



**CITY OF KIRKLAND**  
Planning and Community Development Department  
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225  
www.ci.kirkland.wa.us

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## MEMORANDUM

**To:** David Ramsay, City Manager

**From:** Eric R. Shields, AICP, Planning Director  
David Barnes, Project Planner

**Date:** July 24, 2007

**Subject:** VanBuskirk Right-of-way Vacation, File No. VAC07-00002

### **RECOMMENDATION**

The Department of Planning and Community Development recommends that the City Council hold a public hearing and adopt a Resolution of Intent to Vacate granting a vacation of a portion of NE 97<sup>th</sup> Place right-of-way located between Slater Avenue NE and Interstate 405, subject to the following condition:

Within ninety (90) days of the passage of the Resolution of Intent to grant the vacation, the applicants shall:

1. Pay to the City as compensation for vacating the requested portion of right-of-way, the full appraised value of the subject site totaling \$210,000.
2. Submit to the City a copy of the recorded easement as requested by Washington State Department of Transportation.

### **RULES FOR CITY COUNCIL CONSIDERATION**

The City Council shall consider the vacation at a public hearing. Any interested person may participate in the public hearing by either or both submitting written comments to the City Council or by appearing in person, or through a representative, at the hearing and make oral comments directly to the City Council.

After the public hearing, the City Council shall, by motion approved by a majority of the entire membership in a roll call vote (per KMC 19.16.160), do one of the following:

- (a) Adopt an Ordinance granting the vacation; or
- (b) Adopt a motion denying the vacation; or
- (c) Adopt a resolution of intent to vacate stating that the City Council will, by Ordinance, grant the vacation if the applicant meets specified conditions within 90 days, unless otherwise specified in the resolution.

Staff recommends option C above since monetary compensation is recommended.

The City may require that monetary compensation be paid to the City in an amount of up to one-half the appraised value for the vacated property, provided that compensation may be required in an amount of up to full appraised value if either the vacated area has been part of a dedicated public right-of-way for twenty five years or more; or if the subject property were acquired at a public expense. In this case, the NE 97<sup>th</sup> Place right-of-way was dedicated with the plat Burke and Farrar's Division 14 on July 11, 1911.

### **BACKGROUND DISCUSSION**

John VanBuskirk and Johal Karnail submitted a petition to vacate a 10,339 square foot portion of the NE 97<sup>th</sup> Place right-of-way located between Slater Avenue NE and Interstate 405. The vacation must be initiated by owners of more than two-thirds of the property abutting the right-of-way to be vacated. In this case, John VanBuskirk and Johal Karnail are the only owners that abut the proposed vacated right-of-way.

On the City Council adopted Resolution No. 4648 setting a public hearing date for the proposed vacation on July 17, 2007. The hearing was opened and continued to August 7, 2007 in order to provide adequate notice of hearing.

Enclosures:

Staff Advisory Report

Resolution of Intent to Vacate

cc: File No. VAC07-00002



## CITY OF KIRKLAND

Planning and Community Development Department  
123 Fifth Avenue, Kirkland, WA 98033 425.828.1257  
[www.ci.kirkland.wa.us](http://www.ci.kirkland.wa.us)

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### ADVISORY REPORT

### FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

**To:** Kirkland City Council

**From:** \_\_\_\_\_ Eric R. Shields, AICP, Planning Director  
\_\_\_\_\_ David Barnes, Project Planner

**Date:** July 23, 2007

**File:** VANBUSKIRK RIGHT-OF-WAY VACATION, A portion of NE 97<sup>th</sup> PL, FILE NO. VAC07-00002

**Hearing Date and Place:** August 7, 2007  
City Hall Council Chamber  
123 Fifth Avenue, Kirkland

#### I. INTRODUCTION

##### A. APPLICATION

1. Applicant: John VanBuskirk and Johal Karnail
2. Site Location: The NE 97<sup>th</sup> PL right-of-way between Slater Avenue NE and Interstate 405. (see Attachment 1).
3. Request: The proposal is to vacate a 60 foot wide by 170.18 foot long section of the NE 97<sup>th</sup> PL right-of-way for a total of 10,339 square feet. (see Attachment 2).
4. Review Process: City Council conducts public hearing. Following the public hearing, the Council makes the final decision by motion approved by a majority of the entire membership in a roll call vote.
5. Summary of Key Issues: Compliance with right-of-way vacation criteria.

##### B. RECOMMENDATIONS

Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, we recommend approval of this application subject to the following conditions:

1. Within ninety (90) days of the passage of the Resolution of Intent to grant the vacation, the applicants shall
  - a. Pay to the City as compensation for vacating the requested portion of right-of-way, the full appraised value of the subject site totaling \$210,000 (see Conclusion II.C.3).
  - b. Submit to the City a copy of the recorded easement as requested by Washington State Department of Transportation (see Conclusion II.C.4).

## II. **FINDINGS OF FACT AND CONCLUSIONS**

### A. **SITE DESCRIPTION**

#### 1. Site Development and Zoning:

##### a. Facts:

- (1) Size: The portion of the NE 97<sup>th</sup> PL right-of-way requested to be vacated is 60 feet wide by 170.18 feet long (10,339 square feet) and is located between Slater Avenue NE and Interstate 405.
- (2) Land Use: The right-of-way proposed to be vacated is undeveloped. The applicant to the south's property is undergoing development. The applicant to the north's property is vacant and was recently approved for a three lot short plat.
- (3) Zoning: RM 3.6 (Medium density residential zoning with a minimum lot area of 3,600 square feet).
- (4) Development Potential: The applicant's property to the south is approximately 44,788 square feet. The current development plans are to build 6 duplex structures. The proposed structures adjacent to the unopened portion of the NE 97<sup>th</sup> PL right of way require a 20 foot building setback. The development plans indicate a 6 foot setback from the current property line which abuts NE 97<sup>th</sup> Place. The vacation of the right-of-way would reduce the property line setback from the 20 foot front yard setback to a minimum 5 foot side yard setback. The street vacation would bring the development plans into conformance with regards to setback requirements and give the applicant additional land area for future improvements including an additional housing unit. The applicant's property to the north is currently vacant and this street vacation holds the possibility of an additional housing unit.
- (5) Terrain: The portion of right-of-way to be vacated slopes upward from the Slater Avenue NE right-of-way to the rear where it abuts a sound wall for Interstate 405.
- (6) Vegetation: The portion of right-of-way to be vacated contains many significant trees.

- ##### b. Conclusions: Size, Land Use, Zoning, Terrain, Vegetation and Development Potential are not constraining factors in the proposed street vacation application.

#### 2. Neighboring Development and Zoning:

- ##### a. Facts: The area of the proposed street vacation and adjoining site is surrounded by a developing site of duplex structures to the south and a vacant parcel that was recently approved for a three lot short plat to the north, both of which are in the RM 3.6 Zone. To the west is Interstate 405. To the east are vacant parcels in the PLA 17 Zone.
- ##### b. Conclusion: The neighboring development and zoning are not constraining factors in the proposed street vacation application.

### B. **PUBLIC COMMENT**

There were no written comments received by the Department of Planning and Community Development prior to writing this report.

## **KIRKLAND MUNICIPAL CODE – COMPLIANCE WITH STREET VACATION CRITERIA**

### 1. Street Vacation Criteria

#### a. Facts:

- (1) Section 19.16.130 of the Kirkland Municipal Code states: "Criteria for granting Street Vacation - The City Council may, in its discretion vacate a street, alley or public easement if it determines the vacation is in the public interest and that:
  - (a) The street, alley, or public easement is not currently necessary for travel or other street purposes, nor likely to be in the future; and
  - (b) No property will be denied all access as a result of the vacation.
- (2) The City Council may consider any other fact or issue it deems relevant when deciding whether to vacate a street, alley or public easement.
- (3) The property located to the south and the property to the north both take access from Slater Avenue NE. No other lots will be impacted by the proposed street vacation.
- (4) NE 97<sup>th</sup> PL is classified as a Neighborhood Access Street. Kirkland Zoning Code Chapter 110 requires that this type of street have a minimum pavement width of 28 feet if used for vehicular travel. This portion of NE 97<sup>th</sup> PL is an existing 60 foot-wide right-of-way. There are no plans to use or open this portion of right-of-way. The area to be vacated contains no improvements and is heavily vegetated with trees and grasses.
- (5) Approval of this street vacation would be consistent with similarly approved street vacations for unused right-of-ways.
- (6) The Public Works Department has recommended approval of the proposed street vacation (see Attachment 3, Development Standards).

- b. Conclusion: The proposed street vacation will not deny direct access to any lots and the proposed area to be vacated is not needed for right-of-way improvements.

### 2. Initiation of Vacation Procedure

#### a. Facts:

- (1) Section 19.16.030 of the Kirkland Municipal Code (Initiation of Proceedings) allows a vacation to be initiated by the City Council or by owners of more than two thirds of the property abutting the part of the street or alley to be vacated. The applicants represent all of the owners with properties abutting the proposed vacation.
- (2) A petition signed by all the abutting property owners of the proposed street vacation has been submitted (see Attachment 4).

- b. Conclusion: The requirements of Section 19.16.030 have been met.

3. Street Vacation - Final Decision and Compensation

a. Facts:

- (1) Section 19.16.160 of the Kirkland Municipal Code indicates that following the public hearing, the City Council shall, by motion approved by a majority of the entire membership in a roll call vote, either (a) adopt an ordinance granting the vacation; or (b) adopt a motion denying the vacation, or (c) adopt a resolution of intent to vacate stating that the City Council will, by ordinance, grant the vacation if the applicant meets specified conditions within 90 days, unless otherwise specified in the resolution.
- (2) The City may require the following as conditions:
  - (a) Monetary compensation to be paid to the City in an amount of up to one-half the appraised value for the subject property; provided, that compensation may be required in an amount of up to full appraised value of the subject property if either of the following applies to the street vacation:
    - (i) It has been part of a dedicated public right-of-way for twenty five years or more; or
    - (ii) The subject property or portions thereof were acquired at public expense.
  - (b) The grant of a substitute public right-of-way which has value as right-of-way at least equal to the subject property; or
  - (c) Any combination of (a) and (b) above, provided that the total value of the combined conditions shall not total more than the maximum amount of monetary compensation allowed under subsection (2) (a) of this section.
- (3) The City has acquired an independent appraisal of the subject site from O'Connor Consulting Group, LLC concluding a fair market land value of \$20.31 per square foot (see Attachment 5).
- (4) The value of the right-of-way to be vacated is \$210,000 (10,339 square feet times \$20.31 per square foot).
- (5) The portion of NE 97<sup>th</sup> PL right-of-way was dedicated with the recording of the plat Burke and Farrar's Division 14 on July 11, 1911.
- (6) Since the right-of-way was dedicated more than 25 years ago, as required above, payment to the City of the full-appraised value of the subject site is required.

- b. Conclusion: The applicant should compensate the City \$210,000 (the full appraised value) for vacating the portion of the NE 97<sup>th</sup> PL right-of-way between Slater Avenue NE and the Interstate 405 right-of-way.

4. Street Vacation – Easements

a. Facts:

- (1) KMC Section 19.16.140 allows the City Council to reserve for the City any easement or the right to exercise and grant any easements for public utilities and services, pedestrian trail purposes; and any other type of easement relating to the City's right to control, use and manage rights-of-way.
- (2) The City has obtained a request from Washington State Department of Transportation regarding their need to retain a 20 foot-wide drainage easement over the entire length of the vacated right-of-way

- b. Conclusion: Within ninety (90) days of the passage of the Resolution of Intent to grant the vacation, the applicants should submit to the City a copy of the recorded easement as requested by Washington State Department of Transportation.

**D. COMPREHENSIVE PLAN**

1. Fact: The subject property is located within the North Rose Hill Neighborhood. The North Rose Hill Neighborhood Land Use Map designates the subject property for medium-density residential use at 12 units per acre (see Attachment 6).
2. Conclusion: The vacation of the right-of-way would not change the Comprehensive Plan Land Use Designation.

**E. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

Street Vacations are categorically exempt from SEPA pursuant to WAC 197-77-800 (2)(h).

**III. APPENDICES**

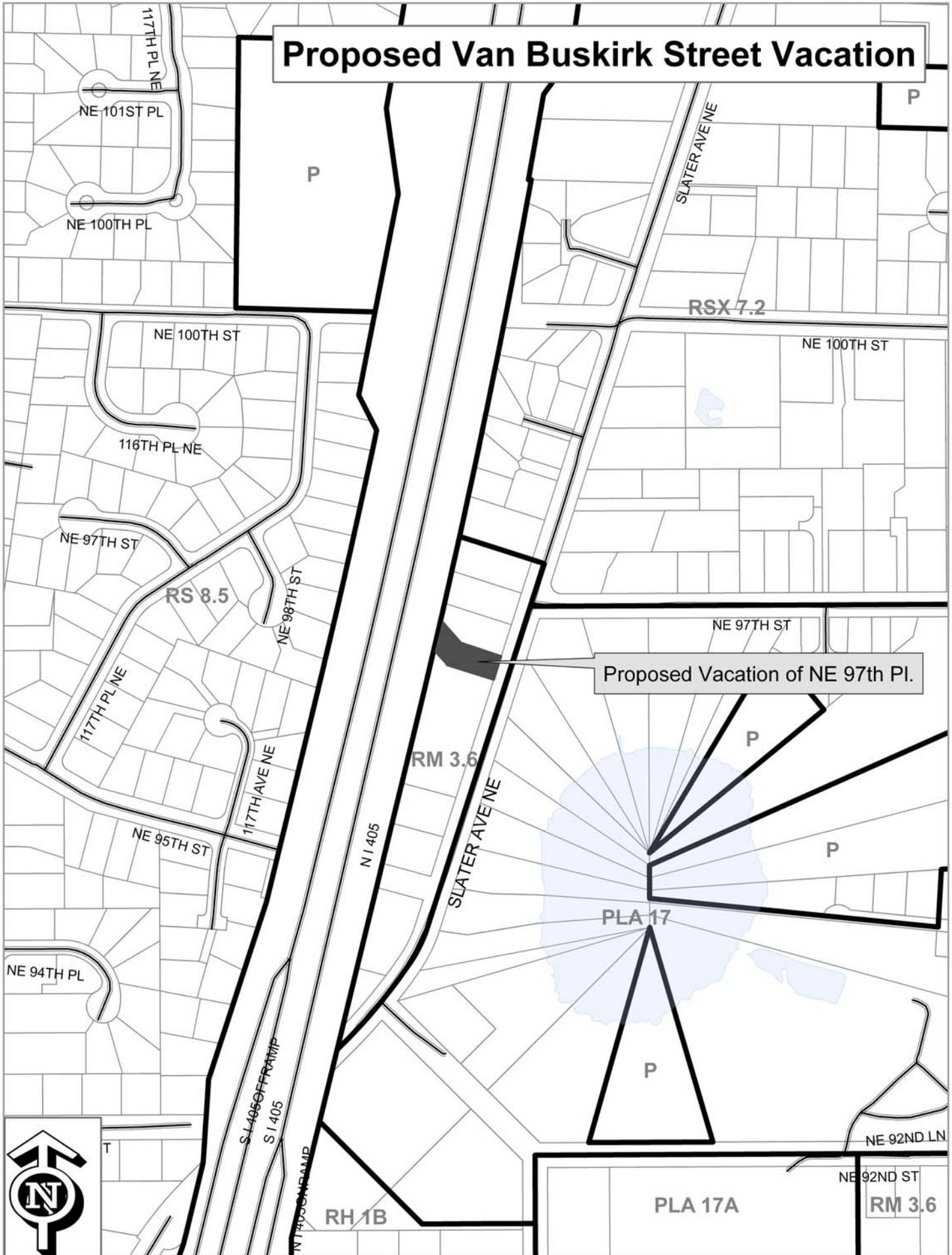
Attachments 1 through 6 are attached.

1. Vicinity Map
2. Site Map
3. Development Standards
4. Petition to Vacate Right-of-Way
5. Land Appraisal Report
6. North Rose Hill Neighborhood Land Use Map

**IV. PARTIES OF RECORD**

Applicant: John VanBuskirk  
Applicant: Johal Karnail  
Department of Planning and Community Development  
Department of Public Works  
Department of Building and Fire Services

# Proposed Van Buskirk Street Vacation







CITY OF KIRKLAND  
123 FIFTH AVENUE, KIRKLAND, WASHINGTON 98033-6189 (425) 587-3800

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**PERMIT NO. : VAC07-00002**

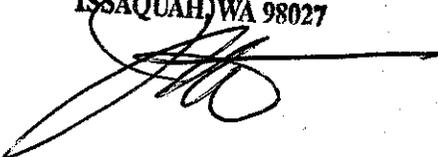
**PRINT DATE: 7/24/2007**

**PUBLIC WORKS DEPARTMENT CONDITIONS AS FOLLOWS:**

- 1) PUBLIC WORKS CONDITIONS:
- 2) A 20 foot wide storm easement is requested by WSDOT. This easement shall be located in the center of the vacation such that 10 feet encumbering each of the properties benefiting from the Vacation. If one of the benefiting owners takes over the entire vacation the 20 foot wide easement may be located anywhere within the 60 foot wide vacation.

**PETITION TO VACATE A STREET, ALLEY OR PUBLIC EASEMENT**

We, the owners of two-thirds of the real property abutting the street, alley, or part thereof, or underlying the public easement, or part thereof, legally described on page 1 of this Petition, petition the City Council of the City of Kirkland to vacate this street, alley, public easement, or part thereof.

NAME	ADDRESS	LEGAL DESCRIPTION
<p>JAMAX ASSOCIATES LLC</p> <p><b>JAMAX ASSOCIATES, LLC.</b> 18709 SE 44 PL ISSAQUAH, WA 98027</p> 	9551 SLATER AVENUE	<p>LOTS 8 &amp; 9 BLK 47, BURKE &amp; FARRAR'S KIRKLAND ADDITION TO THE CITY OF SEATTLE, DIVISION NO. 14.</p>
<p>JOHAL KARNAIL S NILAKUMARI</p> <p><i>JT</i> Mehi Jhal</p>	N/A	<p>LOT 4 BLK 45, BURKE &amp; FARRAR'S KIRKLAND ADDITION TO THE CITY OF SEATTLE, DIVISION NO. 14</p>

*(Attach additional sheets if necessary)*

NOTE: If any petitioner is purchasing the property under a real estate contract, the signature of the contract seller is also required.



O'CONNOR  
CONSULTING  
GROUP, LLC

500 UNION STREET  
SUITE 650  
SEATTLE, WA 98101

June 1, 2007  
OCG Ref. No. 07-174

Mr. David Barnes  
City of Kirkland Planning and Development  
123 5<sup>th</sup> Ave  
Kirkland, WA 98033

RE: Appraisal of an unimproved street of NE 97<sup>th</sup> Place in Kirkland, WA

Dear Mr. Barnes:

In accordance with your request, we have written an appraisal in a *summary* format and formed an opinion of the Market Value of the Fee Simple interest in the above-referenced property. The subject is an unimproved street and based on the land area survey it represents approximately a total gross land area of 10,172 square feet, or 0.23 acres.

Mr. John Van Buskirk and Mr. Karnail S. Jihal who own sites located directly to the south and north intend to purchase this undeveloped land (street) to develop a duplex based on the RM 3.6 zoning. Jamax Associates (Mr. Van Buskirk) own the site to the south and they plan to build 12 Fee-Simple townhouse units in 6 separate duplex buildings.

The accompanying appraisal report identifies the subject property, describes the market for this type of property and presents the specific market data and analyses leading to our estimate of value. The report has been prepared to comply with the Standards of Professional Practice of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation. It has also been prepared to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as revised, governing appraisals for federally related transactions.

As a result of the inspection, investigation, and analyses, it is our opinion that the Market Value for the subject, recognizing the Assumptions and Limiting Conditions contained in the following report is:

**Value Premise**

"As Is" Market Value

**Effective Date**

April 29, 2007

**Market Value**

\$210,000

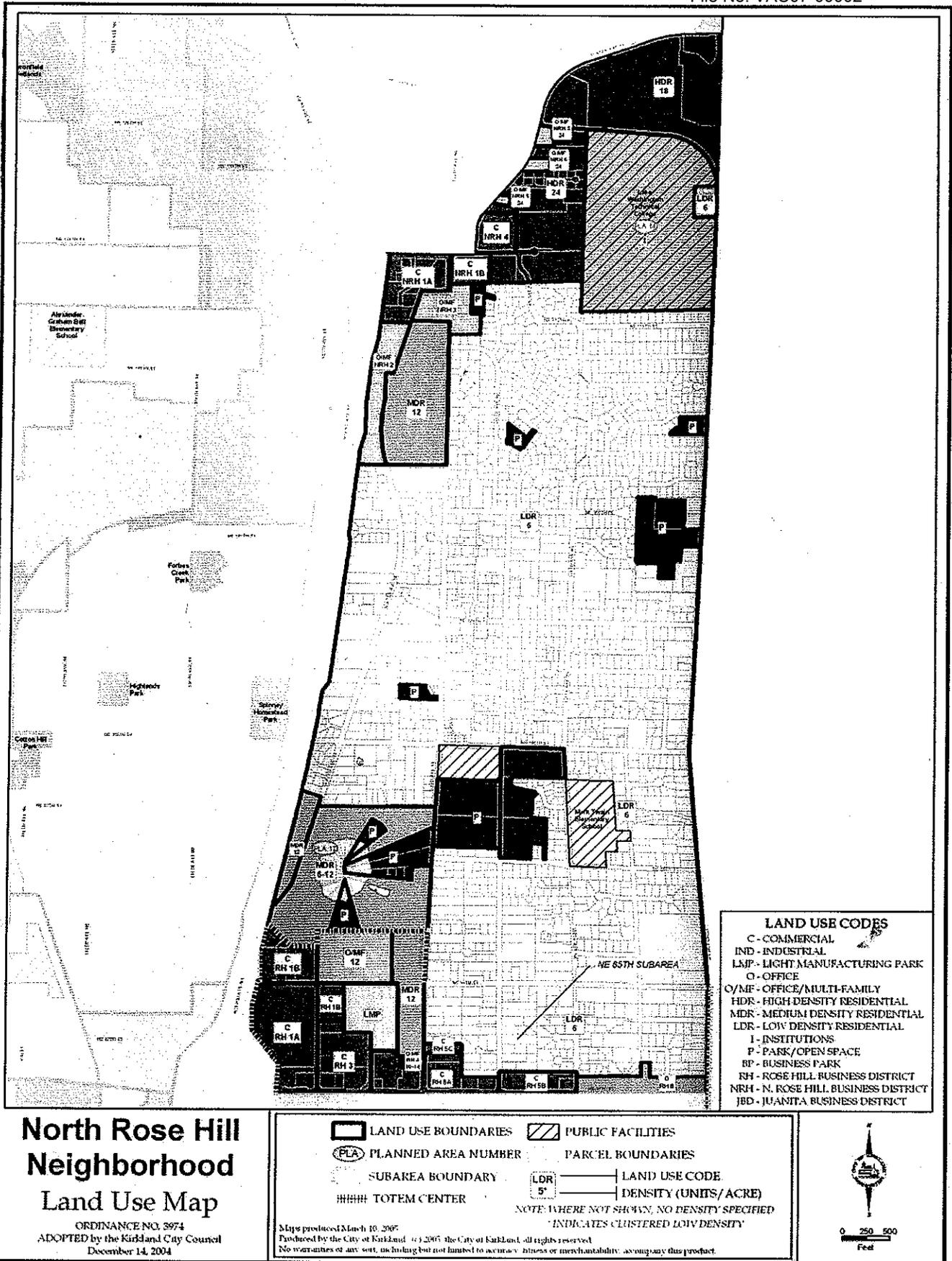
Thank you for the opportunity to work with you on this assignment.

Sincerely,

O'CONNOR CONSULTING GROUP, LLC

Brian R. O'Connor, MAI

Soryun Fitzpatrick, Associate



# North Rose Hill Neighborhood Land Use Map

ORDINANCE NO. 2974  
ADOPTED by the Kirkland City Council  
December 14, 2004

Figure NRH-4: North Rose Hill Land Use

RESOLUTION R-4658

A RESOLUTION OF THE CITY OF KIRKLAND EXPRESSING AN INTENT TO VACATE A PORTION OF A RIGHT-OF-WAY FILED BY John VanBuskirk and Johal Karnail, FILE NUMBER VAC07-00002.

WHEREAS, the City has received an application filed by John VanBuskirk and Johal Karnail to vacate a portion of a right-of-way; and

WHEREAS, by Resolution Number 4648, the City Council of the City of Kirkland established a date for a public hearing on the proposed vacation; and

WHEREAS, proper notice for the public hearing on the proposed vacation was given and the hearing was held in accordance with the law; and

WHEREAS, an Environmental Checklist was filed pursuant to the State Environmental Policies Act and applicable state guidelines and local implementing ordinances, which was reviewed by the Responsible Official of the City of Kirkland who issued a negative declaration of the proposed vacation; and

WHEREAS, this Environmental Checklist and Negative Declaration have been available and accompanied this application through the entire review process; and

WHEREAS, it is appropriate for the City to receive compensation for vacating the right-of-way as allowed under state law; and

WHEREAS, no property owner will be denied direct access as a result of this vacation.

WHEREAS, it appears desirable and in the best interest of the City, its residents and property owners abutting thereon that said street to be vacated;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland as follows:

Section 1. The Findings and Conclusions as set forth in the Recommendation of the Department of Planning

and Community Development contained in File Number VAC07-00002 are hereby adopted as though fully set forth herein.

Section 2. Except as stated in Section 3 of this resolution, the City will, by appropriate ordinance, vacate the portion of the right-of-way described in Section 4 of this resolution if within 90 days of the date of passage of this resolution the applicant or other person meets the following conditions:

(a) Pays to the City \$210,000 as compensation for vacating this portion of the right-of-way.

(b) Within seven (7) calendar days after the final public hearing, the applicant shall remove all public notice signs and return them to the Department of Planning and Community Development.

(c) Within ninety (90) days of the passage of the Resolution of Intent to grant the vacation, the applicants should submit to the City a copy of the recorded easement as requested by Washington State Department of Transportation.

Section 3. If the portion of the right-of-way described in Section 4 of this resolution is vacated, the City will retain and reserve an easement, together with the right to exercise and grant easements along, over, under and across the vacated right-of-way for the installation, construction, repair and maintenance of public utilities and services.

Section 4. The right-of-way to be vacated is situated in Kirkland, King County, Washington and is described as follows:

See Attachment 1 for legal description

Section 5. Certified or conformed copies of this Resolution shall be delivered to the following within seven (7) days of the passage to this resolution:

- (a) Applicant;
- (b) Department of Planning and Community Development of the City of Kirkland;
- (c) Fire and Building Departments of the City of Kirkland;

- (d) Public Works Department of the City of Kirkland; and
- (e) The City Clerk for the City of Kirkland.

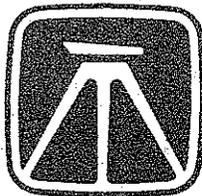
Passed by majority vote of the Kirkland City Council in open meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED IN AUTHENTICATION THEREOF this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



# JIM HART AND ASSOCIATES

220 6TH STREET, KIRKLAND, WA 98033-6335, 425-822-4171 FAX 425-827-3085

07-25  
5/24/07

## ROAD VACATION NORTH ONE HALF NE 97<sup>TH</sup> PLACE

### LEGAL DESCRIPTION:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 4, BLOCK 45, BURKE AND FARRAR'S KIRKLAND ADDITION, DIVISION NO. 14, AS RECORDED IN VOLUME 20 OF PLATS, PAGE(S) 14, RECORDS OF KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THENCE SOUTH 17°45'17" WEST 30.00 FEET TO THE CENTERLINE OF NE 97<sup>TH</sup> PLACE (MORETON AVENUE);

THENCE NORTH 72°14'43" WEST ALONG SAID CENTERLINE 109.07 FEET;

THENCE NORTH 41°01'43" WEST ALONG SAID CENTERLINE 61.14 FEET, MORE OR LESS, TO THE EASTERLY RIGHT OF WAY OF I-405 WHOSE RADIAL CENTER BEARS NORTH 77°16'24" WEST 23,043.22 FEET;

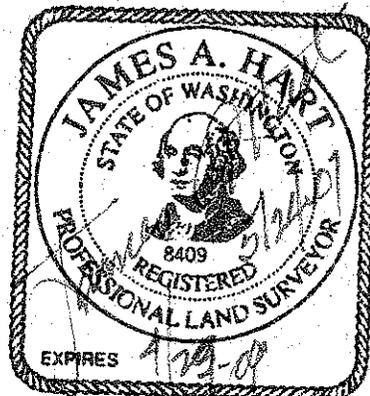
THENCE ALONG A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 00°05'32" AN ARC DISTANCE OF 37.06 FEET ALONG SAID RIGHT OF WAY TO THE NORTHERLY MARGIN OF NE 97<sup>TH</sup> PLACE (MORETON AVENUE) AND THE SOUTHWESTERLY LINE OF LOT 4, BLOCK 45, OF SAID PLAT;

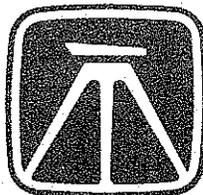
THENCE SOUTH 41°01'43" EAST ALONG THE NORTHERLY MARGIN OF NE 97<sup>TH</sup> PLACE 74.52 FEET;

THENCE SOUTH 72°14'43" EAST ALONG THE NORTHERLY MARGIN OF NE 97<sup>TH</sup> PLACE 100.69 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 5,178 SQUARE FEET, MORE OR LESS.

SITUATE IN THE CITY OF KIRKLAND, KING COUNTY, WASHINGTON.





# JIM HART AND ASSOCIATES

220 6TH STREET, KIRKLAND, WA 98033-6335, 425-822-4171 FAX 425-827-3085

07-25  
5/21/07

## ROAD VACATION SOUTH ONE HALF NE 97<sup>TH</sup> PLACE

### LEGAL DESCRIPTION:

BEGINNING AT THE NORTHEAST CORNER OF LOT 9, BLOCK 47, BURKE AND FARRAR'S KIRKLAND ADDITION, DIVISION NO. 14, AS RECORDED IN VOLUME 20 OF PLATS, PAGE(S) 14, RECORDS OF KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THENCE NORTH  $17^{\circ}45'17''$  EAST 30.00 FEET TO THE CENTERLINE OF NE 97<sup>TH</sup> PLACE (MORETON AVENUE);

THENCE NORTH  $72^{\circ}14'43''$  WEST ALONG SAID CENTERLINE 109.07 FEET;

THENCE NORTH  $41^{\circ}01'43''$  WEST ALONG SAID CENTERLINE 61.14 FEET, MORE OR LESS, TO THE EASTERLY RIGHT OF WAY OF I-405 WHOSE RADIAL CENTER BEARS NORTH  $77^{\circ}16'24''$  WEST 23,043.22 FEET;

THENCE ALONG A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF  $00^{\circ}05'31''$  AN ARC DISTANCE OF 37.02 FEET ALONG SAID RIGHT OF WAY TO THE SOUTHERLY MARGIN OF NE 97<sup>TH</sup> PLACE (MORETON AVENUE) AND THE NORTHEASTERLY LINE OF LOT 9, BLOCK 47, OF SAID PLAT;

THENCE SOUTH  $41^{\circ}01'43''$  EAST ALONG THE SOUTHERLY MARGIN OF NE 97<sup>TH</sup> PLACE 47.84 FEET;

THENCE SOUTH  $72^{\circ}14'43''$  EAST ALONG THE SOUTHERLY MARGIN OF NE 97<sup>TH</sup> PLACE 117.45 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 5,033 SQUARE FEET, MORE OR LESS.

SITUATE IN THE CITY OF KIRKLAND, KING COUNTY, WASHINGTON.

