

**CITY OF KIRKLAND  
HEARING EXAMINER FINDINGS,  
CONCLUSIONS AND RECOMMENDATION**

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**APPLICANT:** S. Michel Smith of Toll WA LP

**FILE NO:** SUB12-00560

**APPLICATION:**

1. Site Location: 7707 129<sup>th</sup> Avenue NE

2. Requests: The applicant requests approval of a preliminary subdivision and planned unit development (PUD) as follows:

a. Preliminary Subdivision: A proposal to subdivide one 278,113 square foot parcel (6.38 acres) into 35 separate lots with access from both NE 75<sup>th</sup> Street and NE 80<sup>th</sup> Street. The applicant seeks a modification to the right of way standards of Chapter 110 KZC. The applicant proposes to construct a narrower street, with a sidewalk and landscape strip on one side instead of both sides of the street, in exchange for construction of off-site street improvements from the north property line to NE 80<sup>th</sup> Street, which will provide a vehicular and pedestrian street connection between NE 75<sup>th</sup> and NE 80<sup>th</sup> Streets within the 128<sup>th</sup> Avenue NE right-of-way. Three vehicular access tracts will provide access from the new street to interior lots on the west side of the plat.

b. PUD: A request for a preliminary and final Planned Unit Development (PUD) with a 10% density bonus (three additional lots) and modification of the following Zoning Code requirements:

- (1) Provide lots smaller than the 7,200 square foot minimum lot size required in the RSX 7.2 zone, with an average lot size of 5,435 square feet.
- (2) Calculate the maximum lot coverage at 50% on a project wide, rather than on a per lot basis as required by Code.
- (3) Calculate the maximum floor area ratio (FAR) of 50% on a project wide, rather than on a per lot basis.

Pursuant to Chapter 125 KZC, the proposal includes the following proposed benefits to the City beyond the improvements that would typically be required:

- (1) Increased open space and landscaping. Common open space is planned above the underground storm detention facility at the north end of the development (with recreational amenities such as a sports court, play equipment and picnic bench). At the north and south entrances, landscape tracts will be provided incorporating existing and new trees and landscaping. A six foot tall wood fence is proposed along the east and west property lines.
- (2) Superior site design and architectural home design. The applicant

proposes 14 home designs that range in size from 2,600 to 3,750 square feet. The homes will be two stories with varied roof forms, porches, decks and a variety of exterior materials including stone, brick, vertical and horizontal siding, and shakes. As noted, the proposed site plan includes large open space tracts at the north and south boundaries of the subdivision.

- (3) Installation of a flashing Rectangular Rapid Flash Beacon (RRFB). The applicant proposes to add the RRFB to the existing crosswalk on the east side of the corner of NE 80<sup>th</sup> Street and 128<sup>th</sup> Avenue NE to improve pedestrian access to Rose Hill Elementary School.
- (4) Installation of missing sidewalks. The applicant proposes to construct two sidewalk sections along NE 80<sup>th</sup> Street at the southwest and southeast corners of the intersection with 128<sup>th</sup> Avenue NE to improve the pedestrian crossing across 128<sup>th</sup> Avenue NE to the crosswalk across NE 80<sup>th</sup> Street.
- (5) Offsite street improvements. As noted above, the applicant proposes to construct off-site street improvements from the north property line to NE 80<sup>th</sup> Street, which will provide a vehicular and pedestrian street connection between NE 75<sup>th</sup> and NE 80<sup>th</sup> Streets within the 128<sup>th</sup> Avenue NE right-of-way.

3. History: The original site plan submitted for the proposal showed a dead end cul-de-sac street with vehicular access from NE 75<sup>th</sup> Street. At the request of City staff, the plans were revised to show a through street connection for 128<sup>th</sup> Avenue NE, from NE 75<sup>th</sup> Street to NE 80<sup>th</sup> Street, with a modification request to provide a narrower interior street with a sidewalk on the west side. A subsequent revision moved the sidewalk to the east side of the interior street to connect with the existing crosswalk across NE 80<sup>th</sup> Street.

4. Review Process: Process IIB, the Hearing Examiner conducts a public hearing and makes a recommendation to the City Council, which makes a final decision.

5. Key Issues:

- Compliance with subdivision criteria
- Compliance with PUD approval criteria
- Compliance with applicable development regulations
- Compliance with Process IIB Zoning Permit approval criteria

**SUMMARY OF RECOMMENDATIONS:**

Department	Approve with conditions
Hearing Examiner	Approve with conditions

**PUBLIC HEARING:**

The Hearing Examiner held a public hearing on the applications on June 5, 2013, in the Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. A verbatim

recording of the hearing is available at the City Clerk's office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development. The Examiner visited the site in advance of the hearing.

#### **TESTIMONY AND PUBLIC COMMENT:**

A list of those who testified at the public hearing, and a list of the exhibits offered at the hearing are included at the end of this Recommendation. The testimony is summarized in the hearing minutes.

For purposes of this recommendation, all section numbers refer to the Kirkland Zoning Code (KZC or Code) unless otherwise indicated.

#### **FINDINGS, CONCLUSIONS AND RECOMMENDATION**

Having considered the evidence in the record and reviewed the site, the Hearing Examiner enters the following:

##### **Findings of Fact and Conclusions:**

###### **1. Site Description**

The Facts and Conclusions on this matter set forth at Subsection II.A of the Planning Department's Advisory Report, dated May 28, 2013, (hereafter Exhibit A) are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

###### **2. Public Comment, and State Environmental Policy Act and Concurrency**

A. The Facts and Conclusions on this matter set forth at Subsections II.B and II.C of Exhibit A are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

B. Public comments at the hearing generally mirrored those in the comment letters in the record, Attachment 5 to Exhibit A. There was both support for, and opposition to the vehicular and pedestrian connection between NE 75<sup>th</sup> and NE 80<sup>th</sup> Streets. Some neighborhood residents who presently access their properties from NE 80<sup>th</sup> Street via the paved access drive within the 128<sup>th</sup> Street right-of-way were particularly concerned about the additional vehicle traffic and noise that would result from the proposed connection. Others cited a concern with potential traffic speeds on the proposed roadway and requested inclusion of traffic calming measures, such as speed humps. Several area residents spoke in opposition to an increase in density in the area, with some noting that existing densities already overtax the intersection of 128<sup>th</sup> Avenue NE and NE 80<sup>th</sup> Street, which is near several schools. One person asked that the proposal's (FAR) be calculated on a per lot, rather than a project-wide basis. Some questioned the

accuracy of the trip generation and trip distribution information in the Transportation Impact Analysis (Traffic Study), Exhibit C, prepared for the proposal. Most of these concerns are properly addressed by the Department in Section II.B of Exhibit A.

C. With the road connection between NE 75<sup>th</sup> and NE 80<sup>th</sup> Streets, the proposal passed traffic concurrency.

D. The localized transportation impacts of the proposal are reviewed pursuant to SEPA. The Traffic Study for the proposal was completed in accordance with the Public Works Department's direction and the City's TIA Guidelines, and used the City's BKR traffic model to estimate the distribution of project traffic.

E. The Traffic Study concluded that with the project, all analyzed intersections would operate at level of service C or better. Exhibit C at 18. The Study analyzed the PM peak hour at all study intersections and the school AM and afternoon PM peak hours at the intersection of 128<sup>th</sup> Avenue NE and NE 80<sup>th</sup> Street. *Id.* The project would add 34 AM peak hour trips and 41 PM peak hour trips. *Id. See also* Exhibit B at 1-3.

F. There is no evidence in the record that the Traffic Study's conclusions are inaccurate. Further, because the SEPA Determination of Nonsignificance issued for the proposal was not appealed, there is no legal basis on which the Traffic Study can be challenged at this point.

## 6. Approval Criteria

A. The Facts and Conclusions on this matter set forth at Subsection II.D of Exhibit A are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

B. KZC 125.20 authorizes modification of the Code provisions that the applicant seeks to modify.

C. The average impervious surface coverage for the 35 lots would be 52.5%. For the project as a whole, it would be 44.6%.

D. The proposed subdivision will create infill residential development and is consistent with the Comprehensive Plan's density designation for the subject property.

E. The proposed subdivision complies with KMC 22.12.230 and KZC 150.65. With the proposed PUD, and as conditioned, the subdivision is consistent with zoning and subdivision regulations and makes adequate provision for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste,

power service, parks, playgrounds, and schools. The proposed subdivision will serve the public use and interest and is consistent with the public health, safety and welfare.

## **7. Development Regulations**

The Facts and Conclusions on this matter set forth at Subsection II.E of Exhibit A are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

## **8. Comprehensive Plan**

A. The Facts and Conclusions on this matter set forth at Subsection II.F of Exhibit A are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

B. The Comprehensive Plan includes Policy T-4.3 that calls for maintaining "a system of arterials, collectors, and local access streets that forms an interconnected network for vehicular circulation." Plan at IX-13. Policy T-4.5 calls for maintaining and improving convenient access for emergency vehicles. *Id.* The City Transportation Engineer summarized the Plan's discussion of these policies as follows: "These two policies encourage a "grid" system road network to minimize cul-de-sacs, uneven trip distribution through the road network and to minimize impacts on close-by neighborhood streets and ... maintain and provide direct access for emergency vehicles." Exhibit B at 4.

## **9. Development Standards**

The Facts and Conclusions on this matter set forth at Subsection II.G of Exhibit A are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

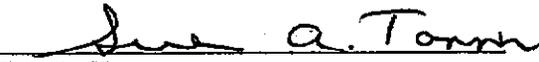
## **10. Process IIB Decisional Criteria**

The application for the subdivision and PUD is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan. As noted above, it is also consistent with the public health, safety and welfare.

### **Recommendation:**

Based upon the foregoing findings of fact and conclusions, the Hearing Examiner recommends that the City Council approve the Preliminary Subdivision and PUD subject to the conditions set forth in the "Final" version of Exhibit E dated June 5, 2013.

Entered this 10<sup>th</sup> day of June, 2013.

  
Sue A. Tanner  
Hearing Examiner

**EXHIBITS:**

The following exhibit was entered into the record:

- Exhibit A Department's Advisory Report with Attachments 1 through 8;
- Exhibit B Memorandum to Janice Coogan from Thang Nguyen, Transportation Engineer, re: C&G Subdivision Development, Tran 12-00528;
- Exhibit C Transportation Impact Analysis for "C&G Property;"
- Exhibit D Preliminary Technical Information Report for Storm Drainage
- Exhibit E Revised Staff Recommendations – "Track Changes" and "Final" versions;
- Exhibit F C&G Development Traffic Impact Analysis Overview – Hard copy of PowerPoint presentation;
- Exhibit G Comment letter from to Hearing Examiner and City Council from Andrew Held;
- Exhibit H Hard copy of applicant's PowerPoint presentation;
- Exhibit I Revised Statement from Doug and Marilyn Love, 6/5/13, re: Cam West Housing Development Proposal;

**PARTIES OF RECORD:**

S. Michael Smith, Applicant  
Michael Swenson, Transpo Group  
Kurt Osojnak  
Kyle Peterson  
Steve Benson  
Charles Olson  
Gordon Buck  
Andrew Held  
E.J. McElwee  
Wally Kempe  
Doug Love  
James Hoff  
Parties of Record prior to hearing  
Department of Planning and Community Development  
Department of Public Works  
Department of Building and Fire Services

**CHALLENGES AND JUDICIAL REVIEW**

The following is a summary of the deadlines and procedures for challenges and appeals. Any person wishing to file or respond to a challenge or appeal should contact the Planning Department for further procedural information.

## **CHALLENGE**

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., \_\_\_\_\_, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

## **JUDICIAL REVIEW**

Section 152.110 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within twenty-one (21) calendar days of the issuance of the final land use decision by the City.

## **LAPSE OF APPROVAL**

The applicant must submit to the City a complete building permit application approved under KZC Chapter 125 within four (4) years after approval of the Final PUD, or the lapse provisions of Section 152.115 will apply. Furthermore, the applicant must substantially complete construction approved under Chapter 125 and complete the applicable conditions listed on the Notice of Approval within six (6) years after approval of the Final PUD, or the decision becomes void.

## **SUBSEQUENT MODIFICATIONS**

Modifications to the approval may be requested and reviewed pursuant to the applicable modification procedures and criteria in effect at the time of the requested modification.