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July 30, 2021

Via Email

Kimberly McNeeley, Director
City of Austin
Parks and Recreation Department
200 S. Lamar Blvd.
Austin, TX 78704

Re: Parkland Appeal for SP-2020-0419C

Director McNeeley,

Please accept this letter as an official notice of appeal pursuant to Section 25-1-605(F) of the Land Development Code. I am submitting this appeal due to the decision made by the City of Austin Parks and Recreation Department ("PARD") to reject the parkland dedication proposal described in this letter related to the Vertical Mixed-Use project with income-restricted affordable units proposed in site plan SP-2020-0419C ("the Project").

I am also providing the following information, as required by Section 25-1-183:

- Appellant Name: Michael J. Whellan
- Appellant Address: 100 Congress Ave., Suite 1300
- Appellant Phone: 512-435-2300
- Appellant Status: Agent for property owner.
- Appealed Decision: Parkland dedication determination (described below).
- Date of Decision: July 27, 2021
- Reasons for Appeal: As described below.

Our team reached out to PARD last summer, in August 2020, to discuss the Project and the configuration of on-site parkland. We then officially submitted a site plan application in late November 2020, and received our first comments from PARD in February 2021.

For nearly a year, we have engaged extensively with PARD regarding the configuration of our parkland and ways to meet PARD's requirements, including obtaining Austin Energy's approval to implement parkland improvements within an existing electrical easement area. This easement area – roughly 3,740 sf of amenitized space achieved through the applicant's efforts – would expand the usable parkland area above and beyond the space owed by the applicant. The applicant undertook this effort to help meet PARD's desire for additional space and is not requesting any parkland dedication credit for this area.

The Project is located in an Imagine Austin Center (Highland Mall Station) and is surrounded on three sides by Transit Priority Network roadways, marking it as a priority area for additional housing, and especially for long-term, affordable, income-restricted housing, which the Project will provide. Fully embracing affordable housing in these areas is particularly important given that the city has progress to make on its affordable housing goals. The Project is located in District 4, for which City Council has established an annual goal of 311 affordable units. However, over just the first two years of reporting alone, the city has already fallen 186 units short.

Projects like this one (located in an Imagine Austin Center and participating in a city affordability program) are critical to making up this affordability gap and meeting our affordability goals, especially considering that it is already located just a 10-minute walk from an existing park (Reilly School Park) and less than a 5-minute drive from three new parks at the Highland Mall redevelopment – including the Highland Greenway Park, which is within a quarter-mile of the Project.

These high-level goals and policies establish the city's vision, and the site plan process often drives its outcomes. In this case, a number of constraints common to infill projects limit the ways in which the project can move forward. To the north and south, single-family homes trigger compatibility height limitations. To the east, a 20-ft. wide electrical/public utility easement impinges on buildable area. To the west, grade changes and existing protected trees create particular design challenges.

Within this context, a further meaningful reduction to buildable area will have a significant negative impact on the site, threatening both the applicant's ability to build the Project and the Project's ability to deliver on the city's goals and vision.

Given these factors, we believe it is appropriate to approach the Project with the dual goals of providing on-site parkland access in a way that ensures full affordability and Project viability. To that end, we have proposed over one acre of parkland across the site, with two larger areas on the eastern and western edges of the site that connect across the front of the site ("Applicant Compromise Plan") (Exhibit 1).

This Applicant Compromise Plan includes a wide variety of public amenities including bicycle and pedestrian pathways, a dog park and wash station, natural flower and stone garden, preservation of an existing heritage tree as well as a variety of planted shade trees, stationary fitness stations, benches, tables, and children playscapes. Under this proposal, the parkland area constitutes 15.27 percent of the site, slightly more than the maximum 15 percent that the Land Development Code allows PARD to require. And, with the additional uncredited easement area that the applicant helped secure (described above), the effective total parkland area represents over 16 percent of the site.

This configuration helps provide parkland while also ensuring a financially feasible mixed-use Project with 434 units, including 44 income-restricted housing units at 80 percent of Median Family Income for 40 years. Our plan also addresses broader North Loop neighborhood concerns related to pedestrian connectivity across Koenig Lane (via an Austin Transportation Department-sponsored, developer-funded Pedestrian Hybrid Beacon), purpose-built commercial space for restaurant/retail uses, and traffic-easing mechanisms (bisecting vehicular connection between 56th Street and Koenig Lane).

However, PARD has rejected this proposed Applicant Compromise Plan and instead is requiring configurations that will meaningfully impact the Project's housing and affordability – eliminating between 11 to 23 percent of all affordable units, depending on the configuration – and damage the Project's viability.

PARD's three options for required configuration are as follows, in order of PARD preference:

- **PARD's Western Consolidation Plan** (PARD's Top Configuration), which shifts all parkland to the western side of the site, resulting in a 92-unit loss (82 market and 10 affordable) (Exhibit 2).
- **PARD's Eastern Consolidation Plan**, which shifts all parkland to the eastern side of the site, resulting in a 68-unit loss (62 market and 6 affordable) (Exhibit 3).
- **PARD's Withheld Credit Plan**, which requires parkland on both the eastern and western sides of the site, similar to the Applicant Compromise Plan – but instead withholds parkland credit for the portion of parkland that provides connectivity between the two parks. By withholding credit for that connector, PARD is instead requiring expanded eastern and/or western park areas, which (conservatively) results in a 42-unit loss (37 market and 5 affordable) (Exhibit 4).

We have discussed with PARD the impact that each of these scenarios would have on the Project, especially in contrast to the Applicant Compromise Plan. The Applicant Compromise Plan addressed PARD's stated goals, while maintaining the Project's ability to provide needed housing and income-restricted affordable housing.

As a final offer, we also put forward a plan by which we would offer to privately implement the Applicant Compromise Plan outside of the city's parkland requirements while simultaneously paying the full fee-in-lieu for the total parkland owed ("On-Site Parkland and Full Fee Compromise Plan"). This proposal would ensure on-site parkland while also providing PARD with the full parkland dedication and parks development fees – estimated at more than \$667,000 – which PARD could use to further equitable parkland priorities in the area.

PARD specifies that, after land acquisition, they prioritize parkland dedication fee expenditures on new park amenities within a two-mile radius of the site, within the relevant PARD planning area, or at the nearest district or metropolitan park.

Based upon these criteria, there are a number of eligible parks in the area where fee investments would have, in PARD's own words, a "high equity impact" according to "the population served, median household income, people of color served, and children served." This includes the following, listed in order of highest "equity impact" according to PARD's equity criterion: Buttermilk Neighborhood Park, St. John's Pocket Park, T.A. Brown Neighborhood Park, Earl J. Pomerleau Pocket Park, Highland Neighborhood Park, and Reilly School Park.

Parkland dedication and parks development fees are a major source of funding for improvements at existing parks, including for "high equity impact" parks projects. The more resources that PARD requires to be focused at the new Vertical Mixed-Use Project, the fewer PARD can direct toward "high equity impact" parkland needs in the area.

We believe that both our Applicant Compromise Plan and our subsequent On-Site Parkland and Full Fee Compromise Plan offered reasonable compromises to meet PARD's goals while also ensuring full affordable housing and Project viability. Ultimately, however, PARD has directed us to initiate an appeal of their stated ruling.

At this time, PARD's position is that applicants can *only* appeal the denial of a fee-in-lieu and *cannot* appeal the precise configuration of parkland. So, while our goal has been to put forward a compromise

vision that meets PARD's preferences as well as the city's unmet housing and affordability needs, we have been informed that we must limit our appeal only to a narrow request to pay fee-in-lieu, rather than to a more comprehensive approval of a compromise vision. The Planning Commission may separately wish to revisit the wording of the Land Development Code to allow a more nuanced and context-sensitive appeals process for future cases.

While our appeal must, procedurally, be limited to one of a fee request only, we intend to proceed substantially with our proposed compromise configuration. Approving this appeal would thus allow this configuration to move forward on the eastern and western portions of the site while also ensuring on-site affordable housing and fees that PARD can use on equitable parks investments.

We believe that an appropriate compromise is possible that can satisfactorily meet all parties' goals, and appreciate the opportunity to present that compromise for Planning Commission consideration. I am available to answer any questions.

Respectfully,

A handwritten signature in black ink, appearing to read 'Michael J. Whellan', written in a cursive style.

Michael J. Whellan

Exhibit 1: Applicant Compromise Plan

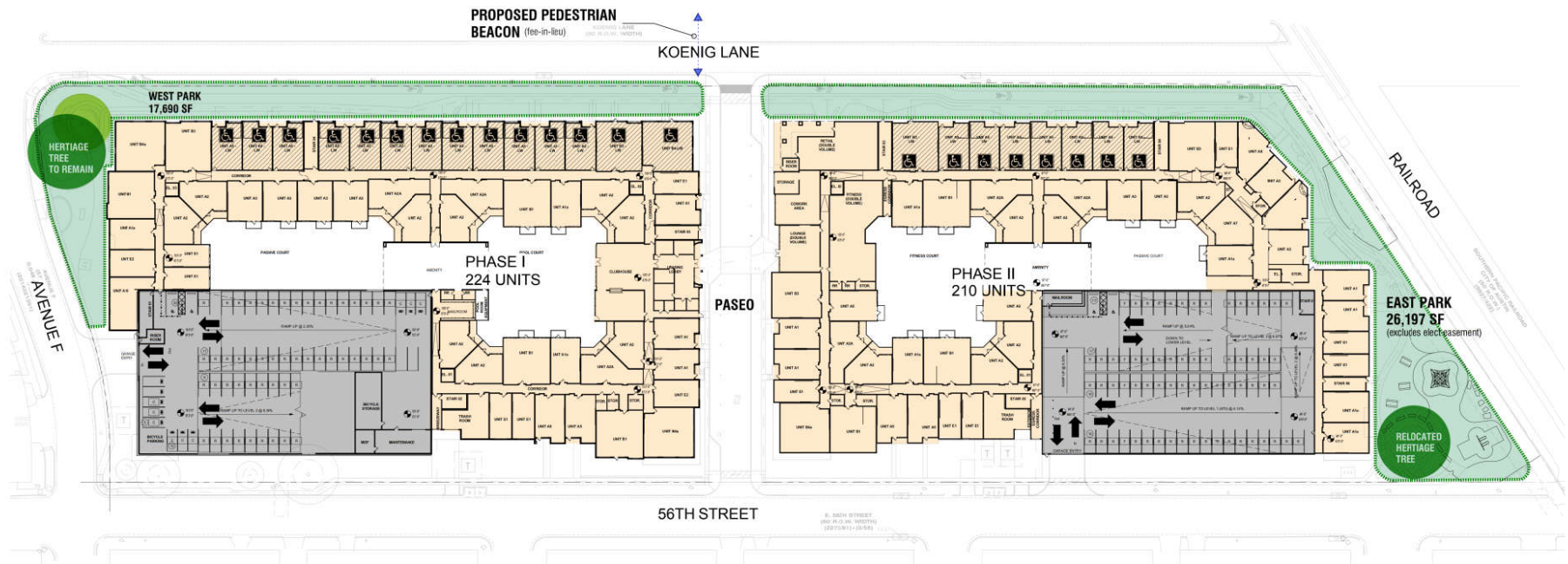


FIGURE A - CURRENT PROPOSED SITE PLAN / PARK PLAN



SITE INFO

Zoning: CS-V-MU-NP
 Site Area: 287,428 sf (6.598 ac)
 Parkland Dedication via easement: East Park @26,197 sf + 17,690 sf = **43,887 sf provided**
 Parkland Dedication percentage: 43,887 sf provided / 287,428 sf = **~15.27%**



FIGURE B - PEDESTRIAN BEACON
 EXAMPLE (AUSTINTEXAS.GOV)



FIGURE C - DISTANCE TO NEAREST PARKLAND



KOENIG LANE MF - PROPOSED SITE / PARK PLAN 06/11/2021
 201 EAST KOENIG LANE, AUSTIN, TX

Exhibit 3: PARD Eastern Consolidation Plan



FIGURE 'A' - BUILDING IMPACT DIAGRAM

15% CONSOLIDATED PARKLAND BUILDING / UNITS IMPACTED

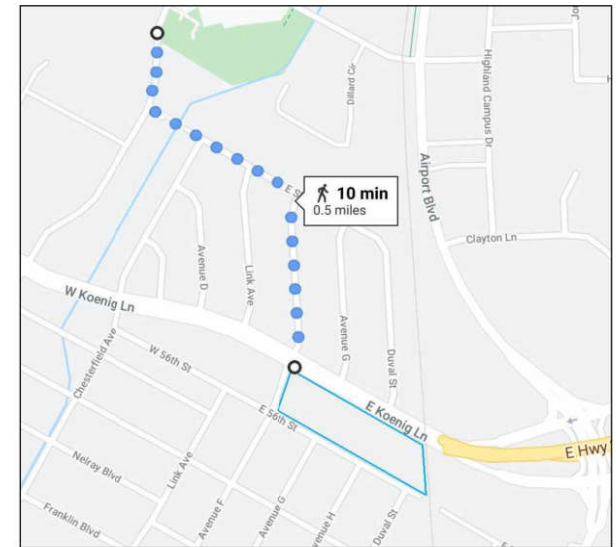


FIGURE 'B' - EXISTING PARKS WITHIN 10-MINUTE WALK:
REILLY SCHOOL PARK AND MUSTANG PARK



KOENIG LANE MF - USE IMPACT EXHIBIT 03/03/2021
201 EAST KOENIG LANE, AUSTIN, TX

Exhibit 4: PARD Withheld Credit Plan

GDA
ARCHITECTS

KOENIG LANE
MULTIFAMILY
AUSTIN, TX



PRELIMINARY
NOT FOR
REGULATORY
APPROVAL,
PERMITTING OR
CONSTRUCTION

Design Team

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DATE:	08/01/2021
PROJECT:	1000 UNIVERSITY BLVD, SUITE 200 AUSTIN, TX 78705 512.534.8175
ARCHITECT:	ARCHITECT 2000 UNIVERSITY BLVD, SUITE 200 AUSTIN, TX 78705 512.457.8075
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Issue Package

No.	Date	Description
1	08/01/2021	1000 University Blvd

Job No.

20010.00

Sheet Title

SITE PLAN

Sheet Number

A1.100

37 TYPICAL UNIT LOSS
5 AMFI UNIT LOSS (AFFORDABLE)
42 TOTAL UNIT LOSS
1 ACRE = 43560 SF
43560 SF*.49 = 21345 SF

1 ACRE = 43560 SF
43560 SF*.49 = 21345 SF



1 SITE PLAN
SCALE 1" = 30'