

CITY OF KIRKLAND

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CITY ATTORNEY'S OFFICE
MEMORANDUM

To: Dave Ramsay, City Manager
From: Oskar Rey, Assistant City Attorney
Date: November 14, 2006
Subject: Written Decision on SEPA Appeal of Proposed FAR Amendments

RECOMMENDATION:

That the Council authorize the Mayor to sign the attached Decision affirming the issuance of a DNS with respect to proposed amendments to Floor Area Ratio ("FAR") regulations.

BACKGROUND DISCUSSION:

The City Council heard the SEPA appeal of Mike Nykreim at its November 8, 2006 meeting. Mr. Nykreim appealed the issuance of a DNS by the Planning Director. The City Council voted to affirm the issuance of the DNS at the conclusion of the appeal hearing. The attached decision memorializes the City Council's action.

**CITY OF KIRKLAND CITY COUNCIL
FINDINGS, CONCLUSIONS AND DECISION**

In the Matter of the SEPA Appeal of

MIKE NYKREIM

From the issuance of a Determination
of Non-significance by the Director of the
Department of Planning and Community Development

Appeal Number:
APL06-00008

File Number:
ZON05-00024

INTRODUCTION

Appellant Mike Nykreim (“Appellant”) appealed the issuance of a determination of non-significance (“DNS”) by the Director of Planning and Community Development (“Planning Director”) with respect to proposed amendments to Floor Area Ratio (“FAR”) regulations. Appellant contends that the Planning Director should have issued a determination of significance (“DS”) and that an Environmental Impact Statement (“EIS”) should have been prepared. City staff contends that the DNS was properly issued. The appeal was heard before the City Council at its November 8, 2006 Special Meeting.

The Appellant represented himself at the appeal hearing. City staff was represented by Assistant City Attorney Oskar Rey. Planning Director Eric Shields responded to questions from the Council.

Exhibits

The following documents were considered by the Council on this appeal:

1. Appellant’s Notice of SEPA Appeal dated June 2, 2006;
2. Staff Report of Eric Shields and Michael Bergstrom dated October 27, 2006 and attachments thereto (“Staff Report”);
3. SEPA Appeal Response Memo of Oskar Rey dated October 27, 2006 and attachments thereto (“Appeal Response Memo”);
4. One page housing trend chart and graph (introduced at hearing by Appellant);
5. Page VII-7 of the Kirkland Comprehensive Plan (Dec. 2004 Rev.) with annotations by Appellant;

6. 2005-2006 Budget Fact Sheet with annotations by appellant;
7. Norkirk Neighborhood Workshop Future Trends Scenario handout with annotations by appellant;
8. City of Kirkland Building Division Monthly Reports from December 1992 through June 2005 (13 pages total) with annotations by appellant.

After due consideration of all information and material within the scope of the appeal submitted by persons entitled to participate in the appeal, the City Council makes the following findings of fact, conclusions and decision on this appeal.

FINDINGS OF FACT

1. The City has considered proposed FAR amendments pursuant to Planning Department File No. ZON05-00024.
2. On May 19, 2006, the Planning Director issued a DNS with respect to the proposed FAR amendments. Attached to the DNS is an Environmental Checklist in which City staff assessed the potential environmental impacts of the proposed FAR amendments (Staff Report, Enclosure 1). The City Council finds that the Environmental Checklist accurately sets forth the environmental impacts of the proposed FAR amendments.
3. The City issued notice of the issuance of the DNS in accordance with its usual distribution procedures. The proposed FAR amendments will affect low density residential zones throughout the City. The City did not attempt to provide individualized notice to every property owner whose property is potentially affected by the proposed FAR amendments.
4. On June 2, 2006, the Appellant timely filed an appeal of the issuance of the DNS (Staff Report, Enclosure 2).
5. Appellant has not shown that he has suffered injury in fact as a result of the City's decision to issue a DNS (as opposed to issuance of a DS which would require preparation of an EIS).

CONCLUSIONS

1. Pursuant to Kirkland Municipal Code ("KMC") 24.02.105, the Kirkland City Council has jurisdiction over this appeal. Under KMC 24.02.105(i)(1), the matters to be considered and decided upon in this appeal are limited to the matters raised in the Appellant's Notice of Appeal. Under KMC 24.02.105(i)(2), the decision of the Planning Director to issue a DNS is accorded substantial weight.

2. The Appellant contends that the City should have provided individualized notice of the issuance of the DNS to potentially affected property owners. The proposed FAR amendments are legislative in nature. Neither state law nor City codes require individualized notice of the issuance of the DNS for the proposed FAR amendments.

3. Under SEPA, the City shall issue a DNS if a proposed action will not have significant adverse environmental impact. The proposed FAR amendments will not have significant adverse environmental impact. As the Environmental Checklist indicates, the proposed FAR amendments will not have an effect on plants, animals, natural resources or environmentally sensitive areas.

4. The Appellant in his Notice of Appeal claims that the proposed FAR amendments will contribute to “sprawl.” However, the appellant has not provided any evidence to support this contention, nor has he indicated where he believes the alleged sprawl will occur.

5. At the appeal hearing, the appellant claimed that the City had not met its housing targets under the Growth Management Act. The Planning Director, Eric Shields, disputed this claim. In any event, the issue of housing targets is not relevant to the substantive issue on this SEPA appeal: whether the proposed FAR amendments will have a significant adverse environmental impact.

6. To establish standing to bring a SEPA appeal, the Appellant must show that he has suffered injury in fact—that he has been “specifically and perceptibly harmed by the proposed action.” Trepanier v. City of Everett, 64 Wash.App. 380, 824 P.2d 524 (1992). The Appellant has not shown that he has suffered injury in fact as a result of the issuance of a DNS instead of a DS. He therefore lacks standing to bring this appeal.

DECISION

The decision of the Planning Director to issue a DNS with respect to the proposed FAR amendments, File No. ZON05-00024, is hereby affirmed.

Entered this 21st day of November, 2006.

KIRKLAND CITY COUNCIL

By: Jim Lauinger, Mayor