



CITY OF KIRKLAND

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MEMORANDUM

To: David Ramsay, City Manager

From: Robin S. Jenkinson, City Attorney

Date: April 16, 2008

Subject: Kirkland Parkplace Center: Potential DRB Appeal on New Proposal

RECOMMENDATION

That the City Council review this memorandum and consider whether it wants to delegate to the Hearing Examiner the authority to decide appeals of Design Review Board (DRB) decisions. If delegation is desired, the Council could direct that an ordinance be prepared for an upcoming agenda.

BACKGROUND DISCUSSION

On April 23, 2007, Douglas Howe of Touchstone Corporation (Touchstone) applied for a private amendment request to redevelop the existing Kirkland Parkplace Center with as much as 1.8 million square feet of office, retail and hotel use. The request is to amend the Comprehensive Plan and Zoning Code to allow additional height up to a maximum eight stories, reduced yard setbacks and other changes to the existing regulations and Comprehensive Plan policies. The City Council directed the Design Review Board (DRB) to advise the Planning Commission on the private amendment request which it has done. The Planning Commission is currently studying the amendment request. The Planning Commission is scheduled to hold three public hearings and then will provide a recommendation to the City Council. The City Council will make the final decision on the amendments sometime in early fall 2008.

More recently Touchstone submitted a new Parkplace Center redevelopment proposal for design review with the intention of meeting the current CBD-5 Zoning Code regulations and Comprehensive Plan policies (referred to in this memorandum as the new proposal). Touchstone has decided to pursue design review approval of this new proposal while the City considers its private amendment.

The new proposal is to redevelop Kirkland Parkplace Center in two phases. Phase I consists of six or seven office buildings at five-stories in height located in the north and northeast portion of the site. No retail is proposed in the buildings. All existing buildings, except those retained until Phase II, would be removed. The QFC store and the retail building directly east of the grocery store would be retained and redeveloped at a later date in Phase II. The buildings southeast of QFC that contain the restaurants will also be retained and redeveloped in Phase II. Six alternative conceptual site plans have been submitted with a total square footage ranging from 895,000 sq. ft. to 935,000 sq. ft. of office space.

The DRB conceptual design conference for the new proposal is scheduled for April 21, 2008.

ISSUE TO CONSIDER

The private amendment request is a legislative process in which the City Council will ultimately exercise its broad policy making authority. Legislative decisions are not subject to the appearance of fairness doctrine. RCW 42.36.010. An appeal of any resulting City Council amendments to the Comprehensive Plan and Zoning Code would have to be filed with the Growth Management Hearings Board. RCW 36.70A.300.

If the DRB's decision on the new proposal to redevelop Kirkland Parkplace Center was appealed, the appeal would be to the City Council. This would be a quasi-judicial appeal with a hearing subject to the appearance of fairness doctrine. While the appeal was pending, the Council members could not engage in ex parte communications with opponents or proponents with respect to the new proposal. RCW 42.36.060.¹

Just the fact that the private amendment request and the new proposal are proceeding on parallel tracks may cause some confusion. The potential appeal of the DRB decision on the new proposal could add an additional layer of complexity. On the private amendment request the City Council will want to receive citizen input and is freely able to do so. On an appeal of the new proposal from the DRB, the City Council would be subject to the appearance of fairness doctrine. It would be difficult to sort out if a citizen is seeking to talk to Council Members in their legislative or quasi-judicial role; the private amendment request or the new proposal. In talking about either the private amendment request or the new proposal, people are likely to draw comparisons, further blurring the boundaries. One possible solution would be for the Council to delegate the authority to hear DRB appeals to the Hearing Examiner. Should the Council wish to do so; this office can prepare the appropriate ordinance.

Please let me know if you have any questions.

¹ RCW 42.36.060 provides: During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

- (1) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and
- (2) Provides that a public announcement of the contents of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.