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CF 311240

FINDINGS, CONCLUSIONS AND DECISION
OF THE CITY COUNCIL OF THE CITY OF SEATTLE

In the matter of the Petition)	
of)	
)	C.F. 311240
Northgate Plaza LLC and)	DPD Project 3006101
T&M Jenn LP)	
)	FINDINGS, CONCLUSIONS
To rezone 365,040 square)	AND DECISION
feet of land located at)	
11200 1 st Avenue Northeast)	
from MR to NC3-85)	

Introduction

This matter involves a request by Northgate Plaza LLC and T&M Jenn LP (Owners) to rezone approximately 365,040 square feet of land located at 11200 1st Avenue Northeast from Midrise (MR) to Neighborhood Commercial 3 with an 85 foot height limit (NC3-85). Attachment A shows the area to be rezoned (Rezone Site).

On March 26, 2012, the Director of the Department of Planning and Development (DPD) recommended approval of the rezone, with conditions. On July 27, 2012, after holding an open-record hearing, the Hearing Examiner issued her Findings and Recommendation that recommended approval of the rezone, subject to conditions. The Council received no appeals of the Hearing Examiner's Findings and Recommendation.

The matter first came before the Planning, Land Use, and Sustainability Committee (Committee) on September 13, 2012. At that meeting, the Committee reviewed the Hearing Examiner's file and staff report, and considered the merits of the rezone petition. On October 26, 2012, the Committee voted to recommend approval of the rezone to the full Council.

Findings of Fact and Conclusions

1. The Council adopts the Hearing Examiner's Findings of Fact and Conclusions of Law for C.F. 311240, dated July 27, 2012.

2. The Council adopts the conditions recommended in the Hearing Examiner's Findings and Recommendation for C.F. 311240, dated July 27, 2012, and amended to read as follows:

a. No development will be permitted on the Rezone Site prior to Seattle Public Utilities' approval of a sewer system engineering analysis and any required infrastructure improvements.

b. Future development on the Rezone Site shall be consistent with the mitigation described in massing Option 3 in Section II.D of the "Addendum to the Northgate Urban Center Rezone Final Environmental Impact Statement for Rezone of 11200 1st Avenue N.E. and 11205 3rd Avenue N.E. from the Midrise to Neighborhood Commercial 3-85'," dated November, 2011, and included in Clerk File 311240 as Hearing Examiner Exhibit 3.

c. The following conditions relate to affordable housing:

1. The Owners shall make land at the Rezone Site available for lease, for a minimum period of 75 years, with zero lease payments due for a minimum period of 20 years, for a low-income housing developer ("Lessee") to construct 66 rental units that are restricted to occupancy by households with incomes no higher than 50% of Median Income, for a minimum period of 50 years from the date of issuance of a Final Certificate of Occupancy for the 66-unit project ("Affordable Housing"). In determining the amount of land made available for lease pursuant to this provision, the following criteria shall be followed for the Affordable Housing, to the extent that these criteria are not inconsistent with then applicable provisions of the City of Seattle Land Use Code:

a) the units are contiguous within a single building;

b) "5 over 1" construction with no nonresidential use within the building; parking at a ratio of no more than .5 spaces per unit, with the parking to be constructed in one level below the building, with the exception of Code-

required handicapped stalls which are to be provided on grade; and

c) the unit mix generally reflecting the current mix of units at the Rezone Site (which is 30% studios, 42% 1-bedrooms, and 28% 2-bedrooms), unless the Lessee determines that a different unit mix is needed for adequate funding of the Affordable Housing; provided, however, that a building with predominantly all studio units shall not be considered consistent with this Agreement unless there is no reasonable alternative.

The definition of "Median Income" in SMC 23.84A.025, as it exists on the date of this Agreement, shall apply.

2. Following the 20-year period of zero lease payments, the Owners may charge rent to the Lessee, provided that rents shall be discounted from prevailing market rents for an additional 20 years, with rents not to reach market level until year 41 from the commencement of the Lease. Rent increases during the second, 20-year period shall be incremental. Unless the Owners and Lessee agree otherwise, rents shall be increased to no more than 25% of market rate during the first five-year interval (years 21 to 25), increasing to no more than 50% of market rate during the second five-year interval (years 26 to 30), increasing to no more than 75% of market rate during the third five-year interval (years 31 to 35), and increasing to 85% of market rate during the final five-year interval (years 36 to 40). "Market rate" shall be determined by a method agreed to by the Owners and Lessee based on commercially reasonable practices, such as a land appraisal or with reference to the Consumer Price Index. The Owners shall consult with Lessee regarding the market rate before these rent increases are established and also during the term of the lease beyond year 40.

3. Construction of the Affordable Housing shall commence no later than eight years from issuance of a demolition permit for demolition of the first 50 or more existing units on the Rezone Site.

4. The Owners intend for the Affordable Housing to be constructed on the Rezone Site. However, in the event the Owners cannot come to an agreement with an acceptable Lessee for the Affordable Housing at the Rezone Site, then in lieu of making land available for lease at the Rezone Site, the Owners shall instead make a payment to a low-income housing developer or developers selected by the Owners in consultation with the City, Seattle Displacement Coalition, and the Maple Leaf Community Council for construction at

an off-site location or locations (following the priorities set forth below) of 66 rental units that are restricted to occupancy by households with incomes no higher than 50% of Median Income, as defined herein, for a minimum period of 50 years from the date of issuance of a Final Certificate of Occupancy for that 66-unit project ("Payment"). The Payment amount shall be equal to the present value of both the 20-year period of zero lease payments and the present value of any discounted incremental lease payments, as described in Section 1(c)(2), that are reasonably likely from the second, 20-year period of discounted rent, as calculated by the City of Seattle Office of Housing at the time of the Payment. The Payment shall be made no later than seven years from issuance of a demolition permit for demolition of the first 50 or more existing units on the Rezone Site. The Payment agreement with the low-income housing developer shall require that the affordable housing built with the Payment be within the City limits, with the following priorities for location:

- a) within the Northgate Urban Center;
- b) within 0.5 miles of light rail or bus rapid transit stations in northeast Seattle;
- c) within 0.25 miles of a bus stop in northeast Seattle; or
- d) within 0.5 miles of a light rail or bus rapid transit station or within 0.25 miles of a bus stop elsewhere inside the Seattle city limits.

5. In addition to the Affordable Housing or Payment, the Owners shall allow an additional 10% of the residential units developed on the Rezone Site in excess of 660 residential units (not including assisted living or hotel rooms which shall not be considered residential units) to be affordable to households with incomes no higher than 80% of Median Income, as defined herein ("10% Units"). This obligation is satisfied if the Owners make a reasonable effort for a developer to lease a portion of the Rezone Site at market rate to develop the 10% Units. This opportunity shall be provided by the time of issuance of a Master Use Permit allowing development of the 660th residential unit on the Rezone Site.

6. This Section 1(c) shall apply in the event that the City has not enacted or expanded an affordable housing incentive program providing for the development of low-income housing at the Rezone Site before a Master Use Permit is considered vested under City law. If the City has enacted or expanded such a program that applies to a Master Use Permit on the Rezone Site according to City vesting law,

then that program shall apply instead of this Section 1(c); provided, however, that if the newly enacted or expanded affordable housing incentive program requires fewer affordable units than this Section 1(c) while still allowing a Floor Area Ratio of at least 4.5 for a single use building and at least 6.0 for a mixed use building on the Rezone Site, then the Owners nonetheless agree to implement this Section 1(c), and further, if a Lease has been entered into for the Affordable Housing or the 10% Units, or the Payment has been made for affordable housing at an off-site location, then the Affordable Housing or Payment, and the 10% Units, shall be credited toward compliance with the applicable affordable housing incentive program, as determined by DPD in consultation with the City of Seattle Office of Housing.

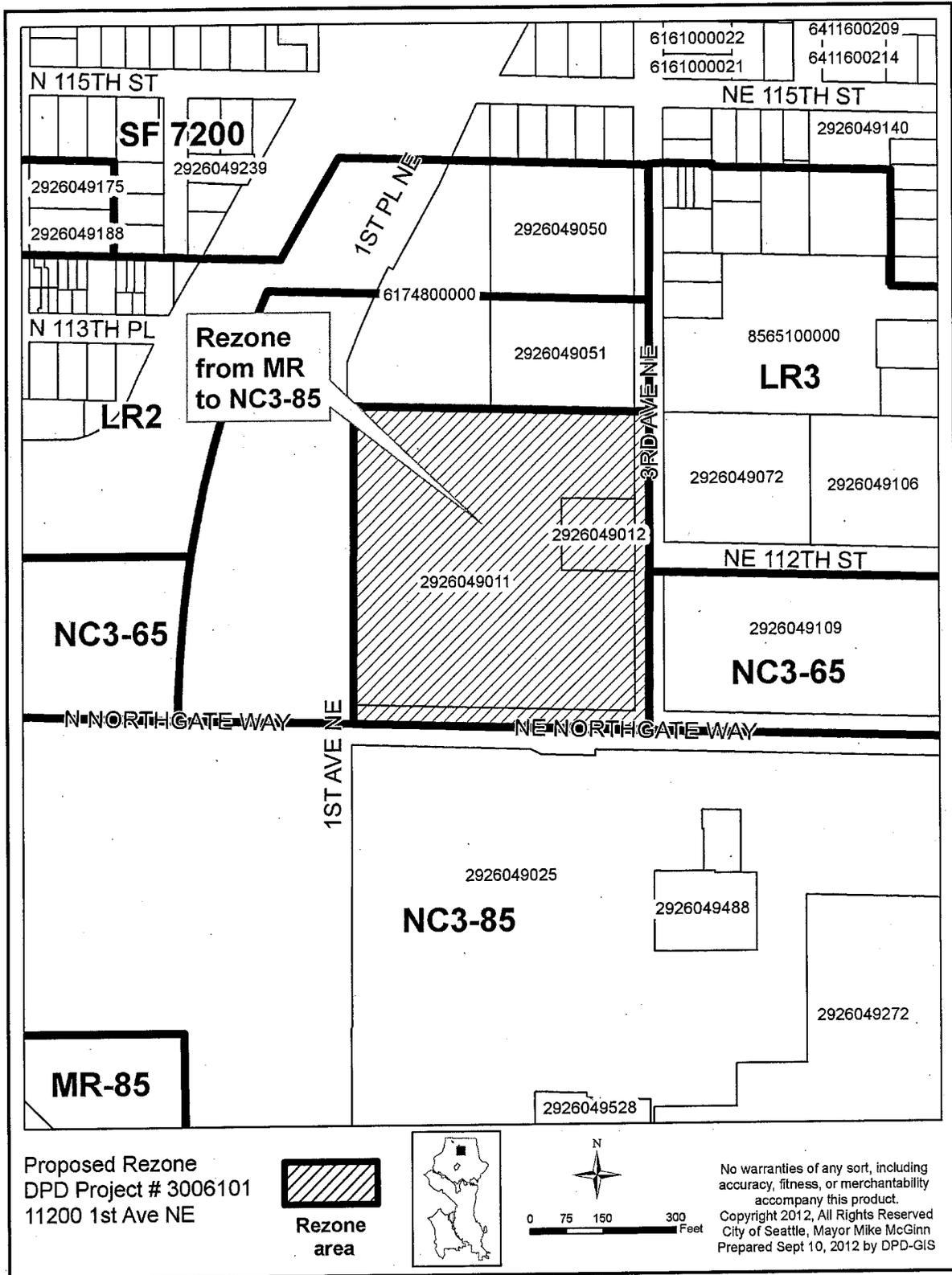
Decision

The Council GRANTS a rezone of the Rezone Site from MR to NC3-85 as described above and found in Attachment A. The rezone is subject to the execution of a Property Use and Development Agreement (PUDA) requiring the Owners to comply with the amended conditions described above. The rezone shall not expire unless the City Council changes the zoning designation of the Rezone Site by ordinance. The restrictions and requirements in the PUDA shall terminate as provided in the PUDA.

Dated this _____ day of _____, 2012.

City Council President

ATTACHMENT A



**FINDINGS AND RECOMMENDATION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Application of

**JENNIFER GRANT on behalf of
NORTHGATE PLAZA LLC, & T&M JENN LP**

for a rezone for property
located at 11200 1st Avenue NE

CF 311240

DPD Reference:
3006101

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Introduction

Jennifer Grant, on behalf of Northgate Plaza, LLC and T&M Jenn, LP, applied for a rezone of property located at 11200 1st Avenue NE from Midrise (multifamily) zoning to Neighborhood Commercial 3 zoning with an 85-foot height limit. The Director of the Department of Planning and Development (Director or Department) issued a report recommending that the rezone be approved with conditions. The Director's report included adoption of an existing environmental impact statement (EIS) and issuance of an Addendum to the EIS pursuant to SEPA (Addendum). Appeals of the adequacy of the environmental documents were dismissed in a Hearing Examiner decision issued in consolidated cases MUP-12-007, MUP-12-008 and MUP-12-009. The Applicant's appeal of a condition imposed pursuant to SEPA was dismissed for lack of jurisdiction in MUP-12-010.

A hearing on the rezone application was held before the Hearing Examiner (Examiner) on June 26, and July 6, 2012. The Applicant/Owners were represented by Melody B. McCutcheon, attorney-at-law; and the Director was represented by Shelley Bolser, Senior Land Use Planner, and Cliff Portman, Principal Land Use Planner. The record was held open for the Examiner's site visit and closed on July 23, 2012.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. Having considered the evidence in the record, the Examiner enters the following findings of fact, conclusions and recommendation on the rezone application.

Findings of Fact

Site and Vicinity

1. The rezone site is composed of two parcels. One is approximately 7.86 acres in size and developed with low density, one- and two-story multi-family housing called "The Northgate Apartments," which was constructed in 1951. The other is approximately one-half acre in size and developed with two single-family residences and one duplex.

2. The 207 units at the Northgate Apartments all rent at levels affordable to those making 50% to 60% of the median income level as defined by the United States Department of Housing and Urban Development. All are nearing the end of their lifespan and require frequent repair to maintain them as rental units. The main utility systems for some of the buildings are failing.

3. The property is located in the northern part of the Northgate Urban Center, within the Northgate District Overlay. Zoning to the north is Midrise (MR), then Lowrise-2 (L-2), and then Single-family. These properties are developed with one- to six-story residential structures. To the south is NE Northgate Way and then the Northgate Mall, which is zoned Neighborhood Commercial 3 with an 85 foot height limit (NC3-85). To the east is 3rd Avenue NE and then a swath of property with four different zoning designations: 1) the property located on the north side of Northgate Way is zoned NC3-65 and developed with the Target/Best Buy complex; 2) north of that is L-4-zoned property that is developed with Hubbard Homestead Park, multifamily residential structures and small commercial structures; 3) further north is L-3-zoned property developed with small commercial and single-family structures; and 4) then single-family zoning and development. To the west is 1st Avenue NE and the Interstate 5 freeway and on-ramps. West of the freeway is NC3-65 zoning and development on the south and L-2 zoning and development on the north.

4. The site is flat, as are surrounding areas, and there are no Environmentally Critical Areas on or near it.

5. The predominant scale of development in the area in terms of building width and depth is Neighborhood Commercial. The Midrise scale, with buildings no wider than 150 feet, and filling no more than 75 percent of the lot depth, is seen in only one multifamily structure to the north of the site. A multifamily structure directly north is 447 feet wide and 222 feet deep; a multifamily structure to the northeast is 283 feet wide and 233 feet deep, and the Target/Best Buy complex is 290 feet wide and 274 feet deep. *See Exhibit 6.*

6. Nearby open space includes Hubbard Homestead Park, Northgate Park approximately six blocks to the southeast, and several other parks to the north, east, southeast and southwest, all within approximately 10 blocks of the site. Two elementary schools and North Seattle Community College are located nearby.

7. The site has excellent transit service. There is frequent bus service along NE Northgate Way, and the site is located approximately one-half mile north of the existing Northgate Transit Center and the site of the future Northgate Light Rail Station, which is expected to open in approximately 2020.

8. NE Northgate Way is classified as a principal arterial, 1st Avenue NE is classified as a collector arterial, and 3rd Avenue NE is classified as a non-arterial access street. Area parking consists of structured parking, surface parking and limited on-street parking.

9. The Northgate Coordinated Transportation Investment Plan (CTIP) is identified as a "comprehensive, prioritized program of transportation improvements that would be needed to accommodate Northgate's projected 2030 growth employment and households." Exhibit 15 at 4-51. The EIS indicates that installation of the improvements listed in the CTIP will be adequate mitigation for traffic from future development of the entire Northgate Urban Center Rezone area, including the subject property. Exhibit 9 at 3-44 to 3-46.

Zoning History

10. The Director found no evidence of recent zoning changes in the immediate area. The zoning history of the site is as follows:

1947 – Second Residence District, Area District A (R2-A)

1950s – RM zone (Multiple Residence)

1982 – MR (Midrise Multi-family)

Neighborhood Plan

11. In evaluating a rezone proposal, consideration is to be given to those parts of a neighborhood plan that have been adopted by the City Council, with particular attention given to any adopted policies that guide future rezones. SMC 23.34.008.D.

12. The site is located within what is called the "North Core Subarea" of the Urban Center. Comprehensive Plan (Plan) at 8.136. The adopted portions of the Northgate Neighborhood Plan include policies that relate to rezones. NG-P7 calls for reducing conflicts between activities and promoting a compatible relationship between different scales of development by maintaining a transition between zones that allow significantly different intensities of development. NG-P8 stresses maintaining the character and integrity of existing single-family-zoned areas by maintaining that zoning on properties that meet the single-family locational criteria. NG-P-8.5 calls for supporting future potential rezones to higher intensity designations in the North Core Subarea and indicates that in considering such rezones, particular attention should be paid to creating a network of pedestrian connections and encouraging pedestrian activity. NG-G7 calls for medium to high density residential and employment uses concentrated within a 10-minute walk of the transit center.

Proposal

13. The Applicants seek a rezone of the subject property from MR to NC3-85. No development proposal is associated with the rezone application.

Public Comment

14. The Director received written public comments in response to the notice of the rezone proposal and the notice of availability of the EIS Addendum. Exhibit 24. The Examiner heard testimony from five members of the public and received additional written comments. *See Exhibits 1, 10, 19, 21 and 22.*

15. Comments supporting the rezone cited the site's suitability to receive additional growth and its proximity to future light rail, as well as the rezone's consistency with the City's planning initiatives in the Northgate Urban Center. Comments in opposition raised concerns about the potential loss of affordable housing in light of the fact that the Code's incentive zoning provisions on affordable housing that apply in the MR zone but not in the NC zone. Other concerns included traffic and parking, the pedestrian environment, encroachment of commercial zoning into residential areas, potential shadows on adjacent properties, reduction in open space, water runoff, the need for a contract rezone, and the perception that the proposal does not meet several rezone criteria.

Director's Review

16. The Director reviewed the proposal, the public comments and the SEPA documents and issued a report recommending approval of the rezone with conditions.

17. The Director's Recommended Conditions 1 and 2 are rezone conditions that address the provision of affordable housing in conjunction with development of the site. Exhibit 2 at 33. The Director noted that the Plan includes a policy (H30) stating that the City's share of affordable housing needs should be addressed by planning for specific percentages of expected housing to be affordable to those at certain established income levels. Exhibit 2 at 12. Citing the EIS, the Director also noted that the intent of the Northgate Urban Center Rezone was to provide affordable housing and open space through zoning regulations in the Land Use Code. The Director observed that while MR zoning is subject to incentive zoning provisions to gain additional floor area ratio (FAR), these incentives do not apply in the proposed NC zone. Exhibit 2 at 13. However, the Director recognized that a developer would have the option to build to the base FAR under MR zoning without providing any affordable housing units, a scenario that could result in affordable housing units falling short of what is envisioned for urban centers. Exhibit 2 at 16.

18. The Director analyzed the potential impact of the proposed rezone on low-income housing and concluded that it would allow increased development potential of 638,820 square feet (a 41% increase from the existing maximum FAR under MR zoning) without requiring any mitigation of impacts to affordable housing. Exhibit 2 at 16. On the basis of Plan Policy H30 and the EIS, the Director recommended imposing two conditions to mitigate the impacts of the proposed rezone development potential on the need for affordable housing near transit hubs. Exhibit 2 at 16-17.

19. The Director's recommended Condition 1 would require that prior to issuance of the building permit, the Applicant must "demonstrate that a minimum of 5% of the proposed floor area in each building permit is designed as housing affordable to households making up to 80% of the King County median income, or 3% of the proposed floor area is designated as housing affordable to households making up to 50% of King County median income." Exhibit 2 at 17 and 33. Recommended Condition 2 would require that "prior to issuance of a MUP, the applicant provides DPD with a signed Memorandum of Agreement between the applicant and the Office of Housing which defines the details for implementing a 3-5% affordable housing requirement. At a minimum, this agreement shall include a 50 year term of affordability for the required affordable housing." Exhibit 2 at 17 and 33.

20. Seattle Public Utilities (SPU) determined that water capacity in the area is sufficient for the current and proposed zoning. Exhibits 27, 33 and 34. SPU did not require a full wastewater system capacity analysis at the rezone stage, but stated that no development would be permitted under the rezone unless the analysis was done and any necessary additional infrastructure was built or otherwise committed at that time. Exhibit 26. The Director's Recommended Condition 3 is a rezone condition that responds to SPU's requirements. Exhibit 2 at 19 and 33.

21. The Director analyzed the rezone's height, bulk and scale impacts pursuant to SEPA. Exhibit 2 at 29-33. The EIS addressed height, bulk and scale impacts for the Northgate Urban Center Rezone, including the fact that midrise zoning requires building setbacks from the street and sidewalk lines, whereas NC3 zoning does not. Section II.D of the Addendum discusses the height, bulk and scale impacts of the proposed rezone and includes three options for mitigating those impacts along the northern portion of the rezone site, the only edge that does not abut a street. *See* Addendum at 13 and 15-18. Option 3 was developed and suggested by the Applicants/Owners and is labeled the "23-foot Modulated Envelope". It is described in detail in the Addendum and includes setbacks from the northern, western and eastern property lines, in addition to the maximum required by the NC3-85 zone, as well as upper level setbacks above 55 feet. Exhibit 3 at 17.

22. The Director determined that massing Option 3 would be sufficient to mitigate the proposed rezone's probable shadow impacts on residential property to the north and the park to the northeast. These impacts were disclosed in Section II.E of the Addendum at 18-44.

23. The Director also determined that Option 3 "appears to provide adequate mitigation for the potential impacts of additional height, bulk and scale of the rezone, for the property to the north and the Park to the northeast". Exhibit 2 at 33. In addition, the Director noted the likelihood that any development on the rezone site would be required to submit to design review, which would include consideration of height, bulk and scale impacts.¹ The Director's Recommended Condition 4 is a SEPA condition that would

¹ The threshold for design review in NC zones is four dwelling units.

require future development of the site to be consistent with the mitigation described in Section II.D of the Addendum for massing Option 3. Exhibit 2 at 33.²

24. The Director noted that in MR zones, maximum building widths and depths provide mitigation of potential building bulk impacts, whereas NC3-85 zones have no maximum building width or depth requirements. The Director's Report states that removal of a maximum building width requirement through the proposed rezone would result in "potential" adverse height bulk and scale impacts, and that when combined with the additional FAR and height, "the *potential impact could be significant*". Exhibit 2 at 31 (emphasis added). On this basis, the Director recommended Condition 5, a SEPA condition that would require any future development to be consistent with maximum building width and depth requirements applicable to Midrise zones, with the exception of allowing a continuous street wall on NE Northgate Way. Exhibit 2 at 33.

25. At the hearing, the Director asked the Examiner to consider whether Recommended Condition 5 was truly needed to mitigate the rezone's height bulk and scale impacts.

Proposed Condition on Affordable Housing

26. After the prehearing conference in this case, the Applicant, two of the parties who had filed SEPA appeals related to the rezone application (the Seattle Displacement Coalition and the Maple Leaf Community Council), and the Director, assisted by the City Attorney's Office, entered into mediation on the issue of addressing the proposed rezone's impacts on affordable housing. The mediation resulted in a settlement agreement.

27. At the hearing, the parties to the mediation presented the Examiner with an "Agreed Condition on Affordable Housing for Hearing Examiner Rezone Proceeding" (Agreed Condition), Exhibit 20. They asked that if the Examiner recommended approval of the proposed rezone, the Examiner also recommend that the Agreed Condition be imposed on the rezone instead of recommended conditions 1 and 2 in the Director's Report, Exhibit 2.

28. The Agreed Condition requires that the Applicant/Owners make part of the site available for lease, for a minimum of 75 years, with no lease payments due for a minimum of 20 years, to allow a low-income housing developer to construct 66 rental units that would be restricted for 50 years to households with incomes at or below 50% of the median income level, and prescribes criteria for the housing. The Agreed Condition also provides that the Applicant/Owners may charge rents discounted by a prescribed percentage to the lessee during the next 20 years, with rents prohibited from reaching market level until 41 years from the start of the lease. The Agreed Condition makes provision for a payment in lieu of making the land available for lease if the Applicant/Owners are unable to reach agreement with an acceptable lessee for the affordable housing on the site. In addition to the affordable housing or payment, the Agreed Condition requires the Applicant/Owners to allow an additional 10 percent of

² The Addendum Section is misstated as "E" in Exhibit 2.

residential units developed on the site, in excess of 660 units, to be affordable to households with incomes at or below 80% of the median income level. Exhibit 20.

29. Although they had submitted comments opposing the rezone application, representatives of the Seattle Displacement Coalition and the Maple Leaf Community Council each testified that their organizations support the rezone if the Agreed Condition is imposed in place of the Director's recommended conditions 1 and 2. See Exhibits 21 and 22.

Applicable Law

30. SMC 23.34.008.A requires that the zoned capacity for urban villages be no less than 125% of the growth targets adopted in the Comprehensive Plan for the village. For residential urban villages taken as a whole, the zoned capacity must be within the density ranges established in the Land Use Element of the Comprehensive Plan.

31. SMC 23.34.024.A prescribes the function of the MR zone as "providing concentrations of housing in desirable, pedestrian-oriented urban neighborhoods with convenient access to regional transit stations" and where a "mix of activity provides convenient access to a full range of residential services and amenities" as well as "opportunities for people to live within walking distance of employment."

32. SMC 23.34.024 provides the relevant locational criteria for the MR zone in terms of "Threshold Conditions" and "Other Criteria" The Threshold Conditions provide that the only properties that may be considered for MR zoning are those already zoned MR, those in areas already developed predominantly to MR intensity, and those within an urban center or urban village where a neighborhood plan was adopted or amended by the Council after January 1, 1995 and indicates that the area is appropriate for MR zoning.

33. The relevant "Other Criteria" for Midrise zoning provide that the designation is most appropriate in areas "generally characterized by" properties that are: 1) "adjacent to business and commercial areas with comparable height and bulk"; 2) "in areas that are served by major arterials and where transit service is good to excellent and street capacity could absorb the traffic generated by midrise development"; 3) "in areas in close proximity to major employment centers"; 4) in areas in close proximity to open space and recreational facilities"; 5) "in areas along arterials where topographic changes ... provide an edge or permit a transition in scale and surroundings"; 6) "in flat areas where the prevailing structure height is greater than 37 feet" or "there is no established height pattern"; and 7) in areas characterized by various levels of slope with specific view conditions.

34. SMC 23.34.072 addresses designation of commercial zones. It discourages encroachment of commercial development into residential areas and encourages compact, concentrated commercial areas or nodes over diffuse, sprawling commercial areas, and the preservation and improvement of existing commercial areas.

35. SMC 23.34.078.A states that the NC3 zone functions to “support or encourage a pedestrian-oriented shopping district that serves the surrounding neighborhood and a larger community, citywide, or regional clientele; that incorporates offices, business support services, and residences that are compatible with the retail character of the area”; and where it is possible to achieve a "variety of sizes and types of retail and other commercial businesses at street level," “[c]ontinuous storefronts or residences built to the front lot line," “[s]hoppers can drive to the area, but walk around from store to store," and “[t]ransit is an important means of access."

36. SMC 23.34.078.B provides locational criteria for the NC3 zone and states that the designation is "most appropriate on land that is generally characterized by the following conditions: 1. The primary business district in an urban center or hub urban village; 2. Served by [a] principal arterial; 3. Separated from low-density residential areas by physical edges, less-intensive commercial areas or more-intense residential areas; [and] 4. Excellent transit service."

37. SMC 23.34.009 prescribes criteria for a rezone that includes consideration of height limits in commercial zones. Height limits are to be "consistent with the type and scale of development intended for the zone," considering the “demand for permitted goods and services and the potential for displacement of preferred uses." They are also to "reinforce the natural topography of the area and its surroundings,” considering the likelihood of view blockage. Height limits established by current zoning are to be considered, and permitted height limits are to be "compatible with the predominant height and scale of existing development, particularly where existing development is a good measure of the area's overall development potential." They are to be "compatible with actual and zoned heights in surrounding areas," and are to provide a "gradual transition in height and scale and level of activity between zones" unless major physical buffers are present.

38. Under SMC 23.34.007.C, compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones. Thus, Plan goals and policies are not separately reviewed.

39. SMC 23.34.007 provides that the applicable sections of Chapter 23.34 SMC on rezones are to be weighed and balanced together to determine the most appropriate zone and height designation. In addition, the zone function statements are to be used "to assess the likelihood that the area proposed to be rezoned would function as intended." SMC 23.34.007.A. "No single criterion ... shall be applied as an absolute requirement or test of the appropriateness of a zone designation ... unless a provision indicates the intent to constitute a requirement...." SMC 23.34.007.B. The general rezone criteria, including “zoning principles,” are set forth in SMC 23.34.008.

40. The most appropriate zone designation is the one "for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation." SMC 23.34.008.B.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 23.76.052.

Capacity and Density

2. The proposed rezone satisfies SMC 23.34.008.A, as it would increase the zoned capacity of the Northgate Urban Center, and the capacity would be consistent with the density established by the Urban Village Appendix in the Comprehensive Plan.

MR Zone

3. The site is consistent with the function of the MR zone. The area provides a concentration of multifamily housing with commercial development on the east, south and west that provides convenient access to a full range of services and amenities, as well as opportunities for employment. The site also has convenient access to regional transit. The area is not presently pedestrian friendly due to large block sizes, busy traffic, wide arterials, and the Interstate 5 freeway and on ramps that constitute a barrier to the west. However, pedestrian improvements are in process, and more are planned for the area.

4. The site meets most of the locational criteria for the MR zone. Because it is already zoned MR, it meets the threshold conditions for MR zoning. It is not designated as an environmentally critical area. It is adjacent to the Northgate commercial corridor, which includes structures of comparable height and bulk; is served by NE Northgate Way, a major arterial included within the CTIP; and is located within a 10 minute walk of the existing transit station and future light rail station. The Northgate Urban Center provides many jobs and is designated for future growth as an employment center. The site is within close proximity to City parks and within a 10 to 15 minute walk of the Northgate Community Center. The area is one where a gradual transition between single-family areas and more intensive MR or NC zones is appropriate and presently exists. Although the site is adjacent to two arterials, it is also relatively flat, without topographic changes to provide an edge or transition in scale. There is also no true established height pattern, with existing structures ranging from one to seven stories in height.

Designation of Commercial Areas

5. The proposed rezone is from a residential zone to a commercial zone and could be considered an encroachment into residential areas. However, the change would be consistent with the pattern of zoning and development in the immediate vicinity, particularly that along NE Northgate Way. The proposal would not conflict with the preferred configuration and edge protection of residential zones established in SMC 23.34.010 and .011. It would constitute a logical extension of the existing concentration of commercial uses along NE Northgate Way and would enhance the corridor by allowing for the increased variety of commercial uses that is permitted in the NC3 zone.

NC3 Zone

6. The site is a good match for the function of the NC3 zone. The shopping district along NE Northgate Way across from and adjacent to the site, serves the surrounding neighborhood as well as a larger community and, to some extent, a citywide and regional clientele. Pedestrian activity is increasingly busy, with three crosswalks located adjacent to the site. The district is sufficiently large to provide comparison shopping for a wide range of goods and services, and the area incorporates offices, business support services and residences, all within one-quarter mile of the site. Shoppers can drive to the area and, with the increasing number of pedestrian amenities, walk from store to store despite the area's historical auto orientation. There is a variety of sizes and types of retail and other commercial businesses at street level, and more recent developments are achieving continuous storefronts built to the front lot line. Transit is a very important means of access, with frequent busses on adjacent arterials, a major Transit Center within a 10 minute walk, and a Light Rail station anticipated to open in approximately 2020.

7. The site also meets the locational criteria for NC3 zoning. It is located within the area's primary business district, which is within an urban center. As noted, it is served by NE Northgate Way, a principal arterial with frequent transit service, and the Transit Center is a 10 minute walk away. The site is separated from low-density residential areas by MR zoning on the north, and by a street and public park on the northeast.

Height Limits

8. A height limit of 85 feet is consistent with the type and scale of development intended for the NC3 zone. See Table A for SMC 23.47A.004 (permitted uses in commercial zones). Further, making provision for additional residential units above a retail base promotes increased density within the Urban Center that is consistent with the Plan and the City's Northgate planning initiatives, and supports the pedestrian-oriented shopping area along NE Northgate Way. There is no evidence of a potential for displacement of preferred uses as a result of increased height at this site. The EIS and Addendum indicate that displacement of the existing single-family use of the site is likely whether or not it retains its MR zoning and height.

9. As noted, the topography in the area is flat, so there is no opportunity for height limits to reinforce natural topography. There is a potential that development at 85 feet will block private, territorial views from multifamily residential structures to the north, but it is likely that these views would also be blocked by development to allowed heights under the existing MR zoning.

10. As also noted, there is no predominant height and scale in the area. With the exception of single-family development within single-family zones, structures range from one to seven stories in height regardless of zoning designation. The height and scale of much of the existing development is not a good measure of the area's overall development potential, particularly along NE Northgate Way.

11. An 85-foot height limit would match the 85-foot limit across NE Northgate Way to the south of the site, and the rezone would retain the existing gradual transition in heights and scales. MR zoning north of the site would provide a buffer between the rezone site and LR2 zoning and development. NC3-65 zoning would be located to the east and west of the site, and 3rd Avenue NE and the park would buffer residential development to the northeast. The Neighborhood Plan does not include specific height recommendations but, as noted above, Policy NG-P8.5 supports rezones to higher intensity designations in the North Core Subarea, which includes the rezone site.

Precedential Effect

12. Because the Neighborhood Plan encourages higher intensity designations within the Urban Core Subarea, the owners of other property within the Subarea may pursue upzones, as well. This would result more from the City's Northgate Urban Rezone Strategy than from any precedential effect of the proposed rezone.

Relationship to Neighborhood Plan

13. The proposed rezone would be consistent with the adopted Neighborhood Plan. It would maintain the existing transition between zones that allow significantly different and intensities of development (NG-P7), maintain the character and integrity of existing single-family zones (NG-P8), and increase the potential for increased residential density and employment uses within a 10 minute walk of the Transit Center (NG-G7). The proposal would also implement NG-P8.5, which supports rezones to higher intensity designations in the North Core Subarea.

Zoning Principles

14. The zoning principles listed in SMC 23.34.008.E are generally aimed at buffering less intensive zones from more intensive zones, if possible. As noted, the proposed rezone would leave existing zoning transitions in the area intact. Parcels to the north zoned MR and developed with multifamily structures buffer lowrise zoning and development located for the north. To the west, the I-5 freeway and on ramps create an effective barrier between the subject property and properties to the west. Properties to the east and south are zoned NC, and the site would be effectively clustered with commercial uses located on these properties, although separated from them by a principal arterial in one case and a non-arterial access street in the other. Like the existing zoning, the proposed rezone would follow platted lot lines, and would result in existing and potential commercial uses facing each other across the street and facing away from adjacent residential uses to the north.

Impact Evaluation

15. The proposed rezone would have a positive impact on housing by providing additional capacity for new dwelling units within the Urban Center.

16. As to impacts on low income housing, the Examiner adopts the Director's analysis in Exhibit 2 at 11-16. It is clear from that analysis that the proposed rezone would have negative impacts on low-income housing. This is due primarily to the fact that in the NC3 zone, provision of affordable housing is not required to gain additional FAR, as it is in the MR zone. Further, the City's SEPA policy on housing requires only compliance with the City's ordinance on housing relocation assistance. *See* SMC 25.05.675.I. Given this regulatory framework, the Director relied on Plan policies and language in the FEIS to recommend conditions requiring that the Applicant/Owners provide some low-income replacement housing when the subject site is developed. However, the Agreed Condition is superior to DPD's proposed Conditions 1 and 2 because it provides certainty as to the number of units that will be provided and the time period in which they will be constructed. It also ensures that the truly low-income units, available to those at or below 50% of the median income level, will actually be constructed. Exhibit 20; Testimony of Fiori.

17. Development of the site to either the existing MR zoning or the proposed NC3-85 zoning would require additional public services.

18. Noise at the site would be typical of that generated by neighborhood commercial and residential activities and would be unlikely to approach existing noise levels attributable to the I-5 freeway. Any development of the site would be subject to Federal, State and City emission control requirements. Development under MR or NC3-85 zoning would likely result in similar amounts of impervious surface, and stormwater collection and management would be required to conform to City standards in any event. Impacts on flora and fauna would also be similar under the MR and NC3-85 zones, except that vegetation requirements for future development would be reduced from .5 Green Factor to .3 Green Factor. There would be no noticeable changes to glare, odor, energy, or private views impacts as a result of a rezone from MR to NC3-85. Potential development of the site under NC3-85 zoning would result in additional shadows on multifamily development to the north and the park to the northeast. As noted, the Director determined pursuant to SEPA that the use of massing Option 3 would provide sufficient mitigation for these impacts.

19. There is no indication in the record that future development under the proposed zoning would have a negative impact on pedestrian safety. It is likely that pedestrian safety would be improved by street improvements that would be required of future development.

20. Considering the additional variety of commercial uses permitted under the NC3 zone, the proposed rezone may create additional employment opportunities in the area.

21. There are no nearby historic landmarks or historic overlays, and the Landmarks Preservation Board determined that the existing structures on the site were unlikely to meet standards for designation as historic landmarks.

22. There is no manufacturing activity in the area, and there are no shorelines visible or accessible at, or near the site.

23. The Director reviewed the proposed rezone's transportation impacts pursuant to SEPA. Development-level impacts cannot be analyzed at this point, as there is no associated development proposal. The Director determined that the site is within the area analyzed in the EIS and that the proposed rezone is within the range of actions and impacts evaluated in the EIS. The Director also reiterated that the improvements listed in the CTIP are expected to be adequate mitigation for future development traffic in the area, including the subject site.

24. As noted, the Director recommended a rezone condition prohibiting development at the subject site prior to SPU's approval of the sewer system engineering analysis and any required infrastructure improvements.

25. The record does not show a sufficient basis under SEPA to impose the additional requirement in the Director's Recommended Condition 5, which would limit building width and depth to that allowed in MR zones with the exception of NE Northgate Way. Further, such a requirement could eliminate some of the more likely uses for the western part of the property, such as a large hotel, and are at odds with the predominant scale of development within the immediate surrounding area. In any case, the significant setbacks and upper-level setbacks provided by massing Option 3, together with design review of development proposals under the new "Northgate Urban Center and Overlay District Design Guidelines," would provide sufficient mitigation for the height, bulk and scale impacts of the proposed rezone.

Changed Circumstances

26. Changed circumstances are not required before a rezone may be approved, and they are to be considered only as they relate to elements or conditions included in the criteria for the relevant zone and/or overlay designation.

27. Since the most recent zoning change in 1982, the City's has adopted the 1994 Comprehensive Plan, designating the Northgate Urban Center, and has adopted a 2024 growth target of 2,500 additional households for the Urban Center. It has also engaged in a concerted planning effort to improve the physical and pedestrian environment in the Urban Center and recently adopted a new neighborhood planning policy to foster rezones within the North Core Subarea. Further, the Transit Center was established since the last zoning change, and the area for the planned Light Rail station was designated. As a result of these actions, the Urban Center, and the North Core Subarea in particular, has increasingly developed into a pedestrian-oriented shopping district that serves the neighborhood as well as a larger community, and an area that incorporates offices, business support services and residences compatible with the retail character of the area. These qualify as changed circumstances and support the requested rezone.

Overlay District

28. The proposed rezone upholds the purpose of the Northgate Overlay District, which is to: "A. Create an environment in the Northgate Area that is more amenable to pedestrians and supportive of commercial development; and B. To protect the residential character of the residential neighborhood; and C. Support the use of Northgate as a regional high-capacity transportation center." SMC 23.71.002.

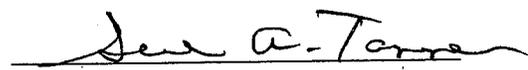
29. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone and height designation for the site is NC3-85.

Recommendation

The Hearing Examiner recommends that the City Council **APPROVE** the requested rezone subject to the following conditions:

1. Affordable housing impacts shall be mitigated as provided in Exhibit 20, the Agreed Condition on Affordable Housing for Hearing Examiner Rezone Proceeding.
2. No development will be permitted at the subject property prior to Seattle Public Utilities' approval of a sewer system engineering analysis and any required infrastructure improvements.
3. Future development shall be consistent with the mitigation described in massing Option 3 in Section II.D of the "Addendum to the Northgate Urban Center Rezone Final Environmental Impact Statement for Rezone of 11200 1st Avenue N.E. and 11205 3rd Avenue N.E. from the Midrise to Neighborhood Commercial 3-85," dated November, 2011.

Entered this 27th day of July, 2012.


Sue A. Tanner
Hearing Examiner

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner's recommendation to consult appropriate Code sections to determine applicable rights and responsibilities.

Pursuant to SMC 23.76.054, any person substantially affected by a recommendation of the Hearing Examiner may submit an appeal of the recommendation in writing to the City Council. The appeal must be submitted within fourteen (14) calendar days following the date of the issuance of the recommendation of the Hearing Examiner, and be addressed to:

Seattle City Council
Built Environment Committee
c/o Seattle City Clerk
600 Fourth Avenue, Floor 3 (physical address)
P.O. 94728 (mailing address)
Seattle, WA 98124-4728

The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought. Consult the City Council committee named above for further information on the Council review process.

Exhibit B: Property Use and Development Agreement – v.1

When Recorded, Return to:

THE CITY CLERK
600 Fourth Avenue, Floor 3
PO Box 94728
Seattle, Washington 98124-4728

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor:	1) <u>Northgate Plaza LLC</u>	2) <u>T&M Jenn LP</u>
	<input type="checkbox"/> Additional on page _____	
Grantee:	1) <u>The City of Seattle</u>	2) _____
	<input type="checkbox"/> Additional on page _____	
Legal Description (abbreviated):	PORTIONS OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON	
	<input checked="" type="checkbox"/> Additional on : <u>pp.2-3</u>	
Assessor's Tax Parcel ID #:	<u>2926049011, 2926049012</u>	
Reference Nos. of Documents Released or Assigned:	<u>Not applicable.</u>	

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 31ST day of October, 2012, in favor of the **CITY OF SEATTLE** (the "City"), a Washington municipal corporation, by **NORTHGATE PLAZA LLC**, a Washington limited liability company, and **T&M JENN LP**, a Washington limited partnership (the "Owners").

RECITALS

A. Northgate Plaza LLC and T&M Jenn LP are the owners of that certain real property (the "Rezone Site") in the City of Seattle zoned Midrise (MR) shown in Attachment A and described as:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF NORTHEAST NORTHGATE WAY (EAST 110TH STREET) WITH THE CENTERLINE OF FIRST AVENUE NORTHEAST, AS SAID STREET AND AVENUE EXISTED PRIOR TO THEIR WIDENING BY DEED TO KING COUNTY DATED DECEMBER 27, 1949, RECORDED JANUARY 31, 1950 UNDER RECORDING NO. 3980663 AND RECORDED IN VOLUME 2911 OF DEEDS, PAGE 527, RECORDS OF KING COUNTY, WHICH INTERSECTION IS THE SOUTHWEST CORNER OF SAID SUBDIVISION;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID SUBDIVISION, 30 FEET, MORE OR LESS, TO INTERSECT THE NORTHERLY MARGIN OF SAID EAST 110TH STREET AS IT EXISTED PRIOR TO SAID WIDENING;

THENCE EASTERLY ALONG SAID NORTHERLY MARGIN, 30 FEET, MORE OR LESS, TO THE EASTERLY MARGIN OF SAID FIRST AVENUE NORTHEAST AS IT EXISTED PRIOR TO SAID WIDENING, WHICH IS THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

THENCE SOUTH 88°19'10" EAST ALONG THE NORTHERLY MARGIN OF SAID EAST 110TH STREET, 599.53 FEET TO THE WESTERLY MARGIN OF THIRD AVENUE NORTHEAST;

THENCE NORTH 00°06'30" EAST ALONG SAID WESTERLY MARGIN, 300 FEET;

THENCE NORTH 88°19'10" WEST 150 FEET;

THENCE NORTH 00°06'30" EAST 150 FEET;

THENCE SOUTH 88°19'10" EAST 150 FEET TO THE WESTERLY MARGIN OF SAID THIRD AVENUE NORTHEAST;

THENCE NORTH 00°06'30" EAST ALONG SAID WESTERLY MARGIN, 180 FEET;

THENCE NORTH 88°19'10" WEST, 598.26 FEET TO THE EASTERLY MARGIN OF SAID FIRST AVENUE NORTHEAST;

THENCE SOUTH 00°13'20" WEST ALONG SAID EASTERLY MARGIN, 630 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THE WESTERLY 10 FEET THEREOF FOR WIDENING SAID FIRST AVENUE
NORTHEAST;

AND EXCEPT THE SOUTHERLY 10 FEET THEREOF FOR WIDENING SAID EAST 110TH STREET
CONVEYED TO KING COUNTY BY THE ABOVE-MENTIONED DEED BEARING RECORDING
NO. 3980663.

AND

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE
SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN
KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF NORTHEAST 110TH STREET AS
SAID STREET EXISTED PRIOR TO ITS WIDENING BY DEED TO KING COUNTY RECORDED
JANUARY 31, 1950, UNDER AUDITOR'S FILE NO. 3980663, WITH THE WEST LINE OF 3RD
AVENUE NE; THENCE NORTH 300.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE
NORTH 150.00 FEET; THENCE WEST 150.00 FEET; THENCE SOUTH 150.00 FEET; THENCE EAST
150.00 FEET TO THE TRUE POINT OF BEGINNING.

B. On December 16, 2010, the Owners submitted to the City of Seattle an
application under Project No. 3006101 for a rezone of the Rezone Site from MR to
Neighborhood Commercial 3 with an 85 foot height limit (NC3-85). The purpose of the
application is to allow the Rezone Site to accommodate future mixed-use, commercial, and multi-
family residential development of greater density. No development proposal is associated with the
rezone application.

C. Seattle Municipal Code Section 23.34.004 allows the City to approve a rezone
subject to "self-imposed restrictions upon the use and development of the property in order to
ameliorate adverse impacts that could occur from unrestricted use and development permitted by
development regulations otherwise applicable after the rezone."

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the
parties agree as follows:

AGREEMENT

Section 1. Agreement. Pursuant to Seattle Municipal Code Section ("SMC") 23.34.004, the
Owners hereby covenant, bargain and agree, on behalf of themselves and their successors and
assigns, that they will comply with the following conditions in consideration of the rezone of the
Rezone Site from MR to NC3-85:

a. No development will be permitted on the Rezone Site prior to Seattle Public
Utilities' approval of a sewer system engineering analysis and any required infrastructure
improvements.

b. Future development on the Rezone Site shall be consistent with the mitigation
described in massing Option 3 in Section II.D of the "Addendum to the Northgate Urban

Center Rezone Final Environmental Impact Statement for Rezone of 11200 1st Avenue N.E. and 11205 3rd Avenue N.E. from the Midrise to Neighborhood Commercial 3-85’,” dated November, 2011, and included in Clerk File 311240 as Hearing Examiner Exhibit 3.

c. The following conditions relate to affordable housing:

1. The Owners shall make land at the Rezone Site available for lease, for a minimum period of 75 years, with zero lease payments due for a minimum period of 20 years, for a low-income housing developer (“Lessee”) to construct 66 rental units that are restricted to occupancy by households with incomes no higher than 50% of Median Income, for a minimum period of 50 years from the date of issuance of a Final Certificate of Occupancy for the 66-unit project (“Affordable Housing”). In determining the amount of land made available for lease pursuant to this provision, the following criteria shall be followed for the Affordable Housing, to the extent that these criteria are not inconsistent with then applicable provisions of the City of Seattle Land Use Code:

a) the units are contiguous within a single building;

b) “5 over 1” construction with no nonresidential use within the building; parking at a ratio of no more than .5 spaces per unit, with the parking to be constructed in one level below the building, with the exception of Code-required handicapped stalls which are to be provided on grade; and

c) the unit mix generally reflecting the current mix of units at the Rezone Site (which is 30% studios, 42% 1-bedrooms, and 28% 2-bedrooms), unless the Lessee determines that a different unit mix is needed for adequate funding of the Affordable Housing; provided, however, that a building with predominantly all studio units shall not be considered consistent with this Agreement unless there is no reasonable alternative.

The definition of “Median Income” in SMC 23.84A.025, as it exists on the date of this Agreement, shall apply.

2. Following the 20-year period of zero lease payments, the Owners may charge rent to the Lessee, provided that rents shall be discounted from prevailing market rents for an additional 20 years, with rents not to reach market level until year 41 from the commencement of the Lease. Rent increases during the second, 20-year period shall be incremental. Unless the Owners and Lessee agree otherwise, rents shall be increased to no more than 25% of market rate during the first five-year interval (years 21 to 25), increasing to no more than 50% of market rate during the second five-year

interval (years 26 to 30), increasing to no more than 75% of market rate during the third five-year interval (years 31 to 35), and increasing to 85% of market rate during the final five-year interval (years 36 to 40). "Market rate" shall be determined by a method agreed to by the Owners and Lessee based on commercially reasonable practices, such as a land appraisal or with reference to the Consumer Price Index. The Owners shall consult with Lessee regarding the market rate before these rent increases are established and also during the term of the lease beyond year 40.

3. Construction of the Affordable Housing shall commence no later than eight years from issuance of a demolition permit for demolition of the first 50 or more existing units on the Rezone Site.

4. The Owners intend for the Affordable Housing to be constructed on the Rezone Site. However, in the event the Owners cannot come to an agreement with an acceptable Lessee for the Affordable Housing at the Rezone Site, then in lieu of making land available for lease at the Rezone Site, the Owners shall instead make a payment to a low-income housing developer or developers selected by the Owners in consultation with the City, Seattle Displacement Coalition, and the Maple Leaf Community Council for construction at an off-site location or locations (following the priorities set forth below) of 66 rental units that are restricted to occupancy by households with incomes no higher than 50% of Median Income, as defined herein, for a minimum period of 50 years from the date of issuance of a Final Certificate of Occupancy for that 66-unit project ("Payment"). The Payment amount shall be equal to the present value of both the 20-year period of zero lease payments and the present value of any discounted incremental lease payments, as described in Section 1(c)(2), that are reasonably likely from the second, 20-year period of discounted rent, as calculated by the City of Seattle Office of Housing at the time of the Payment. The Payment shall be made no later than seven years from issuance of a demolition permit for demolition of the first 50 or more existing units on the Rezone Site. The Payment agreement with the low-income housing developer shall require that the affordable housing built with the Payment be within the City limits, with the following priorities for location:

- a) within the Northgate Urban Center;
- b) within 0.5 miles of light rail or bus rapid transit stations in northeast Seattle;
- c) within 0.25 miles of a bus stop in northeast Seattle; or

d) within 0.5 miles of a light rail or bus rapid transit station or within 0.25 miles of a bus stop elsewhere inside the Seattle city limits.

5. In addition to the Affordable Housing or Payment, the Owners shall allow an additional 10% of the residential units developed on the Rezone Site in excess of 660 residential units (not including assisted living or hotel rooms which shall not be considered residential units) to be affordable to households with incomes no higher than 80% of Median Income, as defined herein ("10% Units"). This obligation is satisfied if the Owners make a reasonable effort for a developer to lease a portion of the Rezone Site at market rate to develop the 10% Units. This opportunity shall be provided by the time of issuance of a Master Use Permit allowing development of the 660th residential unit on the Rezone Site.

6. This Section 1(c) shall apply in the event that the City has not enacted or expanded an affordable housing incentive program providing for the development of low-income housing at the Rezone Site before a Master Use Permit is considered vested under City law. If the City has enacted or expanded such a program that applies to a Master Use Permit on the Rezone Site according to City vesting law, then that program shall apply instead of this Section 1(c); provided, however, that if the newly enacted or expanded affordable housing incentive program requires fewer affordable units than this Section 1(c) while still allowing a Floor Area Ratio of at least 4.5 for a single use building and at least 6.0 for a mixed use building on the Rezone Site, then the Owners nonetheless agree to implement this Section 1(c), and further, if a Lease has been entered into for the Affordable Housing or the 10% Units, or the Payment has been made for affordable housing at an off-site location, then the Affordable Housing or Payment, and the 10% Units, shall be credited toward compliance with the applicable affordable housing incentive program, as determined by DPD in consultation with the City of Seattle Office of Housing.

Section 2. Reporting. If the Owners have not used the Payment option provided in Section 1(c)(4), and no City-adopted affordable housing reporting requirement otherwise applies, then the Owners shall include the following requirements in the lease described in Section 1(c)(1):

a. the lessee shall submit a report to the City of Seattle Office of Housing annually, starting with the first year of the lease described in Section 1(c)(1), that documents compliance with Sections 1(c)(1) and 1(c)(2), and shall pay a fee equivalent to any then-applicable fee for reports required to determine compliance with affordable housing incentive programs; and

b. the lessee shall submit documentation to the City of Seattle Office of Housing sufficient to demonstrate compliance with Section 1(c)(3) no later than one month after commencement of construction of the Affordable Housing.

Section 3. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the land and shall be binding upon the Owners, their heirs, successors and assigns, and shall apply to after-acquired title of the Owners of the Property.

Section 4. Termination of Zoning Designation. The NC3-85 zoning designation applicable to the Rezone Site shall not expire unless the City Council changes the zoning designation of the Rezone Site by ordinance.

Section 5. Termination of Conditions.

a. If the NC3-85 zoning designation expires or otherwise no longer applies to the Rezone Site, the conditions in Sections 1(a) and 1(b) shall terminate automatically.

b. The conditions in Sections 1(c) and 2 shall terminate as follows:

1. Section 1(c)(1), (2) and (4) shall terminate upon the earliest of either:

a) the conclusion of the 75th year of the lease described in Section 1(c)(1), or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).

2. Section 1(c)(3) shall terminate upon the earliest of either:

a) the written certification by the City of Seattle Department of Planning and Development that the Owners have satisfied the obligation in Section 1(c)(3); or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).

3. Section 1(c)(5) shall terminate upon the written certification by the City of Seattle Office of Housing that the Owners have satisfied the obligation in Section 1(c)(5), if applicable, by making a reasonable effort to provide an opportunity (by the time of issuance of a Master Use Permit allowing development of the 660th residential unit, as defined therein, on the Rezone Site) for a developer to lease a portion of the Rezone Site at market rate to develop the 10% Units.

4. Section 2 shall terminate upon the earliest of either:

a) written certification by the City of Seattle Office of Housing that the lease described in Section 1(c)(1) includes the provisions required by Section 2; or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).

c. Notwithstanding the termination events described in Section 5(b), the conditions in Sections 1(c) and 2 shall terminate upon the effective date of a City Council ordinance that either:

1. applies a new zoning designation to the Rezone Site (or amends the regulations applicable within the NC3-85 zoning designation) in a manner that allows a Floor Area Ratio of less than 4.5 for a single use building or less than 6.0 for a mixed use building; or

2. releases the Rezone Site from the conditions in Sections 1(c) and 2, following application of a new zoning designation to the Rezone Site.

d. Upon termination of the conditions as provided herein, and as verified by the City, the Owners may record in the records of King County a notice of such termination.

Section 6. Amendment. This Agreement may be amended or modified by agreement between Owners and the City; provided, such amendment agreement shall be approved by the legislative authority of the City by ordinance.

Section 7. Exercise of Police Power. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 8. No Precedent. The conditions contained in this Agreement are based on the unique circumstances applicable to this Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 9. Repeal as Additional Remedy. Owners acknowledge that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owners avail themselves of the benefits of this rezone but then fail to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may:

a. revoke the rezone by ordinance and require the use of the Rezone Site to conform to the requirements of the MR zoning designation or some other zoning designation imposed by the City Council; and/or

b. pursue specific performance of this Agreement.

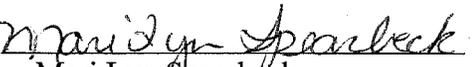
Section 10. References to City Departments. References in this Agreement to the City of Seattle Office of Housing and to Seattle Public Utilities shall be deemed references to any department or office that succeeds the City of Seattle Office of Housing or Seattle Public Utilities, respectively.

SIGNED this 31st day of October, 2012.

Northgate Plaza LLC
a Washington limited liability company

By: 
John Mullally
Its: Managing Member

T&M Jenn LP
a Washington limited partnership

By: 
Mari Lyn Spearbeck
Its: General Partner

STATE OF WASHINGTON
COUNTY OF KING

ss.

On this day personally appeared before me John Mullally, to me known to be the Managing Member, of Northgate Plaza LLC, a Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 31st day of October, 2012.



Janet M. Norman

Printed Name Janet M. Norman

NOTARY PUBLIC in and for the State of Washington, residing at Seattle

My Commission Expires 07/01/2013

STATE OF WASHINGTON
COUNTY OF KING

ss.

On this day personally appeared before me Mari Lyn Spearbeck, to me known to be the General Partner, of T&M Jenn LP, a Washington limited partnership, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited partnership, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 31st day of October, 2012.



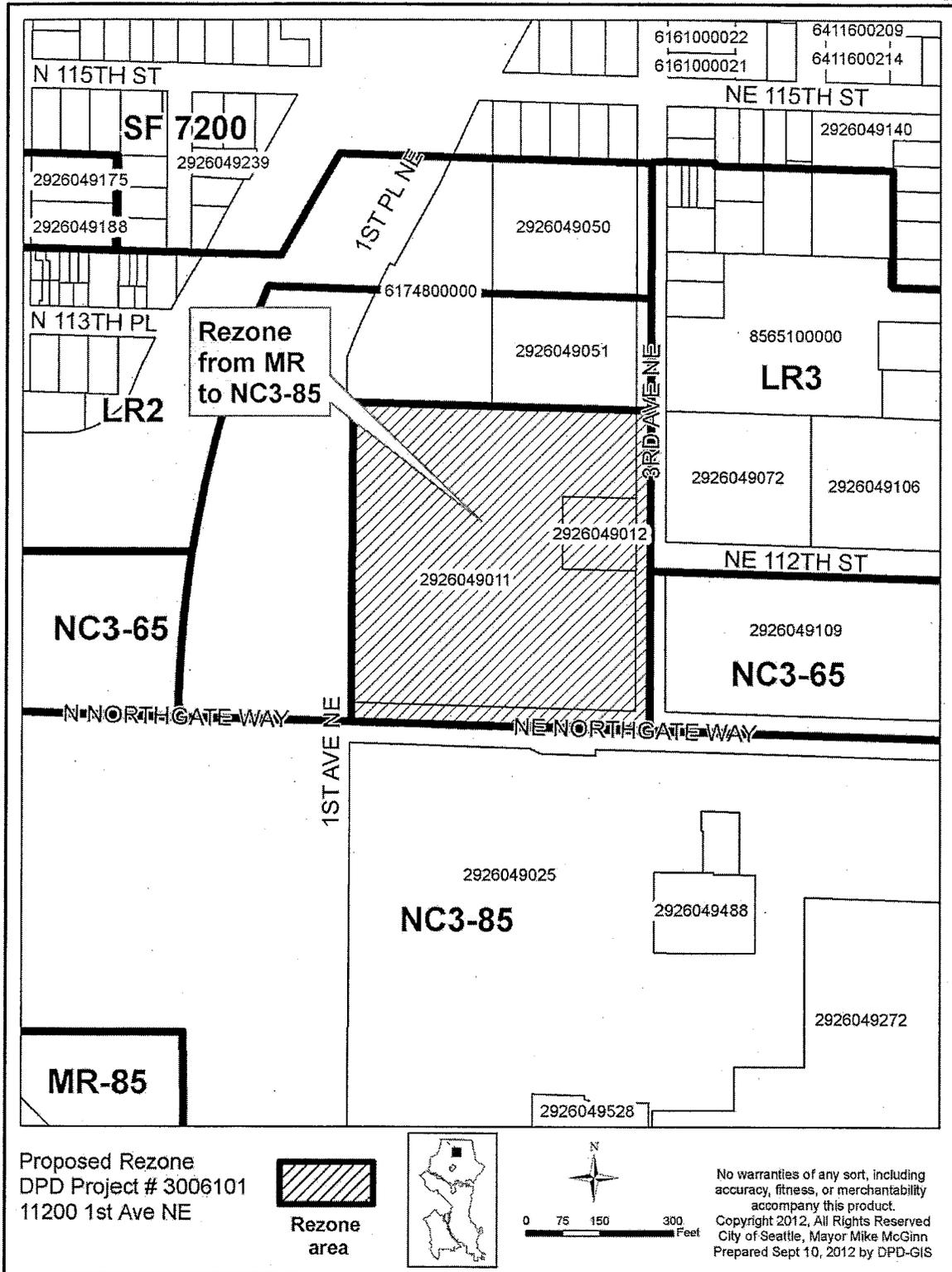
Janet M. Norman

Printed Name Janet M. Norman

NOTARY PUBLIC in and for the State of Washington, residing at Seattle

My Commission Expires 07/01/2013

ATTACHMENT A





Seattle City Attorney

Peter S. Holmes

Roger Wynne
Assistant City Attorney
(206) 233-2177

October 29, 2012

RECEIVED

Ms. Melody McCutcheon
Hillis Clark Martin & Peterson P.S.
1221 Second Avenue, Suite 500
Seattle WA 98101-2925

OCT 31 2012

HILLIS CLARK MARTIN & PETERSON

Re: Rezone proposed by Northgate Plaza LLC and T&M Jenn LP
of land located at 11200 1st Avenue Northeast from MR to NC3-85
(Council File 311240; DPD Project 3006101)

Dear Melody:

This is to confirm an issue we recently discussed regarding the rezone proposed by Northgate Plaza LLC and T&M Jenn LP of land located at 11200 1st Avenue Northeast from MR to NC3-85 (Council File 311240; DPD Project 3006101).

The proposed property use and development agreement contains a number of affordable housing conditions in Subsection 1(c). Subsections (1)(c)(1) through (3) provide the option of making land on the property available for lease by a low-income housing developer for a minimum period of 75 years, with zero lease payments due for a minimum period of 20 years. Subsection 1(c)(4) provides for a payment in lieu of making the land available for use by a low-income housing developer.

Subsection 1(c)(4) describes how that payment-in-lieu is to be calculated: "The Payment amount shall be equal to the present value of both the 20-year period of zero lease payments and the present value of any discounted incremental lease payments, as described in Section 1(c)(2), that are reasonably likely from the second, 20-year period of discounted rent, as calculated by the City of Seattle Office of Housing at the time of the Payment."

You and I discussed the meaning of this sentence. We agree that the intent and meaning is for the payment to be measured in terms of the value that a low-income housing provider would have realized had the property owner pursued the lease option. Setting aside the time value of money, that value would be relatively high for any period of rent-free occupancy, and relatively lower the more the housing provider would have to pay in rent. We also agree that the intent is not for the payment to be measured in terms of the lease payments that would have otherwise flowed to the property owner if the land was made available for lease at the rezone site (which, for example, would result in a present value of zero for the 20-year period of zero lease payments).

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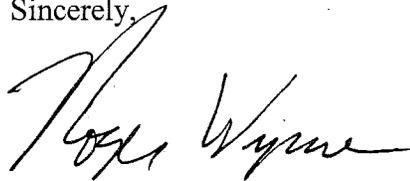
October 29, 2012

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If you agree that I have accurately represented our mutual understanding of that sentence, please so indicate that by signing below and returning this letter to me.

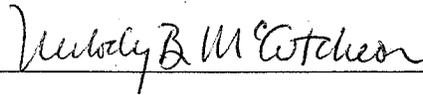
Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roger Wynne".

Roger Wynne,
Assistant City Attorney

Dated: Oct. 31ST, 2012

A handwritten signature in cursive script, appearing to read "Melody B. McCutcheon".

Melody McCutcheon,
Attorney for Northgate Plaza LLC and T&M Jenn LP

