



CITY OF KIRKLAND

City Attorney's Office

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MEMORANDUM

To: David Ramsay, City Manager

From: Robin S. Jenkinson, City Attorney

Date: July 23, 2007

Subject: City Council's Findings, Conclusions, and Decisions on the Aubry Short Plat Appeal

RECOMMENDATION

That the City Council pass the attached resolution adopting the City Council's Findings, Conclusions, and Decision in the Aubry Short Plat Appeal.

BACKGROUND DISCUSSION

On March 22, 2007, the Director of Planning and Community Development issued his Findings, Conclusions, and Recommendations on the Aubry Short Plat. Two appeals of the short plat decision were timely filed. Both appeals challenged the Director's decision to require the short plat applicant to install street improvements in the existing 5th Avenue South right-of-way adjacent to the property, which would open 5th Avenue South between 7th Street South and 8th Street South. On June 19, 2007, the City Council heard the two appeals in an open record proceeding. The Council decided to modify the decision of the Director of Planning and Community Development to require only an improved pedestrian and bicycle path be installed in the 5th Avenue South right-of-way. Thus, the 5th Avenue South right-of-way between 7th Street South and 8th Street South would not be opened for through vehicular use.

Under Kirkland Zoning Code 145.105, it is necessary for the City Council to enter findings and conclusions when it modifies the decision of the Director. The proposed Findings, Conclusions, and Decision would be adopted with the passage of the attached resolution.

Subsequent to the City Council hearing the appeals, other issues, unrelated to the appeals have arisen which will be addressed through the administrative process and, if appealed, would be heard by the Hearing Examiner as they do not relate to the opening of right-of-way for vehicular use.

Please let me know if you have any questions.

RESOLUTION R-4657

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING THE PROPOSED FINDINGS, CONCLUSION, AND DECISION IN THE AUBRY SHORT PLAT APPEAL.

WHEREAS, March 22, 2007, the Director of the Department of Planning and Community Development issued his Findings, Conclusions, and Recommendations on Aubry Short Plat File, No. SPL06-00007; and

WHEREAS, two appeals of the short plat decision were filed in a timely manner; and

WHEREAS, on June 19, 2007, the Kirkland City Council heard the two appeals in an open record proceeding; and

WHEREAS, the City Council voted to modify the decision of the Director of Planning and Community Development; and

WHEREAS, under Kirkland Zoning Code 145.105, it is necessary for the City Council to enter findings and conclusions when it modifies the decision of the Director;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The proposed Findings, Conclusions, and Decision on the Aubry Short Plat Appeal, attached hereto as Exhibit A and incorporated by reference, are hereby adopted.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2007.

Signed in authentication thereof this ____ day of _____, 2007.

MAYOR

Attest:

City Clerk

BEFORE THE KIRKLAND CITY COUNCIL

IN THE MATTER OF THE APPEALS OF)	APPEAL FILE NO'S. APL07-00002 AND
DAVID AUBRY, ANNA AUBRY, JERRY)	APL07-00003
GILBERT, BEVERLY GILBERT, TOM)	
LYNN, SHERRY LYNN, KAREN TIPP, AND)	CITY COUNCIL'S FINDINGS,
DOUG THOMPSON FROM THE DIRECTOR)	CONCLUSIONS, AND DECISION ON
APPROVAL OF AUBRY SHORT PLAT, FILE)	THE AUBRY SHORT PLAT APPEAL
NO. SPL06-00007)	
)	
)	

PROCEDURAL FINDINGS

1. Except as provided in this Finding No. 1, the Kirkland City Council adopts the Findings set forth in the Department of Planning and Community Development Findings, Conclusions, and Recommendations dated March 20, 2007, and contained in Enclosure 3 of City Council Agenda Item 9.a, June 19, 2007. The City Council does not adopt Section 5 relating to the opening of the 5th Avenue South right-of-way,” on page 11, including Findings of Fact 1 – 9 on pages 11 and 12.

2. On March 22, 2007, the Director of the Department of Planning and Community Development issued his Findings, Conclusions, and Recommendations on Aubry Short Plat, File No. SPL06-00007. Two appeals of the short plat decision were filed in a timely manner. The applicant, David and Anna Aubry filed an appeal on April 10, 2007. The second appeal was filed by Jerry and Beverly Gilbert, Tom and Sherri Lynn, Karen Tipp, and Doug Thompson on April 9, 2007. Both appeals challenged the Director’s decision to require the short plat applicant to install street improvements in the existing 5th Avenue South right-of-way, adjacent to the property, which would open 5th Avenue South between 7th Street South and 8th Street South.

3. On June 19, 2007, the Kirkland City Council heard the two appeals in an open record proceeding.

4. Deputy Mayor Joan McBride recused herself from the proceedings explaining that she had previously publicly taken positions on the matter before the City Council in the appeals and thought it would be inappropriate for her to participate.

**City Council Findings, Conclusions, and
Decision – Aubry Short Plat**

5. The City Council heard presentations from the parties to the appeal and asked questions of the parties. The Council had before it the entire administrative record. After hearing the presentations of the parties, the City Council deliberated and reached a decision. By a vote of six-to-zero, the City Council decided to modify the decision of the Director of Planning and Community Development to require only an improved pedestrian and bicycle path be installed in the 5th Avenue South right-of-way and held that 5th Avenue South between 7th Street South and 8th Street South should not be opened for through vehicular use.

6. Any Conclusion set forth below that is deemed a Finding of Fact is hereby adopted as such.

ADDITIONAL FINDINGS REGARDING APPEAL

7. The appellants have demonstrated that opening the 5th Avenue South right-of-way would provide a by-pass route for congested traffic on 6th Street South through their neighborhood.

8. The appellants have demonstrated that because 5th Avenue South ends at 6th Street South and Everest Park, opening the 5th Avenue South right-of-way would do little to improve the City's grid system, would not improve traffic circulation, and would not provide improved access into or out of the neighborhood.

9. The appellants have demonstrated that opening the 5th Avenue South right-of-way would be detrimental to the character of their neighborhood by increasing the volume of traffic, potentially eliminating significant trees, and disturbing a quiet trail which is enjoyed by the neighbors, including small children.

10. The Comprehensive Plan has policies which support alternative modes of transportation:

- a. Framework Goal FG-9: Provide accessibility to pedestrians, bicyclists and alternative mode users within and between neighborhoods, public spaces and business districts and to regional facilities.

- b. Transportation Element Policy T-2.2: Promote a comprehensive and interconnected network of pedestrian and bike routes within neighborhoods.

PROCEDURAL CONCLUSIONS

1. Except as provided in this Conclusion 1, the City Council hereby adopts the Conclusions set forth in the Department of Planning and Community Development Findings, Conclusions, and Recommendations dated March 20, 2007, and contained in Enclosure 3 of City Council Agenda Item 9.a, June 19, 2007. The City Council does not adopt the Conclusions in Section 5 relating to the opening of the 5th Avenue South right-of-way on pages 12 and 13.
2. The Kirkland City Council has jurisdiction over the two appeals in accordance with Kirkland Municipal Code (KMC) 22.20.245. KMC 22.20.245 provides that the City Council rather than the Hearing Examiner will decide an appeal of the Planning Director's decision on a short plat, when the approval of the short plat would result in the dedication of a new through right-of-way. The two appeals were timely filed. Under Kirkland Zoning Code 145.95, the appellants have the responsibility of convincing the City Council that the Planner Director has made an incorrect decision.
3. Any Finding of Fact set forth above that is deemed a Conclusion is hereby adopted as such.

CONCLUSIONS REGARDING APPEALS

4. In his Conclusions in Section 5 of the Findings, Conclusions and Recommendations, the Planning Director determined that 5th Avenue South should be opened and improved for through vehicular use.
5. The Planning Director correctly noted that several Comprehensive Plan policies support the opening of the 5th Avenue South right-of-way. However, the Council concludes there are also Comprehensive Plan policies which support not opening the 5th Avenue South right-of-way if it would be to the detriment of neighborhood integrity:

**City Council Findings, Conclusions, and
Decision – Aubry Short Plat**

- a. Transportation Element Policy T-1.2: Mitigate adverse impacts of transportation systems and facilities on neighborhoods.
* * *
 - Increased traffic resulting from drivers seeking alternate routes to congested arterials;
 - b. Transportation Element, page IX-12: The plan supports the maintenance and enhancement of vehicular capacity on the existing system and recognizes the continued importance of vehicular circulation to local mobility, **but not at the expense of other modes of travel or community character.** (Emphasis added.)
 - c. Framework Goal FG-16: Promote active citizen involvement and outreach education in development decisions and planning for Kirkland's future.
6. Accessibility to pedestrians and bicyclists should be preserved through an improved pedestrian and bicycle path through the unopened 5th Avenue South right-of-way.
7. The applicant may propose to locate a residential driveway in the unopened 5th Avenue South right-of-way to access Lot 3 of the Aubry Short Plat. The design for the required pedestrian and bicycle path and the driveway will be reviewed and approved by the Public Works Department.
8. For all of the reasons set forth above, the City Council concludes that the decision of the Planning Director should be modified. The 5th Avenue South right-of-way should be improved with only a pedestrian and bicycle path and the 5th Avenue South right-of-way should not be opened to through vehicular use.

DECISION

For the reasons set forth in the foregoing Findings and Conclusions, the appeals of David and Anna Aubry, Jerry and Beverly Gilbert, Tom and Sherri Lynn, Karen Tipp, and Doug Thompson are hereby **GRANTED**. Any portion of the Director’s Findings, Conclusions, and Recommendations not overturned by virtue of granting the appeals as provided herein is upheld. The Director’s approval of the Aubry Short Plat is upheld as modified herein.

Decision adopted by the Kirkland City Council _____, 2007.

MAYOR