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MEMORANDUM

Date: January 23, 2006

To: David Ramsay

From: Eric Shields

Subject: Zoning Code Consistency with the Comprehensive Plan

On two recent occasions, issues arose in which there were inconsistencies between zoning regulations and the Comprehensive Plan. These incidents prompted Council members to question the overall extent and implications of inconsistencies. This memorandum discusses:

- The legal authority of the Comprehensive Plan and Zoning Code;
- Recent cases where inconsistencies were discovered; and
- How to avoid further inconsistencies and correct existing inconsistencies.

In preparing this memorandum I have consulted with Robin Jenkinson, City Attorney.

Legal Authority of the Comprehensive Plan and Zoning Code

The Comprehensive Plan is a document that sets forth the City's long range (20 year) plan for managing growth. It is a policy document that serves as a guide to other City actions, such as adopting development regulations and capital improvement decisions. Growth hearings board and court decisions have ruled that a Comprehensive Plan may not be used to directly regulate development unless a provision of a plan is specifically incorporated by reference into a zoning regulation. In such cases, where there is a conflict between the Zoning Code and Comprehensive Plan, the Zoning Code will prevail.

The Zoning Code establishes regulations that apply to the use and development of private property. Under the Growth Management Act, zoning regulations must be consistent with the Comprehensive Plan.

When Is the Comprehensive Plan Used in Kirkland's Development Review Process

For developments that merely require administrative approval, such as building permits, the Planning Department evaluates applications only for compliance with the Zoning Code and other applicable development regulations, not the Comprehensive Plan. However, for three types of development applications, Kirkland zoning regulations specifically require some level of review for consistency with the Comprehensive Plan. The three types of applications are discussed below:

Properties Governed by Zoning Map Suffixes The Kirkland Zoning Map shows a notation (called a suffix) on approximately twelve properties. Most of the properties containing a suffix have already been developed, so there are few remaining that will be affected by this method of regulation in the future.

There are four different suffixes, each of which is explained in the legend of the map. The explanation for each suffix includes the following statement:

Development proposal must be consistent with the appropriate neighborhood plan policies, specifically applicable to this property, contained in the Comprehensive Plan.

The explanation for one of the suffixes goes on to state that the development must be processed through Process IIA. Another suffix requires approval through Process IIB. Yet another suffix, which applies to only one property, provides a restriction on the location of a certain type of land use. An example of a property governed by a suffix is the property rezoned to allow expansion of the Honda automobile dealership on NE 85th St. for which the NE 85th St. Subarea Plan establishes an extensive list of development standards.

In light of the court and hearing board cases referenced above, enforcement of the applicable neighborhood policies through the Zoning Map suffixes could be challenged. The policies are typically more restrictive than the zoning regulations that would otherwise apply. Such a conflict could be interpreted in favor of the zoning regulations. On the other hand, the City might argue that using the policies as regulations is acceptable since the policies are applied to specifically identified properties on the Zoning Map. We would certainly be on firmer ground, however, if the policies were more explicitly incorporated into the Zoning Code.

Quasi-judicial Land Use Decisions The Zoning Code requires some uses or development proposals to be approved using one of several types of quasi judicial processes (e.g. processes I, IIA and IIB). For each of these processes, the Code includes a criterion that allows for some consideration of the Comprehensive Plan. Specifically, the decision maker may approve such an application only upon finding that the application:

...is consistent with all applicable development regulations and, to the extent that there is no applicable development regulation, the Comprehensive Plan.

Design Review Similarly, for applications that require approval by the Design Review Board, the Zoning Code directs the DRB to review applications for consistency with design guidelines, design regulations and:

The downtown plan, Juanita Business District Plan, the Totem Lake Neighborhood Plan and goals and policies in the North Rose Hill Neighborhood Plan for the North Rose Hill Business District contained in the Comprehensive Plan.

In light of the Growth Hearings Board and court decisions mentioned above, using the Comprehensive Plan in the review of the above types of applications is somewhat problematic. While decisions indicate that zoning regulations may incorporate the Comprehensive Plan by reference, there is still the potential for conflict between the Zoning Code and the Comprehensive Plan. This is particularly problematic when the reference to the Comprehensive Plan is very general and implies that the project will be reviewed against City-wide policies rather than just area-specific or property-specific policies. In addition, by referencing the Comprehensive Plan, the zoning regulations mislead the public into thinking of the Comprehensive Plan as a regulatory document,

Recent Cases Where There Were Inconsistencies

1. **Motorcycle Sales** In response to an inquiry about locating a motorcycle sales business in the NRH 1 zone, a difference in wording between language in the Zoning Code and Comprehensive Plan was discovered. The North Rose Hill chapter of the Comprehensive Plan states: “Car and boat dealerships...are prohibited” in the NRH 1A subarea. In contrast, within the Zoning Code, a special regulation for the NRH 1A zone prohibits: “vehicle or boat sales or rental facilities.” Clearly, there is a difference in wording that could have and, in retrospect, should have been resolved during the drafting of the plan and zoning. At the time, there was little or no thought to the consequences of the difference.

(As an aside, I should add that there was also no thought given to the possibility of an indoor vehicle or car sales business, so neither the plan nor zoning addressed such a circumstance. This points to the fact that plans and zoning regulations rarely anticipate all situations and so there is constantly the need for interpretation and subsequent amendments.)

2. **Almond Condos** Inconsistencies were also an issue during the Design Review Board (DRB) review of the Almond Condominiums also located in North Rose Hill. Two inconsistencies were discussed.

Buffers The first was a difference in the width of a buffer along the boundary of the proposed condominiums with adjacent single family uses. The North Rose Hill Neighborhood Plan states that the buffer should be 10 ft. in width. The Zoning Code establishes different buffer requirements for offices (10 ft. in width) and multi-family uses (5 ft. in width). The zoning regulations are consistent with the way buffering is required in similar situations elsewhere in the City. Staff has concluded that the language in the Comprehensive Plan was carried over from the previous neighborhood plan. In that plan, only offices were allowed on the Almond property. When multi-family was allowed as a permitted use with the new plan, a change to the Comprehensive Plan buffering language should have been made (or else the zoning regulations should have been changed). As it turned out, the applicant designed the site to provide a 10 ft. wide buffer.

Tree Grove Protection The other issue that was characterized as an inconsistency during the Almond project review had to do with protection of a grove of trees. The North Rose Hill Neighborhood Plan includes a general policy that states: “*Protect notable trees and groves of trees.*” However, the plan does not define or identify specific notable trees or groves of trees. The Almond property contained a number of trees in the SW portion of the site which the DRB concluded constituted a grove worthy of saving. During the review of the project, the Board, asked the applicant to explore site plan alternatives that saved as many of the trees as possible, but the applicants indicated that other development constraints on the property (most notably the Seattle City Light transmission line easement on the east side of the property) prevented them from doing so. The applicants noted that the Zoning Code includes the following language:

The City may require minor alterations in the arrangement of buildings and other elements of the proposed development in order to achieve the maximum retention of significant trees. The City may not require an alteration which will result in a significant added expenditure to the applicant or in a decrease in the number of units or bulk of structures permitted.

As a result, the DRB reluctantly approved the application without saving the number of trees they desired. As an aside, the DRB was also generally unimpressed with the overall design of the development and concluded that existing design regulations and guidelines do not provide sufficient tools to address this kind of situation.

I believe that this is not primarily a case of an inconsistency between the Comprehensive Plan and zoning regulations. It does, however, raise other issues:

- **How should a general policy within a neighborhood plan be interpreted and applied to site specific development applications?** Was it the intent of the North Rose Hill Neighborhood Plan that tree protection policies be implemented through neighborhood specific regulations? I don't believe so. During the North Rose Hill planning process, the staff and Planning Commission were aware that city-wide tree regulations would soon be updated and concluded that it would be appropriate for those regulations to govern tree preservation in North Rose Hill. Unfortunately, the Almond application preceded completion of the new regulations.
- **How extensively should the DRB review projects for consistency with the Comprehensive Plan?** As noted above, the Zoning Code gives the DRB authority to review an application for consistency with "...goals and policies in the North Rose Hill Neighborhood Plan for the North Rose Hill Business District contained in the Comprehensive Plan." (emphasis added) In addressing tree preservation, the DRB referred to a general neighborhood-wide policy about protecting groves of trees.
- **To what degree should the DRB have authority to require major changes in site plans for the purpose of saving trees?** Are additional design guidelines needed?

How to Avoid and Correct Inconsistencies

Following are ideas for what we can do to avoid inconsistencies in the future as well as to identify and correct possible inconsistencies that may already exist:

- The City would be on firmer legal ground in enforcing neighborhood plan policies through a Zoning Map suffix if we either incorporated the policies as regulations in the appropriate Zoning Code Use Zone Charts, or at least revised the Use Zone Charts to specifically reference the policies.
- In preparing neighborhood plans and code amendments, we need to do a better job of proofreading. Part of the process should be to carefully compare the text of the plan and zoning and make sure they agree. In recent years, this aspect of the process may have suffered somewhat due to the overall large number of projects within the Planning Department. This may have been compounded by the fact that many projects are targeted for adoption at the end of the year, creating a workload crunch. In the future it may be better to do somewhat fewer projects at the same time and/or stagger completion dates.

Also, to help sort out potential problems with regulatory language, it would be desirable for planners who are involved in the day to day review of development activities to review and suggest changes to draft code amendments. Involving the City Attorney's Office early in the code development process, such as was done in drafting the new tree regulations, is also helpful.

In preparing zoning regulations and design guidelines for the Rose Hill and Totem Lake Business Districts, we have made a concerted effort to ensure that regulations are consistent with the adopted neighborhood plans.

- Preparing zoning regulations simultaneously with a neighborhood plan is helpful. Wording nuances may arise during the drafting of zoning regulations that may not have been easily foreseen during the drafting of policies. To ensure consistency, it is helpful to have the option of changing the wording of a policy rather than the regulation.
- In drafting neighborhood policies, it may be advisable to avoid using language that sounds regulatory. Because the plan is fundamentally a guide, policies should typically be broader and less specific than

regulations.

- Despite our best efforts, some inconsistencies or ambiguities are likely to occur on occasion. The Planning Department keeps a long list of potential code amendments. However, our ability to process code amendments is limited due to other higher work program priorities. In the future, I would suggest giving higher priority to such code amendments to allow us to catch up. Similarly, it is important to consider corrections to the Comprehensive Plan, including neighborhood plans, as part of our annual amendment process.

If there is a high level of concern about inconsistencies, the City Council could direct that the Planning Department and Planning Commission focus on identifying and correcting inconsistencies as a major work program project. This would involve reviewing neighborhood plans and zoning regulations to ensure there is agreement. Where there is not, changes to the plans or neighborhood specific zoning revisions would be proposed. With such a project, there would be no need to review the neighborhoods that are now under consideration as separate projects: Totem Lake, NE 85th St. Corridor, Highlands, Norkirk or Market. We may also be able to exclude the Houghton and Lakeview Neighborhoods, since those are next up for review. Another approach would be to focus only on the North Rose Hill neighborhood plan since that is a recently updated plan where inconsistencies may be of particular concern.

Cc: City Council
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Es: Zoning Code Consistency with the Comprehensive Plan