maintained with a permanent cover of live lawn turf, with optional shrubbery and/or trees which do not obstruct the flow or percolation of runoff in the drainage swale.

13. The design of the stormwater treatment and disposal system shall comply with all recommendations of the geotechnical engineer as contained in the stormwater report submitted to the City of Spokane for this development. The developer will be responsible for all costs associated with constructing storm water improvements necessary to serve this proposed PUD plat.

14. An erosion/sediment control plan, detailing how dust and runoff will be handled during and after construction must be submitted to Engineering Services-Developer Services for review and acceptance prior to construction.

15. All improvements (street, sewer, stormwater, and water) shall be designed by a Professional Engineer, licensed in the State of Washington and constructed to City standards by the developer prior to the occupancy of any structures served by said improvement. Conceptual construction plans must be submitted to Engineering Services-Developer Services for review and acceptance.

16. The development of any below-grade structures, including basements, is subject to prior review of a geotechnical evaluation for foundation design to determine suitability and the effects from stormwater and/or subsurface runoff. The geotechnical evaluation is required to be performed for each lot with below grade-level structures and submitted for review and acceptance to the City of Spokane Building Department and the City Engineering Services-Developer Services Department prior to issuance of a building permit.

17. The PUD Master Plan depicts the proposed design of the three different types of streets within the PUD. Each shows a 38-foot wide paved surface with various public amenities such as street trees, sidewalks, and open areas along the side. The design of those streets is approved, but if the design deviates from City Standards then those deviations will also require approval by the Director of Engineering Services. For those

streets and other streets which front the PUD, improvements are required including City of Spokane standard curb, sidewalk, buffer strips, paving, street signage, striping, stormwater drainage, street trees, and street lighting. Wheelchair ramps are also required.

18. Garages on residential units, if any, shall be a minimum of 20 feet from the back of the sidewalk. Clear view at driveways and street intersections must be maintained. All street lighting shall be constructed to City standards. The street names shall comply with SMC 17D.050.

19. Any roadways with less than 36 feet of paved width shall prohibit on street parking on one side and private roadways with less than 28 feet of paved width shall prohibit parking on both sides of the street. All roadways, including fire or emergency lanes, shall not be less than 20 feet in paved width to accommodate emergency vehicles. Cul-de-sacs shall have a minimum radius of 50 feet to the face of the curb. The cul-de-sac right of way must have a minimum radius of 56 feet.

20. The City will require approach permits to access public streets. The number of access locations may be limited and all driveway plans must be approved by Engineering Services-Developer Services.

21. All street identification and traffic control signs required for this project must be installed by the developer at the time the streets are improved, prior to the occupancy of any structures served by those streets. The developer will be responsible for all costs associated with constructing street improvements necessary to serve this plat/PUD. Street designs for all arterials must include supporting geotechnical information on the adequacy of the soils underneath to support vehicle loads.

22. Cedar Street between Ohio Avenue and Broadway Avenue is designated as having a shared used bicycle lane in the Comprehensive Plan and it shall be constructed accordingly. Lindeke Street shall be constructed to collector arterial standards.

23. All streets proposed for vacation, can be vacated through the plat/PUD process as long as the appropriate utility easements or utility relocations are accomplished. The exception to this is Ohio Avenue from Bridge Avenue to Cochran Street. Staff recommends that this street not be vacated in this location because half of the street is dedicated for street purposes and the other half for park purposes. Staff recommends that this remain public and that an appropriate fire access/utility maintenance agreement be made to accommodate this as public right of way. The Hearing Examiner finds that this street should not be vacated through the plat/PUD process, but the applicant can apply for a street vacation by the City Council pursuant to the requirements of the City Code.

24. Slope easements for cuts and fills, as deemed necessary by Engineering Services-Developer Services are to be granted to the City of Spokane for the construction and

maintenance of public streets in and adjoining this plat. This statement must be included in the dedicatory language on the face of the final plat/PUD. All easements, existing and proposed as well as their purpose shall be on the final plat. A 10-foot utility easement shall be granted along all streets within the plat.

25. Prior to the signing of the final plat, a developer agreement must be negotiated and executed between the City and the developer. This agreement shall address the timing and financing of recommended traffic mitigations as well as any other issues relating to development and mitigation which the City and the developer agree to address.

26. The Transportation Department has determined that concurrency can be certified for Phase 1 build out. This concurrency is based on the construction of 785 residential units and 747,700 square feet of commercial space or 2,491 adjusted evening peak hour trips. If the number of units and total square feet or the number of evening peak hour trips is exceeded prior to the completion of Phase 1, concurrency shall be recertified for the remainder of the phase. The recertification may require additional mitigations. The following transportation mitigations are to be accomplished for the Phase 1 build out based on the thresholds cited above.

A. The developer will be 100% responsible for financing the following mitigations:

1. Construction of full intersection improvements for Monroe Street and Kendall Yards Boulevard.
2. Construction of Kendall Yards Boulevard to minor arterial standards between Maple Street and Monroe Street, including full intersection improvements for Maple Street and Kendall Yards Boulevard.
3. Removal or relocation of the north bridge abutment and the addition of a deceleration lane for north bound Maple Street at the intersection with Kendall Yards Boulevard.
4. Modifications to the lane widths on Monroe Street through re-striping and construction of transitions.
5. Design only of Bridge Avenue from Monroe Street to Lincoln Street including street resurfacing, new sidewalk, street trees, and other street features as appropriate.
6. Construction of the Centennial Trail (Monroe Street Bridge to the west), including the trail, lighting, and associated improvements adjacent to the Kendall Yards project. Construction of the trail can be implemented to coincide with phases of the Kendall Yards project.
7. Construction of improvements to Ohio Avenue where vehicles are to be prohibited.

B. The following mitigation items and their financing arrangements will be addressed by the developer and the City in the above-mentioned Developer Agreement:

1. Installation of left-turn signal heads at the intersection of Northwest Boulevard and Indiana Avenue.
2. Construction of improvements in accordance with the mitigations proposed in the Washington State Department of Transportation (WSDOT) letter to

Tom Arnold dated 7-14-06.

3. Acceptable mitigation to the City of Spokane for Monroe Street and Lincoln Street at Broadway Avenue, including stop warrant analysis and subsequent improvements to the Lincoln/Broadway connector.
4. Design only of the connection of the Centennial Trail from the Monroe Street Bridge east to Post Street.
5. To address overall congestion on the Maple/Ash corridor the developer will contribute financially or add to the City's Maple/Ash Street ITS communication/conduit project (as defined in the 2007-2012 Six Year Street Program) based upon a reasonable share of impact utilizing the Developer Agreement.
6. Signal timing revision for the following intersections:
  - a. Northwest Boulevard and Maple Street,
  - b. Northwest Boulevard and Indiana Avenue,
  - c. Indiana Avenue and Post Street,
  - d. Maple Street and Second Avenue,
  - e. Maple Street and Fifth Avenue,
  - f. Maple Street and Kendall Yards Boulevard,
  - g. Monroe Street and Kendall Yards Boulevard,
  - h. Monroe Street/Lincoln Street and Broadway,
  - i. Third Avenue and Lincoln Street,
  - j. Fourth Avenue and Walnut Street.

27. After the completion of Phase 1 a revised traffic study shall be submitted and transportation concurrency recertified for any future phases of Kendall Yards. Mitigations for future phases will include but are not limited to, the following:

- a. The addition of a third through lane for north bound Maple Street at Northwest Boulevard.
- b. The addition of a northbound right turn lane at the intersection of Northwest Boulevard, Indiana Avenue, and Monroe Street.
- c. The removal of parking and addition of a southbound right turn lane at the intersection of Post Street and Indiana Avenue.
- d. Study, design and construction of physical traffic calming features on local access streets adjacent to the Kendall Yards project.
- e. Signal timing revisions for the following intersections:
  1. Monroe Street and Maxwell Avenue,
  2. Northwest Boulevard and Maple Street,
  3. Maple Street and Second Avenue,
  4. Maple Street and Fifth Avenue,
  5. Northwest Boulevard, Indiana Avenue, and Monroe Street,
  6. Post Street and Indiana Avenue,
  7. Monroe Street, Spokane Falls Boulevard, and Main Avenue.

28. Prior to the issuance of any building permit for any structure in the plat/PUD, a trip

generation letter shall be submitted for review and acceptance, unless further defined in the Developer Agreement. The letter shall include the number of proposed residential units or the number of square feet of commercial space for the proposed structure, the number of evening peak hour trips for the proposed structure, and a running total of each for the phase.

29. Cannon Street should be constructed as a through street between Bridge Avenue and Kendall Yards Boulevard. If the applicant proposes to vacate that street, then, at a minimum, a pedestrian/bicycle connection shall be maintained along the Cannon Street or Elm Street alignment. The Applicant shall use its best efforts to provide connections to and through the project for as many north/south residential streets west of Maple as is feasible.

30. The applicant shall develop, in coordination with the City of Spokane and the Washington Department of Fish and Wildlife a habitat management plan that meets the requirements of SMC 11.19.2566E. The habitat management plan will address the slope areas along the river adjacent to the applicant's property. In addition to addressing the requirements in the ordinance the plan shall address the potential affects of lighting and pets from this development on habitat areas and propose mitigation. The recommendations of the plan shall become part of the CC&Rs for the development and also part of the rules for the homeowners association. Recommended mitigation shall become conditions of this approval.

31. The applicant, in conjunction with the City of Spokane, shall conduct a traffic calming analysis to look at traffic impacts and traffic calming mitigation for the north south local access streets that are being linked between Kendall Yards Boulevard and the West Central Neighborhood to the north. In developing the traffic calming analysis, the parties shall also seek comments from Spokane County to insure that the streets around the Courthouse and the other government buildings in the area are taken into consideration in the study.

32. The requirements of SMC 17C.0160, the North River Overlay District, apply to the PUD/plat.

33. Concurrency for all utilities and facilities must be certified for each phase of the development.

34. A \$250.00 deposit will be required for each monument to be installed as part of this final plat/PUD. Civil engineered plans and profiles shall use NAVD88 datum (City of Spokane datum minus 13.13 feet).

35. In accordance with the City's Financial Guarantee Policy, a financial guarantee will be required for all street, drainage, utilities, and erosion/sediment control improvements not constructed prior to approval of the final PUD.

36. The area (in square feet) and street address of each lot shall be shown on the face of the final plat.

37. The plattor should consult with the Department of Engineering Services to insure the proper wording is used in the dedication on the final plat.

38. The applicant shall implement all mitigation set forth in the Mitigation Matrix of the Final Supplemental Environmental Impact Statement, Pp. 15-20 unless modified by these conditions.

39. The applicant shall use its best efforts to: 1) Obtain LEED's (Leadership in Energy and Environmental Design) certification and; 2) to design all site lighting to minimize its potential for extending on to the slopes along the Spokane River Gorge.

40. This approval does not waive the applicant's obligation to comply with all other requirements of the Spokane Municipal Code as well as requirements of City Departments and outside agencies with jurisdiction over land development.

41. Spokane Municipal Code 17G.060.240 regulates the expiration of this approval, and Table 17G.060.3 sets forth the time frame for the expiration of all approvals.

DATED this 21<sup>st</sup> day of September 2006.

  
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Greg Smith  
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 of the Hearing Examiner regarding preliminary plats and planned unit developments are final. They may be appealed to the City Council. All appeals must be filed with the Planning Department within fourteen (14) calendar days of the date of the decision. The date of the decision is the 21st day of August 2006. **THE DATE OF THE LAST DAY TO APPEAL IS THE 5TH DAY OF OCTOBER 2006 AT 4:30 P.M.**

In addition to paying the appeal fee 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 City Council.

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