



CITY OF KIRKLAND

CITY COUNCIL

James Lauinger, Mayor • Joan McBride, Deputy Mayor • Dave Asher • Mary-Alyce Burleigh
Jessica Greenway • Tom Hodgson • Bob Sternoff • David Ramsay, City Manager

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AGENDA

KIRKLAND CITY COUNCIL MEETING

City Council Chamber
Tuesday, August 5, 2008
5:30 p.m. – Study Session – Peter Kirk Room
7:30 p.m. – Regular Meeting

COUNCIL AGENDA materials are available on the City of Kirkland website www.ci.kirkland.wa.us, at the Public Resource Area at City Hall or at the Kirkland Library on the Friday afternoon prior to the City Council meeting. Information regarding specific agenda topics may also be obtained from the City Clerk's Office on the Friday preceding the Council meeting. You are encouraged to call the City Clerk's Office (587-3190) or the City Manager's Office (587-3001) if you have any questions concerning City Council meetings, City services, or other municipal matters. The City of Kirkland strives to accommodate people with disabilities. Please contact the City Clerk's Office at 587-3190, or for TTY service call 587-3111 (by noon on Monday) if we can be of assistance. If you should experience difficulty hearing the proceedings, please bring this to the attention of the Council by raising your hand.

EXECUTIVE SESSIONS may be held by the City Council to discuss matters where confidentiality is required for the public interest, including buying and selling property, certain personnel issues, and lawsuits. An executive session is the only type of Council meeting permitted by law to be closed to the public and news media

ITEMS FROM THE AUDIENCE provides an opportunity for members of the public to address the Council on any subject which is not of a quasi-judicial nature or scheduled for a public hearing. (Items which may not be addressed under Items from the Audience are indicated by an asterisk*.) The Council will receive comments on other issues, whether the matter is otherwise on the agenda for the same meeting or not. Speaker's remarks will be limited to three minutes apiece. No more than three speakers may address the Council on any one subject. However, if both proponents and opponents wish to speak, then up to three proponents and up to three opponents of the matter may address the Council.

1. *CALL TO ORDER*
2. *ROLL CALL*
3. *STUDY SESSION*, Peter Kirk Room, 5:30 p.m.
 - a. 2009 to 2014 Capital Improvement Program
4. *EXECUTIVE SESSION*
 - a. To Discuss Labor Negotiations
5. *SPECIAL PRESENTATIONS*
 - a. 520 Tolling Implementation:
Puget Sound Regional Council Executive Director Bob Drewel and Director of Government Relations and Communications Rick Olson
 - b. Sustainability Study: Kathleen O'Brien, O'Brien & Company
6. *REPORTS*
 - a. *City Council*
 - (1) Regional Issues
 - a. *City Manager*
 - (1) Calendar Update

7. *COMMUNICATIONS*

- a. *Items from the Audience*
- b. *Petitions*

8. *CONSENT CALENDAR*

a. *Approval of Minutes:* July 15, 2008

- b. *Audit of Accounts:*
 - Payroll* \$
 - Bills* \$

- c. *General Correspondence*
- d. *Claims*

- (1) Angela Warmuth

- e. *Award of Bids*

- f. *Acceptance of Public Improvements and Establishing Lien Period*

- (1) Police Department Jail Kitchen Tenant Improvement Project
 - (2) 2007 Emergency Sewer Construction Program

- g. *Approval of Agreements*

- (1) Cascade Water Alliance Membership Audit Acceptance Agreement

- * (2) Resolution R-4716, Approving the Issuance of a Process IIB Permit as Applied for in Department of Planning and Community Development File No. ZON07-00039 by King County Department of Natural Resources and Parks, Solid Waste Division Being Within a Park Zone, and Setting Forth Conditions to Which Such Process IIB Permit Shall be Subject

- (3) Resolution R-4717, Approving Participation by the City in a Cooperative Purchasing Agreement with the Washington State Department of General Administration's Office of State Procurement and Authorizing the City Manager to Execute Said Agreement on Behalf of the City of Kirkland

- h. *Other Items of Business*

- * (1) Resolution R-4718, Approving the Subdivision and Final Plat of Juanita Bay Townhomes Being Department of Planning and Community Development File No. FSB08-00001 and Setting Forth Conditions to Which Such Subdivision and Final Plat Shall be Subject

GENERAL CORRESPONDENCE

Letters of a general nature (complaints, requests for service, etc.) are submitted to the Council with a staff recommendation. Letters relating to quasi-judicial matters (including land use public hearings) are also listed on the agenda. Copies of the letters are placed in the hearing file and then presented to the Council at the time the matter is officially brought to the Council for a decision.

ORDINANCES are legislative acts or local laws. They are the most permanent and binding form of Council action, and may be changed or repealed only by a subsequent ordinance. Ordinances normally become effective five days after the ordinance is published in the City's official newspaper.

RESOLUTIONS are adopted to express the policy of the Council, or to direct certain types of administrative action. A resolution may be changed by adoption of a subsequent resolution.

PUBLIC HEARINGS are held to receive public comment on important matters before the Council. You are welcome to offer your comments after being recognized by the Mayor. After all persons have spoken, the hearing is closed to public comment and the Council proceeds with its deliberation and decision making.

- (2) Resolution R-4719, Ratifying Amendments to the King County Countywide Planning Policies
- (3) Resolution R-4720, Relinquishing Any Interest the City May Have in an Unopened Right-of-Way as Described Herein and Requested by Property Owners Cedomir and Lucia Iovanovici
- (4) Resolution R-4721, Relinquishing Any Interest the City May Have in an Unopened Right-of-Way as Described Herein and Requested by Property Owners Douglas J. and Linda M. Jamieson
- (5) Resolution R-4722, Relinquishing Any Interest the City May Have in an Unopened Right-of-Way as Described Herein and Requested by Property Owner Thomas Wolter
- (6) Remittance of Concours d'Elegance Admissions Tax Receipts to Evergreen Hospital
- (7) Report on Procurement Activities

9. *UNFINISHED BUSINESS*

10. *NEW BUSINESS*

- a. Tax Burden Study
- b. Status Report on Touchstone (Parkplace), Orni and Alton Private Amendment Requests
- c. Costco Wholesale Private Amendment Request

11. *PUBLIC HEARINGS* - This quasi-judicial hearing is not open to testimony from the general public. Participation is limited per Kirkland Zoning Code 142.40.6.

- * a. Resolution R-4707, Adopting Findings and Conclusions and Reversing the Decision of the Design Review Board Granting Design Review Approval to the Bank of America/Merrill Gardens Mixed Use Project at 101 Kirkland Avenue (File No.: DRC 07-0006; Appeal Case No.: APL08-0001)

12. *ANNOUNCEMENTS*

13. *ADJOURNMENT*

NEW BUSINESS consists of items which have not previously been reviewed by the Council, and which may require discussion and policy direction from the Council.

**CITY OF KIRKLAND****Department of Finance & Administration****123 Fifth Avenue, Kirkland, WA 98033 425.587.3100****www.ci.kirkland.wa.us**

MEMORANDUM

To: Dave Ramsay, City Manager

From: Tracey Dunlap, Director of Finance and Administration
Sandi Hines, Financial Planning Manager

Date: July 24, 2008

Subject: **2009 to 2014 Capital Improvement Program**

RECOMMENDATION:

City Council review the Preliminary 2009 to 2014 Capital Improvement Program (CIP).

BACKGROUND DISCUSSION:

The Preliminary CIP for 2009 to 2014 has been completed and a hard copy of the document has been provided to the City Council under separate cover for review and consideration. Please refer to the narrative in the introductory section of the document summary for a discussion of significant policy issues, changes and project highlights. The study session scheduled for August 5th is the first meeting to discuss the CIP. Depending on issues and questions that arise from the CIP discussion, additional study sessions may be scheduled. A public hearing on the CIP is scheduled for September 2nd. Adoption of the CIP occurs by Council resolution and is scheduled for the first regular meeting in December.

For this CIP, we have modified the format to present the information in two volumes: (1) a summary document including the narrative, maps, summary tables and graphs, and brief project descriptions and (2) a project detail document which contains the individual project sheets for funded and unfunded projects.

In addition to the CIP document, additional information on selected issues is included in four attachments to this memo:

- Report on strategy regarding transportation and utility CIP backlog,
- Detailed report on individual IT CIP projects,
- Report on green facilities projects, and
- Update on facilities planning and financing.



CITY OF KIRKLAND

Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Daryl Grigsby, Public Works Director

Date: June 17, 2008

Subject: Public Works Capital Improvement Program (CIP) Issues and Strategies

As we prepared the Public Works Department CIP for 2009-14, we realized that our carryover of uncompleted projects is increasing to an unacceptable level. A backlog of capital projects for a city or county is not uncommon given unanticipated delays and delivery challenges. In this case, however, we believe the backlog is growing and requires a fundamental change in the way we do business.

Specifically, we will complete about \$10 M worth of projects this year. We have a backlog of \$21 M, not including new projects added in 2008. Since the average CIP adds \$11-12 M in new projects each year, we are proposing a new approach to CIP management to address this issue.

Before outlining our recommendations; some of the causes are noted below.

1. Increased CIP budget and number of projects. Three elements combined to increase the budget and size of our annual CIP. These new elements have included, a) completion of Comprehensive Water System Plan with expanded project list, b) completion of Comprehensive Sewer Plan update with expanded project list, c) implementation of increased Transportation Impact Fees.
2. Staffing shortfall caused by nationwide shortage of licensed engineers. Over the last four years consultants and municipalities have noticed a decline in the number of qualified engineer candidates. Kirkland was able to hire engineers with little problem until 18 months ago. Since then, we have held three unsuccessful recruitments and have been 1.5 engineers short of our budgeted positions.
3. Staffing of external and regional projects. The staffing demands for our participation in regional projects exceeded our estimates. Specifically, the I-405 Nickel projects, the Sound Transit NE 128th overpass, and the Downtown Transit Center required more coordination from our engineers than anticipated.
4. Staffing of internal projects The City internal projects such as Public Safety Building Study, Tenant Improvement (TI) Projects for the Police and Information Technology Departments required more engineer time than we anticipated.
5. Increased Surface Water and Fish Passage requirements Over the last several years Salmon Recovery programs, wetland protection regulations, and fishery standards have increased the intensity and scope of permitting requirements. These requirements have delayed some of our Surface Water projects.

In order to address this serious issue, we are recommending to the Finance Committee that we adopt the following strategy. Each of these points is intended to address the five elements noted above.

1. Limit our annual capital program 'promise' to \$14 M for 2009-11. As noted earlier we can complete about \$10 M/year in projects with existing staffing. We intend to increase that to \$14 M/year with the additional steps noted below. This completion level will enable us to finish the \$21 M backlog of projects and complete those projects started in 2008. In 2012 we would begin adding new projects.
2. Fill existing vacancies. There are currently 1.5 vacant engineer positions in the CIP Division. We propose to hire Neighborhood Outreach Coordinator Kari Page as a .5 Community Outreach position. This would allow existing engineers to focus efforts on technical duties. We would also proceed with hiring 1.00 Project Engineer. Our intent is to research and implement 'best practices' from other cities and consultants in hiring and retaining engineers. Both of these would be implemented immediately.

3. Add 2.00 new staff We understand this to be a difficult proposal given the City's budget condition. Public Works has been asked, like other Departments, to make reductions to account for both less revenue and to cover one-time programs. Consequently, we would request these positions only if we can charge them 100% to the CIP or if Public Works can identify savings to offset the General Fund impact. One position would be an Inspector to reduce the inspection/coordination work of existing engineers. The second would perform administrative work for all the engineers to increase their available time to manage and complete their projects.
4. Insure critical projects and maintenance have priority. We propose to complete the \$21 M backlog, complete the projects started in 2008, and from 2009-11, increase the annual overlay to an average of \$2.3 M/year, and continue with maintenance and safety programs like Emergency Sewer, Street Striping, and others. We would also average approximately \$1.1 M in Non-Motorized consistent with 2007 Council direction. We would also complete over \$3M/year in capacity projects.

A summary of the above strategies is noted below:

- ✓ Hiring 1.5 vacant positions
- ✓ Recommend 2.0 new positions through the CIP Budget process
- ✓ For the next three years, 2009-11, the CIP program will:
 - Complete the \$21 M backlog of transportation, water/sewer, and surface water projects
 - Complete all projects started in 2008
 - Complete an enhanced Maintenance program that increases overlay from \$1.8 M to \$2.5 M for two years and \$2.0 M for one year, adds a fully-funded striping program of \$ 250 K/year, and continues the \$200 K/year sidewalk program.
- ✓ Each year between 2009-11 \$14 M worth of projects will be completed. Of this amount, approximately 65% will be transportation projects and the remaining 35% is comprised of water, sewer and surface water projects. (Note: of the \$21 M backlog, \$11 M is from NE 85th Transit and Underground project)
- ✓ Beginning in 2012, continue enhanced Maintenance and resume adding new projects to the CIP.

We are also aware this has several potential consequences. Below we have provided a partial list of issues for discussion now or during the budget process. The Finance Committee may have additional issues for us to address at the future City Council Study Session.

- a) How does this impact our Capacity List, Impact Fee Collection, Concurrency or the Comprehensive Plan?
- b) How does this impact projects like the 3rd/Kirkland Signal, 68th/108th Intersection, NE 85th and NE 120th?
- c) How does this impact future Water and Sewer rates?
- d) Will this proposal diminish our infrastructure maintenance and reliability?
- e) How does this impact opportunities like grants or the pending Non-Motorized and Intelligent Transportation System (ITS) Plans?
- f) How does this impact the 2007 Council decision to increase the City's Non-Motorized commitment?

Summary of Recommendations for Future Actions

1. Direct staff to propose a CIP which completes existing project backlog, including those started in 2008.
Who: Finance Committee
2. Direct staff to propose a CIP with enhanced street maintenance program **Who: Finance Committee**
3. Direct staff to provide quarterly reports to Council on project delivery beginning 2009. **Who: Finance Committee**
4. Proceed with hiring .5 Outreach Staff and 1.00 Professional Engineer in accordance with existing budget
Who: Public Works Department
5. Propose 2.00 new positions in the CIP, 1.00 Inspector and 1.00 Administrative staff, contingent upon full CIP cost allocation **Who: Public Works Department with City Manager concurrence**

Information Technology CIP White Paper

Background

As the digital age has made electronic tools essential to the provision of good governance and raised citizen expectations for communication and direct services, the cost of maintaining and supporting the infrastructure needed for IT has also grown. Over the past ten years, we've added staff, servers, network locations and bandwidth, and new systems. We've also changed how we work so that most employees depend on access to a computer for at least parts of their jobs.

While some costs have gone down, such as desktop computers, the overall cost of service has increased as qualified staff have become more expensive, information security and privacy have emerged as tough business issues, IT regulation has increased, and technology has crept into more corners of the work that we do, including most aspects of our internal and external communication. Technology costs are split across operating and capital funds.

Overall comments on the 2009-2014 CIP

We looked closely at a number of overall issues with this CIP. Changes include the following:

- We moved funding for two staff members who had been funded from the CIP into the operating budget and thus into rates. This includes an Applications Administrator position that had been one-time funded for four years. The projects that this position supported in the CIP will require this level of ongoing support for day to day operations. The second position is for a GIS Analyst (historically funded via the CIP) who is needed to help maintain the growing amount of spatial data that the city uses in its day to day operations.
- We moved the 2009 funding for the eCityGov Alliance (which is our regional e-government initiative) from the CIP into the operating budget.
- We cut out less important projects and some contingency money.
- We eliminated the Public Access CIP, which had been use primarily for the eCityGov Alliance and for smaller projects as they came up. We cut the smaller projects for now based on the budget situation, following the logic above where we removed much of our contingency money.
- We moved some projects from funded to unfunded status. These were largely projects that were further out and less defined, such as email archiving.
- We moved some project dates out to more closely match our staffing resource availability.

Taken together, these actions let us address the two one-time funded positions mentioned above two in a responsible way, preserve funding for our most important in-process projects, and to keep critical technology infrastructure replacements and projects.

Description of Individual Projects

Geographic Information Systems

Geographic Information Systems have become critical to the day to day operations of the city. Police and Fire dispatch (whether provided by us or others) depend on GIS data for the incident responses and emergency preparedness. Utilities need GIS data to develop maintenance plans and to understand the upstream and downstream consequences of changes in the complicated network of pipes, valves, pump stations, retention ponds, etc. they manage. Planning uses GIS to explain zoning, to comply with state-mandated Growth Management Act regulations, to help understand the impact of various decisions, and to protect our natural resources. Finance and Administration uses GIS to optimize utility meter reading routes, to manage the city-owned cemetery, and to analyze fiscal impacts of city decisions such as annexation. The City Council uses GIS to help them make policy decisions about a variety of topics. Information Technology uses GIS to record and locate fiber optic networks. In other words, GIS supports operations and strategic decision making.

While the GIS CIP was cut to move some funding to operating funds for the GIS analyst, GIS is considered an important strategic tool, and much of its funding was retained. Some projects were extended over more time, contingencies were cut, and we have found opportunities to save money through regionalization. For example, we reduced the cost of ortho-photography by joining with other cities.

The GIS CIP is partly funded by utilities, and is an "ongoing" CIP in the sense that it is not considered a project with an end date, but rather the capital portion of an important program. Nearly all of these projects were driven by the GIS Strategic Planning Process.

Productivity Tools - Process Automation, and GIS Data Maintenance/QC Tools

Data maintenance and quality control (QC) represent a significant portion of the GIS Division's workload. Some of our CIP projects ensure that these repetitive procedures are automated to the extent possible, saving valuable GIS staff time, reducing redundant work, and improving data quality in shorter turnaround times.

Field Access to GIS Phase II

This project, initially focused on the surface water and sanitary sewer utilities, is expected to benefit other street infrastructure needs largely by significantly reducing time spent in unnecessary data entry and providing staff with information when and where they need it.

System Integration

This project links GIS with a number of business systems including permitting, asset management, utility billing, cemetery management, and public safety dispatch. This is one of the most requested projects for GIS in the next several years.

GIS Technology Infrastructure Replacement

Technology infrastructure components - specifically software, hardware, and peripheral devices - must be upgraded and/or replaced on a set cycle. Like the network infrastructure, this is currently funded through the CIP.

3D GIS

The project will create a virtual model of the city, or parts of the city, using digital terrain models, building footprints, tree inventory, building textures, window treatments, sidewalks,

and other layers to demonstrate how a development (e.g., a new commercial or office building) or policy (e.g., zoning code, Comprehensive Plan, etc.) will impact the city. Council, staff, and the public will also benefit from the ability to see the impacts of decisions before the decisions are made; e.g., how will a major street widening impact a neighborhood.

Environmentally Sensitive Areas

The Growth Management Act requires all counties and cities in Washington to adopt development regulations to protect designated environmentally sensitive areas. The current inventory of critical areas GIS data is not meeting the requirement of helping the city comply with state and federal regulations. The overall benefit of this project is to enhance decision making and analysis capabilities in permitting, development review, and code compliance.

Orthophoto Updates

Virtually all city departments use the high resolution orthophotography data as a base map, for planning emergency response, for inventory of existing assets, for CIP projects, for future parks planning, and for high-quality exhibits to communicate with the public concerning city projects or issues.

Data Development Consulting

This category of funding was cut, but not entirely eliminated as there are significant data needs still unmet in the GIS program.

Internal GIS Browser Phase II

The internal GIS Browser has brought GIS data access and functionality to all staff connected to the citywide communications network. The resulting positive impact on city services, staff workload, and product quality should be recognized by ensuring the ongoing upkeep of this resource. Users have indicated the need for further GIS Browser enhancements, such as additional data layers (for example, from permitting, asset management, dispatch, and utility billing) that will be refreshed nightly, plus productivity tools such as address list creation, dynamic addressing, specialized reporting, network tracing and redlining tools, all capabilities identified as high priority by many users.

Public GIS Browser Customization

This project represents the Kirkland contribution to the eGov Alliance effort to develop a regional GIS browser application. Other than this portal, Kirkland does not directly distribute its GIS data to the Internet.

Permit Plan System Replacement

Our current permitting system has been running well for us for nearly twenty years. This is one of the largest systems we support, with users in Fire and Building, Public Works, Planning, and Finance. It handles almost all of our permits and inspections as well as business licensing. It is integrated with GIS, the eCityGov Mybuildingpermit.com product, and other city systems. The vendor has not officially announced a retirement date for the system, but they are encouraging people to move to another system of theirs, which does not appear to meet our business needs for integration with the eCityGov Alliance products and which has high ongoing costs. We are working with other eCityGov Alliance cities such as Bothell, Woodinville, SeaTac, Issaquah, and others to develop joint requirements and go through a regional purchasing process. The funding for this project comes from the Major Systems Replacement Reserve.

Since these CIP numbers were put together, we have received preliminary results of a consultant report which includes anticipated costs, and we are almost a million dollars shy of

the amount they expect we will need. We have not had time to address this issue in detail yet, nor do we have the final report. As Dave often says, "stay tuned."

Records Management System

This in-process project represents one of the largest single investments the city has made in technology for some time. It is a complex multi-year project that will not be considered "finished" until the end of 2010, which is actually somewhat optimistic. This software will eventually be used by almost everyone in the city with a computer, it will be integrated with our Intranet and our Internet and with our GIS systems. While the primary driver is about compliance with regulations regarding records, the project yields a number of benefits:

- It provides a self-service portal for citizen access to public records. This portal launched in 2008 with ordinances and resolutions, and is intended to eventually contain many commonly requested public records,
- It will help us manage the increase in electronic records that need to be kept track of and help us meet both traditional records management rules and laws, but also to meet the requirements of the new digital WAC.
- Through workflow, it will help us manage the routing of complex and critical documents. For example, we are now using it for contracts. As we implement additional workflows in the future, it will present us with a unique opportunity to examine and improve business practices.
- A full-time project manager is required for success, and that position is included in the CIP funding as a temporary position for 2009 and 2010 only. Note that an ongoing 1.0 business-side FTE is anticipated to be needed in the future.

Finance and Human Resources CIP

The Finance / Human Resource system, IFAS, has always been an integral part of the daily operations of the city. New tools and processes are improving the way department representatives use the system to complete purchasing, budgeting and personnel tasks. City Council and city management use the reporting from the system to make policy decisions regarding budgeting, new revenue sources, annexation and contract negotiations.

The Finance / Human Resource CIP was cut to move some of the funding to the operating fund for the staff support of the system.

The Finance/HR CIP is an "ongoing" CIP in the sense that it is not considered a project with an end date, but rather the capital portion of an important program. Many of these projects are driven by the Core Finance and Human Resource / Payroll Best Practice reviews.

Core Finance and HR/PY Best Practice Review Process Improvements

A Core Financial Best Practice Review was performed in December of 2006 and a Human Resources/Payroll Best Practice Review performed in November of 2007. As a part of these reviews a number of process improvement projects were identified. Several projects have been completed, resulting in significant efficiencies, data accuracy and improved internal controls. Remaining projects will continue to address process improvements.

Accounts Receivable

A centralized Accounts Receivable policy and system will help with consistent collection and reporting of outstanding monies. As part of this implementation, the IFAS Cashiering module

will be evaluated to replace the Springbrook cashiering module, which will improve integration of cash and receivable functions, and reduce annual support costs.

Business Intelligence Reporting Tool

Departments rely on general fund and capital budgeting reports to monitor the status and balance of budgets. Human Resources and Managers rely on personnel data to make requisition, collective bargaining and policy decisions. As questions about budgeting, personnel funding, and policy decisions become more complex the existing custom report writing tool is stretched to its limit. The Business Intelligence Reporting tool now available from the finance vendor leverages the OLAP (Online Analytical Processing) environment. This allows for a multidimensional, conceptual view of the finance and human resources data providing a better tool for business modeling, forecasting, and analytics.

Replace Finance Server / Migrate to SQL Server

Most application servers are part of the Network CIP, however, due to the complexity and cost of the finance server, its replacement is budgeted in this CIP. We replace the finance Unix server approximately every 5 years, although the timing is sometimes influenced by other finance projects.

Scaling: Additional Webservers and User Licenses

As additional users are added to the finance system the processing burden increases for the web client and Employee Online. Additional webservers will be needed to ensure productivity for all users. Our current user license for the IFAS system is based on 40 concurrent users. As we add additional users we will need to increase our concurrent license pool.

New Modules: Professional Development, Form Designer and Project Allocation

New modules released by our finance system vendor are designed to enhance the web client and processes. Professional Development is an HR module designed to allow training offerings, class sign-ups, instructor evaluations and integration with the existing HR training module. Form Designer is a tool to design custom web screens for use in the web client.

Fire RMS System Replacement

This is one of the projects funded through the Major System Replacement reserve. At this point, the FireRMS system will soon be the responsibility of NORCOM. We believe that 2011 is a reasonable time frame for this implementation to occur, and this could end up funding our portion of the capital costs for a new, regional fire records system. If NORCOM finds other funding sources, then this money can be reprogrammed against other systems replacements with are underfunded. In the meantime, we did not want to cut it because this is a critical public safety system. Note that this amount of money is a pretty rough guess at this point, and the dynamics of the NORCOM system selection and it's affect on the costs of FireRMS are not yet clear.

Local and Wide Area Networks

The City's local and wide area networks (supported by the Network and Operations Group) include the servers that run the city's application software such as finance, permits, parks, and many others, the wires and routers and switches that connect all of the computers and servers together, the fiber optic networks that connect the city's buildings together, the wireless networks in every building and downtown, the telephone system, and centrally shared software like email. It also includes the security software and hardware that helps protect us from viruses, malware, and hacker attacks. While the annual maintenance fee and

support staff for this equipment is all in the operating budget, the equipment replacement is done through the CIP, as are major upgrades and additional projects.

Server replacements

Every year, some money is set aside to replace aging servers. As a cost-cutting strategy, we did move selected replacements out in time so that some servers will be replaced every four years instead of every three years. We currently have sixty-five servers that vary in size and cost significantly.

Fiber Optic Network

The city participates in a regional fiber-optic network project with other cities, the University of Washington, the Lake Washington School district, and Evergreen Hospital. The fiber network has been used:

- to connect our buildings faster and at lower ongoing costs than leasing lines from telecommunication companies,
- by King County intelligent transportation systems and as part of our intelligent transportation systems money
- to connect our wireless network downtown back to city hall so users can access the internet

Typically, this network is expanded as opportunities arise, and we retained some funding to do that.

Upgrade/Replace Phone System

The phone system hardware will be at its end of life for vendor support and will need to be replaced. This will actually happen twice across the six years of this CIP, once in 2009 and again in 2013. Note these are not full-scale replacements of phone sets and numbers and logic, but only software upgrades and server upgrades.

Replace Network Communication Infrastructure

Includes routers, switches, firewalls, and wireless access points. We only replace this equipment when it either fails to function or it has reached its end of life for vendor support. We currently have thirty switches, eight routers and four firewalls. Anytime a new location is added to the network, new equipment is also added.

Core Switch Replacement

The core switch is where we plug in all of the network file servers, desktop computers, phones and other miscellaneous network equipment so they can all talk to each other. This project will replace aging equipment, increase the port count (number of devices we can plug in), provide better redundancy and fault tolerance, and better distribute the heat load in the server room.

Network Security Assessment

Periodically, we have a network assessment performed by an outside firm that evaluates our resiliency against attack.

Strong Authentication

This is a project to increase the security of our remote network authentication.

Storage Area Network Replacement

The SAN (Storage Area Network) is large storage device for network data which is shared by most of the city servers. This piece of equipment was purchased in 2007 and has an end of life in 2012.

Upgrade/replace Network Backups

The hardware that performs network backups will be at its end of life for vendor support and will need to be replaced.

Upgrade/replace wireless access points in city buildings

The hardware that provides wireless networking in all of our conference rooms, in the Council Chamber, and in other remote locations will be at end of life for vendor support and will need to be replaced. We currently have forty-five of these in city buildings which are included in this project, and fourteen that are part of the Kirkland Free Wireless project, which do not currently have a replacement funding source.

Disaster Recovery Improvements

If the city were to experience any form of unexpected event that meant we lost access to our servers and server room, or that they were damaged and not usable, the only system we currently have adequate backup and recovery procedures for is the finance system. City staff could potentially lose access to GIS, email, the internet and intranet, and other types of systems. We had some money programmed for 2008, much of which had to be re-purposed to deal with potential infrastructure failures in our server room by moving some systems and associated hardware off-site. The money we currently have programmed in this CIP is not enough to get all of our systems adequately protected against a disaster, but we are hopeful that it will help protect our most important systems.

Help Desk Clientele System Replacement

Our current Help Desk system is nearing its end of life, and the project to replace it will be started in 2008. We actually added a little bit of money to 2009 since we plan to adopt the new best practices widely in use for Help Desk management (ITIL) and will need to train staff. The funding for this project comes from the Major Systems Replacement Reserve.

Recreation Registration System Replacement

The CLASS recreation system that manages our online and over the counter sign-up for classes, our facilities, and interfaces with the eCityGov Alliance MyParksandrecreation.com product is aging. It has had poor vendor support, is not yet PCI compliant (compliant in credit card transaction handling from a security viewpoint) and does not have the flexibility that we want to allow further regionalization of our business practices in this area. Like the permit system replacement project mentioned above, this system acquisition is likely to be a joint project with other cities in the eCityGov Alliance.

The funding for this project comes from the Major Systems Replacement Reserve.

**CITY OF KIRKLAND****Department of Public Works****123 Fifth Avenue, Kirkland, WA 98033 425.587.3800****www.ci.kirkland.wa.us****MEMORANDUM**

To: David Ramsay, City Manager

From: Erin J. Leonhart, Public Works Facilities and Administrative Manager
Daryl Grigsby, Public Works Director

Date: June 30, 2008

Subject: "GREEN" FACILITIES PROJECTS

The City of Kirkland signed the Mayors' Climate Protection Agreement in 2005 and, thereby, committed to reducing Kirkland's greenhouse gas emissions, both as a government agency and as a community. This action is consistent with the Council's ongoing Environmental Stewardship philosophy, committing to the proactive protection of our environment. The Facilities Division of the Public Works Department is mindful of these commitments, particularly focusing on ways to conserve energy and use "green" products and methods, in both operations and capital projects.

FACILITIES LIFECYCLE PROJECTS

Every City building's major systems are included in a lifecycle model indicating when they will be due for replacement. The Facilities Capital Improvement Program is generated from this lifecycle model. In general, replacement equipment is more energy efficient than what was installed previously as technology improves over time. Some projects are specifically focused on improving energy efficiency, lighting retrofits are an example.

Light fixtures at three Fire Stations, North Kirkland Community Center and the Maintenance Center have been retrofitted, most from T12 to T8 fluorescent light bulbs¹. Typically, instead of replacing entire light fixtures, existing fixtures can be retrofitted with new electronic ballasts² to accommodate the smaller bulbs. The estimated energy savings for this type of retrofit (for one fixture with two bulbs that is on eight hours per day) is 390 kilowatt-hours. By comparison, the average U.S. household uses about 8,900 kilowatt-hours of electricity each year. Lighting retrofits at Peter Kirk Community Center and two Fire Stations are in the 2009 CIP. Puget Sound Energy has rebate programs for energy-efficient replacements such as lighting and the City utilizes these programs where possible.

The City has signed an Interagency Agreement with the State of Washington General Administration Office for project management services for improving energy efficiency at the Peter Kirk Community Center (PKCC). The plan, in conjunction with a budgeted lifecycle capital improvement project, is to replace

¹Fluorescent light bulb designations indicate the shape and size (in eighths of an inch) of the bulb – T8 is a tube 1" in diameter and T12 is a tube 1-1/2" in diameter.

²Ballasts are devices that regulate voltage and current supplied to fluorescent lamps during start and throughout operation.

existing heating/ventilation/air conditioning equipment with a system that is much more efficient. The recommendation currently under review is to use ground-source heat. Another option is to link PKCC and the Peter Kirk Pool. More will follow as this project progresses.

FACILITIES REMODELS/RENOVATIONS

During the May 1, 2007 Council Study Session about Environmental Stewardship, staff made a presentation about development of a City of Kirkland Green Building program to encourage sustainable construction in the community. There have also been discussions about passing a Resolution that future construction or remodel of City Facilities meet a LEED (Leadership in Energy and Environmental Design Green Building Rating System™) standard. Information can be found on the U.S. Green Building Council website: www.usgbc.org. Other organizations in the region have adopted LEED standards for their facilities (State of Washington, King County and City of Seattle, for example).

Renovation of the City Hall Annex (occupied until recently by Hopelink) is in the design stages with a plan to begin construction in fall 2008. Staff interest and the direction of Council are to preserve the historic integrity of the building and pursue LEED certification. There is a LEED specialist on the design team and it appears likely there will be some level of certification for the project.

CONCLUSION

The Facilities Division is working with the Planning and Community Development Department as well as the Building Department to institute Green Building/LEED techniques into projects and operations. Green Building will also play a large role in the City's action plan to reduce greenhouse gas emissions (currently under development).



CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Tracey Dunlap, Director of Finance and Administration
Marilynne Beard, Assistant City Manager

Date: July 24, 2008

Subject: Facilities Planning and Financing Update

The 2009-2014 Preliminary CIP includes two significant facilities projects intended to relieve overcrowding at the City Hall and Maintenance Center facilities. Major facilities projects require several years to plan in addition to design and construction. The following memo summarizes the two primary projects and summarizes the proposed financing plan presented last year to the City Council. Staff would like to proceed with preliminary work related to the public safety expansion of City Hall using existing grant funding.

PUBLIC SAFETY EXPANSION AT CITY HALL (CGG 0035 000)

The present City Hall facility, including the Public Safety portion, was originally built in 1982 and expanded in 1994. The 1994 expansion was expected to accommodate ten years of growth. The City Hall facility is now at capacity and two departments were moved to another facility (505 Market) to relieve overcrowding in City Hall. Over the years, the City was able to acquire the properties to the south of City Hall (now rental properties) with the intent of completing a future expansion of the City Hall/Public Safety campus. It is anticipated that the construction of this project would occur in the next 5 years. The following amounts are shown as "funded" in the 2009-2014 Preliminary CIP.

2009	\$3,000,000 – Design
2010	\$6,592,000 – Design
2011	\$11,632,800 – Construction
2012	\$11,981,800 – Construction

This project replaces the existing project in the 2008-2013 CIP (CGG 0013 001), the Public Safety Campus. As originally scoped, the Public Safety Campus would have housed the Police Department, Jail, Court, and possibly Fire Administration and was based on the potential annexation and need for significant new facilities. Funding for this project was from a state grant. Phase I of this project would have included design activities and, potentially, property acquisition (up to \$750,000). A feasibility study was completed and the Council subsequently determined that annexation would need to be placed on hold. We are assuming that the remaining state funding will be available to assist with the design activities related to meeting the City's public safety needs at City Hall.

Since the City is not proceeding with annexation of the PAA at this time, then planning needs to begin for an expansion of the current City Hall facility. The expansion would primarily house public safety functions with the exception of the Municipal Court which would remain offsite. The area vacated in City Hall would be used to

July 24, 2008

Page 2

consolidate functions such as Human Resources and Parks Administration that are currently located at a separate facility (505 Market).

Finance identified potential funding sources last year and a summary of those sources, as presented in December 2007, is included later in this memo. At this time, staff is recommending that we begin the process of updating and defining the conceptual plan for the City Hall expansion project prepared by McLaren Lawrie Associates in 2002.

MAINTENANCE CENTER EXPANSION

The present Maintenance Center complex in its current configuration was constructed in 1989. The Maintenance Center facilities are insufficient to serve all of the needs for personnel support, vehicle/equipment parking, materials storage and shop space. A study was conducted in 2003 and included recommended interim remodels that were completed in 2005 and 2006 to capture all available space for office use (the project enclosed a vehicle bay for Fleet offices and converted the lobby in the Administration building to office space). The existing property has been maximized so adjacent properties or a new site would likely need to be acquired for expansion. Phase I of the proposed project is included as a "funded" project in the preliminary CIP and would involve a feasibility study and pre-design work for an expansion. Phase II, which is currently shown as "unfunded," is design and construction of the expansion project.

CGG 0037 001 – Phase I:
\$50,000 – Planning/Design (Feasibility Study) in 2010

CGG 0037 002 – Phase II:
\$3,000,000 – Planning/Design/Engineering
\$12,000,000 – Construction

As an interim measure, staff is in discussions with the King County Housing Authority which owns property at 1129 8th Street, adjacent to the existing Maintenance Center. This building recently became vacant and is available for rent. The building has 8,856 rentable square feet (2,638 square feet office and 6,218 square feet of warehouse). Operating department staff are evaluating the suitability of the space and Finance staff is evaluating the budgetary impact and potential funding sources.

FACILITIES FINANCING PLAN

In December 2007, an overview of the potential financial resources that could be available to finance the City's facilities needs was provided to the City Council. The summary below contains the highlights from that briefing as context for reviewing the expansion needs at City Hall (including Public Safety needs), as presented in the CIP. As noted in the earlier report, it is important to recognize that a detailed financing plan based on the specific facility costs and timing will be developed based on the results of more detailed planning efforts that will be undertaken.

The major assumptions in this evaluation include:

- The potential funding options identified below reflect the use of current revenue sources.
- Sources are assumed to be applied to councilmanic (non-voted) debt. If voted debt is an option, it would be in addition to these sources since it would be accompanied by a new excess levy (new revenue).
- Debt calculations assume 30 year bonds at 5% interest (the Finance Committee has reviewed revised debt management policies that would provide for debt with a term of more than 20 years; these policies are expected to be brought to the full Council later in the year).

July 24, 2008

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The potential resources identified as available are:

Cash Resources

- *Available capital reserves* of \$5.8 million have been identified as available, comprised of \$2.6 million in REET 1, \$2.4 million in the Building and Property Reserve, and \$0.8 million in the Facilities Expansion Reserve.
- *Grant Funding* of \$750,000 has been made available by the state grant for Phase I planning and design funding related to facilities to meet public safety needs.
- *Potential sale of 505 Market St. building* may be considered if a major expansion of City Hall is undertaken. An earlier evaluation of facilities funding (January 2006) contained an estimate of proceeds from such a sale at \$2 million, which could logically be put toward new facilities costs. If the space provided by the 505 building becomes part of the facilities solution, this funding source would not be available. Note that the debt associated with this facility was retired at the end of 2007.
- *Projected Facilities Sinking Fund balances* related to existing impacted facilities may be available if planned projects are incorporated into the expansion projects. Sizing of this potential cash resource is dependent on the location and schedule for expansion and will be estimated as more detailed facilities needs become available.
- *Unspent portion of current near-term police facilities projects*, estimated at approximately \$800,000, could be available if the planned expenditures would be included in the public safety elements of the expansion.

In total, identified cash resources fall in the \$7.3-9.3 million range, assuming that no other expenditures are authorized against these balances.

Revenues to Support Debt

- *Revenues supporting current debt:* The annual debt service on councilmanic bonds is currently being paid from a variety of general revenue sources. The current outstanding principal balance on this debt is \$11.1 million. As this debt is retired, the revenue streams currently dedicated to pay the debt service can be used for new debt without impacting General Fund operating revenues. In 2011, \$350,000 becomes available as the maintenance center debt is retired and in 2015, another \$750,000 becomes available as the parking garage and City Hall expansion debt is retired. By 2021, all of the outstanding non-voted G.O. debt will be retired. The City has the ability to structure debt and/or to combine the use of reserves and debt in order to take advantage of these revenue streams as they become available. The City could issue up to \$18.7 million in new bonds by "wrapping" new debt service around the existing debt service resources as the debt retires and using approximately \$4.2 million in reserves to make interest only payments until the existing debt retires.
- *Potential commitment of future REET1 revenues:* Until recently, REET 1 collections have been far in excess of budgeted amounts. Evaluating the 10-year history, it may be possible to commit an additional \$300,000 per year to facilities debt, which would service approximately \$4.5 million in borrowing. Before such a commitment is made, it will be important to recognize the cyclical nature of these revenues.
- *Court lease payments:* The Municipal Court currently makes lease payments averaging about \$210,000 per year (base rent) and the lease term ends in 2011. If the Court were to be incorporated into the City Hall complex, this revenue stream could be available to service additional debt after the end of the term or earlier if a sublet is secured. These revenues could support an additional \$3.2 million in borrowing.
- Another potential resource might be *contributions/participation of City utilities* and other fee-generating activities. Before a dollar estimate can be made for this source, the extent to which the facilities needs will serve functions with dedicated revenues sources would need to be determined.

July 24, 2008

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Total debt that could be supported from identified revenues is in the range of \$25 million, assuming use of \$4.2 million in reserves to make initial interest only payments.

The table below summarizes the potential resources identified at this stage:

Potential Resource	Total
Available Capital Reserves	\$5,832,874
Public Safety Grant	750,000
Potential 505 Market Sale	2,000,000
Potential Savings on Police Projects	800,000
Debt Supported by Retiring GO Sources	18,700,000
Less: Reserves for Interest Only Payments	(4,200,000)
Debt Supported by \$300,000 of REET	4,500,000
Debt Supported by \$210,000 Court Lease Payment*	3,200,000
Potential Available towards Facilities	\$31,582,874

*Only available if Court is included in the public safety expansion.

Initial estimates based on current assumptions are that identified revenue sources could support facilities costs of \$25-32 million, made up of a combination of debt and cash resources. More detailed estimates and strategies will be developed as needs are identified and further costs become available. In addition, any increases in operating costs associated with new or expanded facilities will need to be factored into the operating budget.

The extent to which the Council is comfortable committing these resources is a discussion that will be pursued as additional details on costs and timing for facilities expansion are available. As mentioned earlier, revisions to the debt management policy took place with the Finance Committee in the Spring, with recommended changes expected to be brought forward for consideration by the full City Council later this year (well in advance of any potential debt issues).



CITY OF KIRKLAND
Department of Finance and Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager
From: Kathi Anderson, City Clerk
Date: July 28, 2008
Subject: CLAIM(S) FOR DAMAGES

RECOMMENDATION

It is recommended that the City Council acknowledge receipt of the following Claim(s) for Damages and refer each claim to the proper department (risk management section) for disposition.

POLICY IMPLICATIONS

This is consistent with City policy and procedure and is in accordance with the requirements of state law (RCW 35.31.(040)).

BACKGROUND DISCUSSION

The City has received the following Claim(s) for Damages from:

- (1) Angela Warmuth
9455 NE 121st Pl.
Kirkland, WA 98034

Amount: \$2227.96

Nature of Claim: Claimant states damage to vehicle resulted from being hit by a City vehicle.



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Eric Olsen, Police Chief
David Snider, PE, Capital Projects Supervisor

Date: July 24, 2008

Subject: POLICE DEPARTMENT JAIL KITCHEN TENANT IMPROVEMENT PROJECT
ACCEPT CONSTRUCTION and ESTABLISH LIEN PERIOD

RECOMMENDATION:

It is recommended that City Council accept the work for Police Department Jail Kitchen Tenant Improvement Project, as constructed by Pattison Construction Company, Redmond, WA, and establish the statutory lien period.

BACKGROUND DISCUSSION:

A 2005 Police Department Space Needs Assessment resulted in a proposed multi-phased approach to implementing safety and general office space improvements within the existing Police Department facility located in City Hall. This Project dealt with a reconfiguration of the existing jail kitchen area resulting in a smaller food preparation area serving the jail but with increased office work space for corrections officers – in all there were three corrections officer work spaces added in place of the former larger jail kitchen/staff break area. The Project also addressed corridor security by adding one additional hallway door separating the corrections division from the main police department and installed proximity card readers to existing doors in the corrections officer’s work space.



BEFORE

A notice to proceed was issued on April 14th and the work was substantially complete on May 13, 2008. The total amount paid to the Contractor for the construction was \$76,487.42, including one change order in the amount of \$1,214.14 for minor additional work.

AFTER

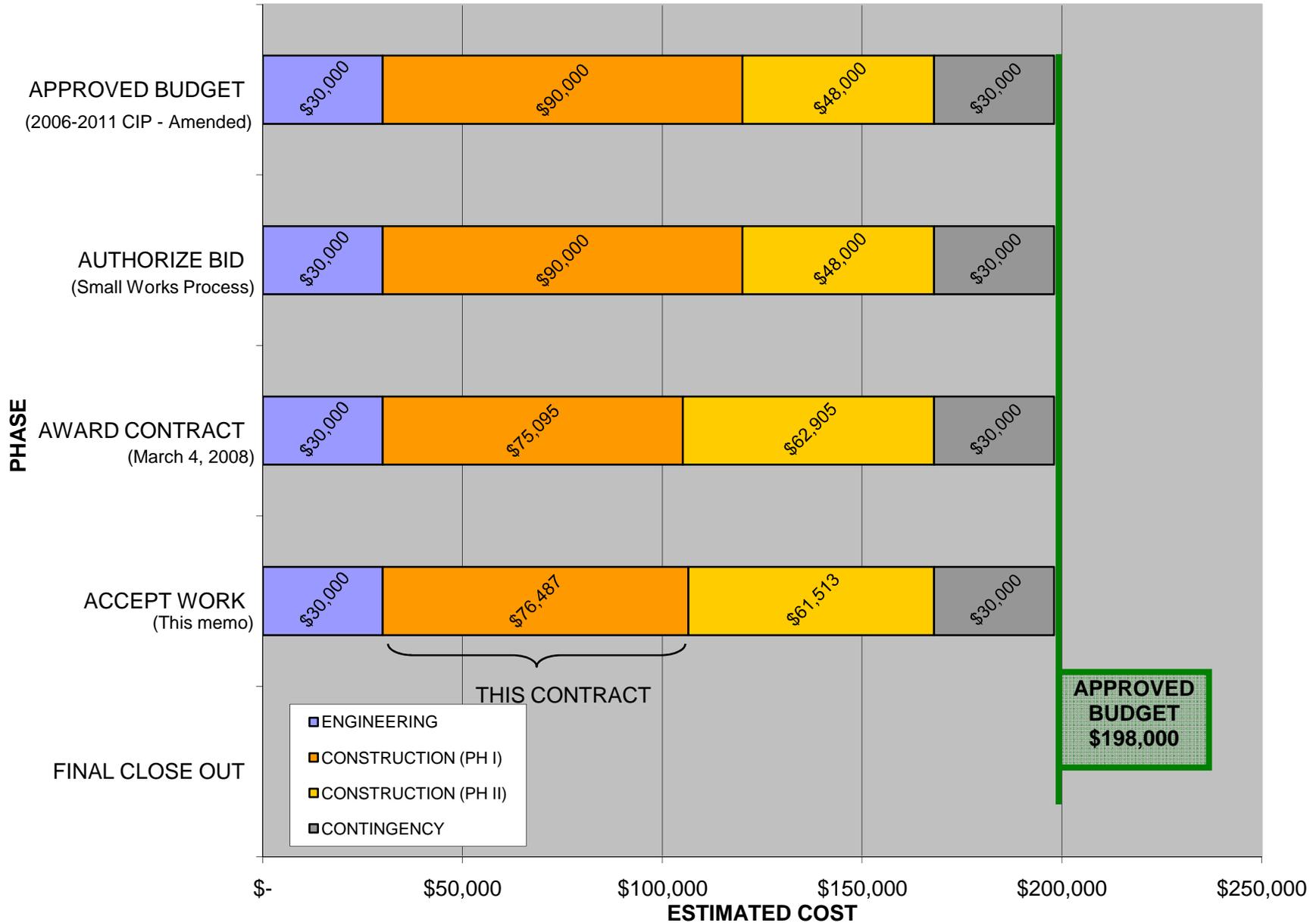


cc: Daryl Grigsby, Public Works Director



PROJECT BUDGET REPORT

POLICE SAFETY - KITCHEN TENENT IMPROVEMENT PROJECT



**CITY OF KIRKLAND****Department of Public Works**

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.ci.kirkland.wa.us**MEMORANDUM**

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Ray Steiger, P.E., Capital Projects Manager

Date: August 5, 2008

Subject: 2007 EMERGENCY SEWER CONSTRUCTION PROGRAM - ACCEPT WORK

RECOMMENDATION:

It is recommended that the City Council accept the construction of the 2007 Emergency Sewer Construction Program (ESP), as constructed by Shoreline Construction of Woodinville, Washington, and allow Public Works to establish the required lien period; after the final property restoration efforts, payment will be made in late fall 2008.

BACKGROUND DISCUSSION:

The scope of this year's ESP project included the installation of sanitary sewer main in the following Kirkland neighborhoods (see Attachments 1-4):

South Rose Hill Neighborhood:

- 1) 122nd Avenue NE between NE 73rd & NE 78th Street
- 2 NE 72nd Street between 124th & 126th Avenue NE and 124th Avenue NE between NE 70th & NE 73rd Street
- 3) NE 72nd Street between 130th Ave NE & end of cul-de-sac and 130th Ave NE between NE 73rd and NE 71st Ct, and NE 73rd Street between 130th and 132nd Ave NE (added during re-bid due to the NE 73rd Street Sidewalk Project CNM-0052).

Juanita Neighborhood:

- 4) 115th Ave NE between NE 112th & 113th PL NE

The 2007 ESP was adopted in the CIP at \$1,050,000 (\$50,000 is funded to coordinate replace of existing water mains near sanitary systems). Based on a high level of interested participants in the program on March 20, 2007 City Council added \$350,000 in utility reserve funds to bring the project budget to \$1.4 million. On November 6, 2007 during the project award phase City Council authorized a further budget increase of \$485,000 to accommodate construction of additional sewer main in Area 3, bringing the total project budget to \$1.885 million.

Council authorized staff to advertise for bids for the 2007 ESP on March 20, 2007, and on August 7, 2007 staff recommended City Council rejected the bids and allow for rebid at a later date due to bids being 15% above the engineer estimate. On November 6, 2007, nine bids were received in what was a more competitive bidding climate, therefore Council awarded the construction contract to Shoreline Construction Company of Woodinville, WA in the amount of \$1,484,878.73. Construction was completed in May 2008, with final landscape restorations

August 5, 2008

Page 2 of 2

efforts planned for late October due to the need to wait for a more appropriate planting window. The total amount to be paid to the contractor will be \$1,336,788.05.

The project included the installation of over 4,500 lineal feet of sewer main and provided sewer availability for 84 properties that are currently served by septic systems. Properties that benefit from this new sewer construction are responsible for all costs associated with the project, and in each case, individual property owners will be assessed a portion of the costs of the project. The final individual assessments are \$19,864 per sewer stub. To date, four properties of the possible 84 have hooked up to the new sewer main and have signed interim contracts to repay their share of the assessments.

The 2007 assessment compares with the 1999 ESP assessments which ranged between \$6,000 and \$20,500, the 2001 ESP with assessments of \$9,726, the 2003 assessments of \$11,866, and the 2005 assessments of \$15,975. Including the 2007 program, 409 connections have been made available by the City, 140 connections have been utilized by the property owners, and we anticipate seeing a continuing trend of aging septic failures and the continuation of new housing development more ESP assessments will be paid in full than had been originally expected (Attachment 6).

Attachments (3): Vicinity Map (1-4)

Project Budget Report (5)

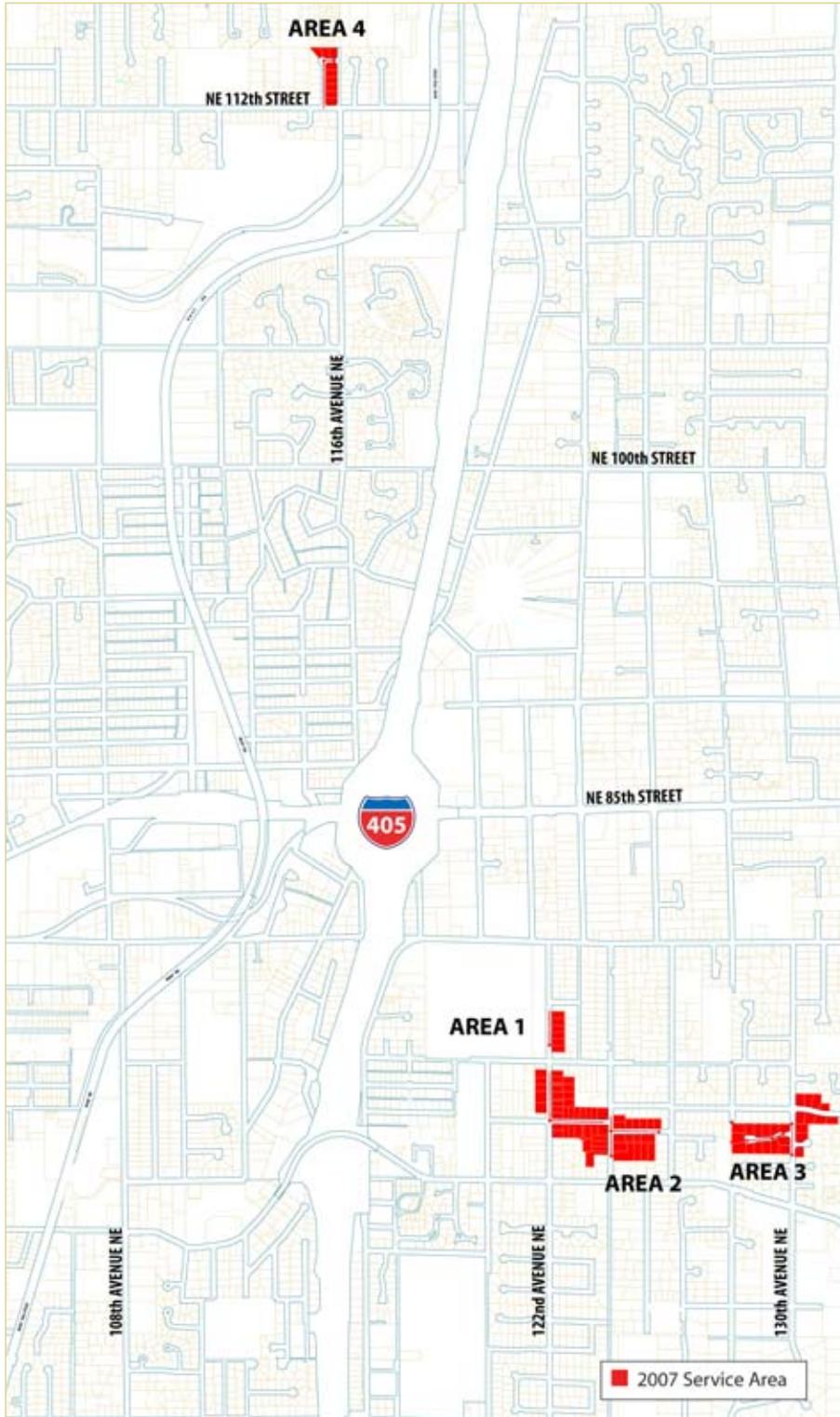
ESP Project Comparison (6)



CITY OF KIRKLAND

2007 EMERGENCY SEWER PROGRAM

ATTACHMENT I





CITY OF KIRKLAND

2007 EMERGENCY SEWER PROGRAM

ATTACHMENT 2



LEGEND

- REPORTED FAILURE
- SERVICE AREA
- PROPOSED SANITARY SEWER ALIGNMENT
- EXISTING SANITARY SEWER MAIN

Area I

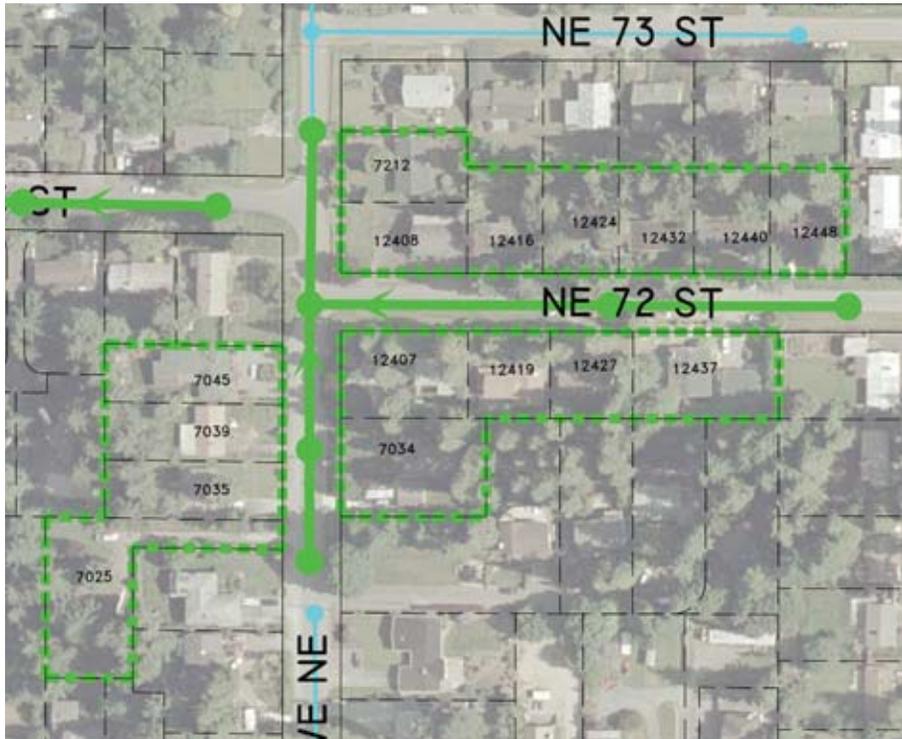




CITY OF KIRKLAND

2007 EMERGENCY SEWER PROGRAM

ATTACHMENT 3



LEGEND

- REPORTED FAILURE
- SERVICE AREA
- PROPOSED SANITARY SEWER ALIGNMENT
- EXISTING SANITARY SEWER MAIN

Area 2



Area 3

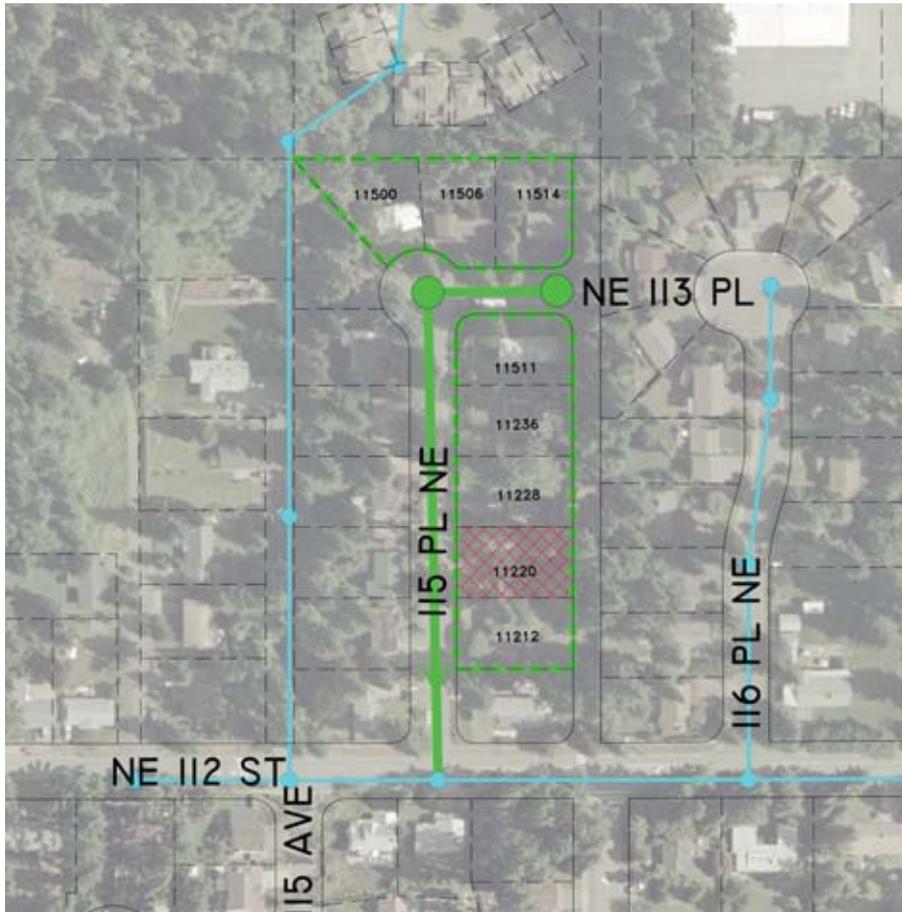




CITY OF KIRKLAND

2007 EMERGENCY SEWER PROGRAM

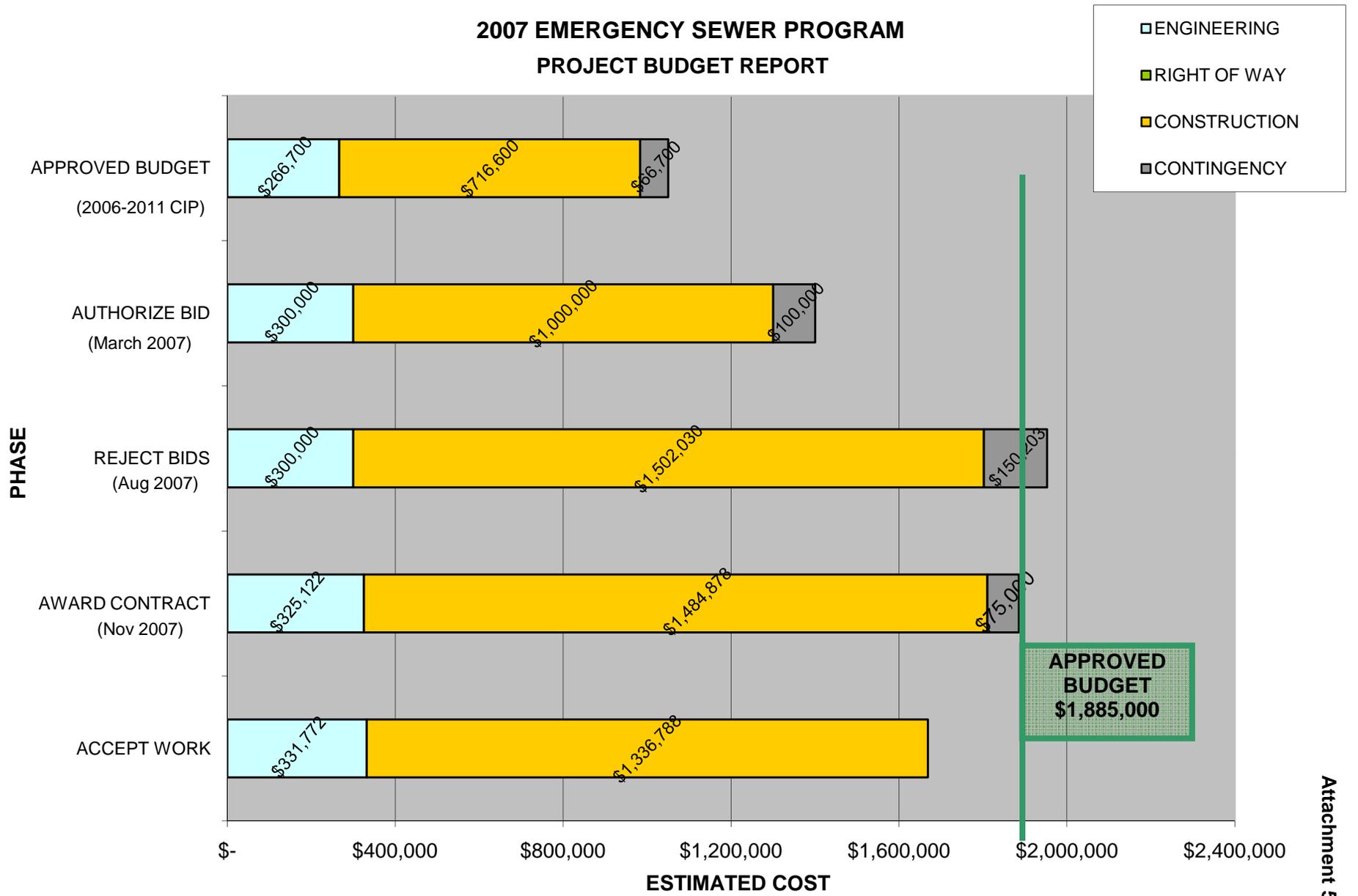
ATTACHMENT 4



Area 4



2007 EMERGENCY SEWER PROGRAM PROJECT BUDGET REPORT



EMERGENCY SEWER PROGRAM OVERVIEW

EMERGENCY SEWER PROGRAM OVERVIEW AS OF June 30, 2008

Program	Year	Length (lineal feet)	# Connections Provided*	Connected To Date	Final Project Cost	Cost Per Assessment	Reimbursed through 6/30/08	% Reimbursed	Principal Due
1	1999	2,900	54	34	\$576,028	\$8,025	\$484,633	84%	\$91,395
2	2001	4,756	74	44	\$725,995	\$9,726	\$626,879	86%	\$99,116
3	2003	5,700	113	45	\$1,435,668	\$11,857	\$1,015,853	71%	\$419,815
4	2005	4,150	83	17	\$1,325,925	\$15,975	\$513,613	39%	\$812,312
5	2007	4,583	84	4	\$1,668,561	\$19,864			
TOTAL		22,089	408	140	\$5,732,177		\$2,640,978	46%	\$1,422,638

*0.5 attributed to adjacent developer sewer extension

34% Percent Connected

Program	Year	Connections	Paid in Full	Payment Refinance	Payment Sale	Payment Other	ACTIVE Contracts	Delinquent Contracts	Inactive
1	1999	54	45	13	21	11	6	2	4
2	2001	74	59	21	15	23	9	0	6
3	2003	114	68	22	17	29	33	2	13
4	2005	83	29	4	7	18	18	4	36
5	2007	84	0	0	0	0	6	0	79
TOTAL		409	201	60	60	81	66	8	59

% of Contracts paid with refinance 14.67%
 % of Sales 14.67%
 % Other (payout) 19.80%
 Paid in full 49.14%

**CITY OF KIRKLAND****City Manager's Office****123 Fifth Avenue, Kirkland, WA 98033 425.587.3001****www.ci.kirkland.wa.us**

MEMORANDUM

To: David Ramsay, City Manager

From: Erin Leonhart, Intergovernmental Relations Manager

Date: July 23, 2008

Subject: CASCADE WATER ALLIANCE MEMBERSHIP AUDIT ACCEPTANCE AGREEMENT

RECOMMENDATION:

It is recommended that Council authorize the City Manager to sign the Membership Audit Acceptance Agreement between the Cascade Water Alliance and the City of Kirkland, as reviewed by the Kirkland City Attorney's Office.

BACKGROUND:

The Kirkland City Council approved Cascade membership in March 1999 by Resolution 4181. An Interlocal Agreement now governs the relationship between Cascade members. Cascade negotiated the purchase of a block of water from Seattle which went into effect as Kirkland's water supply on January 1, 2004.

Cascade members participated in a water system audit in 1999. The audit reviewed member-owned water supplies ("independent supply"), which resulted in an award of independent supply credits that could be used by those members against future connection charges, known as Regional Capital Facilities Charges (RCFC's). The policies establishing and governing supply credits, RCFC's and water audits are contained in the Cascade Interlocal Contract, which was first adopted in 1999 and most recently amended in 2004.

Recently, Cascade recognized the need to update the water audits for members with independent supply to establish member obligations to produce water from independent supplies, to define RCFC credits available and outline the financial consequences if a member fails to produce the agreed upon amount of independent supply. For those members without independent supply, such as Kirkland (the portion of the Water District 1 water right to be used for park irrigation is not considered independent supply in this case), primary purposes of the audit are to document the supply relationship between Cascade and the member. The audit also documents the member's official service area and delivery points. The provisions of the Membership Audit Acceptance Agreement that apply to members with independent supply do not apply to Kirkland. If, at some point in the future, Kirkland acquired independent supply, the water audit would have to be updated.

Attachments:

- A – Membership Audit Acceptance Agreement between Cascade Water Alliance and City of Kirkland
- B – Member Water Audit

MEMBERSHIP AUDIT ACCEPTANCE AGREEMENT

Between

CASCADE WATER ALLIANCE

And

CITY OF KIRKLAND

MEMBER

May 23, 2008

Cascade Water Alliance (“Cascade”) and the City of Kirkland (“Kirkland”) enter into this Membership Audit Acceptance Agreement (the “Audit Agreement”) with respect to Kirkland’s public water system.

Article I: Authority – Audit Predicate – Audit – Definitions

Section 1.1 Authority. Article V, Section 5.2.2 of the Cascade Water Alliance Amended and Restated Interlocal Contract, dated December 15, 2004, (the “Interlocal”) requires an audit of each Member’s water system and Independent Supply, if any, for the purposes of (1) determining Cascade’s supply obligation to that Member, (2) recognizing when the Member has lost Independent Supply, and (3) allocating credits against the Member’s Regional Capital Facility Charge for its Independent Supply.

Section 1.2 Audit Predicate. Cascade’s supply obligations (water quantity and quality) and related supply obligations and the Member’s obligations concerning planning, conservation, shortage management, Independent Supply, and payment of Rates and Charges are established by the Interlocal. This Audit Agreement is intended to implement, not modify the Interlocal, and nothing herein shall change the benefits or obligations of a party to the Interlocal.

Section 1.3 Audit. This Audit Agreement incorporates and adopts the audit of Kirkland’s public water system, dated May 23, 2008, performed by Cascade Water Alliance (the “Audit”). *The Audit was performed according to a methodology adopted by the Board of Directors of Cascade (the “Board”) in Resolution No. 2008-04.* The original Audit is on file with Cascade. A true and accurate copy is attached hereto as Exhibit A.

Section 1.4 Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meaning assigned to them in the Interlocal. The following words have the following meanings when used in this Agreement:

- a) Production Requirement – The quantity (seasonal and annual) of water a Member is required to supply from its Independent Supply as established by the Audit and set forth in Section V of Exhibit A.
- b) Failure to meet Production Requirement – A Member’s voluntary or involuntary failure to meet Production Requirements and so declared by a resolution of the Board.
- c) Loss of Supply – A Member’s permanent Failure to Meet Production Requirements, or a portion thereof, and so declared by a resolution of the Board.

Article II: Independent Supply

The Audit accurately identifies and quantifies Kirkland’s Independent Supply for the purpose of establishing Cascade’s supply commitment to Kirkland.

Article III: Supply Commitment

Cascade's supply commitment, as provided in the Interlocal and further defined by the Audit, shall be implemented through the Points of Delivery that are identified in Exhibit A.

Article IV: Wheeling

All existing wheeling arrangements between Members or between Members and non-members as described in Exhibit A shall remain in effect. For future wheeling arrangements, Cascade shall pay wheeling charges when, in the judgment of the Board, a wheeling arrangement represents a cost-effective way to provide water to a Member or non-member.

Article V: Points of Delivery

Section 5.1 Cascade shall either own, or by contract with Seattle, have wholesale master meters at all points of delivery of the regional transmission system as set forth in Exhibit A.

Section 5.2 Costs related to installation of future wholesale master meters initiated by Cascade shall be borne by Cascade. The cost of installing any future wholesale master meters not initiated by Cascade and not listed in Exhibit A shall be charged pursuant to Cascade's fiscal policies to the entity (Member or non-member) receiving the water.

Section 5.3 The hydraulic gradients for the points of delivery are established in Exhibit A. A Member may request changes to such hydraulic gradient(s) to avoid adverse impacts to their distribution system. Cascade shall assume the initial cost of any adjustments required at the Member supply connection to match the defined range. Cascade shall also assume the initial cost of any adjustments (within the Member's distribution system) resulting from changes to the defined hydraulic gradient range caused by Cascade. Thereafter, the cost of any subsequent adjustments shall be borne by each individual Member. Under emergency conditions or other unusual short-term operating situations, Cascade shall not be obligated to meet minimum hydraulic gradients.

Article VI: RCFC Credits – Independent Supply – Production Requirements – Loss

Section 6.1 Award of Credits. According to the Audit, Kirkland is entitled to and shall have 0 credits against the Regional Capital Facilities Charge.

Section 6.2 Production Requirements – Waiver

6.2.1 Kirkland accepts the Audit and the Production Requirement established by the Audit and set forth in Exhibit A, and agrees to produce water from its Independent Supply in an amount at least sufficient to meet its Production Requirements.

6.2.2 The Board may temporarily modify or waive Production Requirements when:

- a. the modification or waiver will not result in any increased demand upon Cascade or any increased cost to Cascade;
- b. the modification or waiver is based upon unforeseen events such as equipment failure, natural disaster, or other situation that could not have been reasonably foreseen by Member(s);
- c. the modification or waiver is based upon a planned temporary interruption of production as might be needed to perform routine maintenance or modification to a Member's system, the impacts of which have been coordinated in advance with Cascade;
- d. the modification or waiver is warranted by considerations of equity and fairness as determined in the sole discretion of the Board;
- e. the modification or waiver is based upon an agreed demand mitigation plan submitted by a Member and accepted by the Board; or
- f. The modification or waiver is in effect only for a specified and limited (not to exceed one year) period of time.

Section 6.3 Production Requirements – Administration and Enforcement.

Production Requirements shall be administered and enforced as follows:

6.3.1 Cascade will monitor Members' Independent Supply and Cascade's supply to Members through the collection of necessary reports and data. Cascade will evaluate Independent Supply production relative to Production Requirements and periodically report to Members on status. The frequency of such reports will be determined by practical timeframes for receipt and compilation of necessary data from regional and local sources. If a Member fails to meet Production Requirements, Cascade will notify the Member and the Board as soon as practical.

6.3.2 Each year, Cascade will periodically assess the supply and demand situation to determine whether Production Requirements may be waived or reduced based on a finding of surplus in water supply capacity or capability relative to demands. In the event of shortage conditions invoking shortage response, Cascade will work with Members to maximize those Members' reliance on Independent Supply while recognizing that concurrent demand reductions may cause de facto reductions in the ability to put Independent Supply to full productive use.

6.3.3 The Production Requirement shall be reduced pro rata to reflect a reduction in demand levels in any year. For this purpose, Cascade shall determine the actual Cascade usage per CERU for its collective Members, divide this usage by the standard usage per CERU established and used by Cascade, and multiply this ratio times the Production Requirement. This shall be done separately for annual and peak season demands and Production Requirements.

6.3.4 Shortfalls in production that are not waived by the Board or otherwise satisfied by any of the foregoing shall be documented by a resolution of the Board that shall impose penalties according to a graduated series of financial surcharges and operational sanctions, as follows:

Cascade Actions for Member Shortfall in Independent Supply Production			
Frequency	Financial Response (applies to volume of shortfall)		Operational Response
	Peak Season Shortfall	Annual Shortfall	
<i>1st occurrence in 20-year rolling period</i>	None	None	Cascade notifies Member and Board adopts resolution declaring production failure
<i>2nd occurrence in 20-year rolling period</i>	Surcharge equal to 25% of Cascade's average cost per ccf delivered*	Surcharge equal to 5% of Cascade's average cost per ccf delivered*	Cascade notifies Member and Board adopts resolution declaring 2 nd production failure, imposing penalties, and detailing consequences of further failures
<i>3rd and subsequent occurrences in 20-year rolling period</i>	Surcharge equal to 200% of Cascade's average cost per ccf delivered*	Surcharge equal to 80% of Cascade's average cost per ccf delivered*	Cascade notifies Member and Board adopts resolution declaring 3 rd production failure, imposing penalties, and warning that a fourth failure will be deemed a Member declaration of "loss of supply"
* "average cost per ccf delivered" is defined as total annual Cascade Demand Share revenue divided by total annual Cascade volume delivered.			

Provided that only one occurrence of a shortfall in Independent Supply Production may be declared per year, and provided further that in the event of multiple shortfalls in the same year (e.g. both peak season and annual shortfalls), the financial penalty shall be the greater of the calculated penalties.

6.3.5 A resolution declaring a permanent Loss of Supply shall be adopted by the Board upon the 4th occurrence of a Failure to Meet Production Requirements in a 20 year rolling period.

6.3.6 Whenever a resolution declaring a Loss of Supply has been adopted by the Board, (a) the Member shall concur in the declaration of Loss of Supply and formally request an additional Full Supply Commitment from Cascade in accordance with Section 5.2.2 of the Interlocal; (b) Cascade shall, at the Member's expense, perform an audit according to the approved audit methodology to quantify Cascade's additional Full Supply Commitment to the Member; and (c) Cascade shall impose, by resolution of the Board, the applicable annual financial penalties provided for in Section 6.3.4 of this agreement for that Loss of Supply, until the Member submits to Cascade a formal request for an additional Full Supply Commitment according to the Interlocal.

6.3.7 Whenever a Member experiences a Loss of Supply, that Loss of Supply shall be documented in a resolution of the Board and copy provided to the Member. The resolution shall

state the basis for the Board's declaration. A resolution declaring a Loss of Supply may be rescinded upon a showing satisfactory to the Board of replacement of lost supply consistent with the requirements of the Interlocal.

ARTICLE VII: General

Section 7.1 Integrated Agreement. This Agreement implements provisions of the Interlocal and shall be construed and interpreted to that effect; otherwise, this document and all attachments integrates all prior oral and written representations between the parties and is the complete agreement between Cascade and Kirkland concerning the Audit of Kirkland's public water system.

Section 7.2 Amendment. Except as otherwise provided, this Audit Agreement may be amended only in writing and only if such writing is signed by the Member and by Cascade; provided, however, an approved water system plan that modifies the Member's service area shall amend the service area described in Section 2.1 pending a further Audit of the Member's public water system in accordance with the Interlocal.

Section 7.3 Interpretation and Venue. This Audit Agreement shall be interpreted and construed according to the laws of the State of Washington; provided that the Interlocal, the Audit, and applicable Cascade resolutions may be consulted as aids to interpretation and construction. Any action to enforce this Agreement shall be brought in King County, Washington.

Section 7.4 Effective Date. This Audit Agreement shall be effective on the date that it is approved by resolution of the Board.

CASCADE WATER ALLIANCE
By:

Chair, Board of Directors

Date _____.

Attest:

Secretary, Board of Directors

Date _____.

MEMBER

By:

Mayor or City Manager or President of Commissioners

Date _____.

Attest:

Date _____.

MEMBER WATER AUDIT

CITY OF KIRKLAND

PREPARED FOR CASCADE WATER ALLIANCE

May 23, 2008

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Section I: Purpose & Background

This water audit outlines the supply relationship between Cascade Water Alliance (Cascade) and its Members, documenting each Member's official service area and independent supply sources. As a condition for membership in Cascade, Members with independent supply sources participated in a water system audit in 1999. The audit included a review of Member-owned independent supplies, which resulted in an award of independent supply credits for use against future regional capital facilities charge (RCFC) payments. The prior audits were conducted on the premise that Cascade would commence operation and supply delivery in 2000 – however, Cascade did not begin delivering water until 2004.

Cascade has recognized the need to update the prior audits for Members with independent supply sources to establish Member obligations to produce water from independent supplies, and to define RCFC credits (redeemable beginning in 2008). This document has been prepared in accordance with Article V, Section 5.2.2 of the Amended and Restated Cascade Interlocal Contract (dated December 15, 2004), which authorizes Cascade to conduct audits of the independent supplies of its Members at any time. Given that the City of Kirkland does not have any independent supply sources of its own, the primary purpose of this audit is to document the supply relationship between the City and Cascade.

Section II: Utility Description

The City of Kirkland is a municipal corporation that owns and operates a public water system serving customers inside its water service area. Table 1 summarizes information pertinent to the City's water system:

Table 1: General Water System Information – City of Kirkland

Water System Name:	City of Kirkland
Water System ID No:	4225OT
Water System Classification:	Group A – Community Type
Type of Ownership:	Local Government
Owner No:	3047
Address:	123 5 th Avenue, Kirkland, WA 98033
System Contact Person:	Greg Neumann
CERU Count as of 12/31/04:	17,056.5
Sources of Information:	Cascade / City Records

Section 2.1 Service Area

The City of Kirkland is located in King County, Washington, along the eastern shore of Lake Washington. The City boundaries encompass an area of approximately 10.9 square miles, which extends north to NE 132nd Street, east to 132nd Avenue NE and furthest south to approximately State Route 520. The City provides water service to customers throughout its corporate limits, except for the area north of approximately NE 124th Street. The City's existing service area boundary encompasses approximately 9 square miles.

The City purchases wholesale water from Cascade (currently Seattle water from the Cascade Block) to serve its customers. Kirkland supplies water to Redmond to serve customers in the Rose Hill area, and provides water to Bellevue to meet additional supply needs.

Section 2.2 Pre-Existing Service Commitments to Non-Members

The City does not have any pre-existing service commitments to non-members.

Section 2.3 Distinguishing Characteristics & Considerations

The following considerations are unique to the City of Kirkland's water system:

- There is a Potential Annexation Area in the City of Kirkland Comprehensive Plan. Given that this area receives water service from Seattle purveyors, assumption of water service in these annexation areas would lead to an increase in the Cascade Block if they occur by December 31, 2011.
- A well from King County Water District #1 (which the City of Bellevue assumed in 2005) lies within Kirkland's service area. This well provides some extra capacity that the City intends to use for park irrigation. While it is not currently considered to be "independent supply" for the purpose of the audit, it may have value to Cascade as an offset to what would otherwise be regional water demand for irrigation in Kirkland.

Section III: Supply Commitment

Section 3.1 Delivery Points

The specific Points of Delivery are identified in Figure 1. The location of each Point of Delivery is listed in Table 1 and is the Points of Delivery as defined by the Member agency at the time the water audit was finalized.

Figure 1

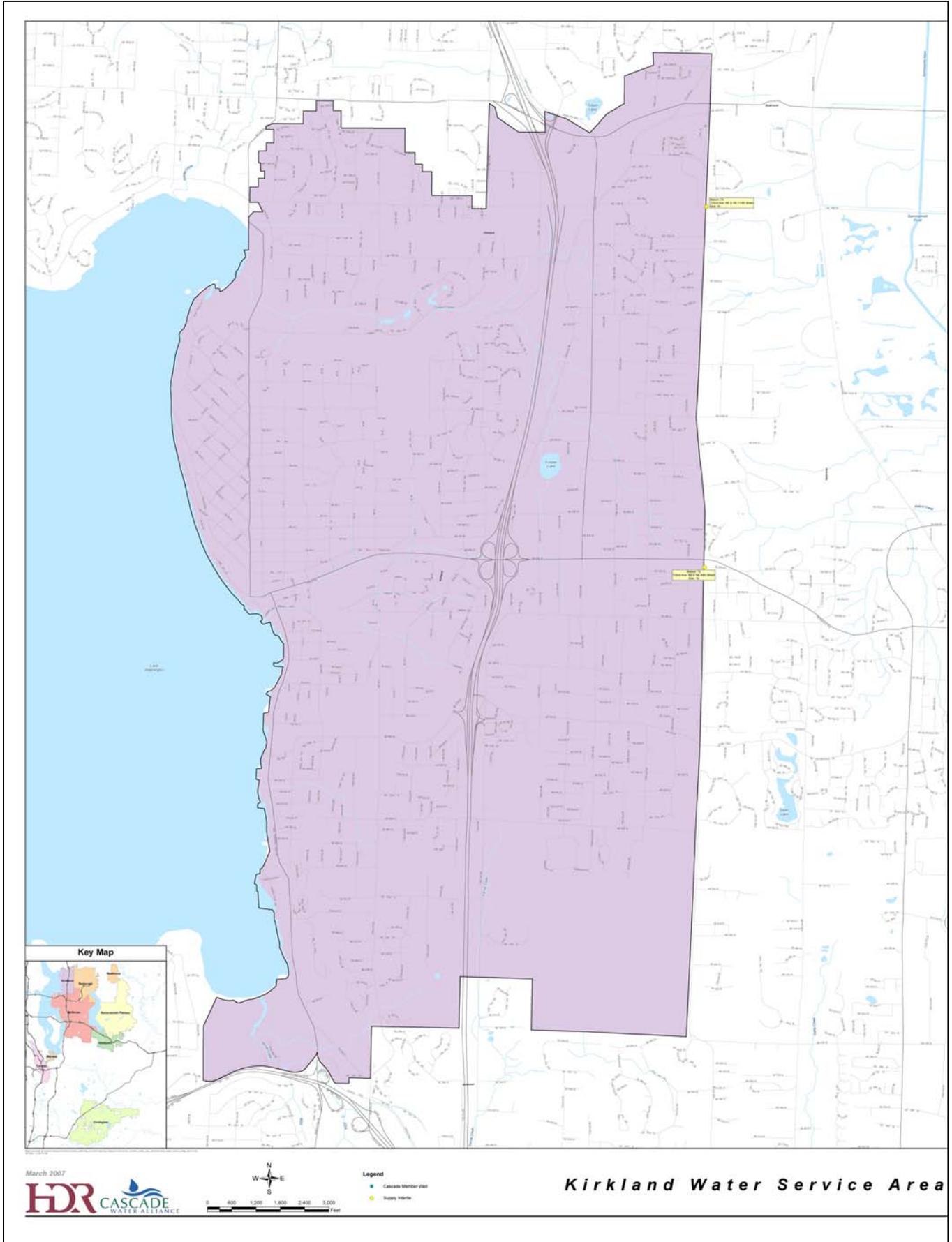


TABLE 1
TABLE OF DELIVERY POINTS

LOCATION	JURISDICTION	STA_NO	HYDRAULIC GRADIENT (Ft)		TYPE
			Minimum	Maximum	
132nd Avenue NE & NE 113th Street	Kirkland / Redmond	74	545	720	SUPPLY
132nd Avenue NE & NE 85th Street	Kirkland / Redmond	75	535	720	SUPPLY
140th Avenue NE & NE 70th Street	Kirkland / Redmond	72	530	720	SUPPLY

Section 3.2 Water Quality

As part of the Cascade Interlocal Contract, Cascade is responsible for the quality of water delivered through its system up to the delivery points specified in Section 3.1. The City maintains responsibility for the water quality of its independent supply sources. Beyond this, Cascade and its Members continue to develop policy and practice related to relative duties and responsibilities for water quality monitoring, management, and compliance.

Section 3.3 Shortages and Other Supply Restrictions

Section 7.3 of the Interlocal Contract specifically addresses the actions that Cascade and the Members will take in the event of supply shortages. In summary, Cascade will reduce or halt interruptible supply commitments first; in cases where further usage restrictions are needed, Members will share the associated burden under a shortage management plan adopted by Cascade's Board of Directors.

Section IV: RCFC Credits

The City of Kirkland does not currently have any independent supply sources – it acquires the water that it needs from wholesale water purchases. Future acquisition and integration of independent supply sources would require approval from Cascade, with any credits being awarded at the discretion of Cascade's Board of Directors.

Section V: Production Requirement

As noted, the City of Kirkland does not currently have any independent supply sources – consequently, the City does not have any independent supply production requirements. If the

City should acquire and integrate any independent supply sources (with the Board's approval) in the future, Cascade may establish independent supply production requirements that are commensurate with any RCFC credits awarded to the City.



CITY OF KIRKLAND

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

MEMORANDUM

To: David Ramsay, City Manager QUASI JUDICIAL
From: Eric Shields, Planning Director
Tony Leavitt, Associate Planner
Date: July 24, 2008
Subject: Houghton Transfer Station Mitigation Project, ZON07-00039 and APL08-00008

RECOMMENDATION

Per the direction given at the July 15th City Council Meeting, consider the zoning permit application and grant the application as recommended by the Hearing Examiner.

A Resolution reflecting the recommendation of the Hearing Examiner is enclosed.

This application is subject to the disapproval of the Houghton Community Council. The decision of the City Council will not be effective unless and until it is affirmed by the Community Council.

RULES FOR CITY COUNCIL CONSIDERATION

The City Council shall consider the Zoning Permit application based on the record before the Hearing Examiner and Houghton Community Council, the recommendation of the Hearing Examiner, the challenge to the recommendation and the response to the challenge to the recommendation.

BACKGROUND DISCUSSION

At the July 15th City Council Meeting, this project was brought before the City Council for their consideration. For a copy of this agenda item, click on the following link:

http://www.ci.kirkland.wa.us/_shared/assets/HoughtonTransferStationMitigationProject.pdf

At this meeting the Council heard from Staff, the applicant, and Mr. Andrew Held (the Challenger). After hearing from these parties, Council directed Staff to return to the August 5th Meeting with a resolution that reflected the Hearing Examiner's Recommendation for Approval with Conditions.

RESOLUTION. R-4716

A RESOLUTION OF THE CITY OF KIRKLAND APPROVING THE ISSUANCE OF A PROCESS IIB PERMIT AS APPLIED FOR IN DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. ZON07-00039 BY KING COUNTY DEPARTMENT OF NATURAL RESOURCES AND PARKS, SOLID WASTE DIVISION BEING WITHIN A PARK ZONE, AND SETTING FORTH CONDITIONS TO WHICH SUCH PROCESS IIB PERMIT SHALL BE SUBJECT.

WHEREAS, the Department of Planning and Community Development has received an application for a Process IIB permit, filed by King County Department of Natural Resources and Parks, Solid Waste Division, representing the owner of said property described in said application and located within Park zone; and

WHEREAS, pursuant to the City of Kirkland's Concurrency Management System, KMC Title 25, this action is exempt from the concurrency management process; and

WHEREAS, pursuant to the State Environmental Policy Act, RCW 43.21C, and the Administrative Guideline and local ordinance adopted to implement it, King County Department of Natural Resources and Parks, as SEPA Lead Agency, performed SEPA review for the application; and

WHEREAS, said environmental checklist and determination have been available and accompanied the application through the entire review process; and

WHEREAS, the application has been submitted to the Hearing Examiner who held hearings thereon at her special meetings of April 28, 2008 and May 27, 2008; and

WHEREAS, the Hearing Examiner after her public hearing and consideration of the recommendations of the Department of Planning and Community Development did adopt certain Findings, Conclusions, and Recommendation and did recommend approval of the Process IIB permit subject to the specific conditions set forth in said recommendation; and

WHEREAS, the City Council, in regular meeting, did consider the environmental documents received from the responsible official, together with the recommendation of the Hearing Examiner, as well as a timely filed challenge of said recommendation;

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

Section 1. The findings, conclusions, and recommendation of the Hearing Examiner as signed by the Hearing Examiner and filed in the Department of Planning and Community Development File No. ZON07-00039 are adopted by the Kirkland City Council as though fully set forth herein.

Section 2. The Process IIB permit shall be issued to the applicant subject to the conditions set forth in the recommendations hereinabove adopted by the City Council.

Section 3. Nothing in this resolution shall be construed as excusing the applicant from compliance with any federal, state, or local statutes, ordinance, or regulations applicable to this project, other than expressly set forth herein.

Section 4. Failure on the part of the holder of the permit to initially meet or maintain strict compliance with the standards and conditions to which the Process IIB permit is subject shall be grounds for revocation in accordance with Ordinance 3719, as amended, the Kirkland Zoning Ordinance.

Section 5. Notwithstanding any recommendation heretofore given by the Houghton Community Council, the subject matter of this resolution and the permit herein granted are, pursuant to Ordinance 2001, subject to the disapproval jurisdiction of the Houghton Community Council or the failure of said Community Council to disapprove this resolution within sixty days of the date of the passage of this resolution.

Section 6. A complete copy of this resolution, including Findings, Conclusions and Recommendation adopted by reference, shall be certified by the City Clerk who shall then forward the certified copy to the King County Department of Assessments.

Section 7. A copy of this resolution, together with the findings, conclusions, and recommendation herein adopted shall be attached to and become a part of the Process IIB permit or evidence thereof delivered to the permittee.

PASSED by majority vote in open meeting of the Kirkland City Council on the _____ day of _____, 20____.

SIGNED IN AUTHENTICATION thereof this _____ day of _____, 20____.

Mayor

Attest:

City Clerk



CITY OF KIRKLAND
Department of Finance and Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Tracey Dunlap, Director of Finance & Administration
Barry Scott, Purchasing Agent

Date: July 15, 2008

Subject: STATE INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT

RECOMMENDATION:

That the City Council authorize the City Manager to execute a new Intergovernmental Purchasing Agreement with the State of Washington's Department of General Administration.

BACKGROUND AND DISCUSSION:

The City of Kirkland has participated in the Washington State Purchasing Cooperative for over twenty years. The purchasing cooperative provides the City with access to over three hundred (300) contracts. The City of Kirkland is one of over seven hundred (700) members of the purchasing cooperative.

Since joining the cooperative, the City has relied on the use of these competitively bid contracts for the purchase of a wide variety of goods and services including light vehicles, heavy equipment, furniture, office equipment, janitorial services, tools and safety supplies.

Beginning in 2008, the Department of General Administration (GA) has restructured its fee schedule to require purchasing cooperative members to make quarterly payments during a two-year membership period rather than making one annual fee payment. This change has made it necessary for each member of the cooperative to execute a new intergovernmental agreement with GA.

The City has paid an annual fee of \$2,000 to participate in the purchasing cooperative since 1995. The annual fee for each member of the purchasing cooperative was to be determined by the member's annual expenditures as shown in the State Auditor's most recently published Local Government Comparative Statistics report. It was GA's responsibility to review the State Auditor's report prior to invoicing members each year. This review and adjustment of fees was not always done, and it was not done for the City of Kirkland.

Having now reviewed our recent expenditures, GA has determined that our correct two-year membership fee for 2008 and 2009 will be \$6,000 (\$3,000 for each year). This will result in quarterly payments of \$750 for this two-year membership period. No back payments are being sought for the years that the City underpaid its membership fees.

RESOLUTION R-4717

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING PARTICIPATION BY THE CITY IN A COOPERATIVE PURCHASING AGREEMENT WITH THE WASHINGTON STATE DEPARTMENT OF GENERAL ADMINISTRATION'S OFFICE OF STATE PROCUREMENT AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY OF KIRKLAND.

WHEREAS, the City of Kirkland and Washington State Department of General Administration seek to enter into an intergovernmental cooperative purchasing agreement enabling the City of Kirkland to purchase goods and services through the Office of State Procurement's purchase contracts; and

WHEREAS, the City Council has determined it to be in the best interest of the City of Kirkland to enter into such an interlocal cooperative purchasing agreement; and

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

Section 1. Participation by the City of Kirkland in the Intergovernmental Cooperative Purchasing Agreement attached to the original of this resolution as Exhibit A and by this reference incorporated herein is approved. The Kirkland City Manager is hereby authorized to execute said agreement on behalf of the City of Kirkland.

Passed by majority vote of the Kirkland City Council in open meeting this 5th day of August, 2008.

Signed in authentication thereof this ____ day of _____, 2008.

MAYOR

ATTEST:

City Clerk



State of Washington
DEPARTMENT OF GENERAL ADMINISTRATION
Office of State Procurement
Rm. 201 General Administration Building, P.O. Box 41017 • Olympia, Washington 98504-1017 • (360) 902-7400
<http://www.ga.wa.gov>

STATE OF WASHINGTON
INTERGOVERNMENTAL COOPERATIVE
PURCHASING AGREEMENT FOR
PUBLIC AGENCIES

Pursuant to Chapter 39.34 RCW and to other provisions of law, the State of Washington, Department of General Administration, Office of State Procurement, Purchasing and Contract Administration, (hereinafter called the "Office of State Procurement" or "OSP"), and the following named public agency, City of Kirkland (hereinafter called the "Cooperative member") hereby enter into this Intergovernmental Cooperative Purchasing Agreement (hereinafter called the "Agreement"), the purpose of which is for undertaking governmental purchasing activity that each party is authorized by law to perform, upon the following terms and conditions:

- (1) The Cooperative member must be an agency, Cooperative member, or unit of local government of Washington state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of Washington state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any Cooperative member of another state of the United States.
- (2) The Office of State Procurement, in contracting for the purchase of goods and services according to the laws and regulations governing purchases by and on behalf of the State of Washington, agrees to contract on behalf of the Cooperative member, to the extent permitted by law and agreed upon by both parties. The Cooperative member accepts responsibility for compliance with any additional laws and regulations governing purchases by or on behalf of the Cooperative member.
- (3) The Office of State Procurement shall comply with its statutory requirements regarding notice for bids or proposals for goods or services subject to this Agreement, and shall either post the bid or solicitation notice on a web site established and maintained by OSP for the purposes of posting public notice of bid or proposal solicitations, or shall provide an access link on the State of Washington's web portal to the notice.
- (4) When the Office of the State Procurement has entered into a contractual agreement for the purchase of goods or services on behalf of Cooperative member (s), the Cooperative member may purchase goods and services covered by the contract on the same terms and conditions as the State of Washington, except that the contractor has the right to modify payment terms based on their credit assessment of the Cooperative member. Purchases by the Cooperative member may be made by a purchase order issued by the Cooperative member to the state contractor. The Cooperative member accepts full responsibility for payment for any goods and services it purchases under contracts negotiated by OSP with private vendors or items it purchases directly from OSP. The Cooperative member accepts responsibility for contract monitoring related to their use of these contracts.
- (5) The Cooperative member reserves the right to contract independently for the purchase of any particular class of goods or services, with or without notice being given to OSP.
- (6) This Agreement shall be effective on the later of the two signatures dates appearing below, and shall continue in force until canceled in writing by either party.

R-4717

- (7) In the event that either the Office of the State Procurement or the Cooperative member is abolished, this Agreement shall continue in operation as to any public agency succeeding to the powers and duties of the abolished party, except as canceled or modified by operation of law. The Cooperative member may request a refund of unexpired membership exceeding three months, which may be approved by OSP at their discretion.
- (8) The Cooperative member agrees to use only contracts available to the Cooperative member and only in accordance with those contract terms and conditions. The Cooperative member further agrees that all purchases from OSP contracts will be made only for the direct use of the Cooperative member's programs (as covered by this agreement) and will not be made on behalf of other jurisdictions (Cooperative member").
- (9) The Office of State Procurement is required by Chapter 236-49-060 WAC to recover the costs of administering the state purchasing cooperative program from all its members. The Membership Fee Schedule below sets forth the fee structure for Cooperative members that are not Washington State Agencies, which is based on the total expenditures less debt service and interfund transfers, as reported in the Cooperative member's last audited financial statements. The Cooperative member shall be charged a membership fee based upon the self-declaration, as indicated by their signatory's initials in the first column of the Membership Fee Schedule below. The Cooperative member's self-determined membership fee is subject to change if not validated by OSP during its subsequent reviews. This membership fee is due upon subscribing for the first year of membership and by January 31 of the membership cycle. The membership term is January 1st 2008 through December 31st 2009. The Cooperative member agrees to pay the membership fee as a part of this Agreement. New memberships beginning after June 30 may be prorated and will be established at the discretion of OSP.
- (10) Membership fees are established every two years. The State Auditors' most recently published *Local Government Comparative Statistics* report will be used to verify membership fee. Where a Cooperative member is not reported separately in that document, audited financial statements as published in the State Auditors' Website will be used. The Superintendent of Public Instruction (OSPI) web site will be used to verify fee issues for School Districts. The most recent audited financial statement will be used as the authoritative source to resolve any issues regarding the Annual Membership Fee due from the Cooperative member. Any Cooperative member not reported in the OSPI or State Auditor's Websites, must submit a copy of its most recent audited financial statements to OSP. When a member does not have audited financial statements, the member shall provide internal budgets or financial statements to OSP if requested.
- (11) In addition to accessing State contracts established by the Office of State Procurement, custom contracting and procurement services are available for an additional predetermined fee. These include development of contracts and/or single requisitions that meet specific needs. The cost for these optional services, typically a flat fee, is established at the time of request.
- (12) It is not the intention of the parties, nor shall this Agreement be interpreted, to create a separate legal entity for the performance of this Agreement. Instead, the Office of State Procurement shall be responsible for administering this Agreement.
- (13) The Cooperative member shall be responsible for filing a copy of this Agreement with its county auditor's office.
- (14) By its signature below, the Office of State Procurement confirms it approves of this Agreement as required by RCW 39.34.050 and it is authorized to enter into this Agreement pursuant to RCW 39.34.030 and RCW 39.34.080. Similarly, by its signature below, the Cooperative member confirms it is authorized to enter into this Agreement pursuant to RCW 39.34.030 and RCW 39.34.080.
- (15) **PAYMENT and NOTICES:** Payment shall be made to OSP at the address given herein. Further, any notice, demand or other communication required or permitted to be given under this Contract shall be made to the parties at the addresses provided below.

Mail: agreement and Payment to:

State of Washington, OSP PAF-Non/Prof Fund: 422 04 20 000214,
 303 General Administration Bldg., P.O. Box 41008, Olympia, WA 98504-1008

Cooperative member contact information:

Contact Person (To whom contract documents and related communications are to be mailed or faxed).

Cooperative Member Name: City of Kirkland
 Contact Name: Barry L. Scott, C.P.M.
 Address: 123 5th Ave
 City, St. Zip: Kirkland, WA 98033
 Phone Number: 425-587-3123
 Federal Id #: 91-6001255
 FAX Number: 425-587-3110
 Email Address: bscott@ci.kirkland.wa.us

Two-Year Membership Fee Schedule

Note: Expenditures below are net of debt service and inter-fund transfers

Initial in box	Annual expenditures of more than	Annual expenditures of less than	Two-Year Membership Fee
	\$0.00	\$3,000,000	\$400
	\$3,000,001	\$7,500,000	\$1,000
	\$7,500,001	\$30,000,000	\$2,000
	\$30,000,001	\$68,000,000	\$4,000
	\$68,000,001	\$90,000,000	\$6,000
	\$90,000,001	\$150,000,000	\$8,000
	\$150,000,001	and over	\$10,000

The undersigned has read, understands and agrees to the terms and conditions of this agreement and this Authorized Signatory for the Cooperative member attests that the expenditure level initialed in the Membership Fee Schedule above is true and correct.
 Cooperative member Authorized Signature: Applicant must provide an authorized signature.

Name: _____

Title: _____

Address (if not the same as above): _____

Phone Number: _____

Date Signed: _____

<p>FOR OSP USE ONLY (Completed by OSP, this page will be returned to you in executed copy) Approved as to form: , AAG Date: 07/18/07 (signature on file)</p> <p>OSP has assigned you Co-op member number, _____. Please provide this number when ordering from contracts or communicating with OSP.</p> <p>OSP AUTHORIZED SIGNATURE</p> <p>Name _____ Title _____ Date _____</p>		
---	--	--

Juanita Bay Townhomes Final Subdivision
PCD File No. FSB08-00001
Page 1 of 2



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

MEMORANDUM

To: David Ramsay, City Manager QUASI JUDICIAL

From: Eric Shields, AICP, Planning Director
Tony Leavitt, Associate Planner

Date: July 24, 2008

Subject: Juanita Bay Townhomes Final Subdivision, File No. FSB08-00001

RECOMMENDATION

Approve with conditions the Final Subdivision for the Juanita Bay Townhomes Plat. The City Council may do so by adopting the enclosed resolution

BACKGROUND DISCUSSION

The Preliminary Subdivision was heard by the Hearing Examiner on July 19, 2007. The Hearing Examiner approved the project with conditions on July 31, 2007. A concurrency test was passed for traffic on January 31, 2007 and for water and sewer on March 13, 2007. A Determination of Non-significance was issued for the proposal on June 17, 2007. The SEPA Determination was appealed on June 27, 2007 by a neighboring property owner. On July 30, 2007 the appeal was withdrawn after the appellant reached an agreement with the applicant to address their concerns.

The proposal includes the following general elements:

- Subdivide two existing parcels (.44 total acres) into 11 separate parcels within the Juanita Business District (JBD) 2 Zone (no minimum lot size for attached residential units).
- The new lots will be developed with the townhome units that were approved as part of Design Review Board File No. DRC06-00004.
- Primary vehicular access for each lot will be provided via an access tract that connects directly to 99th Place NE. Emergency vehicle and secondary access will be provided to and from 98th Avenue NE via an existing private vehicular access easement.

The applicant is not proposing any modifications to the size, configuration, or location of any of the lots, access easements, or the open space tract approved with the preliminary subdivision.

The Planning Director recommends approval of the final subdivision with the conditions outlined in the staff advisory report dated July 23, 2008 (See Enclosure 1).

Juanita Bay Townhomes Final Subdivision

PCD File No. FSB08-00001

Page 2 of 2

ENCLOSURES

1. Staff Advisory Report dated July 23, 2008



CITY OF KIRKLAND

Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.828.1257
www.ci.kirkland.wa.us

**MEMORANDUM
ADVISORY REPORT
FINDINGS, CONCLUSION, AND RECOMMENDATIONS**

To: Eric R. Shields, AICP, Planning Director
From: Tony Leavitt, Associate Planner
Date: July 23, 2008
File: JUANITA BAY TOWNHOMES FINAL SUBDIVISION, FILE FSB08-00001

I. RECOMMENDATION

Recommend approval of the Final Subdivision application for the Juanita Bay Townhomes Plat subject to the following conditions:

- A. The application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, Building and Fire Code, and Subdivision Ordinance. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 1, Preliminary Subdivision Notice of Approval, is provided in this memo to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations.
- B. Prior to recording the final plat mylar with King County the applicant shall:
 - 1. Submit a title report no more than 30 days old from the date the final plat mylar was signed by the owners. The title report shall reflect that all taxes and assessments for the subject property have been paid.
 - 2. Have the exterior plat boundary and all interior lot corners set by a registered land surveyor.
 - 3. Install or bond for the completion of required right-of-way improvements. A bond or other approved security performance undertaken in an amount determined by the director of Public Works in accordance with the requirements therefore in the Kirkland Subdivision Ordinance shall be deposited with the City of Kirkland and be conditioned on the completion and acceptance by the City of all conditions of approval including public improvements within one year from the date of plat approval.

II. BACKGROUND

- A. The applicant is Steve Smith Development
- B. This is a Final Subdivision application to approve an 11-lot subdivision on a 19,421 square foot site (see Attachment 2).
- C. The Preliminary Subdivision (File No. PSB06-00001) was approved by the Hearing Examiner on July 31, 2007. See Attachment 3 and discussion under the History Section below.
- D. The site is located at 11444 98th Avenue NE and 11435 99th Place NE (See Attachment 2).

III. HISTORY

- A. The Preliminary Subdivision was heard by the Hearing Examiner on July 19, 2007. The Hearing Examiner approved the project with conditions on July 31, 2007. A concurrency test was passed for traffic on January 31, 2007 and for water and sewer on March 13, 2007. A Determination of Non-significance was issued for the proposal on June 17, 2007. The SEPA Determination was appealed on June 27, 2007 by a neighboring property owner. On July 30, 2007 the appeal was withdrawn after the appellant reached an agreement with the applicant to address their concerns.
- B. The proposal included the following general elements:
 - Subdivide two existing parcels (.44 total acres) into 11 separate parcels within the Juanita Business District (JBD) 2 Zone (no minimum lot size for attached residential units).
 - The new lots will be developed with the townhouse units that were approved as part of Design Review Board File No. DRC06-00004.
 - Primary vehicular access for each lot will be provided via an access tract that connects directly to 99th Place NE. Emergency vehicle and secondary access will be provided to and from 98th Avenue NE via an existing private vehicular access easement.

IV. ANALYSIS

- A. Section 22.16.080 of the Kirkland Municipal Code discusses the conditions under which the final plat may be approved by the City Council. These conditions are as follows:
 - Consistency with the preliminary plat, except for minor modifications allowed under Kirkland Municipal Code Section 22.16.080; and
 - Consistency with the provisions of the Subdivision Ordinance and RCW 58.17.
- B. The applicant has not proposed any modifications to the size, configuration or location of any of the lots, access easements, or the open space tract approved with the preliminary subdivision.
- C. The applicant has complied with all of the conditions that were placed on the preliminary subdivision application approved by the Hearing Examiner, except for those conditions that must be accomplished prior to Final Plat recording.

V. CHALLENGE, JUDICIAL REVIEW, AND LAPSE OF APPROVAL

- A. Section 22.16.070 of the Kirkland Municipal Code states that any person who disagrees with the report of the Planning Director may file a written challenge to City Council by delivering it to the City Clerk not later than the close of business of the evening City Council first considers the final plat.
- B. Section 22.16.110 of the Subdivision Ordinance allows the action of the City in granting or denying this final plat to be reviewed in King County Superior Court. The petition for review must be filed within 21 calendar days of the issuance of the final land use decision by the City.
- C. Section 22.16.130 of the Kirkland Municipal Code requires that the final plat be submitted to the City for recording with King County within four (4) years of the date of approval of the preliminary plat, unless specifically extended in the decision on the plat, or the decision becomes void: provided, however, that in the event judicial review is initiated per Section 22.16.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the plat.

VI. APPENDICES

Attachments 1 through 3 are attached.

- 1. Preliminary Subdivision Notice of Approval
- 2. Final Plat Plans
- 3. Approved Preliminary Plat

Review by Planning Director:

I concur _____ I do not concur _____

Comments: _____

Eric R. Shields, AICP

Date



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

DEVELOPMENT STANDARDS LIST

JUANITA BAY TOWNHOMES PRELIMINARY SUBDIVISION, PSB06-00001

SUBDIVISION STANDARDS

22.28.030 Lot Size. Unless otherwise approved in the preliminary subdivision or short subdivision approval, all lots within a subdivision must meet the minimum size requirements established for the property in the Kirkland zoning code or other land use regulatory document.

22.28.130 Vehicular Access Easements. The applicant shall comply with the requirements found in the Zoning Code for vehicular access easements or tracts.

22.28.210 Significant Trees. The applicant shall design the plat so as to comply with the tree management requirements set forth in Chapter 95 of the Kirkland Zoning Code.

22.32.010 Utility System Improvements. All utility system improvements must be designed and installed in accordance with all standards of the applicable serving utility.

22.32.030 Stormwater Control System. The applicant shall comply with the construction phase and permanent stormwater control requirements of the Municipal Code.

22.32.050 Transmission Line Undergrounding. The applicant shall comply with the utility lines and appurtenances requirements of the Zoning Code.

22.32.060 Utility Easements. Except in unusual circumstances, easements for utilities should be at least ten feet in width.

27.06.030 Park Impact Fees. New residential units are required to pay park impact fees prior to issuance of a building permit. Please see KMC 27.06 for the current rate. Exemptions and/or credits may apply pursuant to KMC 27.06.050 and KMC 27.06.060. If a property contains an existing unit to be removed, a "credit" for that unit shall apply to the first building permit of the subdivision.

Prior to Recording:

22.16.030 Final Plat - Lot Corners. The exterior plat boundary, and all interior lot corners shall be set by a registered land surveyor.

22.16.040 Final Plat - Title Report. The applicant shall submit a title company certification which is not more than 30 calendar days old verifying ownership of the subject property on the date that the property owner(s) (as indicated in the report) sign(s) the subdivision documents; containing a legal description of the entire parcel to be subdivided; describing any easements or restrictions affecting the property with a description, purpose and reference by auditor's file number and/or recording number; any encumbrances on the property; and any delinquent taxes or assessments on the property.

22.16.150 Final Plat - Improvements. The owner shall complete or bond all required right-of-way, easement, utility and other similar improvements.

22.32.020 Water System. The applicant shall install a system to provide potable water, adequate fire flow and all required fire-fighting infrastructure and appurtenances to each lot created.

22.32.040 Sanitary Sewer System. The developer shall install a sanitary sewer system to serve each lot

created.

22.32.080 Performance Bonds. In lieu of installing all required improvements and components as part of a plat or short plat, the applicant may propose to post a bond, or submit evidence that an adequate security device has been submitted and accepted by the service provider (City of Kirkland and/or Northshore Utility District), for a period of one year to ensure completion of these requirements within one year of plat/short plat approval.

Prior to occupancy:

22.32.020 Water System. The applicant shall install a system to provide potable water, adequate fire flow and all required fire-fighting infrastructure and appurtenances to each lot created.

22.32.040 Sanitary Sewer System. The developer shall install a sanitary sewer system to serve each lot created.

22.32.090 Maintenance Bonds. A two-year maintenance bond may be required for any of the improvements or landscaping installed or maintained under this title. A maintenance bond will be required for .

ZONING CODE STANDARDS

85.25.1 Geotechnical Report Recommendations. The geotechnical recommendations contained in the report by Dennis M. Bruce, P.E. dated January 2, 2007 shall be implemented.

85.25.3 Geotechnical Professional On-Site. A qualified geotechnical professional shall be present on site during land surface modification and foundation installation activities.

92.35 Prohibited Materials In Design Districts. If in a design district the following building materials are prohibited or limited in use: mirrored glass or reflective materials, corrugated fiberglass, chain link fencing, metal siding, concrete block, backlit awnings. Water spigots are required along building facades along sidewalks for cleaning and plant watering. Commercial buildings with more than one tenant shall install a cornerstone or plaque.

95.50.2.a Required Landscaping. All required landscaping shall be maintained throughout the life of the development. The applicant shall submit an agreement to the city to be recorded with King County which will perpetually maintain required landscaping. Prior to issuance of a certificate of occupancy, the proponent shall provide a final as-built landscape plan and an agreement to maintain and replace all landscaping that is required by the City.

95.40.7.b Parking Area Landscape Buffers. Applicant shall buffer all parking areas and driveways from the right-of-way and from adjacent property with a 5-foot wide strip as provided in this section. If located in a design district a low hedge or masonry or concrete wall may be approved as an alternative through design review.

95.45 Tree Installation Standards. All supplemental trees to be planted shall conform to the Kirkland Plant List. All installation standards shall conform to Kirkland Zoning Code Section 95.45.

105.10.2 Pavement Setbacks. The paved surface in an access easement or tract shall be set back at least 5 feet from any adjacent property which does not receive access from that easement or tract. An access easement or tract that has a paved area greater than 10 feet in width must be screened from any adjacent property that does not receive access from it. Screening standards are outlined in this section.

105.18 Pedestrian Walkways. All uses, except single family dwelling units and duplex structures, must provide pedestrian walkways designed to minimize walking distances from the building entrance to the right of way and adjacent transit facilities, pedestrian connections to adjacent properties, between primary entrances of all uses on the subject property, through parking lots and parking garages to building entrances. In design districts through block pathways or other pedestrian improvements may be required. See also Plates 34 in Chapter 180.

105.32 Bicycle Parking. All uses, except single family dwelling units and duplex structures with 6 or more vehicle parking spaces must provide covered bicycle parking within 50 feet of an entrance to the building at a ratio of one bicycle space for each twelve motor vehicle parking spaces. Check with Planner to determine the number of bike racks required and location.

105.18 Entrance Walkways. All uses, except single family dwellings and duplex structures, must provide pedestrian walkways between the principal entrances to all businesses, uses, and/or buildings on the subject property.

105.18.2 Walkway Standards. Pedestrian walkways must be at least 5' wide; must be distinguishable from traffic lanes by pavement texture or elevation; must have adequate lighting for security and safety. Lights must be non-glare and mounted no more than 20' above the ground.

105.19 Public Pedestrian Walkways. The height of solid (blocking visibility) fences along pedestrian pathways that are not directly adjacent a public or private street right-of-way shall be limited to 42 inches unless otherwise approved by the Planning or Public Works Directors. All new building structures shall be setback a minimum of five feet from any pedestrian access right-of-way, tract, or easement that is not directly adjacent a public or private street right-of-way. If in a design district, see section and Plate 34 for through block pathways standards.

105.20 Required Parking. 25 parking spaces are required for this use.

105.58 Parking Lot Locations in Design Districts. See section for standards unique to each district.

105.65 Compact Parking Stalls. Up to 50% of the number of parking spaces may be designated for compact cars.

105.60.2 Parking Area Driveways. Driveways which are not driving aisles within a parking area shall be a minimum width of 20 feet.

105.60.3 Wheelstops. Parking areas must be constructed so that car wheels are kept at least 2' from pedestrian and landscape areas.

105.77 Parking Area Curbing. All parking areas and driveways, for uses other than detached dwelling units must be surrounded by a 6" high vertical concrete curb.

110.52 Sidewalks and Public Improvements in Design Districts. See section, Plate 34 and public works approved plans manual for sidewalk standards and decorative lighting design applicable to design districts.

110.60.5 Street Trees. All trees planted in the right-of-way must be approved as to species by the City. All trees must be two inches in diameter at the time of planting as measured using the standards of the American Association of Nurserymen with a canopy that starts at least six feet above finished grade and does not obstruct any adjoining sidewalks or driving lanes.

115.25 Work Hours. It is a violation of this Code to engage in any development activity or to operate any heavy equipment before 7:00 am. or after 8:00 pm Monday through Friday, or before 9:00 am or after 6:00 pm Saturday. No development activity or use of heavy equipment may occur on Sundays or on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day. The applicant will be required to comply with these regulations and any violation of this section will result in enforcement action, unless written permission is obtained from the Planning official.

115.45 Garbage and Recycling Placement and Screening. For uses other than detached dwelling units, duplexes, moorage facilities, parks, and construction sites, all garbage receptacles and dumpsters must be setback from property lines, located outside landscape buffers, and screened from view from the street, adjacent properties and pedestrian walkways or parks by a solid sight-obscuring enclosure.

115.75.2 Fill Material. All materials used as fill must be non-dissolving and non-decomposing. Fill material must not contain organic or inorganic material that would be detrimental to the water quality, or existing habitat, or create any other significant adverse impacts to the environment.

115.90 Calculating Lot Coverage. The total area of all structures and pavement and any other impervious surface on the subject property is limited to a maximum percentage of total lot area. See the Use Zone charts for maximum lot coverage percentages allowed. Section 115.90 lists exceptions to total lot coverage calculations See Section 115.90 for a more detailed explanation of these exceptions.

115.95 Noise Standards. The City of Kirkland adopts by reference the Maximum Environmental Noise Levels established pursuant to the Noise Control Act of 1974, RCW 70.107. See Chapter 173-60 WAC. Any noise, which injures, endangers the comfort, repose, health or safety of persons, or in any way renders persons insecure in life, or in the use of property is a violation of this Code.

115.115 Required Setback Yards. This section establishes what structures, improvements and activities may be within required setback yards as established for each use in each zone.

115.115.3.g Rockeries and Retaining Walls. Rockeries and retaining walls are limited to a maximum height of four feet in a required yard unless certain modification criteria in this section are met. The combined height of fences and retaining walls within five feet of each other in a required yard is limited to a maximum height of 6 feet, unless certain modification criteria in this section are met.

115.115.3.p HVAC Equipment: These may be placed no closer than five feet of a side or rear property line, and shall not be located within a required front yard; provided, that HVAC equipment may be located in a storage shed approved pursuant to subsection (3)(m) of this section or a garage approved pursuant to subsection (3)(o)(2) of this section. All HVAC equipment shall be baffled, shielded, enclosed, or placed on the property in a manner that will ensure compliance with the noise provisions of KZC 115.95.

115.115.5.b Driveway Setbacks. For attached and stacked dwelling units in residential zones, driveways shall have a minimum 5' setback from all property lines except for the portion of any driveway, which connects with an adjacent street. Vehicle parking areas shall have a minimum 20-foot setback from all front property lines and meet the minimum required setbacks from all other property lines for the use.

115.120 Rooftop Appurtenance Screening. New appurtenances on existing buildings shall be surrounded by a solid screening enclosure equal in height to the appurtenance. New construction shall screen rooftop appurtenances by incorporating them in to the roof form.

115.135 Sight Distance at Intersection. Areas around all intersections, including the entrance of driveways onto streets, must be kept clear of sight obstruction as described in this section.

150.22.2 Public Notice Signs. Within seven (7) calendar days after the end of the 21-day period following the City's final decision on the permit, the applicant shall remove all public notice signs.

Prior to recording:

110.60.5 Landscape Maintenance Agreement. The owner of the subject property shall sign a landscape maintenance agreement, in a form acceptable to the City Attorney, to run with the subject property to maintain landscaping within the landscape strip and landscape island portions of the right-of-way. It is a violation to pave or cover the landscape strip with impervious material or to park motor vehicles on this strip.

110.60.6 Mailboxes. Mailboxes shall be installed in the development in a location approved by the Postal Service and the Planning Official. The applicant shall, to the maximum extent possible, group mailboxes for units or uses in the development.

As part of any development permit:

105.10.2 Tract Screening Requirements. Install a five-foot high sight-obscuring fence or vegetation that will provide comparable screening to a five-foot fence within two years of planting along the entire north side of the tract outside the required front yard.

Prior to issuance of a grading or building permit:

85.25.1 Geotechnical Report Recommendations. A written acknowledgment must be added to the face of the plans signed by the architect, engineer, and/or designer that he/she has reviewed the geotechnical recommendations and incorporated these recommendations into the plans.

90.50 Wetland Buffer Fence. Prior to development, the applicant shall install a six-foot high construction

27.06.030 Park Impact Fees. New residential units are required to pay park impact fees prior to issuance of a building permit. Please see KMC 27.06 for the current rate. Exemptions and/or credits may apply pursuant to KMC 27.06.050 and KMC 27.06.060. If a property contains an existing unit to be removed, a "credit" for that unit shall apply to the first building permit of the subdivision.

Prior to occupancy:

95.50.2.a Required Landscaping. All required landscaping shall be maintained throughout the life of the development. The applicant shall submit an agreement to the city to be recorded with King County which will perpetually maintain required landscaping. Prior to issuance of a certificate of occupancy, the proponent shall provide a final as-built landscape plan and an agreement to maintain and replace all landscaping that is required by the City

110.60.5 Landscape Maintenance Agreement. The owner of the subject property shall sign a landscape maintenance agreement, in a form acceptable to the City Attorney, to run with the subject property to maintain landscaping within the landscape strip and landscape island portions of the right-of-way. It is a violation to pave or cover the landscape strip with impervious material or to park motor vehicles on this strip.

110.60.6 Mailboxes. Mailboxes shall be installed in the development in a location approved by the Postal Service and the Planning Official. The applicant shall, to the maximum extent possible, group mailboxes for units or uses in the development.

CITY OF KIRKLAND
123 FIFTH AVENUE, KIRKLAND, WASHINGTON 98033-6189 (425) 587-3225

Date: 7/10/2007

DEVELOPMENT STANDARDS

CASE NO.: PSB06-00001

PCD FILE NO.:PSB06-00001

****KIRKLAND FIRE DEPARTMENT CONDITIONS****

For information, contact Grace Steuart, Fire Marshal, at 425-587-3650

---The unobstructed width of the fire department access road (including any gates) shall be not less than 20 feet paved.

The access road shall be marked NO PARKING-FIRE LANE.

---Any building over 5,000 gross square feet (including garage) requires fire sprinklers which may be of a 13D type

--Sprinklered buildings will require only an outside bell to be installed on each unit to alert occupants which the sprinkler system is activated; the systems are not required to be monitored

---Existing hydrants are adequate. However, both hydrants which would be used to serve the property (the one near the Athletic club, and on 99th PI NE) require 5" Stortz fittings.

---Minimum fire flow required is 1,500 gpm. Available fire flow on 99th is approximately 2,200 gpm, which is adequate for development. However, the hydrant on 98th is served by Northshore Utility District, and availability of 1,500 gpm would need to be ascertained by NUD.

You can review your permit status and conditions at www.kirklandpermits.net

PUBLIC WORKS CONDITIONS

Permit Information

Permit #: PSB06-00001

Project Name: Juanita Bay 12-unit Townhome Preliminary Subdivision

Project Address: 11444 98th Ave. NE and 11435 99th Place NE

Date: March 12, 2007

Public Works Staff Contacts

Land Use and Pre-Submittal Process:

Rob Jammerman, Development Engineering Manager

Phone: 425-587-3845 Fax: 425-587-3807

E-mail: rjammer@ci.kirkland.wa.us

Building and Land Surface Modification (Grading) Permit Process:

John Burkhalter, Senior Development Engineer

Phone: 425-587-3846 Fax: 425-587-3807

E-mail: jburkhal@ci.kirkland.wa.us

General Conditions:

1. All public improvements associated with this project including street and utility improvements, must meet the City of Kirkland Public Works Pre-Approved Plans and Policies Manual. A Public Works Pre-Approved Plans and Policies manual can be purchased from the Public Works Department, or it may be retrieved from the Public Works Department's page at the City of Kirkland's web site at

www.ci.kirkland.wa.us.

2. This project will be subject to Public Works Permit and Connection Fees. It is the applicant's responsibility to contact the Public Works Department by phone or in person to determine the fees. The fees can also be review the City of Kirkland web site at www.ci.kirkland.wa.us. The applicant should anticipate the following fees:
 - o Water and Sewer connection Fees (paid with the issuance of a Building Permit)
 - o Water Meter Fee (paid with the issuance of a Building Permit)
 - o Right-of-way Fee
 - o Review and Inspection Fee (for utilities and street improvements).
 - o Traffic Impact Fee (paid with the issuance of Building Permit). For additional information, see notes below.
3. Concurrency for this project has been completed.
4. Building Permits associated with this proposed project will be subject to the traffic impact fees per Chapter 27.04 of the Kirkland Municipal Code. The impact fees shall be paid prior to issuance of the Building Permit(s).
5. Any buildings within this project which are demolished will receive a Traffic Impact Fee credit. This credit will be applied to the first Building Permit that is applied for within the project (and subsequent Building Permits if multiple building permits are demolished). The credit amount for each demolished building will be equal to the most currently adopted Traffic Impact Fee schedule.
6. All civil engineering plans which are submitted in conjunction with a building, grading, or right-of-way permit must conform to the Public Works Policy titled ENGINEERING PLAN REQUIREMENTS. This policy is contained in the Public Works Pre-Approved Plans and Policies manual.
7. All street improvements and underground utility improvements (storm, sewer, and water) must be designed by a Washington State Licensed Engineer; all drawings shall bear the engineers stamp.
8. All plans submitted in conjunction with a building, grading or right-of-way permit must have elevations which are based on the King County datum only (NAVD 88).
9. A completeness check meeting is required prior to submittal of any Building Permit applications.
10. Prior to issuance of any commercial or multifamily Building Permit, the applicant shall provide a plan for garbage storage and pickup. The plan shall be approved by Waste Management and the City.
11. All subdivision recording mylar's shall include the following note:

Utility Maintenance: Each property owner shall be responsible for maintenance of the sanitary sewer or storm water stub from the point of use on their own property to the point of connection in the City sanitary sewer main or storm water main. Any portion of a sanitary sewer or surface water stub, which jointly serves more than one property, shall be jointly maintained and repaired by the property owners sharing such stub. The joint use and maintenance shall "run with the land" and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

Public Right-of-way Sidewalk and Vegetation Maintenance: Each property owner shall be responsible for keeping the sidewalk abutting the subject property clean and litter free. The property owner shall also be responsible for the maintenance of the vegetation within the abutting landscape strip. The maintenance shall "run with the land" and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

Sanitary Sewer Conditions:

1. Northshore Utility District approval required for sewer service. A letter of sewer availability is

required; call N.U.D at 425-398-4400.

Water System Conditions:

1. The existing water main in the 99th Pl. NE right-of-way along the front of the subject property is adequate to serve this proposed development.
2. Provide a water service from the water main to the meter for each building, each unit, or for the entire lot project (developers choice); water meter and water service sizing shall be per the Uniform Plumbing Code. Provide a separate irrigation service. The City of Kirkland will set the water meters. The west side of the project is in N.U. D. service boundary. Coordination will need to be done to determine if Kirkland should serve the entire project.
3. The existing water service from the City water main on 99th Pl. NE may be used provided that it is in the right location, is not galvanized, and is sized adequately to serve a building (per the Plumbing Code). The other option is to use the water service for irrigation.
4. Provide fire hydrants per the Fire Departments requirements. If the Fire Department requests a new hydrant within the project, a water main extension will be necessary.

Surface Water Conditions:

1. Provide temporary and permanent storm water control per the 1998 King County Surface Water Design Manual. If the site discharges to the storm line, which outlets into the lake to the south of this site, it is possible that a downstream analysis will show that no storm detention is required. If the site discharges to the storm line, which outlets to the north, storm detention will likely be required due to storm line capacity.
2. Storm detention calculations for the entire site are required.
3. Provide a level one off-site analysis unless a quantitative analysis is required to justify a waiver of storm detention.
4. For new or reconstructed impervious areas, subject to vehicular use, provide storm water quality treatment per the most current City-adopted Surface Water Design Manual.
5. When applicable, structural source control measures, such as car wash pads or dumpster area roofing, shall be shown on the site improvement plans submitted for engineering review and approval. Refer to King County Storm water Pollution Control Manual and the 2001 Department of Ecology Storm water Management Manual for Western Washington for further information.
6. The Army Corps of Engineers (COE) has asserted jurisdiction over upland ditches draining to streams. Either an existing Nationwide COE permit or an Individual COE permit may be necessary for work within ditches, depending on the project activities.
Applicants should obtain the applicable COE permit; information about COE permits can be found at: U.S. Army Corps of Engineers, Seattle District Regulatory Branch
http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=mainpage_NWPs
Specific questions can be directed to: Seattle District, Corps of Engineers, Regulatory Branch, CENWS-OD-RG, Post Office Box 3755, Seattle, WA 98124-3755, Phone: (206) 764-3495
7. The National Pollutant Discharge Elimination System (NPDES) Phase II Final Rule requires operators of small construction sites (disturbing between 1 and 5 acres of land) to obtain a Construction Storm water General Permit through the Washington State Department of Ecology. Information about the permit can be obtained at:
Washington State Department of Ecology <http://www.ecy.wa.gov/programs/wq/stormwater/construction/>
U.S. EPA Office of Wastewater Management <http://cfpub.epa.gov/npdes/stormwater/const.cfm>
Specific question can be directed to:
Jeff Killelea

PO Box 47600
Olympia, WA 98504-7600
(360) 407-6127
jkil461@ecy.wa.gov

8. Provide an erosion control plan with Building or Land Surface Modification Permit application. The plan shall be in accordance with the 1998 King County Surface Water Design Manual.
9. Construction drainage control shall be maintained by the developer and will be subject to periodic inspections. During the period from April 1 to October 31, all denuded soils must be covered within 15 days; between November 1 and March 31, all denuded soils must be covered within 12 hours. If an erosion problem already exists on the site, other cover protection and erosion control will be required.
10. All roof and driveway drainage must be tight-lined to the storm drainage system.

Street and Pedestrian Improvement Conditions:

1. The subject property abuts 99th Place NE. This street is a Collector type street. Zoning Code sections 110.10 and 110.25 require the applicant to make half-street improvements in rights-of-way abutting the subject property. Section 110.30-110.50 establishes that this street must be improved with the following:
 - A. Widen the street to 18 ft. from centerline to face of curb.
 - B. Install storm drainage, curb and gutter, a 4.5 ft. planter strip with street trees 30 ft. on-center, and a 5 ft. wide sidewalk.
2. Due to the lack of adequate access to the site from 98th Ave. NE during the PM peak traffic times, all units in this project must have primary access to 99th Place. NE. A secondary access to 98th Ave. NE is allowed.
3. The applicant has asked if the access from 98th Ave. NE can be gated. The Public Works Department approves of the proposed gate as it will deter cut-through traffic from 98th Ave. NE, but the Fire Department must also approve of the gate.
4. A 2-inch asphalt street overlay will be required where more than three utility trench crossings occur with 150 lineal ft. of street length or where utility trenches parallel the street centerline. Grinding of the existing asphalt to blend in the overlay will be required along all match lines.
5. It shall be the responsibility of the applicant to relocate any above-ground or below-ground utilities which conflict with the project associated street or utility improvements.
6. Underground all new and existing on-site utility lines and overhead transmission lines.
7. Zoning Code Section 110.60.9 establishes the requirement that existing utility and transmission (power, telephone, etc.) lines on-site and in rights-of-way adjacent to the site must be underground. The Public Works Director may determine if undergrounding transmission lines in the adjacent right-of-way is not feasible and defer the undergrounding by signing an agreement to participate in an undergrounding project, if one is ever proposed. In this case, the Public Works Director has determined that undergrounding of existing overhead utility on 99th Pl. NE is not feasible at this time and the undergrounding of off-site/frontage transmission lines should be deferred with a concomitant agreement or LID No Protest Agreement.

The proposed lot lines as shown do not accommodate the buildings submitted under NSFR permit applications BLD07-00159 through BLD07-00169. Please revise the Plat Map to comply with IRC section R302.2 below as follows:

In Lot 1 and 2, the "duplex" building appears to have open areas with 2 stories above that cross

property lines on both the East and West sides which is not allowed. Also, in order for the carports to be open and to have windows in the walls above looking East and West, the property lines need to be at least 3' away from these walls/openings. An easement may be necessary for the guest parking space on Lot 2.

In order to have windows on the East face of the building on Lot 3, the property line needs to be at least 3' away. An easement may be necessary for the guest parking space on Lots 3 and 2.

In order to have windows on the West face of the building on Lot 7, the property line needs to be at least 3' away. An easement may be necessary for the guest parking space on Lots 7 and 8.

In order to have windows on the East face of the building on Lot 8, the property line needs to be at least 3' away. An easement may be necessary for the guest parking space on Lots 8 and 7.

IRC excerpt:

LOCATION ON LOT

R302.1 Exterior walls. Exterior walls with a fire separation distance less than 3 feet shall have not less than a one-hour fire-resistive rating with exposure from both sides. Projections shall not extend to a point closer than 2 feet from the line used to determine the fire separation distance. Projections extending into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

R302.2 Openings. Openings shall not be permitted in the exterior wall of a dwelling or accessory building with a fire separation distance less than 3 feet. This distance shall be measured perpendicular to the line used to determine the fire separation distance.

Exceptions:

1. Openings shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.
2. Foundation vents installed in compliance with this code are permitted.

Plumbing meter and service line shall be sized in accordance with UPC 1009 (h) and Table 10-2.

JUANITA BAY TOWNHOMES

A PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER,
SECTION 31, TOWNSHIP 26 NORTH, RANGE 5 EAST, W.M.,
KING COUNTY, WASHINGTON

CITY OF KIRKLAND
FILE NO. FSB08-00001

DEDICATION

KNOW ALL PEOPLE BY THESE PRESENTS THAT WE, THE UNDERSIGNED BEING ALL OF THE OWNERS OF THE LAND HEREBY SHORT SUBDIVIDED, HEREBY DECLARE THIS SHORT PLAT TO BE THE GRAPHIC REPRESENTATION OF THE SHORT SUBDIVISION MADE HEREBY, AND DO HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL STREETS AND AVENUES NOT SHOWN AS PRIVATE HEREON AND DEDICATE THE USE THEREOF FOR ALL PUBLIC PURPOSES NOT INCONSISTENT WITH THE USE THEREOF FOR PUBLIC HIGHWAY PURPOSES, AND ALSO THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS SHOWN HEREON IN THE ORIGINAL REASONABLE GRADING OF SAID STREETS AND AVENUES, AND FURTHER DEDICATE TO THE USE OF THE PUBLIC ALL THE EASEMENTS AND TRACTS SHOWN ON THIS SHORT PLAT FOR ALL PUBLIC PURPOSES AS INDICATED HEREON, INCLUDING BUT NOT LIMITED TO PARKS, OPEN SPACE, UTILITIES, AND DRAINAGE UNLESS SUCH EASEMENTS OR TRACTS ARE SPECIFICALLY IDENTIFIED ON THIS SHORT PLAT AS BEING DEDICATED OR CONVEYED TO A PERSON OR ENTITY OTHER THAN THE PUBLIC.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SUBDIVIDED WAIVE FOR THEMSELVES, THEIR HEIRS AND ASSIGNS AND ANY PERSON OR ENTITY DERIVING TITLE FROM THE UNDERSIGNED, ANY AND ALL CLAIMS FOR DAMAGES AGAINST THE CITY OF KIRKLAND, ITS SUCCESSORS AND ASSIGNS WHICH MAY BE OCCASIONED BY THE ESTABLISHMENT, CONSTRUCTION, OR MAINTENANCE OF ROADS AND/OR DRAINAGE SYSTEMS WITHIN THIS SUBDIVISION OTHER THAN CLAIMS RESULTING FROM INADEQUATE MAINTENANCE BY THE CITY OF KIRKLAND.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SHORT SUBDIVIDED AGREE FOR THEMSELVES, THEIR HEIRS AND ASSIGNS TO INDEMNIFY AND HOLD THE CITY OF KIRKLAND, ITS SUCCESSORS AND ASSIGNS, HARMLESS FROM ANY DAMAGE, INCLUDING ANY COSTS OF DEFENSE, CLAIMED BY PERSONS WITHIN OR WITHOUT THIS SHORT SUBDIVISION TO HAVE BEEN CAUSED BY ALTERATIONS OF THE GROUND SURFACE, VEGETATION, DRAINAGE, OR SURFACE OR SUBSURFACE WATER FLOWS WITHIN THIS SUBDIVISION OR BY ESTABLISHMENT, CONSTRUCTION OR MAINTENANCE OF THE ROADS WITHIN THIS SUBDIVISION. PROVIDED, THIS WAIVER AND INDEMNIFICATION SHALL NOT BE CONSTRUED AS RELEASING THE CITY OF KIRKLAND, ITS SUCCESSORS OR ASSIGNS FROM LIABILITY FOR DAMAGES, INCLUDING THE COST OF DEFENSE, RESULTING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF KIRKLAND, ITS SUCCESSORS, OR ASSIGNS.

THIS SUBDIVISION DEDICATION, WAIVER OF CLAIMS AND AGREEMENT TO HOLD HARMLESS IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF SAID OWNERS. IN WITNESS WHEREOF WE SET OUR HANDS AND SEALS.

BY: _____
NORTHWEST TOWNHOMES, LLC
ITS: _____

BY: _____
HOMESTREET BANK
ITS: _____

ACKNOWLEDGEMENTS

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT _____ SIGNED THIS DECLARATION, ON OATH STATED THAT HE/SHE WAS AUTHORIZED TO EXECUTE THIS INSTRUMENT AND ACKNOWLEDGED IT AS THE _____ OF NORTHWEST TOWNHOMES, LLC TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATED: _____
SIGNATURE OF NOTARY PUBLIC _____
PRINTED NAME OF NOTARY PUBLIC _____
TITLE _____
MY APPOINTMENT EXPIRES _____

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT _____ SIGNED THIS DECLARATION, ON OATH STATED THAT HE/SHE WAS AUTHORIZED TO EXECUTE THIS INSTRUMENT AND ACKNOWLEDGED IT AS THE _____ OF HOMESTREET BANK TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATED: _____
SIGNATURE OF NOTARY PUBLIC _____
PRINTED NAME OF NOTARY PUBLIC _____
TITLE _____
MY APPOINTMENT EXPIRES _____

APPROVALS

CITY OF KIRKLAND
KIRKLAND CITY COUNCIL
APPROVED BY THE KIRKLAND CITY COUNCIL THIS ____ DAY OF _____, 2008.
ATTEST: _____

DEPARTMENT OF PUBLIC WORKS
EXAMINED AND APPROVED THIS ____ DAY OF _____, 2008.
DEPARTMENT OF PUBLIC WORKS
CITY ENGINEER (DIRECTOR)

FINANCE DIRECTOR CERTIFICATE
I HEREBY CERTIFY THAT ALL PROPERTY TAXES ARE PAID, THAT THERE ARE NO DELINQUENT SPECIAL ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION AND THAT ALL SPECIAL ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION ON ANY OF THE PROPERTY HEREIN CONTAINED DEDICATED AS STREETS, ALLEYS OR FOR ANY OTHER PUBLIC USE ARE PAID IN FULL THIS ____ DAY OF _____, 2008.
MANAGER, FINANCE DIVISION _____ DEPUTY _____

CITY TREASURER CERTIFICATE
I HEREBY CERTIFY THAT THERE ARE NO DELINQUENT LOCAL IMPROVEMENT ASSESSMENTS AND THAT ALL SPECIAL ASSESSMENTS ON ANY OF THE PROPERTY HEREIN CONTAINED DEDICATED AS STREETS OR FOR OTHER PUBLIC USE ARE PAID IN FULL THIS ____ DAY OF _____, 2008.
DEPARTMENT OF FINANCE
TREASURER, CITY OF KIRKLAND _____

CITY OF KIRKLAND DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
EXAMINED, REVIEWED AND APPROVED BY THE CITY OF KIRKLAND PURSUANT TO THE SUBDIVISION PROVISIONS OF TITLE 22 (LAND SUBDIVISION), KIRKLAND MUNICIPAL CODE, THIS ____ DAY OF _____, 2008.
DIRECTOR, DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT _____

KING COUNTY
DEPARTMENT OF ASSESSMENT
EXAMINED AND APPROVED THIS ____ DAY OF _____, 2008.
KING COUNTY ASSESSOR _____ DEPUTY KING COUNTY ASSESSOR _____

RECORDER'S CERTIFICATE
FILED FOR RECORD THIS ____ DAY OF _____, 2008 AT _____ IN BOOK _____ OF _____ AT PAGE _____ AT THE REQUEST OF STEVE SMITH DEVELOPMENT
MANAGER _____ SUPT. OF RECORDS _____

SURVEYOR'S CERTIFICATE
THIS MAP CORRECTLY REPRESENTS A SURVEY, MADE BY ME OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF
STEVE SMITH DEVELOPMENT IN _____, 2008.

WILLIAM B. ROGERS
CERTIFICATE NO. 38016



JUANITA BAY TOWNHOMES		
NE 1/4, NE 1/4, SEC 31, T.26 N, R.5 E., W.M.		
DWN. BY: EJV	DATE: 7.23.2008	JOB NO.: 06019.800
CHKD. BY: WBR	SCALE: N/A	SHEET: 1 OF 7

DRS D.R. STRONG CONSULTING ENGINEERS
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KIRKLAND, WA 98033
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800 962 1402 TOLL FREE
425 827 2423 FAX
www.drstrong.com

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JUANITA BAY TOWNHOMES

A PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER,
SECTION 31, TOWNSHIP 26 NORTH, RANGE 5 EAST, W.M.,
KING COUNTY, WASHINGTON

CITY OF KIRKLAND
FILE NO. FSB08-00001

LEGAL DESCRIPTION

(PER LAND AMERICA COMMONWEALTH TITLE)

PARCELS A AND B OF CITY OF KIRKLAND LOT LINE ALTERATION NO. LLA06-00009, AS RECORDED UNDER RECORDING NO. 2006092600018, RECORDS OF KING COUNTY, WASHINGTON, BEING A PORTION OF GOVERNMENT LOT 4 IN SECTION 31, TOWNSHIP 26 NORTH, RANGE 5 EAST W.M., IN KING COUNTY WASHINGTON;

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

TRACT NOTES

TRACT '999' IS A PRIVATE ACCESS TRACT FOR INGRESS AND EGRESS, PRIVATE STORM DRAINAGE, PRIVATE SEWER AND UTILITIES FOR THE BENEFIT OF THE OWNERS OF LOTS 1-12. AN EASEMENT OVER, UNDER AND ACROSS TRACT 999, AS DEPICTED HEREIN, IS HEREBY DEDICATED TO THE NORTHSIDE UTILITY DISTRICT FOR INGRESS AND EGRESS, THE CONSTRUCTION, RECONSTRUCTION AND THE MAINTENANCE OF THE PUBLIC SEWER FACILITIES AND FURTHER DESCRIBED HEREON IN THE EASEMENT PROVISIONS.

EASEMENT PROVISIONS

AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO PUGET SOUND ENERGY, NORTHSIDE UTILITY DISTRICT, ANY TELECOMMUNICATIONS AND CABLE TELEVISION PROVIDER, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, UNDER AND UPON THE EXTERIOR 10 FEET, PARALLEL WITH AND ADJOINING THE STREET FRONTAGE OF ALL LOTS AND TRACTS, IN WHICH TO INSTALL, LAY, CONSTRUCT, RENEW, OPERATE AND MAINTAIN UNDERGROUND CONDUITS, CABLE, PIPELINE, AND WIRES WITH THE NECESSARY FACILITIES AND OTHER EQUIPMENT FOR THE PURPOSE OF SERVICE TO THIS SUBDIVISION AND OTHER PROPERTY WITH ELECTRIC, TELEPHONE, GAS, CABLE T.V., SEWER AND WATER, TOGETHER WITH THE RIGHT TO ENTER UPON THE EASEMENTS AT ALL TIMES FOR THE PURPOSES STATED. THESE EASEMENTS ENTERED UPON FOR THESE PURPOSES SHALL BE RESTORED AS NEAR AS POSSIBLE TO THEIR ORIGINAL CONDITION BY THE UTILITY. NO LINES OR WIRES FOR THE TRANSMISSION OF ELECTRIC CURRENT, TELEPHONE OR CABLE TV SHALL BE PLACED OR BE PERMITTED TO BE PLACED UPON ANY LOT UNLESS THE SAME SHALL BE UNDERGROUND OR IN CONDUIT ATTACHED TO A BUILDING.

HOMEOWNERS ASSOCIATION COVENANT

THE OWNERS OF LOTS 1 THROUGH 11, INCLUSIVE, ARE RESPONSIBLE FOR PROVIDING THE THE JUANITA BAY TOWNHOMES HOMEOWNERS ASSOCIATION CONTINUES TO BE A VIABLE AND FUNCTIONING LEGAL ENTITY. SAID HOMEOWNERS ASSOCIATION SHALL OWN AND MAINTAIN THE TRACT AND EASEMENTS AS INDICATED AND COVENANTED HEREIN, UNLESS OTHERWISE APPROVED BY KING COUNTY DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES OR ITS LEGAL SUCCESSOR AGENCY. THIS COVENANT SHALL RUN WITH THE LAND AND IS BINDING UPON THE OWNERS OF LOTS 1 THROUGH 11, INCLUSIVE, THEIR HEIRS, SUCCESSORS AND ASSIGNS.

ADDRESSING

ADDRESSING SHALL BE IN ACCORDANCE WITH KIRKLAND BUILDING DIVISION POLICY MANUAL NUMBER 9.001, ASSIGNMENT OF STREET NUMBERS AND ROAD SIGNAGE.

ROAD DRAINAGE NOTE

THE ROAD AND STORM DRAINAGE SYSTEMS SHALL BE CONSTRUCTED ACCORDING TO THE PLAN AND PROFILE, _____ ON FILE WITH KING COUNTY DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES (DES). ANY DEVIATION FROM THE APPROVED PLANS WILL REQUIRE WRITTEN APPROVAL FROM THE PROPER AGENCY, CURRENTLY DES.

UTILITY MAINTENANCE

EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR MAINTENANCE OF THE SANITARY SEWER OR STORM WATER STUB FROM THE POINT OF USE ON THEIR OWN PROPERTY TO THE POINT OF CONNECTION IN THE CITY SANITARY SEWER MAIN OR STORM WATER MAIN. ANY PORTION OF A SANITARY SEWER OR SURFACE WATER STUB, WHICH JOINTLY SERVES MORE THAN ONE PROPERTY, SHALL BE JOINTLY MAINTAINED AND REPAIRED BY THE PROPERTY OWNERS SHARING SUCH STUB. THE JOINT USE AND MAINTENANCE SHALL "RUN WITH THE LAND" AND WILL BE BINDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.

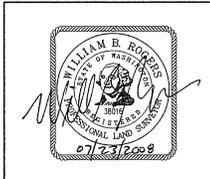
PUBLIC RIGHT-OF-WAY SIDEWALK AND VEGETATION MAINTENANCE

EACH PROPERTY SHALL BE RESPONSIBLE FOR KEEPING THE SIDEWALK ABUTTING THE SUBJECT PROPERTY CLEAN AND LITTER FREE. THE PROPERTY OWNER SHALL ALSO BE RESPONSIBLE FOR THE MAINTENANCE OF THE VEGETATION WITHIN THE ABUTTING LANDSCAPE STRIP. THE MAINTENANCE SHALL "RUN WITH THE LAND" AND WILL BE BINDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.

TITLE EXCEPTIONS

(PER LAND AMERICA COMMONWEALTH TITLE ORDER NO.: 20271380, DATED 14 JULY, 2008.)

1. (A) UNPATENTED MINING CLAIMS; (B) RESERVATIONS OR EXCEPTIONS IN PATENTS OR IN ACTS AUTHORIZING THE ISSUANCE THEREOF; (C) INDIAN TREATY OR ABORIGINAL RIGHTS, INCLUDING BUT NOT LIMITED TO, EASEMENTS OR EQUITABLE SERVITUDES; OR, (D) WATER RIGHTS, CLAIMS OR TITLE TO WATER, WHETHER OR NOT THE MATTERS EXCEPTED UNDER (A), (B), (C) OR (D) ARE SHOWN BY PUBLIC RECORDS.
2. TAX MATTERS
3. 9207300895--NOTICE OF TAP OR CONNECTION CHARGES.
4. 476380--RESTRICTIONS.
5. 477129--RESTRICTIONS.
6. 6159154--AN EASEMENT IN FAVOR OF THE MUNICIPALITY OF METROPOLITAN SEATTLE.
7. 6192921--AN EASEMENT IN FAVOR OF NORTHEAST LAKE WASHINGTON SEWER DISTRICT.
8. 6192923--AN EASEMENT IN FAVOR OF NORTHEAST LAKE WASHINGTON SEWER DISTRICT.
9. 6266809--AN EASEMENT IN FAVOR OF NORTHEAST LAKE WASHINGTON SEWER DISTRICT, A MUNICIPAL CORPORATION.
10. 7304170099--AN EASEMENT IN FAVOR OF KING COUNTY, WASHINGTON.
11. 73204170100--AN EASEMENT IN FAVOR OF KING COUNTY, WASHINGTON.
12. 7504140371--AN EASEMENT IN FAVOR OF PUGET SOUND POWER AND LIGHT COMPANY.
13. COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS OR OTHER SERVITUDES, IF ANY, DISCLOSED BY THE SURVEY RECORDED UNDER RECORDING NO. 7509050567 AND 7601060386.
14. COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS OR OTHER SERVITUDES, IF ANY, DISCLOSED BY THE SURVEY RECORDED UNDER RECORDING NO. 8003279006.
15. 8101280659--AN EASEMENT IN FAVOR OF PUGET SOUND POWER AND LIGHT COMPANY.
16. 8303230455--AN EASEMENT AGREEMENT.(TO BE EXTINGUISHED)
17. 9308181175--KIRKLAND RESOLUTION NO. R--3827.
18. 9309171853--UTILITY EASEMENT VACATED LAKE WASHINGTON BOULEVARD.
19. 20080222001756--AGREEMENT AND THE TERMS AND CONDITIONS THEREOF.
20. COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS OR OTHER SERVITUDES, IF ANY, DISCLOSED BY THE BOUNDARY LINE ADJUSTMENT RECORDED UNDER RECORDING NO. 20060726900018.
21. 20080723000288--SEWER EASEMENT AND THE TERMS AND CONDITIONS THEREOF.
22. 20060915002376--DEED OF TRUST.
23. UNRECORDED LEASEHOLDS, IF ANY; RIGHTS OF VENDORS AND HOLDERS OF SECURITY INTERESTS ON PERSONAL PROPERTY INSTALLED UPON THE LAND; AND RIGHTS OF TENANTS TO REMOVE TRADE FIXTURES AT THE EXPIRATION OF THE TERM.



JUANITA BAY TOWNHOMES		
NE 1/4, NE 1/4, SEC 31, T.26 N, R.5 E., W.M.		
DWN. BY: EJV	DATE: 7.23.2008	JOB NO.: 06019.800
CHKD. BY: WBR	SCALE: N/A	SHEET: 2 OF 7

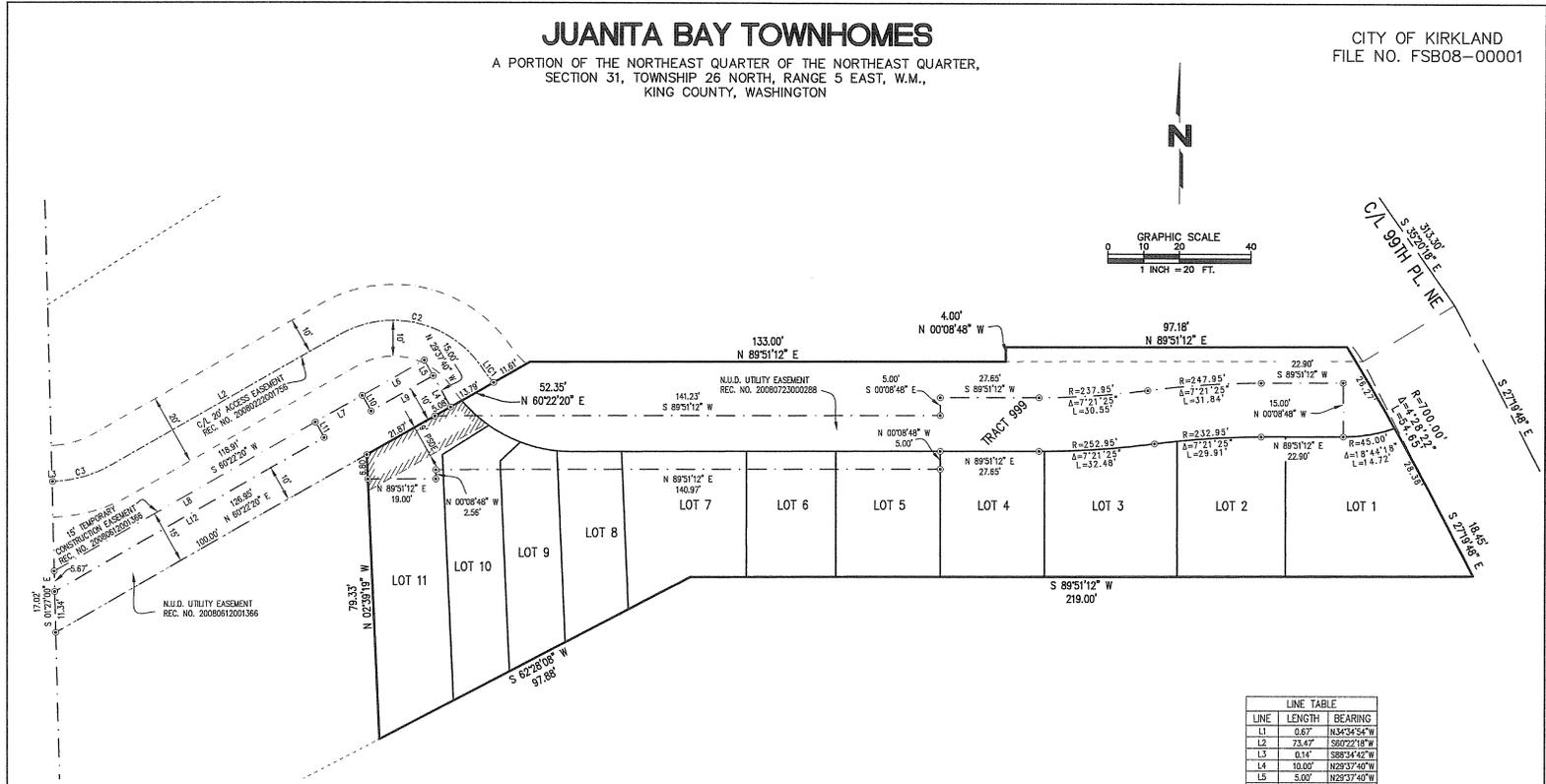
DRS D.R. STRONG CONSULTING ENGINEERS
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JUANITA BAY TOWNHOMES

A PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER,
SECTION 31, TOWNSHIP 26 NORTH, RANGE 5 EAST, W.M.,
KING COUNTY, WASHINGTON

CITY OF KIRKLAND
FILE NO. FSB08-00001



LEGEND:

- (123.45)RECORD DATA AS PER SURVEY REFERENCE #1
- {123.45}RECORD DATA AS PER SURVEY REFERENCE #2
- ⊙MONUMENT FOUND AS NOTED
-REBAR & CAP FOUND AS NOTED
- ⊙SET REBAR & CAP, LS 34134 OR LS 38016
- ⊙CALCULATED POSITION, NOT SET OR FOUND
- ⊕SECTION
- ⊕SECTION CORNER
- ▨PSDE

ABBREVIATIONS:

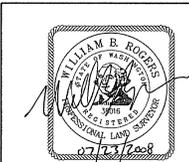
- AFN AUDITOR'S FILE NUMBER
- C/L CENTERLINE
- LS LICENSED SURVEYOR
- NTS NOT TO SCALE
- R/W RIGHT OF WAY
- W.M. WILLAMETTE MERIDIAN
- P.I. POINT OF INTERSECTION
- S.F. SQUARE FEET
- AC. ACREAGE
- (R) RADIAL
- N.U.D. NORTSHORE UTILITY DISTRICT
- PSDE ... PRIVATE STORM DRAINAGE EASEMENT

EASEMENT NOTES:

A 9 FOOT WIDE PRIVATE STORM DRAINAGE EASEMENT OVER LOT 11 SHOWN HEREON CONTAINS A PRIVATE STORM DRAINAGE SYSTEM BENEFITING THE JUANITA BAY TOWNHOMES HOMEOWNERS ASSOCIATION.

LINE	LENGTH	BEARING
L1	0.67'	N34°34'54"W
L2	23.47'	S60°22'16"W
L3	0.14'	S89°24'42"W
L4	10.00'	N28°37'40"W
L5	5.00'	N28°37'40"W
L6	19.50'	S60°22'20"W
L7	19.00'	S60°22'20"W
L8	84.00'	S60°22'20"W
L9	19.50'	S60°22'20"W
L10	5.00'	N28°37'40"W
L11	5.00'	S28°37'40"E
L12	86.69'	S60°22'20"W

CURVE	LENGTH	RADIUS	DELTA
C1	4.83'	30.00'	87°19'52"
C2	44.53'	30.00'	87°02'46"
C3	17.23'	35.00'	281°22'24"



JUANITA BAY TOWNHOMES
NE 1/4, NE 1/4, SEC 31, T.26 N, R.5 E., W.M.

DWN. BY: EJV DATE: 7.23.2008 JOB NO.: 06019.800
CHKD. BY: WBR SCALE: 1" = 20' SHEET: 6 OF 7

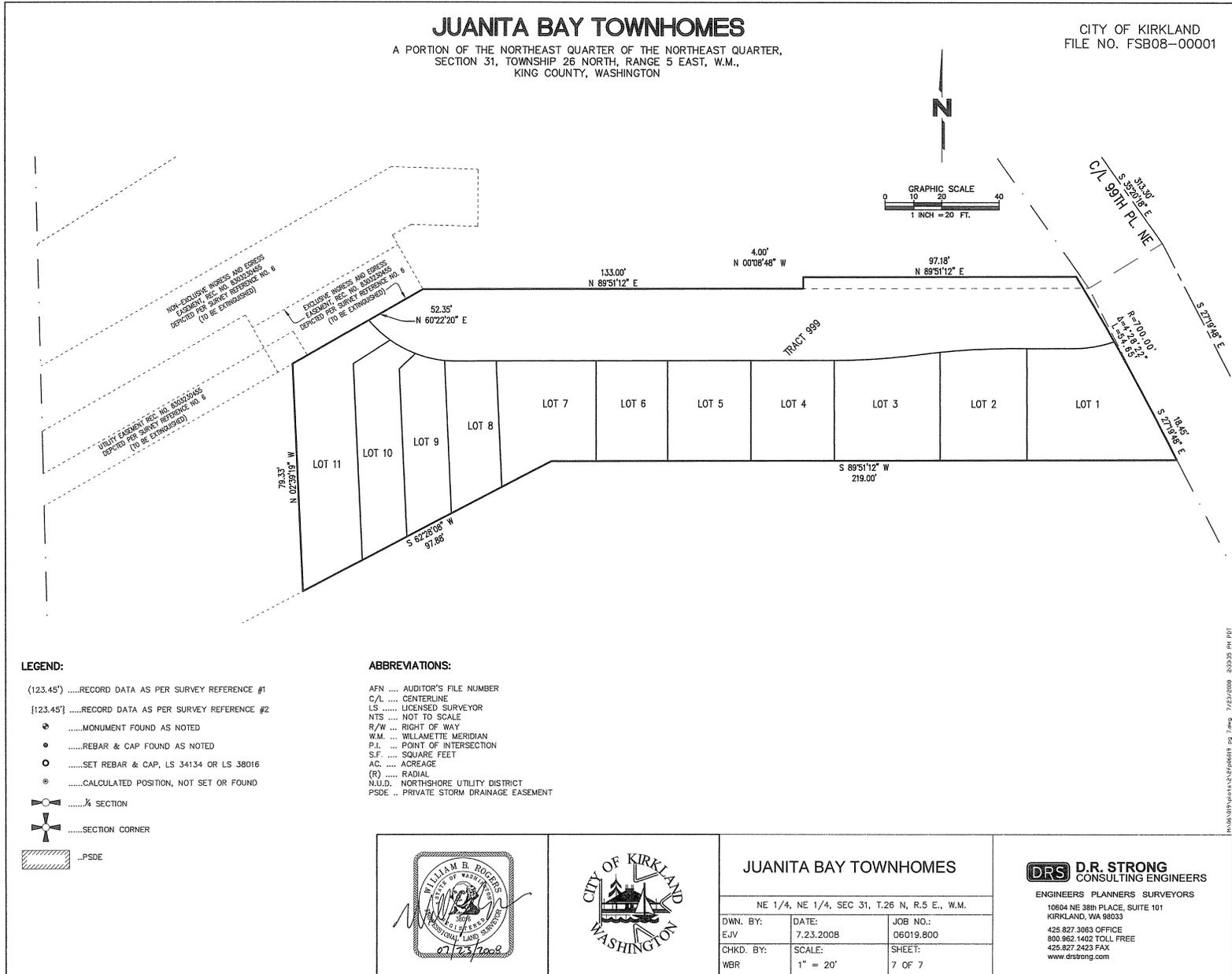
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JUANITA BAY TOWNHOMES

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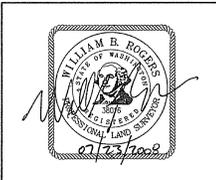


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- ⊕SECTION CORNER
- ▨PSDE

ABBREVIATIONS:

- AFN AUDITOR'S FILE NUMBER
- C/L CENTERLINE
- LS LICENSED SURVEYOR
- NTS NOT TO SCALE
- R/W ... RIGHT OF WAY
- W.M. ... WILLAMETTE MERIDIAN
- P.I. ... POINT OF INTERSECTION
- S.F. SQUARE FEET
- AC. ACREAGE
- (R) RADIAL
- N.U.D. ... NORTHSHORE UTILITY DISTRICT
- PSDE ... PRIVATE STORM DRAINAGE EASEMENT



JUANITA BAY TOWNHOMES		
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DRS D.R. STRONG
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**CITY OF KIRKLAND HEARING EXAMINER
FINDINGS AND DECISION**

APPLICANT: Steve Smith Development, Property Owner

FILE NO.: PSB06-00001, APL07-00005

SITE LOCATION: 11444 98th Avenue NE and 11435 99th Pl. NE

APPLICATION: Proposal to subdivide two existing parcels (.44 acres) into 11 separate parcels within the Juanita Business District (JBD) 2 Zone (no minimum lot size for attached residential units).

REVIEW PROCESS: Preliminary Subdivision process pursuant to Chapter 22.12. KMC and Process IIA; Hearing Examiner holds public hearing and makes final decision on preliminary plat. An Appeal of the Director's SEPA determination is decided by the Hearing Examiner in accordance with KMC 24.02.105.

MAJOR ISSUES: The major issues are compliance with applicable subdivision criteria, including consistency with development regulations. A SEPA appeal was filed by Columbia Athletic Clubs, Inc. The appeal was withdrawn by the Appellant, and is dismissed as part of this decision.

RECOMMENDATION:

Department of Planning and Community Development: Approve with conditions

PUBLIC HEARING:

After reviewing the Department of Planning and Community Development Advisory Report, the Hearing Examiner held a public hearing on the SEPA appeal and the preliminary subdivision application. The hearing commenced at 11:15 a.m. July 19, 2007, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. A verbatim recording of the hearing is available in the City Clerk's Office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development. At the request of the parties, the SEPA appeal hearing was continued to July 31, 2007 and the record held open. On July 30, 2007, the Appellant withdrew its appeal, indicating that it had reached a settlement with the applicant. The appeal was therefore dismissed and the hearing was stricken.

The following persons spoke at the public hearing:

From the City: Tony Leavitt, Project Planner

Hearing Examiner Decision
PSB06-00001, APL07-00005
Page 2 of 6

From the Applicant: James Barnett
John Sullivan

From the Community: James Fitzgerald, attorney for
SEPA Appellant, Columbia Athletic Clubs, Inc.

CORRESPONDENCE:

The following persons submitted written comments on this application:

Jan Jordan (for Michaels The Arts and Crafts Store)
James Fitzgerald (for Columbia Athletic Clubs, Inc.)

FINDINGS AND CONCLUSIONS

After considering the evidence in the record and inspecting the site on July 19, 2007, the Hearing Examiner enters the following findings of fact and conclusions.

A. Findings of Fact

1. The site consists of two parcels which total 19,800 square feet (.44 acres). The site is zoned Juanita Business District (JBD) 2 (no minimum lot size for attached residential units). Two structures at the site, an office structure and a single family residential structure, would be removed as part of the proposal.
2. At this time, the access to the residential structure is from 99th Place NE., and access to the office structure is from 98th Avenue NE via an access easement.
3. The site has a significant downward slope on its eastern half, and levels out on the western half. There are two significant trees on the site.
4. The zoning to the north, south and west is JBD 2, while property to the east is zoned RM 2.4. Development in the vicinity includes the Columbia Athletic Club building and an associated parking lot to the north; the Juanita Veterinary Hospital to the south and a vacant parcel to the southeast; a three-story condominium development to the east; and a parking lot to the west. Juanita Bay Park is located on the west side of NE 98th Street.
5. The property is within the South Juanita neighborhood. The South Juanita Neighborhood Land Use Map designates the subject property for commercial uses; the Comprehensive Plan provides that “commercial” may include multifamily uses.

6. The proposal is to subdivide the two parcels into 11 lots that will be developed with townhome units. The townhomes have been approved as part of Design Review Board File No. DRC06-00004.
7. Primary vehicular access for each lot will be provided via an access tract connecting directly to 99th Place NE, with emergency vehicle access via an existing private access easement to 98th Avenue NE. Access would consist of a minimum width of 20 feet of unobstructed paved surface within the 25-foot wide access easement. The private access easement runs across the southwest corner of property belonging to the Columbia Athletic Club.
8. The applicant has submitted a Tree Plan II identifying two significant trees on the subject property. These trees would be removed as part of the development.
9. The proposed townhome development was reviewed for concurrency by the City's Public Works Department and has passed the concurrency test for traffic.
10. The Public Works Department has concluded that there is adequate water and sewer capacity to serve the proposed development, and has identified conditions of approval for the plat. The Fire Department and PCD have also recommended approval, subject to certain conditions and applicable Codes.
11. Attachment 3 to the PCD Advisory Report identifies the conditions and standards that will apply to the proposed subdivision and/or development, in addition to other Code requirements that may apply.
12. The Director reviewed the proposal pursuant to SEPA, and issued a Determination of Nonsignificance (DNS) on June 13, 2007. The DNS was appealed by Appellant Columbia Athletic Clubs, Inc., on June 27, 2007.
13. The Appellant withdrew its SEPA appeal on July 30, 2007.
14. KMC 22.12.230 states that the Hearing Examiner may approve a preliminary plat only if *“(1) There are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools; and (2) It will serve the public use and interest and is consistent with the public health, safety, and welfare. The Hearing Examiner shall be guided by the policy and standards and may exercise the powers and authority set forth in RCW 58.17.”*
15. KZC 150.65 provides that the Hearing Examiner may approve a preliminary plat if it is consistent with all applicable development regulations, and in the absence of applicable development regulations, the Comprehensive Plan.

Hearing Examiner Decision
PSB06-00001, APL07-00005
Page 4 of 6

B. Conclusions

SEPA Appeal

1. The SEPA appeal was withdrawn by the Appellant on July 30, 2007, and should therefore be dismissed.

Preliminary subdivision

2. The proposed preliminary subdivision, as conditioned by the requirements set out in Attachment 3 to the Advisory Report, would meet the applicable development regulations and be consistent with the applicable portions of the Comprehensive Plan.

3. The plat will make adequate provisions for open space, drainage ways, rights-of-way, easements, water supplied, sanitary waste, power service, parks, playgrounds and schools, will serve the public use and interest, and will be consistent with the public health, safety and welfare.

4. The proposed plat meets the criteria of KMC 22.12.230 and KZC 150.65, and should be approved subject to the recommended conditions.

DECISION

Preliminary Subdivision: Based upon the foregoing findings of fact and conclusions, the preliminary plat is approved subject to the conditions set forth in Attachment 3 to the Advisory Report.

SEPA Appeal: The appeal is hereby dismissed.

Entered this 31st day of July, 2007.

Anne Watanabe
Hearing Examiner

EXHIBITS

The following exhibits were offered and entered into the record:

Planning and Community Development Staff Advisory Report

Attachments:

1. Vicinity Map
2. Development Plans
3. Development Standards
4. Letter from Michael's Craft Store, dated April 16, 2007
5. Letter from James S. Fitzgerald, dated April 19, 2007
6. SEPA Determination, Memo and Enclosures
7. SEPA Appeal letter from James S. Fitzgerald dated June 27, 2007
8. South Juanita Neighborhood Land Use Map

PARTIES OF RECORD

Applicant, Steve Smith Development, 9500 Roosevelt Way NE #300, Seattle, WA 98115
James Fitzgerald (on behalf of Columbia Athletic Clubs, Inc.) P.O. Box 908, Kirkland, WA 98083

Jan Jordan, Lease Compliance Administrator for Michael's Craft Store, 8000 Bent Branch Drive, Irving, TX 75063

Department of Planning and Community Development

Department of Public Works

Department of Building and Fire Services

APPEALS AND JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for challenges and appeals. Any person wishing to file or respond to a challenge or appeal should contact the Planning Department for further procedural information.

Appeal to City Council:

Under Section 150.80 of the Zoning Code, the Hearing Examiner's decision may be appealed by the applicant and any person who submitted written or oral testimony or comments to the Hearing Examiner. A party who signed a petition may not appeal unless such party also submitted independent written comments or information. The appeal must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5 p.m. _____, fourteen (14) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

Hearing Examiner Decision
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Judicial Review:

Section 150.130 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within twenty-one (21) calendar days of the issuance of the final land use decision by the City.

LAPSE OF APPROVAL

Under Section 22.16.130 of the Subdivision Ordinance, the owner must submit a final plat application to the Planning Department, meeting the requirements of the Subdivision Ordinance and the preliminary plat approval, and submit the final plat for recording, within four (4) years following the date the preliminary plat was approved or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 22.16.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the plat.



CITY OF KIRKLAND

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

**ADVISORY REPORT
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

To: Kirkland Hearing Examiner

From: _____ Tony Leavitt, Associate Planner

_____ Paul Stewart, AICP, Deputy Planning Director

Date: July 11, 2007

File: JUANITA BAY TOWNHOMES PRELIMINARY SUBDIVISION (PSB06-00001) AND SEPA APPEAL (APL07-00005)

Hearing Date and Place: July 19, 2007
City Hall Council Chamber
123 Fifth Avenue, Kirkland

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I. INTRODUCTION

A. APPLICATION

1. Applicant: Steve Smith Development, Property Owner
2. Site Location: 11444 98th Avenue NE and 11435 99th Place NE (see Attachment 1)
3. Request: Proposal to subdivide two existing parcels (.44 total acres) into 11 separate parcels within the Juanita Business District (JBD) 2 Zone (no minimum lot size for attached residential units) (see Attachment 2). The new lots will be developed with the townhome units that were approved as part of Design Review Board File No. DRC06-00004. Primary vehicular access for each lot will be provided via an access tract that connects directly to 99th Place NE. Emergency vehicle and secondary access will be provided to and from 98th Avenue NE via an existing private vehicular access easement.
4. Review Process:
 - a. Preliminary Subdivision: Hearing Examiner conducts public hearing and makes final decision.
 - b. SEPA Appeal: Pursuant to Kirkland Municipal Code Section 24.02.105 the SEPA appeal hearing will be conducted by the Hearing Examiner and combined with the public hearing for the Preliminary Subdivision. The Hearing Examiner will make the final decision on the SEPA appeal (see Section II. D).
5. Summary of Key Issues:
 - SEPA Determination of Nonsignificance Appeal Consideration (see Section II.D). The appeal relates to potential traffic impacts from the applicant's plan to use an existing access easement to 98th Avenue NE and offsite grading work.
 - Compliance with Kirkland Municipal and Zoning Code Approval Criteria (see Section II.F).

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 condition:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed.

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:
 - a. Facts:
 - (1) Size: 19,800 square feet (.44 acres)
 - (2) Land Use: The subject property contains an office structure on the western most parcel and a single family residential structure on the eastern most parcel. These structures are proposed to be removed as part of the proposal.
 - (3) Zoning: Juanita Business District (JBD) 2 Zone (no minimum lot size for attached residential units)
 - (4) Terrain: The site has a significant downward slope on the eastern half of the property and levels out on the western half of the property.
 - (5) Vegetation: The subject property contains a total of 2 significant trees.
 - b. Conclusions: Size, land use, zoning, terrain, and vegetation are not constraining factors in the review of this application.
2. Neighboring Development and Zoning:
 - a. Facts: The following are the uses, allowed heights, and zoning of the properties adjacent to the subject property:

North: JBD 2 Zone. The property to the north contains the Columbia Athletic Club building and an associated parking lot.

East: RM 2.4 Zone. A 3 story multi family development, The Hallmark Juanita Condominiums, currently exists on the site.

South: JBD 2 Zone. The property to the southwest contains the Juanita Veterinary Hospital and the property to the southeast is vacant.

West: JBD 2 Zone. The property immediately to the west contains a parking lot owned by the owners of the Juanita Veterinary Hospital property. On the west side of NE 98th Street is Juanita Bay Park.
 - b. Conclusion: The neighboring development and zoning are not factors in the review of this application. Columbia Athletic Club has filed a SEPA Appeal related to the use of private vehicular access easement that is located on their property. The SEPA Appeal is discussed in Section II.D.

B. HISTORY

In August of 2006, the applicant applied for Design Board Review of the proposed townhome structures. The Design Review Board approved the project, subject to conditions, on November 6th, 2006.

C. PUBLIC COMMENT

Facts: The initial public comment period for this application started on March 29, 2007 and ended on April 19, 2007. Two public comment letters were received (see Attachments 4 and 5). The issues raised in the letter along with staff responses follow:

- Construction Impacts

One neighbor is concerned that construction of the proposed project could impact NE 116th Street.

Staff Response: The subject property is not located on NE 116th Street, so any potential impacts to this street will be minimal.

- Vehicular Access Easement Impacts

The property owner to the north of subject property requests that the City require that the applicant install a gate across the existing private vehicular access easement to 98th Avenue NE in order to restrict use of the access easement to emergency vehicles only.

Staff Response: Staff addresses the vehicular access easement in Section II.D.

D. STATE ENVIRONMENTAL POLICY ACT (SEPA)

1. SEPA Threshold Determination

- a. Facts:

- (1) A Determination of Nonsignificance (DNS) was issued on June 13, 2007. The Environmental Checklist, Determination, and additional environmental information are included as Attachment 5.
 - (2) A timely appeal of the SEPA Determination was filed on June 27, 2007 by the Jim Fitzgerald representing Columbia Athletic Clubs, Inc. (see Attachment 7).
 - (3) The Hearing Examiner will conduct a public hearing on the SEPA appeal concurrently with the public hearing for this permit application on July 19, 2007.
 - (4) The Hearing Examiner will consider the appeal and the testimony received during the public hearing in making her decision to either: affirm the decision being appealed; reverse the decision being appealed; or modify the decision being appealed. Within eight calendar days after the public hearing, the hearing body will issue a written decision on the appeal.

- b. Conclusion: Once the Hearing Examiner issues a decision on the appeal of the SEPA Determination of Non-Significance, the City and the applicant will have satisfied the requirements of SEPA.

2. SEPA Appeal

a. Facts:

- (1) KMC Section 24.02.105.b establishes the following parties as able to appeal the SEPA determination: The applicant or proponent; any agency with jurisdiction, any individual or other entity who is specifically and directly affected by the proposed action.
- (2) KMC Section 24.02.105.g.2 states that only those persons entitled to appeal the threshold determination may participate in the appeal.
- (3) KMC Section 24.02.105.i of the Kirkland Municipal Code relating to SEPA states that:
 - The matters to be considered and decided upon in the appeal are limited to the matters raised in the notice of appeal.
 - The decision of the responsible official shall be accorded substantial weight.
 - All testimony will be taken under oath.
 - The decision of the hearing body hearing the appeal shall be the final decision on any appeal of a threshold determination including a Determination of Nonsignificance.
- (4) The appellants claim in their letter of appeal that the SEPA Determination ignores or fails to take proper account of probable significant adverse environmental impacts, specifically traffic impacts, from the applicant's plan to use an existing access easement to 98th Avenue NE. The appellants also object to any grading work on their property without prior approval.
- (5) The applicant intends to use the existing private vehicular access easement for emergency vehicle and secondary access to and from 98th Avenue NE. The private vehicular access easement runs across the southwest corner of the appellant's property (see Attachment 2).
- (6) The appellants claim that the use of the existing private vehicular access easement is limited and that the easement may not be used as proposed by the applicant.
- (7) The appellant requests that a condition be imposed on the project that requires that a fence and gate be placed along the common boundary between the appellant's property and the subject property. The gate would be located across the access easement and restrict access to emergency vehicles only.
- (8) The Public Works Department reviewed the Concurrency Management Review Application for the proposed development and concluded that

the project will not have a negative traffic impact on existing public facilities.

- (9) The existing vehicular access easement is a private easement and the use of the easement is not regulated by the City of Kirkland.
- (10) Potential grading work on the appellants' property is a private issue as City issued permits do not authorize offsite work. As a result, the applicant would need secure approval from the Columbia Athletic Club for any work on their property.

b. Conclusions:

- (1) Absent identification of probable significant adverse environmental impacts, Staff has concluded that the City does not have the authority to restrict use of the private vehicular access easement by requiring that the applicant install an emergency vehicle access gate (see Attachment 6, SEPA Determination Memo).
- (2) As noted above, Staff has not identified negative traffic impacts and is not requiring access restrictions.
- (3) Although the appeal includes a number of concerns regarding the use of the easement, none of them represent significant environmental impacts. Therefore, the decision by the responsible official to issue a DNS was appropriate.

E. CONCURRENCY

- 1. Facts: The Public Works Department has reviewed the application for concurrency. A concurrency test was passed for traffic on January 31, 2007 (see Enclosure 4 of Attachment 6) and for water and sewer on March 13, 2007 (see Attachment 3).
- 2. Conclusion: The proposal meets the City's concurrency requirements.

F. APPROVAL CRITERIA

- 1. Preliminary Subdivisions
 - a. Facts: Kirkland Municipal Code section 22.12.230 states that the Hearing Examiner may approve a proposed plat only if:
 - (1) There are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools; and
 - (2) It will serve the public use and interest and is consistent with the public health, safety, and welfare. The Hearing Examiner shall be guided by the policy and standards and may exercise the powers and authority set forth in RCW 58.17.

Zoning Code section 150.65 states that the Hearing Examiner may approve a proposed plat only if:

- (3) It is consistent with the all applicable development regulations, including but not limited to the Zoning Code and Subdivision Code, and to the extent there is no applicable development regulation, the Comprehensive Plan.
- b. Conclusion: The proposal complies with Municipal Code section 22.12.230 and Zoning Code section 150.65. It is consistent with the Comprehensive Plan (see Section II H). With the recommended conditions of approval, it is consistent with the Zoning Code and Subdivision regulations (see Sections II.G) and there are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools. It will serve the public use and interest and is consistent with the public health, safety, and welfare because the proposal will create infill residential development while meeting the goals of the Comprehensive Plan for the South Juanita neighborhood.

G. DEVELOPMENT REGULATIONS

1. Vehicular Access Easements or Tracts
 - a. Facts: Municipal Code sections 22.28.110 and 22.28.130 establish that if vehicular access within the plat is provided by means other than rights-of-way, the plat must establish easements or tracts, compliant with Zoning Code Section 105.10, which will provide the legal right of access to each of the lots served.
 - (1) Zoning Code section 105.10 establishes dimensional standards for vehicular access easements and tracts. For the proposed use, the minimum standard is 20 feet of unobstructed paved surface within a 20 foot wide easement or tract.
 - (2) The project includes a proposed vehicular access easement that will be 25 feet wide with a 20 foot wide unobstructed paved surface.
 - b. Conclusion: The proposed vehicular access tract complies with section 105.10.
2. Natural Features - Significant Vegetation
 - a. Facts:
 - (1) Regulations regarding the retention of trees can be found in Chapter 95 of the Kirkland Zoning Code. KZC Section 95.35.2.b.2 requires that a Tree Plan II be submitted for the project.
 - (2) The applicant has submitted a Tree Plan II that identifies two significant trees on the subject property. The applicant intends to remove these two significant trees based on the location of the proposed improvements.
 - b. Conclusions: The project complies with the requirements of KZC Section 95.35.2.b.2.

H. COMPREHENSIVE PLAN

1. Fact: The subject property is located within the South Juanita neighborhood. The South Juanita Neighborhood Land Use Map designates the subject property for commercial uses (see Attachment 8). The Comprehensive Plan Glossary states that commercial may include multi-family uses.
2. Conclusion: The proposal is consistent with the land use designation indicated in the Comprehensive Plan.

I. DEVELOPMENT STANDARDS

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards, Attachment 3.
2. Conclusion: The applicant should follow the requirements set forth in Attachment 3.

III. SUBSEQUENT MODIFICATIONS

Modifications to the approval may be requested and reviewed pursuant to the applicable modification procedures and criteria in effect at the time of the requested modification.

IV. APPEALS AND JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for appeals. Any person wishing to file or respond to an appeal should contact the Planning Department for further procedural information.

A. APPEALS

1. Appeal to City Council:

Section 150.80 of the Zoning Code allows the Hearing Examiner's decision to be appealed by the applicant and any person who submitted written or oral testimony or comments to the Hearing Examiner. A party who signed a petition may not appeal unless such party also submitted independent written comments or information. The appeal must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., _____, fourteen (14) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

B. JUDICIAL REVIEW

Section 150.130 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within 21 calendar days of the issuance of the final land use decision by the City.

V. LAPSE OF APPROVAL

Under Section 22.16.130 of the Subdivision Ordinance, the owner must submit a final plat application to the Planning Department, meeting the requirements of the Subdivision Ordinance and the preliminary plat approval, and submit the final plat for recording, within four years following the date the preliminary plat was approved or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 22.16.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the plat.

VI. APPENDICES

Attachments 1 through 8 are attached.

1. Vicinity Map
2. Development Plans
3. Development Standards
4. Letter from Michael's Craft Store dated April 16, 2007
5. Letter from James S. Fitzgerald dated April 19, 2007
6. SEPA Determination, Memo, and Enclosures
7. SEPA Appeal Letter from James S. Fitzgerald dated June 27, 2007
8. South Juanita Neighborhood Land Use Map

VII. PARTIES OF RECORD

Applicant: Steve Smith Development, 9500 Roosevelt Way NE #300, Seattle, WA 98115

Party of Record: James Fitzgerald; Livengood, Fitzgerald, & Alskog; PO Box 908, Kirkland, WA 98083

Party of Record: Jan Jordan, Michael's Lease Compliance Administrator, 8000 Bent Branch Drive; Irving, TX 75063

Department of Planning and Community Development

Department of Public Works

Department of Building and Fire Services

A written decision on the preliminary subdivision application and the SEPA appeal will be issued by the Hearing Examiner within eight calendar days of the date of the open record hearing.

**Juanita Bay Townhomes
PSB06-00001**

JBD 2

JBD 4

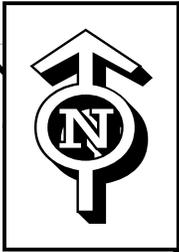
RM 2.4

NE 116th St

11444 98th Avenue NE

JBD 3

RM 3.6



98th Ave NE

100th

100th Ave NE

100th Ave NE

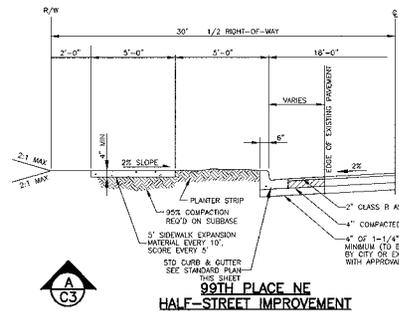
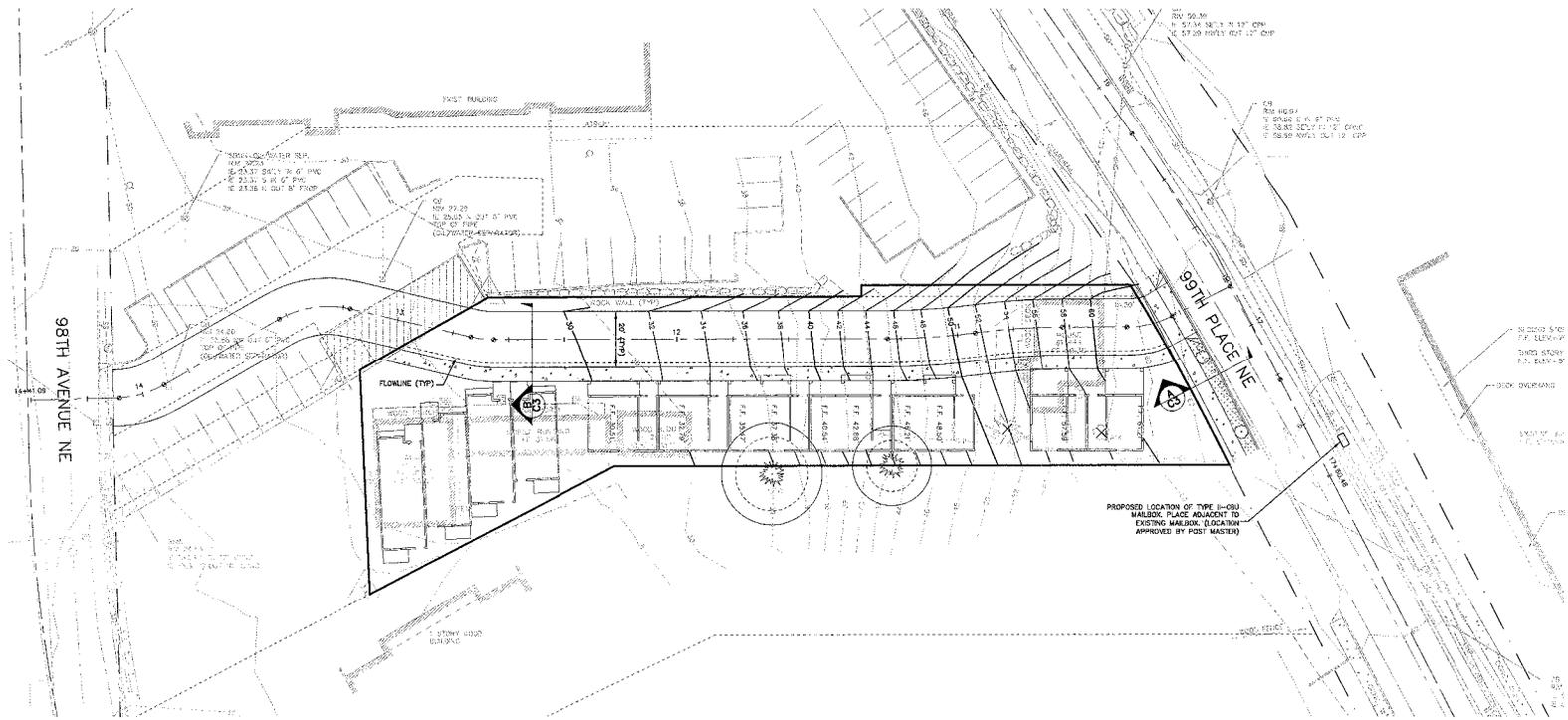
98th Ave NE

NE 113th St

101st Ave NE

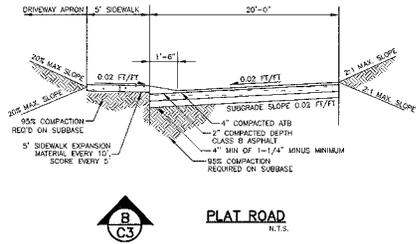
101st Ave

A PORTION OF GOVERNMENT LOT 4 SEC. 31 ,TWP. 26 ,RGE. 5 ,W.M.

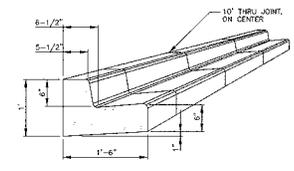


**99TH PLACE NE
HALF-STREET IMPROVEMENT**

- NOTES**
1. CLASS B ASPHALT MAY BE SUBSTITUTED FOR ATB.
 2. MAXIMUM ALLOWABLE GRADE OF A STREET IS 15% UNLESS SPECIFIED BY AN ENGINEER.
 3. A FREE-DRAINING LAYER OF 1-1/4" CRUSHED STONE MAY BE REQUIRED BELOW ATB, DEPENDING UPON SOIL AND GROUNDWATER CONDITIONS.
 4. SIDE SLOPES SHALL BE 2:1 MAXIMUM.
 5. WHEN PLACING NEW CURB AND GUTTERS ALONG AN EXISTING ROADWAY THE ASPHALT SHOULD BE SAWCUT AT A WIDTH TO ALLOW FOR AN 18-INCH ASPHALT PATCH AS MEASURED FROM THE FACE OF THE CURB.

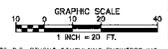


**PLAT ROAD
N.T.S.**



TYPICAL SECTION FOR CURB & GUTTER, TYPE A

- NOTES**
1. FORMS SHALL BE STEEL AND SET TRUE TO LINE AND GRADE (INSPECTION IS REQUIRED PRIOR TO PLACEMENT OF CONCRETE).
 2. CONCRETE SHALL BE CEMENT CONCRETE CLASS 4000.
 3. BASE COURSE SHALL BE 4" OF 5/8" MINUS CRUSHED ROCK OR AS DIRECTED BY ENGINEER.



JUANITA BAY TOWNHOMES
PRELIMINARY PLAT
PRELIMINARY ROAD AND GRADING PLAN
KIRKLAND, WASHINGTON

STEVE SMITH DEVELOPMENT
9500 ROOSEVELT WAY NE STE. 300
SEATTLE, WASHINGTON 98115
(206) 214-8882

D.R. STRONG CONSULTING ENGINEERS
ENGINEERS PLANNERS SURVEYORS
1700 4th Avenue, Suite 101
Kirkland, WA 98033
425.827.2600 OFFICE
425.827.4622 TOLL FREE
425.827.4622 FAX
www.dstrong.com



DATE	BY	REVISION
02/24/07	JAB	REV FOR CITY COMMENTS SUBMIT ROAD

DRAFTED BY: EAB
DESIGNED BY: JAB
PROJECT ENGINEER: REDD
DATE: 11-20-06
PROJECT NO.: 06019
SHEET CS OF 7



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

DEVELOPMENT STANDARDS LIST
JUANITA BAY TOWNHOMES PRELIMINARY SUBDIVISION, PSB06-00001

SUBDIVISION STANDARDS

22.28.030 Lot Size. Unless otherwise approved in the preliminary subdivision or short subdivision approval, all lots within a subdivision must meet the minimum size requirements established for the property in the Kirkland zoning code or other land use regulatory document.

22.28.130 Vehicular Access Easements. The applicant shall comply with the requirements found in the Zoning Code for vehicular access easements or tracts.

22.28.210 Significant Trees. The applicant shall design the plat so as to comply with the tree management requirements set forth in Chapter 95 of the Kirkland Zoning Code.

22.32.010 Utility System Improvements. All utility system improvements must be designed and installed in accordance with all standards of the applicable serving utility.

22.32.030 Stormwater Control System. The applicant shall comply with the construction phase and permanent stormwater control requirements of the Municipal Code.

22.32.050 Transmission Line Undergrounding. The applicant shall comply with the utility lines and appurtenances requirements of the Zoning Code.

22.32.060 Utility Easements. Except in unusual circumstances, easements for utilities should be at least ten feet in width.

27.06.030 Park Impact Fees. New residential units are required to pay park impact fees prior to issuance of a building permit. Please see KMC 27.06 for the current rate. Exemptions and/or credits may apply pursuant to KMC 27.06.050 and KMC 27.06.060. If a property contains an existing unit to be removed, a "credit" for that unit shall apply to the first building permit of the subdivision.

Prior to Recording:

22.16.030 Final Plat - Lot Corners. The exterior plat boundary, and all interior lot corners shall be set by a registered land surveyor.

22.16.040 Final Plat - Title Report. The applicant shall submit a title company certification which is not more than 30 calendar days old verifying ownership of the subject property on the date that the property owner(s) (as indicated in the report) sign(s) the subdivision documents; containing a legal description of the entire parcel to be subdivided; describing any easements or restrictions affecting the property with a description, purpose and reference by auditor's file number and/or recording number; any encumbrances on the property; and any delinquent taxes or assessments on the property.

22.16.150 Final Plat - Improvements. The owner shall complete or bond all required right-of-way, easement, utility and other similar improvements.

22.32.020 Water System. The applicant shall install a system to provide potable water, adequate fire flow and all required fire-fighting infrastructure and appurtenances to each lot created.

22.32.040 Sanitary Sewer System. The developer shall install a sanitary sewer system to serve each lot

created.

22.32.080 Performance Bonds. In lieu of installing all required improvements and components as part of a plat or short plat, the applicant may propose to post a bond, or submit evidence that an adequate security device has been submitted and accepted by the service provider (City of Kirkland and/or Northshore Utility District), for a period of one year to ensure completion of these requirements within one year of plat/short plat approval.

Prior to occupancy:

22.32.020 Water System. The applicant shall install a system to provide potable water, adequate fire flow and all required fire-fighting infrastructure and appurtenances to each lot created.

22.32.040 Sanitary Sewer System. The developer shall install a sanitary sewer system to serve each lot created.

22.32.090 Maintenance Bonds. A two-year maintenance bond may be required for any of the improvements or landscaping installed or maintained under this title. A maintenance bond will be required for .

ZONING CODE STANDARDS

85.25.1 Geotechnical Report Recommendations. The geotechnical recommendations contained in the report by Dennis M. Bruce, P.E. dated January 2, 2007 shall be implemented.

85.25.3 Geotechnical Professional On-Site. A qualified geotechnical professional shall be present on site during land surface modification and foundation installation activities.

92.35 Prohibited Materials In Design Districts. If in a design district the following building materials are prohibited or limited in use: mirrored glass or reflective materials, corrugated fiberglass, chain link fencing, metal siding, concrete block, backlit awnings. Water spigots are required along building facades along sidewalks for cleaning and plant watering. Commercial buildings with more than one tenant shall install a cornerstone or plaque.

95.50.2.a Required Landscaping. All required landscaping shall be maintained throughout the life of the development. The applicant shall submit an agreement to the city to be recorded with King County which will perpetually maintain required landscaping. Prior to issuance of a certificate of occupancy, the proponent shall provide a final as-built landscape plan and an agreement to maintain and replace all landscaping that is required by the City.

95.40.7.b Parking Area Landscape Buffers. Applicant shall buffer all parking areas and driveways from the right-of-way and from adjacent property with a 5-foot wide strip as provided in this section. If located in a design district a low hedge or masonry or concrete wall may be approved as an alternative through design review.

95.45 Tree Installation Standards. All supplemental trees to be planted shall conform to the Kirkland Plant List. All installation standards shall conform to Kirkland Zoning Code Section 95.45.

105.10.2 Pavement Setbacks. The paved surface in an access easement or tract shall be set back at least 5 feet from any adjacent property which does not receive access from that easement or tract. An access easement or tract that has a paved area greater than 10 feet in width must be screened from any adjacent property that does not receive access from it. Screening standards are outlined in this section.

105.18 Pedestrian Walkways. All uses, except single family dwelling units and duplex structures, must provide pedestrian walkways designed to minimize walking distances from the building entrance to the right of way and adjacent transit facilities, pedestrian connections to adjacent properties, between primary entrances of all uses on the subject property, through parking lots and parking garages to building entrances. In design districts through block pathways or other pedestrian improvements may be required. See also Plates 34 in Chapter 180.

105.32 Bicycle Parking. All uses, except single family dwelling units and duplex structures with 6 or more vehicle parking spaces must provide covered bicycle parking within 50 feet of an entrance to the building at a ratio of one bicycle space for each twelve motor vehicle parking spaces. Check with Planner to determine the number of bike racks required and location.

105.18 Entrance Walkways. All uses, except single family dwellings and duplex structures, must provide pedestrian walkways between the principal entrances to all businesses, uses, and/or buildings on the subject property.

105.18.2 Walkway Standards. Pedestrian walkways must be at least 5' wide; must be distinguishable from traffic lanes by pavement texture or elevation; must have adequate lighting for security and safety. Lights must be non-glare and mounted no more than 20' above the ground.

105.19 Public Pedestrian Walkways. The height of solid (blocking visibility) fences along pedestrian pathways that are not directly adjacent a public or private street right-of-way shall be limited to 42 inches unless otherwise approved by the Planning or Public Works Directors. All new building structures shall be setback a minimum of five feet from any pedestrian access right-of-way, tract, or easement that is not directly adjacent a public or private street right-of-way. If in a design district, see section and Plate 34 for through block pathways standards.

105.20 Required Parking. 25 parking spaces are required for this use.

105.58 Parking Lot Locations in Design Districts. See section for standards unique to each district.

105.65 Compact Parking Stalls. Up to 50% of the number of parking spaces may be designated for compact cars.

105.60.2 Parking Area Driveways. Driveways which are not driving aisles within a parking area shall be a minimum width of 20 feet.

105.60.3 Wheelstops. Parking areas must be constructed so that car wheels are kept at least 2' from pedestrian and landscape areas.

105.77 Parking Area Curbing. All parking areas and driveways, for uses other than detached dwelling units must be surrounded by a 6" high vertical concrete curb.

110.52 Sidewalks and Public Improvements in Design Districts. See section, Plate 34 and public works approved plans manual for sidewalk standards and decorative lighting design applicable to design districts.

110.60.5 Street Trees. All trees planted in the right-of-way must be approved as to species by the City. All trees must be two inches in diameter at the time of planting as measured using the standards of the American Association of Nurserymen with a canopy that starts at least six feet above finished grade and does not obstruct any adjoining sidewalks or driving lanes.

115.25 Work Hours. It is a violation of this Code to engage in any development activity or to operate any heavy equipment before 7:00 am. or after 8:00 pm Monday through Friday, or before 9:00 am or after 6:00 pm Saturday. No development activity or use of heavy equipment may occur on Sundays or on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day. The applicant will be required to comply with these regulations and any violation of this section will result in enforcement action, unless written permission is obtained from the Planning official.

115.45 Garbage and Recycling Placement and Screening. For uses other than detached dwelling units, duplexes, moorage facilities, parks, and construction sites, all garbage receptacles and dumpsters must be setback from property lines, located outside landscape buffers, and screened from view from the street, adjacent properties and pedestrian walkways or parks by a solid sight-obscuring enclosure.

115.75.2 Fill Material. All materials used as fill must be non-dissolving and non-decomposing. Fill material must not contain organic or inorganic material that would be detrimental to the water quality, or existing habitat, or create any other significant adverse impacts to the environment.

115.90 Calculating Lot Coverage. The total area of all structures and pavement and any other impervious surface on the subject property is limited to a maximum percentage of total lot area. See the Use Zone charts for maximum lot coverage percentages allowed. Section 115.90 lists exceptions to total lot coverage calculations See Section 115.90 for a more detailed explanation of these exceptions.

115.95 Noise Standards. The City of Kirkland adopts by reference the Maximum Environmental Noise Levels established pursuant to the Noise Control Act of 1974, RCW 70.107. See Chapter 173-60 WAC. Any noise, which injures, endangers the comfort, repose, health or safety of persons, or in any way renders persons insecure in life, or in the use of property is a violation of this Code.

115.115 Required Setback Yards. This section establishes what structures, improvements and activities may be within required setback yards as established for each use in each zone.

115.115.3.g Rockeries and Retaining Walls. Rockeries and retaining walls are limited to a maximum height of four feet in a required yard unless certain modification criteria in this section are met. The combined height of fences and retaining walls within five feet of each other in a required yard is limited to a maximum height of 6 feet, unless certain modification criteria in this section are met.

115.115.3.p HVAC Equipment: These may be placed no closer than five feet of a side or rear property line, and shall not be located within a required front yard; provided, that HVAC equipment may be located in a storage shed approved pursuant to subsection (3)(m) of this section or a garage approved pursuant to subsection (3)(o)(2) of this section. All HVAC equipment shall be baffled, shielded, enclosed, or placed on the property in a manner that will ensure compliance with the noise provisions of KZC 115.95.

115.115.5.b Driveway Setbacks. For attached and stacked dwelling units in residential zones, driveways shall have a minimum 5' setback from all property lines except for the portion of any driveway, which connects with an adjacent street. Vehicle parking areas shall have a minimum 20-foot setback from all front property lines and meet the minimum required setbacks from all other property lines for the use.

115.120 Rooftop Appurtenance Screening. New appurtenances on existing buildings shall be surrounded by a solid screening enclosure equal in height to the appurtenance. New construction shall screen rooftop appurtenances by incorporating them in to the roof form.

115.135 Sight Distance at Intersection. Areas around all intersections, including the entrance of driveways onto streets, must be kept clear of sight obstruction as described in this section.

150.22.2 Public Notice Signs. Within seven (7) calendar days after the end of the 21-day period following the City's final decision on the permit, the applicant shall remove all public notice signs.

Prior to recording:

110.60.5 Landscape Maintenance Agreement. The owner of the subject property shall sign a landscape maintenance agreement, in a form acceptable to the City Attorney, to run with the subject property to maintain landscaping within the landscape strip and landscape island portions of the right-of-way. It is a violation to pave or cover the landscape strip with impervious material or to park motor vehicles on this strip.

110.60.6 Mailboxes. Mailboxes shall be installed in the development in a location approved by the Postal Service and the Planning Official. The applicant shall, to the maximum extent possible, group mailboxes for units or uses in the development.

As part of any development permit:

105.10.2 Tract Screening Requirements. Install a five-foot high sight-obscuring fence or vegetation that will provide comparable screening to a five-foot fence within two years of planting along the entire north side of the tract outside the required front yard.

Prior to issuance of a grading or building permit:

85.25.1 Geotechnical Report Recommendations. A written acknowledgment must be added to the face of the plans signed by the architect, engineer, and/or designer that he/she has reviewed the geotechnical recommendations and incorporated these recommendations into the plans.

90.50 Wetland Buffer Fence. Prior to development, the applicant shall install a six-foot high construction

27.06.030 Park Impact Fees. New residential units are required to pay park impact fees prior to issuance of a building permit. Please see KMC 27.06 for the current rate. Exemptions and/or credits may apply pursuant to KMC 27.06.050 and KMC 27.06.060. If a property contains an existing unit to be removed, a "credit" for that unit shall apply to the first building permit of the subdivision.

Prior to occupancy:

95.50.2.a Required Landscaping. All required landscaping shall be maintained throughout the life of the development. The applicant shall submit an agreement to the city to be recorded with King County which will perpetually maintain required landscaping. Prior to issuance of a certificate of occupancy, the proponent shall provide a final as-built landscape plan and an agreement to maintain and replace all landscaping that is required by the City

110.60.5 Landscape Maintenance Agreement. The owner of the subject property shall sign a landscape maintenance agreement, in a form acceptable to the City Attorney, to run with the subject property to maintain landscaping within the landscape strip and landscape island portions of the right-of-way. It is a violation to pave or cover the landscape strip with impervious material or to park motor vehicles on this strip.

110.60.6 Mailboxes. Mailboxes shall be installed in the development in a location approved by the Postal Service and the Planning Official. The applicant shall, to the maximum extent possible, group mailboxes for units or uses in the development.

CITY OF KIRKLAND
123 FIFTH AVENUE, KIRKLAND, WASHINGTON 98033-6189 (425) 587-3225

Date: 7/10/2007

DEVELOPMENT STANDARDS

CASE NO.: PSB06-00001

PCD FILE NO.:PSB06-00001

****KIRKLAND FIRE DEPARTMENT CONDITIONS****

For information, contact Grace Steuart, Fire Marshal, at 425-587-3650

---The unobstructed width of the fire department access road (including any gates) shall be not less than 20 feet paved.

The access road shall be marked NO PARKING-FIRE LANE.

---Any building over 5,000 gross square feet (including garage) requires fire sprinklers which may be of a 13D type

--Sprinklered buildings will require only an outside bell to be installed on each unit to alert occupants which the sprinkler system is activated; the systems are not required to be monitored

---Existing hydrants are adequate. However, both hydrants which would be used to serve the property (the one near the Athletic club, and on 99th PI NE) require 5" Stortz fittings.

---Minimum fire flow required is 1,500 gpm. Available fire flow on 99th is approximately 2,200 gpm, which is adequate for development. However, the hydrant on 98th is served by Northshore Utility District, and availability of 1,500 gpm would need to be ascertained by NUD.

You can review your permit status and conditions at www.kirklandpermits.net

PUBLIC WORKS CONDITIONS

Permit Information

Permit #: PSB06-00001

Project Name: Juanita Bay 12-unit Townhome Preliminary Subdivision

Project Address: 11444 98th Ave. NE and 11435 99th Place NE

Date: March 12, 2007

Public Works Staff Contacts

Land Use and Pre-Submittal Process:

Rob Jammerman, Development Engineering Manager

Phone: 425-587-3845 Fax: 425-587-3807

E-mail: rjammer@ci.kirkland.wa.us

Building and Land Surface Modification (Grading) Permit Process:

John Burkhalter, Senior Development Engineer

Phone: 425-587-3846 Fax: 425-587-3807

E-mail: jburkhal@ci.kirkland.wa.us

General Conditions:

1. All public improvements associated with this project including street and utility improvements, must meet the City of Kirkland Public Works Pre-Approved Plans and Policies Manual. A Public Works Pre-Approved Plans and Policies manual can be purchased from the Public Works Department, or it may be retrieved from the Public Works Department's page at the City of Kirkland's web site at

www.ci.kirkland.wa.us.

2. This project will be subject to Public Works Permit and Connection Fees. It is the applicant's responsibility to contact the Public Works Department by phone or in person to determine the fees. The fees can also be review the City of Kirkland web site at www.ci.kirkland.wa.us. The applicant should anticipate the following fees:

- o Water and Sewer connection Fees (paid with the issuance of a Building Permit)
- o Water Meter Fee (paid with the issuance of a Building Permit)
- o Right-of-way Fee
- o Review and Inspection Fee (for utilities and street improvements).
- o Traffic Impact Fee (paid with the issuance of Building Permit). For additional information, see notes below.

3. Concurrency for this project has been completed.

4. Building Permits associated with this proposed project will be subject to the traffic impact fees per Chapter 27.04 of the Kirkland Municipal Code. The impact fees shall be paid prior to issuance of the Building Permit(s).

5. Any buildings within this project which are demolished will receive a Traffic Impact Fee credit. This credit will be applied to the first Building Permit that is applied for within the project (and subsequent Building Permits if multiple building permits are demolished). The credit amount for each demolished building will be equal to the most currently adopted Traffic Impact Fee schedule.

6. All civil engineering plans which are submitted in conjunction with a building, grading, or right-of-way permit must conform to the Public Works Policy titled ENGINEERING PLAN REQUIREMENTS. This policy is contained in the Public Works Pre-Approved Plans and Policies manual.

7. All street improvements and underground utility improvements (storm, sewer, and water) must be designed by a Washington State Licensed Engineer; all drawings shall bear the engineers stamp.

8. All plans submitted in conjunction with a building, grading or right-of-way permit must have elevations which are based on the King County datum only (NAVD 88).

9. A completeness check meeting is required prior to submittal of any Building Permit applications.

10. Prior to issuance of any commercial or multifamily Building Permit, the applicant shall provide a plan for garbage storage and pickup. The plan shall be approved by Waste Management and the City.

11. All subdivision recording mylar's shall include the following note:

Utility Maintenance: Each property owner shall be responsible for maintenance of the sanitary sewer or storm water stub from the point of use on their own property to the point of connection in the City sanitary sewer main or storm water main. Any portion of a sanitary sewer or surface water stub, which jointly serves more than one property, shall be jointly maintained and repaired by the property owners sharing such stub. The joint use and maintenance shall "run with the land" and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

Public Right-of-way Sidewalk and Vegetation Maintenance: Each property owner shall be responsible for keeping the sidewalk abutting the subject property clean and litter free. The property owner shall also be responsible for the maintenance of the vegetation within the abutting landscape strip. The maintenance shall "run with the land" and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

Sanitary Sewer Conditions:

1. Northshore Utility District approval required for sewer service. A letter of sewer availability is

required; call N.U.D at 425-398-4400.

Water System Conditions:

1. The existing water main in the 99th Pl. NE right-of-way along the front of the subject property is adequate to serve this proposed development.
2. Provide a water service from the water main to the meter for each building, each unit, or for the entire lot project (developers choice); water meter and water service sizing shall be per the Uniform Plumbing Code. Provide a separate irrigation service. The City of Kirkland will set the water meters. The west side of the project is in N.U. D. service boundary. Coordination will need to be done to determine if Kirkland should serve the entire project.
3. The existing water service from the City water main on 99th Pl. NE may be used provided that it is in the right location, is not galvanized, and is sized adequately to serve a building (per the Plumbing Code). The other option is to use the water service for irrigation.
4. Provide fire hydrants per the Fire Departments requirements. If the Fire Department requests a new hydrant within the project, a water main extension will be necessary.

Surface Water Conditions:

1. Provide temporary and permanent storm water control per the 1998 King County Surface Water Design Manual. If the site discharges to the storm line, which outlets into the lake to the south of this site, it is possible that a downstream analysis will show that no storm detention is required. If the site discharges to the storm line, which outlets to the north, storm detention will likely be required due to storm line capacity.
2. Storm detention calculations for the entire site are required.
3. Provide a level one off-site analysis unless a quantitative analysis is required to justify a waiver of storm detention.
4. For new or reconstructed impervious areas, subject to vehicular use, provide storm water quality treatment per the most current City-adopted Surface Water Design Manual.
5. When applicable, structural source control measures, such as car wash pads or dumpster area roofing, shall be shown on the site improvement plans submitted for engineering review and approval. Refer to King County Storm water Pollution Control Manual and the 2001 Department of Ecology Storm water Management Manual for Western Washington for further information.
6. The Army Corps of Engineers (COE) has asserted jurisdiction over upland ditches draining to streams. Either an existing Nationwide COE permit or an Individual COE permit may be necessary for work within ditches, depending on the project activities.
Applicants should obtain the applicable COE permit; information about COE permits can be found at: U.S. Army Corps of Engineers, Seattle District Regulatory Branch
http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=mainpage_NWPs
Specific questions can be directed to: Seattle District, Corps of Engineers, Regulatory Branch, CENWS-OD-RG, Post Office Box 3755, Seattle, WA 98124-3755, Phone: (206) 764-3495
7. The National Pollutant Discharge Elimination System (NPDES) Phase II Final Rule requires operators of small construction sites (disturbing between 1 and 5 acres of land) to obtain a Construction Storm water General Permit through the Washington State Department of Ecology. Information about the permit can be obtained at:
Washington State Department of Ecology <http://www.ecy.wa.gov/programs/wq/stormwater/construction/>
U.S. EPA Office of Wastewater Management <http://cfpub.epa.gov/npdes/stormwater/const.cfm>
Specific question can be directed to:
Jeff Killelea

PO Box 47600
Olympia, WA 98504-7600
(360) 407-6127
jkil461@ecy.wa.gov

8. Provide an erosion control plan with Building or Land Surface Modification Permit application. The plan shall be in accordance with the 1998 King County Surface Water Design Manual.
9. Construction drainage control shall be maintained by the developer and will be subject to periodic inspections. During the period from April 1 to October 31, all denuded soils must be covered within 15 days; between November 1 and March 31, all denuded soils must be covered within 12 hours. If an erosion problem already exists on the site, other cover protection and erosion control will be required.
10. All roof and driveway drainage must be tight-lined to the storm drainage system.

Street and Pedestrian Improvement Conditions:

1. The subject property abuts 99th Place NE. This street is a Collector type street. Zoning Code sections 110.10 and 110.25 require the applicant to make half-street improvements in rights-of-way abutting the subject property. Section 110.30-110.50 establishes that this street must be improved with the following:
 - A. Widen the street to 18 ft. from centerline to face of curb.
 - B. Install storm drainage, curb and gutter, a 4.5 ft. planter strip with street trees 30 ft. on-center, and a 5 ft. wide sidewalk.
2. Due to the lack of adequate access to the site from 98th Ave. NE during the PM peak traffic times, all units in this project must have primary access to 99th Place. NE. A secondary access to 98th Ave. NE is allowed.
3. The applicant has asked if the access from 98th Ave. NE can be gated. The Public Works Department approves of the proposed gate as it will deter cut-through traffic from 98th Ave. NE, but the Fire Department must also approve of the gate.
4. A 2-inch asphalt street overlay will be required where more than three utility trench crossings occur with 150 lineal ft. of street length or where utility trenches parallel the street centerline. Grinding of the existing asphalt to blend in the overlay will be required along all match lines.
5. It shall be the responsibility of the applicant to relocate any above-ground or below-ground utilities which conflict with the project associated street or utility improvements.
6. Underground all new and existing on-site utility lines and overhead transmission lines.
7. Zoning Code Section 110.60.9 establishes the requirement that existing utility and transmission (power, telephone, etc.) lines on-site and in rights-of-way adjacent to the site must be underground. The Public Works Director may determine if undergrounding transmission lines in the adjacent right-of-way is not feasible and defer the undergrounding by signing an agreement to participate in an undergrounding project, if one is ever proposed. In this case, the Public Works Director has determined that undergrounding of existing overhead utility on 99th Pl. NE is not feasible at this time and the undergrounding of off-site/frontage transmission lines should be deferred with a concomitant agreement or LID No Protest Agreement.

The proposed lot lines as shown do not accommodate the buildings submitted under NSFR permit applications BLD07-00159 through BLD07-00169. Please revise the Plat Map to comply with IRC section R302.2 below as follows:

In Lot 1 and 2, the "duplex" building appears to have open areas with 2 stories above that cross

property lines on both the East and West sides which is not allowed. Also, in order for the carports to be open and to have windows in the walls above looking East and West, the property lines need to be at least 3' away from these walls/openings. An easement may be necessary for the guest parking space on Lot 2.

In order to have windows on the East face of the building on Lot 3, the property line needs to be at least 3' away. An easement may be necessary for the guest parking space on Lots 3 and 2.

In order to have windows on the West face of the building on Lot 7, the property line needs to be at least 3' away. An easement may be necessary for the guest parking space on Lots 7 and 8.

In order to have windows on the East face of the building on Lot 8, the property line needs to be at least 3' away. An easement may be necessary for the guest parking space on Lots 8 and 7.

IRC excerpt:

LOCATION ON LOT

R302.1 Exterior walls. Exterior walls with a fire separation distance less than 3 feet shall have not less than a one-hour fire-resistive rating with exposure from both sides. Projections shall not extend to a point closer than 2 feet from the line used to determine the fire separation distance. Projections extending into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

R302.2 Openings. Openings shall not be permitted in the exterior wall of a dwelling or accessory building with a fire separation distance less than 3 feet. This distance shall be measured perpendicular to the line used to determine the fire separation distance.

Exceptions:

1. Openings shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.
2. Foundation vents installed in compliance with this code are permitted.

Plumbing meter and service line shall be sized in accordance with UPC 1009 (h) and Table 10-2.

Jan Jordan, RPA®
Lease Compliance Administrator
Telephone 469.759.5331
Facsimile 469.759.5586
E-Mail JordanJ@Michaels.COM

RECEIVED
APR 19 2007
AM PM
PLANNING DEPARTMENT
BY _____

Michaels
THE ARTS AND CRAFTS STORE®

April 16, 2007

Tony Leavitt
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

RE: Michaels Store, Kirkland, Washington
Notice of Application
Juanita Townhomes Preliminary Subdivision File. PSB06-00001

Dear Mr. Leavitt:

Michaels is concerned about the disruption to our business that could occur based upon the construction of this subdivision. We are concerned about short term congestion with construction vehicles and long term congestion with subdivision traffic on 116th Street. We are also concerned about the need for closures/detours on 116th Street when streets are cut and utility lines are run.

We would appreciate information about how these items will be addressed.

Sincerely,



Jan Jordan, RPA®
Lease Compliance Administrator

LAW OFFICES
LIVENGOOD, FITZGERALD & ALSKOG

A PROFESSIONAL LIMITED LIABILITY COMPANY

JAMES S. FITZGERALD*
DAVID A. ALSKOG
DAVID B. JOHNSTON
JOHN J. WHITE, JR.
DAVID J. SEELEY**
KEVIN B. HANSEN
THOMAS K. WINDUS+
GREGORY A. McBROOM
HUGH W. JUDD, P.S.+

PHILIP L. CARTER, RETIRED
ROBERT P. TOSSEM, RETIRED

RECEIVED

APR 19 2007

AM 4:52 PM
PLANNING DEPARTMENT
BY TJA

121 THIRD AVENUE
POST OFFICE BOX 908
KIRKLAND, WASHINGTON 98083-0908

PHONE: (425) 822-9281
FAX: (425) 828-0908
E-mail: fitzgerald@lfa-law.com

*ALSO ADMITTED IN OREGON
**ALSO ADMITTED IN CALIFORNIA
+OF COUNSEL

GORDON A. LIVENGOOD (1921 - 2001)

April 19, 2007

Hand-delivered

Mr. Tony Leavitt
Project Planner
Planning and Community Development Department
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

Re: Juanita Townhomes Preliminary Subdivision File No. PSB06-00001

Dear Mr. Leavitt:

I am writing on behalf of Columbia Athletic Clubs, Inc. ("CAC"), owner and operator of the Juanita Bay Club immediately adjacent to the above-referenced subject property on the north side thereof. Please list me and my client as a party of record to this application and all other matters involving the subject property and forward all notices pertaining to the subject property to both of us. My client's name and address is:

Mr. Allen Oskoui
Vice President
Columbia Athletic Clubs, LLC
11400 98th Ave. N.E., Suite 300
Kirkland, WA 98033

This letter constitutes CAC's comments on the above-referenced application. CAC opposes the application for the reasons stated hereinbelow. However, CAC is in discussions with the applicant to mitigate the adverse impacts of the proposal and if agreement is reached, reserves the right to withdraw the objection.

It is my understanding that the applicant has acquired title to the subject property and thus is now the owner. As part of a settlement of a lawsuit between CAC and the applicant's

Mr. Tony Leavitt
April 19, 2007
Page 2

predecessor-in-interest, an easement was created on February 1, 1983 across the CAC property for the benefit of the subject property. At this time, access to the subject property was limited. The home on the east portion was (and is) accessed from 99th Place N.E., and the business property on the west portion was (and is) accessed from 98th Avenue N.E. through the CAC property. No traversing between 98th and 99th was or is possible. The easement was for ingress, egress, maneuvering and backing, but not for loading, unloading or parking. It was created expressly so that the owner of the subject property could access his business with the occasional trucks which serviced it.

Enclosed with this letter is an aerial photo which depicts the subject property and the CAC property. The buildings are clearly visible. The cross-hatched area is the location of the easement where the trucks used to need to turn-around. The proposed use of the subject property eliminates the need for such turn-around.

The easement was not and is not intended to be a thoroughfare between 98th Avenue N.E. and 99th Place N.E. Any attempt to make it so will be strongly resisted for a number of reasons, not the least of which are the following:

- The easement is limited for users solely of the subject property, and not for any others (such as neighbors to the east).
- A tremendous danger to CAC patrons exists if vehicles are allowed to use the easement as a thoroughfare. CAC patrons include children who are accompanying their caretakers to and from their vehicles and a serious safety risk would result.
- Such use would burden the easement and exceed its contemplated allowable use. The easement states it is "primarily for access purposes." When written, this meant access to the commercial structure on the west end of the subject property.
- The easement would be used as a shortcut to avoid the traffic on 98th Avenue N.E. and its intersection with N.E. 116th Street. This is not a permissible use of the easement.

We understand that the application is to subdivide the subject property into eleven (11) separate parcels, to be developed with eleven (11) townhome units. The DRB approval states that primary vehicular access is to be via 99th Place N.E., with secondary access to 98th Avenue N.E. via the easement. The secondary access is for the purpose of allowing emergency vehicle access to the subject property. It allows full use of the west parcel without the need for an emergency vehicle turnaround which would cause a loss of units.

Mr. Tony Leavitt
April 19, 2007
Page 3

Dealing with eleven different owners to trying and control use of the easement, given its limited purpose, would be difficult at best and impossible at worst. Assuring that the easement was only used by such owners would likewise be impossible without certain measures being taken.

CAC has additional objections based on its review of the plans. On the northeast corner of the subject property, it appears that the applicant seeks to grade on CAC's property. Consent for such grading or even temporary use for construction purposes has not been granted.

In addition, the grading for the roadway to provide access to the lots in the proposed plat would intrude on CAC's property. Permission for this has not been granted.

Accordingly, in view of the limited purpose of the easement, CAC opposes the application unless a condition is imposed which would require a fence and gate to be placed between the subject property and the CAC property, with the gate to be located at the point of ingress and egress between the respective properties on the easement premises. The gated access should be accessible only by emergency vehicles, with a Knox key. The fence and gate would be designed to prevent unauthorized parking by either the townhome owners or CAC patrons, to the benefit of both.

We have already verified with Public Works that such an arrangement would be acceptable.

The fact is that this is a significant and serious safety issue for both the patrons of CAC and the residents and guests of the subject property.

CAC has made an effort to meet with the developer and that effort continues. A modification of the easement and placement of a gate is under discussion. If acceptable arrangements are able to be made, then CAC believes that the impact and issues, although not eliminated, will be reduced to acceptable and tolerable levels. If an appropriate gate and fence is installed to CAC's satisfaction, agreement is likely to be reached on the other issues mentioned above. We will continue to work with the applicant to reach mutual agreement but if such is not reached, CAC's opposition will remain for the reasons stated.

If you have any questions regarding the foregoing, please do not hesitate to contact me. Please advise when the hearing before the Hearing Examiner will be held.

CITY OF KIRKLAND
123 FIFTH AVENUE, KIRKLAND, WASHINGTON 98033-6189
(425) 587-3225



DETERMINATION OF NONSIGNIFICANCE (DNS) .

CASE #: SEP07-00005

DATE ISSUED: 6/13/2007

DESCRIPTION OF PROPOSAL

The applicant is proposing to subdivide two existing parcels (.45 total acres) into 11 separate parcels within the Juanita Business District (JBD) 2 Zone. The new lots will be developed with 11 new townhouse units that were approved as part of Design Review Board File No. DRC06-00004. Primary vehicular access for each lot will be provided via an access tract that connects directly to 99th Place NE. Emergency vehicle and secondary access will be provided to and from 98th Avenue NE via an existing private access easement.

PROPONENT: STEVE SMITH

LOCATION OF PROPOSAL

11444 98TH AVENUE NE AND 11435 99TH PLACE NE

LEAD AGENCY is The City of Kirkland

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21.030 (2) (c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

There is no comment period for this DNS.

Responsible official:

6/12/07

Date

Eric Shields, Director
Department of Planning and Community Development
425-587-3225

Address: City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033-6189

You may appeal this determination to the Planning Department at Kirkland City Hall, 123 Fifth Avenue, Kirkland, WA 98033 no later than 5:00 p.m., Wednesday, June 27, 2007 by WRITTEN NOTICE OF APPEAL.

You should be prepared to make specific factual objections. Contact the Planning Department at 425-587-3225 to read or ask about the procedures for SEPA appeals.

Distributed By:

6-13-07
Date:

ATTACHMENT 6
PSB06-00001

Please reference Case #SEP07-00005
cc: Case #PSB06-00001



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

MEMORANDUM

To: Eric R. Shields, AICP, Planning Director

From: Tony Leavitt, Planner

Date: June 12, 2007

File: PSB06-00001, SEP07-00005

Subject: **ENVIRONMENTAL DETERMINATION FOR JUANITA BAY TOWNHOMES
PRELIMINARY SUBDIVISION**

PROPOSAL

Steve Smith Development proposes construction of 11 new townhouse units on the subject property located at 11444 98th Avenue NE and 11435 99th Place NE (see Enclosure 1). The applicant is proposing to subdivide the two existing parcels (.45 total acres) into 11 separate parcels within the Juanita Business District (JBD) 2 Zone (see Enclosure 2). The new lots will be developed with the townhome units that were approved as part of Design Review Board File No. DRC06-00004. Primary vehicular access for each lot will be provided via an access tract that connects directly to 99th Place NE. Emergency vehicle and secondary access will be provided to and from 98th Avenue NE via an existing access easement.

ENVIRONMENTAL ISSUES

I have had an opportunity to visit the site and review the environmental checklist (Enclosure 3) and the following reports:

- Traffic Concurrency Analysis Memo prepared by Thang Nguyen, COK Transportation Engineer, dated January 31, 2007 (Enclosure 4)
- Geotechnical Evaluation prepared by Dennis M. Bruce, P.E. dated January 2, 2007 (Enclosure 5)

Based on a review of these materials, the main environmental issues related to the development of this project are potential traffic and soil impacts. Additionally, during the initial comment period for the preliminary subdivision application, the City received a total of 2 letters from neighboring property owners (see Enclosures 6 and 7). One letter expressed concerns about traffic impacts and the other letter expressed concerns about the use of an existing private access easement that runs from the subject property to 98th Avenue NE. An analysis of each of these key environmental issues follows.

Traffic Impacts

The Public Works Department has reviewed the Concurrency Management Review Application for the proposed development (see Enclosure 4) and concluded that the project will not have a negative traffic impact on existing facilities.

One neighbor is concerned that construction of the proposed project could impact NE 116th Street. The subject property is not located on NE 116th Street, so any potential impacts to this street will be minimal.

Soil Impacts

The Geotechnical Evaluation prepared by Dennis M. Bruce, P.E concludes that the project is “geotechnically viable” when constructed in accordance with the recommendations of the evaluation. The City has the authority (per Kirkland Zoning Code Chapter 85) to require, as part of any development permit for the project, that the development plans be reviewed by the geotechnical engineer to ensure compliance with all recommendations.

Access Easement Impacts

The property owner to the north of subject property requests that the City require that the applicant install a gate across the existing private access easement to 98th Avenue NE in order to restrict use of the access easement to emergency vehicles only. Staff researched this request and concluded that the City does not have the authority to restrict the use of a private access easement by requiring that the applicant install an emergency vehicle access gate. The Public Works Department has reviewed the proposed project and concluded that the secondary access to 98th Avenue NE is acceptable and will not create significant impacts.

CONCLUSIONS AND RECOMMENDATION

It will be necessary to further analyze certain aspects of the proposal to determine if the project complies with all the applicable City codes and policies. That analysis is most appropriately addressed within the review of the Preliminary Subdivision application. In contrast, State law specifies that this environmental review under the State Environmental Policy Act (SEPA) is to focus only on potential significant impacts to the environment that could not be adequately mitigated through the Kirkland regulations and Comprehensive Plan.¹

Based on my review of all available information, I have not identified any significant adverse environmental impacts. Therefore, I recommend that a Determination of Non-Significance be issued for this proposed action.

SEPA ENCLOSURES

1. Vicinity Map
2. Site Plan
3. Environmental Checklist
4. Traffic Concurrency Analysis Memo prepared by Thang Nguyen, COK Transportation Engineer, dated January 31, 2007
5. Geotechnical Evaluation prepared by Dennis M. Bruce, P.E. dated January 2, 2007
6. Letter from Michael's Craft Store dated April 16, 2007
7. Letter from James S. Fitzgerald dated April 19, 2007

Review by Responsible Official:

I concur

I do not concur

Comments:



Eric R. Shields, AICP
Planning Director

6/12/07
Date

**Juanita Bay Townhomes
PSB06-00001**

JBD 2

JBD 4

RM 2.4

JBD 3

RM 3.6

11444 98th Avenue NE

98th Ave NE

100th Ave NE

NE 116th St

100th Ave NE

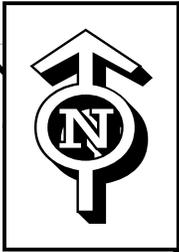
100th Ave NE

98th Ave NE

NE 113th St

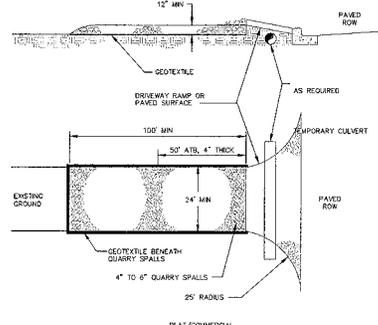
101st Ave NE

101st Ave



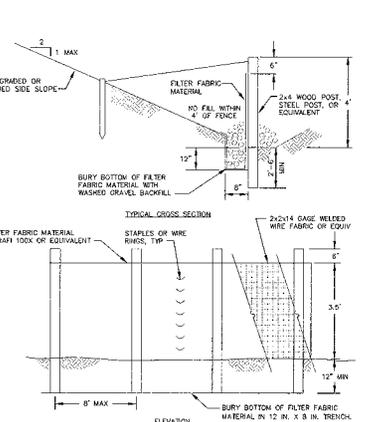
TEMPORARY EROSION AND SEDIMENT CONTROL PLAN NOTES:

1. THE APPROVED CONSTRUCTION SEQUENCE SHALL BE AS FOLLOWS:
 - A. CONVEY FISC-CONSTRUCTION MEETING.
 - B. FLAG OR FENCE CLEARING LIMITS.
 - C. POST SIGN WITH NAME AND PHONE NUMBER OF TESO SUPERVISOR.
 - D. INSTALL CATCH BASIN COLLECTION IF REQUIRED.
 - E. GRADE AND INITIAL CONSTRUCTION ENTRANCE(S).
 - F. INSTALL PERMITEE PROTECTION (SILT FENCE, BRUSH BARRIERS, ETC.).
 - G. CONSTRUCT SEDIMENT POND(S) AND TRAPS.
 - H. GRADE AND STABILIZE CONSTRUCTION SITES.
 - I. CONSTRUCT SURFACE WATER CONTROLS (INTERCEPTOR DIKES, PIPE SLOPE GRABS, ETC.) WHERE APPLICABLE.
 - J. MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH CITY OF KIRKLAND STANDARDS AND MANUFACTURER'S RECOMMENDATIONS.
 - K. RELOCATE EROSION CONTROL MEASURES OR INSTALL NEW MEASURES SO THAT AS SITE CONDITIONS CHANGE THE EROSION AND SEDIMENT CONTROL IS ALWAYS IN ACCORDANCE WITH THE CITY TESO.
 - L. COVER ALL AREAS WITHIN THE SPECIFIED TIME FRAME WITH STRAW, WOOD FIBER MULCH, COMPOST, PLASTIC SHEETING, COVER ROPS OR EQUIVALENT.
 - M. STABILIZE ALL AREAS THAT REACH FINAL GRADE WITHIN 7 DAYS.
 - N. SEED OR SOO ANY AREAS TO REMAIN UNBUILT FOR MORE THAN 30 DAYS.
 - O. UPON COMPLETION OF THE PROJECT, ALL DISTURBED AREAS MUST BE STABILIZED AND BEST MANAGEMENT PRACTICES RESUMED IF APPLICABLE.
2. APPROVAL OF THIS EROSION/SEDIMENTATION CONTROL (ESC) PLAN DOES NOT CONSTITUTE AN APPROVAL OF PERMANENT ROAD OR DRAINAGE DESIGN OR SIZE, LOCATION OR ROADWAY, PIPES, RESTRICTIONS, CHANNELS, RETENTION FACILITIES, UTILITIES, ETC.)
3. THE IMPLEMENTATION OF THIS ESC PLAN AND THE CONSTRUCTION, MAINTENANCE, REPLACEMENT, AND UPGRADES OF THESE ESC FACILITIES IS THE RESPONSIBILITY OF THE PERMITEE/CONTRACTOR UNTIL ALL CONSTRUCTION IS APPROVED.
4. THE BOUNDARIES OF THE CLEARING LIMITS SHOWN ON THIS PLAN SHALL BE SET BY SURVEY AND CLEARLY FLAGGED IN THE FIELD BY A CLEARING SURVEYOR BEFORE ANY CONSTRUCTION DURING THE CONSTRUCTION PERIOD. NO DISTURBANCE OR REMOVAL OF ANY DRIVING COVER BEYOND THE FLAGGED CLEARING LIMITS SHALL BE PERMITTED. THE FLAGGING SHALL BE MAINTAINED BY THE PERMITEE/CONTRACTOR FOR THE DURATION OF CONSTRUCTION.
5. THE ESC FACILITIES SHOWN ON THIS PLAN MUST BE CONSTRUCTED PRIOR TO OR IN CONJUNCTION WITH ALL CLEARING AND GRADING ACTIVITIES IN SUCH A MANNER AS TO ENSURE THAT SEDIMENT-LOADED WATER DOES NOT ENTER THE DRAINAGE SYSTEM OR VIOLATE APPLICABLE WATER STANDARDS. WHEREVER POSSIBLE, MAINTAIN NATURAL VEGETATION FOR SILT CONTROL.
6. THE ESC FACILITIES SHOWN ON THIS PLAN ARE THE MINIMUM REQUIREMENTS FOR ANTICIPATED SITE CONDITIONS DURING THE CONSTRUCTION PERIOD. THESE ESC FACILITIES SHALL BE UPGRADED (E.G., ADDITIONAL SLOTTED, REDUCTION OF GOTES AND SILT FENCES, ETC.) AS NEEDED FOR UNEXPECTED STORM EVENTS. ADDITIONALLY, MORE ESC FACILITIES MAY BE REQUIRED TO ENSURE COMPLETE SILTATION CONTROL. BEFORE, DURING THE COURSE OF CONSTRUCTION IT SHALL BE THE OBLIGATION AND RESPONSIBILITY OF THE CONTRACTOR TO ADDRESS ANY NEW CONDITIONS THAT MAY BE CREATED BY HIS ACTIVITIES AND TO PROVIDE ADDITIONAL FACILITIES OVER AND ABOVE THE MINIMUM REQUIREMENTS AS MAY BE NEEDED.
7. THE ESC FACILITIES SHALL BE INSPECTED BY THE PERMITEE/CONTRACTOR DAILY DURING NON-RAINFALL PERIODS. EVERY HOUR (AFTERNOON) DURING A RAINFALL EVENT AND AT THE END OF EVERY RAINFALL, AND MAINTAINED AS NECESSARY TO ENSURE THEIR CONTINUED FUNCTIONALITY. IN ADDITION, TEMPORARY SILTATION FENCES AND ALL TEMPORARY SILTATION CONTROLS SHALL BE MAINTAINED IN A SATISFACTORY CONDITION UNTIL SUCH TIME THAT CLEARING AND/OR CONSTRUCTION IS COMPLETE. PERMANENT DRAINAGE FACILITIES AT OPEN CHANNELS AND TYPICAL DRAINAGE FACILITIES AT PAVED AREAS SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD. WRITTEN RECORDS SHALL BE KEPT AND MAINTAINED FOR THE ESC FACILITIES AND SHALL BE INSPECTED AND MAINTAINED AT ONE A MONTH OR WITHIN 48 HOURS FOLLOWING A STORM EVENT.
8. ALL REMOVED SOILS MUST BE STABILIZED WITH AN APPROVED TEST METHOD (E.G., SEEDING, MULCHING, PLASTIC COVERING, CRUSHED ROCK) WITHIN THE FOLLOWING TIMELINES:
 - A. 15 DAYS FOR AREAS TO BE STABILIZED WITHIN 7 DAYS OF GRADING.
 - B. 15 NOVEMBER 1 TO MARCH 31 - SOILS MUST BE STABILIZED WITHIN 2 DAYS OF GRADING.
 - C. AT THE END OF THE SHEET, THE CONTRACTOR SHALL BE ALLOWED TO ACCUMULATE DEBRIS IN A CATCH BASIN. ALL CATCH BASINS AND CONVEYING LINES SHALL BE CLEANED PRIOR TO FINISHING THE CLEANING OPERATION SHALL NOT FLUSH SEDIMENT-LOADED WATER INTO THE DOWNSTREAM SYSTEM.
9. STABILIZED CONSTRUCTION ENTRANCES SHALL BE INSTALLED AT THE BEGINNING OF CONSTRUCTION AND MAINTAINED FOR THE DURATION OF THE PROJECT. ADDITIONAL MEASURES, SUCH AS WASH BASINS, MAY BE REQUIRED TO ENSURE THAT ALL PAVED AREAS ARE KEPT CLEAN FOR THE DURATION OF THE PROJECT.
10. ANY PERMANENT RETENTION FACILITY IN THE PERMANENT FACILITY IS TO FUNCTION ULTIMATELY AS AN INFILTRATION OR DISPERSION SYSTEM. THE FACILITY SHALL NOT BE USED AS A TEMPORARY SETTLING BASIN, NO INTERCEPTOR TANK, INTERCEPTOR VALVE, OR SYSTEM INCH BAGS UNDER OR INTO A POND SHALL BE USED AS A TEMPORARY SETTLING BASIN.
11. WHERE SEEDING FOR TEMPORARY EROSION CONTROL IS REQUIRED, FAST GERMINATING GRASSES SHALL BE APPLIED AT AN APPROPRIATE RATE (EXAMPLE: ANNUAL OR PERENNIAL RYE APPLIED AT APPROXIMATELY 80 POUNDS PER ACRE).
12. WHERE STRAW MULCH IS REQUIRED FOR TEMPORARY EROSION CONTROL, IT SHALL BE APPLIED AT A MINIMUM THICKNESS OF 2".
13. ALL EROSION/SEDIMENTATION CONTROL PONDS WITH A DEAD STORAGE DEPTH EXCEEDING 6" MUST HAVE A PERMITEE FENCE WITH A MINIMUM HEIGHT OF 3".
14. ALL WORK AND MATERIALS SHALL BE IN ACCORDANCE WITH CITY OF KIRKLAND STANDARDS AND SPECIFICATIONS.
15. THE ESC FACILITIES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DETAILS ON THE APPROVED PLANS. LOCATIONS MAY BE MOVED TO SUIT FIELD CONDITIONS, SUBJECT TO APPROVAL BY THE ENGINEER AND THE CITY OF KIRKLAND INSPECTOR.
16. A COPY OF THE APPROVED EROSION CONTROL PLANS MUST BE ON THE JOB SITE WHETHER CONSTRUCTION IS IN PROGRESS.
17. ALL LOTS ADDING OR HAVING ANY NATIVE GROWTH PROTECTION ELEMENTS (DIPS) SHALL HAVE A 4" HIGH TEMPORARY CONSTRUCTION FENCE (CYCLONE OR PLASTIC WIND) SEPARATING THE LOT (OR BUILDABLE PORTIONS OF THE LOT) FROM THE AREA RESTRICTED BY THE ORDER AND SHALL BE INSTALLED PRIOR TO ANY GRADING OR CLEARING AND REMAIN IN PLACE UNTIL A DWELLING IS CONSTRUCTED AND OWNERSHIP TRANSFERRED TO THE FIRST OWNER/OCCUPANT.
18. CLEARING LIMITS SHALL BE DELINEATED WITH A CLEARING CONTROL FENCE. THE CLEARING CONTROL FENCE SHALL CONSIST OF A 4"-11" HIGH CHAIN LINK FENCE ADJACENT TO THE DIRT LINE OF TREES TO BE SAVED, WETLAND OR STREAM BUFFERS, AND SENSITIVE SLOPES. CLEARING CONTROL FENCES ALONG WETLAND OR STREAM BUFFERS OR SENSITIVE SLOPES SHALL BE ACCOMPANIED BY AN EROSION CONTROL FENCE. IF APPROVED BY THE CITY, A TYPICAL EROSION CONTROL FENCE MAY BE USED TO DELINEATE CLEARING LIMITS IN ALL OTHER AREAS.
19. OFF-SITE STREETS MUST BE KEPT CLEAN AT ALL TIMES. IF DIRT IS DEPOSITED ON THE PUBLIC STREET SYSTEM, THE STREET SHALL BE IMMEDIATELY CLEANED WITH POWER WASHER OR OTHER EQUIPMENT. ALL VEHICLES SHALL LEAVE THE SITE BY WAY OF THE CONSTRUCTION ENTRANCE AND SHALL BE CLEANED OF ALL DIRT THAT WOULD BE DEPOSITED ON THE PUBLIC STREETS.
20. ALL CATCH BASINS COLLECTING RUNOFF FROM THE SITE, WHETHER THEY ARE ON OR OFF THE SITE, SHALL HAVE THEIR GRABBERS COVERED WITH FILTER FABRIC DURING CONSTRUCTION. CATCH BASINS EXCEPTLY CONSTRUCTED BY THE CONSTRUCTION ENTRANCE OR ANY OTHER CATCH BASIN AS DETERMINED BY THE CITY INSPECTOR SHALL BE PROTECTED WITH A "TRENCH FABRIC" CURB OR COLLAR.
21. THE WASHED GRAVEL BACKFILL ADJACENT TO THE FILTER FABRIC FENCE SHALL BE REPAIRED AND THE FILTER FABRIC CLEANED IF IT IS NONFUNCTIONAL BY EXCESSIVE SILT ACCUMULATION AS DETERMINED BY THE CITY OF KIRKLAND. ALSO, ALL INTERCEPTOR SMOLES SHALL BE CLEANED AND REPAIRED AS NECESSARY.
22. ROCK FOR EROSION PROTECTION OF ROADWAY DITCHES, WHERE REQUIRED, MUST BE OF SOUND QUANTITY FROM PAVED AREAS TO A DEPTH OF 1' AND MUST MEET THE FOLLOWING SPECIFICATIONS: 4"-8" ROCK/40%-70% PASSING, 2"-4" ROCK/30%-40% PASSING AND 1"-2" ROCK/20%-30% PASSING.
23. IF ANY PART(S) OF THE CLEARING LIMIT BOUNDARY OR TEMPORARY EROSION/SEDIMENTATION CONTROL PLAN IS/ARE DAMAGED, IT SHALL BE REPAIRED IMMEDIATELY.
24. ALL PRODUCTS ADJACENT TO THE PROJECT SITE SHALL BE PROTECTED FROM SEDIMENT DEPOSITION AND RUNOFF.
25. DO NOT FLUSH CONCRETE BY-PRODUCTS OR TRUCKS NEAR OR INTO THE STORM DRAINAGE SYSTEM. IF EROSION ACCURATE IS FLUSHED INTO THE STORM SYSTEM, IT COULD LEAN BE-CLEANING THE EXISTING CONSTRUCTION STORM SYSTEM, OR POSSIBLY RE-LEAVING THE STORM LINE.
26. PRIOR TO THE OCTOBER 1 OF EACH YEAR (THE BEGINNING OF THE WET SEASON), ALL DISTURBED AREAS SHALL BE REVIEWED TO IDENTIFY WHICH DICES CAN BE SEEDED IN PREPARATION FOR THE WETTER PAGES. THE IDENTIFIED DISTURBED AREA SHALL BE SEEDED WITHIN ONE WEEK AFTER OCTOBER 1. A SITE PLAN IDENTIFYING THE AREAS TO BE SEEDED AND THE AREA TO BE KEPT UNCOVERED SHALL BE SUBMITTED TO THE PUBLIC WORKS CONSTRUCTION INSPECTOR. THE INSPECTOR CAN REQUIRE SEEDING OF ADDITIONAL AREAS IN ORDER TO PROTECT SURFACE WATERS.



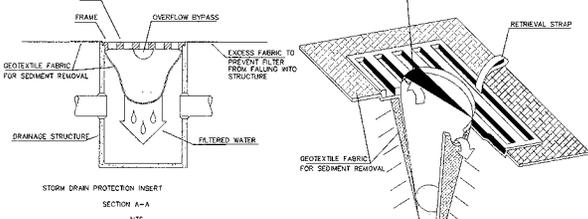
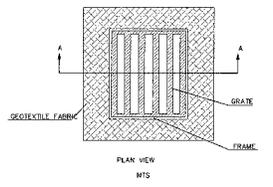
- NOTES**
1. PAD SHALL BE REMOVED AND REPLACED WHEN SOIL IS EXPOSED ON THE SURFACE OF THE PAD OR AS DIRECTED BY THE CITY CLEARING AND GRADING INSPECTOR.
 2. PAD SHALL BE INSTALLED IN PLANTING STRIP AS APPROPRIATE.
 3. PAD THICKNESS SHALL BE INCREASED IF SOIL CONDITIONS DICTATE AND/OR PER THE DIRECTION OF THE CITY CLEARING AND GRADING INSPECTOR.
 4. CONTRACTOR RESPONSIBLE FOR CURB & OUTER CONDITION.

STABILIZED CONSTRUCTION ENTRANCE CK E.02

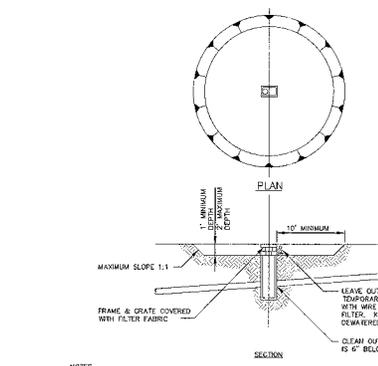


- NOTES**
1. PREFAB FENCE ALLOWED IF REINFORCED AND APPROVED BY THE CITY CLEARING AND GRADING INSPECTOR.
 2. FENCE SHALL NOT BE INSTALLED ON SLOPES STEEPER THAN 2:1.
 3. JOINTS IN FILTER FABRIC SHALL BE OVERLAPPED 6 INCHES AT POST.
 4. USE STRAP, WIRE RINGS, OR EQUIVALENT TO ATTACH FABRIC TO FENCE.
 5. REMOVE SEDIMENT WHEN IT REACHES 1/2 FENCE HEIGHT.
 6. LOCATION OF FENCING SHALL BE AS SHOWN ON APPROVED PLAN OR AS DIRECTED BY THE CITY.

SILT FENCE DETAIL CK E.03



STORM DRAINAGE PROTECTION INSERT DETAIL CK D.21



- NOTES**
1. PROTECT INLETS DURING CONSTRUCTION. KEEP SEDIMENT OUT OF THE STORM DRAINAGE SYSTEM. USE HALF-CIRCLE BEHIND CURB BELT'S EXISTING STREET CONSTRUCTION. MOUNT PROTECTION AS CONSTRUCTION PROGRESSES.
 2. ALLOW 2" MINIMUM OVERHANG ON FILTER FABRIC. FILTER FABRIC OVERHANG MUST BE COVERED WITH 1-1/4" COLOURED ROCK.
 3. JOINTS IN FILTER FABRIC SHALL BE OVERLAPPED 6 INCHES AT POST.
 4. USE STRAP, WIRE RINGS, OR EQUIVALENT TO ATTACH FABRIC TO FENCE.
 5. REMOVE SEDIMENT WHEN IT REACHES 1/2 FENCE HEIGHT.
 6. LOCATION OF FENCING SHALL BE AS SHOWN ON APPROVED PLAN OR AS DIRECTED BY THE CITY.

CATCH BASIN INSERT CROSS-SECTION CK E.08

JUANITA BAY TOWNHOMES
 PRELIMINARY PLAT
 PRELIMINARY TEMPORARY EROSION AND
 SEDIMENT CONTROL PLAN
 KIRKLAND, WASHINGTON

STEVE SMITH DEVELOPMENT
 9500 ROOSEVELT WAY NE STE. 300
 SEATTLE, WASHINGTON 98115
 (206) 214-8882

D.R. STRONG CONSULTING ENGINEERS
 10500 16TH AVENUE, SUITE 101
 KIRKLAND, WA 98033
 425.827.5000 OFFICE
 800.882.1402 TOLL FREE
 425.827.5853 FAX
 www.dstrong.com



EROSION CONTROL SEED MIXTURE:

CHICKENS OR RED FEED	40
ANNUAL OR PERENNIAL RYE	10
REDTOP OR COLLARD BENTGRASS	10
WHITE DUTCH CLOVER	40

SEDIMENT TRAP SIZING SUMMARY:

THE TRAP WAS SIZED USING THE REQUIREMENTS STATED IN APPENDIX 'D' OF THE 1996 ILLUSTRATED MANUAL. THE TRAP WAS SIZED USING THE FOLLOWING DATA:

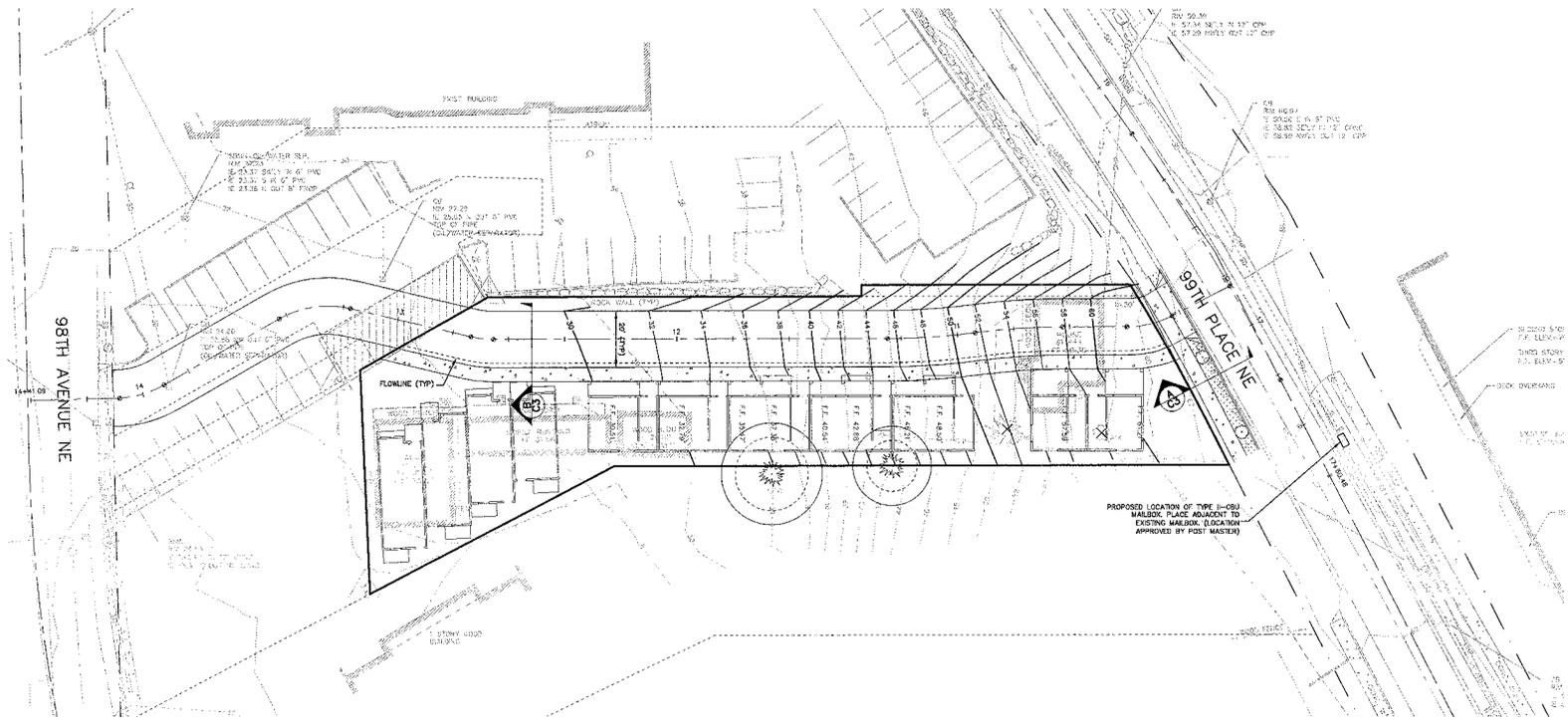
24-HOUR PEAK FLOW RATE	0.336 CFS
REQUIRED SURFACE AREA	470 S.F.
PROVIDED SURFACE AREA	470 S.F.

NOTE: USING THE DEVELOPED SITE CONDITIONS IS A MORE CONSERVATIVE ESTIMATE OF THE ACTUAL CONDITIONS THAT ARE PRESENT AT THE TIME THE SEDIMENT TRAP WAS INTENDED FOR USE.

CALL 48 HOURS BEFORE YOU DIG
 1-800-424-5555

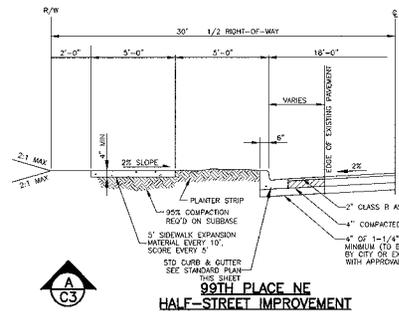
DRAFTED BY: MBM
 DESIGNED BY: JAB
 PROJECT ENGINEER: RDO
 DATE: 11-20-05
 PROJECT NO.: 06019
 SHEET C4 OF 7

A PORTION OF GOVERNMENT LOT 4 SEC. 31 ,TWP. 26 ,RGE. 5 ,W.M.



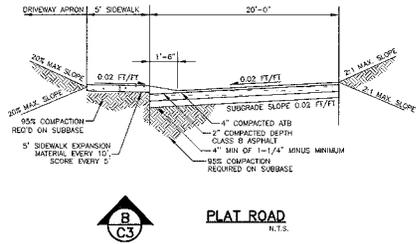
25.4 55.30
 57.3 58.7 71 11' 0"
 58.85 55.7 11' 0" 0"
 58.85 55.7 11' 0" 0"

6.9
 25.4 55.30
 57.3 58.7 71 11' 0"
 58.85 55.7 11' 0" 0"
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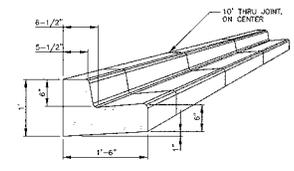


**99TH PLACE NE
 HALF-STREET IMPROVEMENT**

- NOTES**
1. CLASS B ASPHALT MAY BE SUBSTITUTED FOR ATB.
 2. MAXIMUM ALLOWABLE GRADE OF A STREET IS 15% UNLESS SPECIFIED BY AN ENGINEER.
 3. A FREE-DRAINING LAYER OF 1-1/4" CRUSHED STONE MAY BE REQUIRED BELOW ATB, DEPENDING UPON SOIL AND GROUNDWATER CONDITIONS.
 4. SIDE SLOPES SHALL BE 2:1 MAXIMUM.
 5. WHEN PLACING NEW CURB AND GUTTERS ALONG AN EXISTING ROADWAY THE ASPHALT SHOULD BE SAWCUT AT A WIDTH TO ALLOW FOR AN 18-INCH ASPHALT PATCH AS MEASURED FROM THE FACE OF THE CURB.

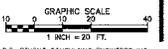


**PLAT ROAD
 N.T.S.**



TYPICAL SECTION FOR CURB & GUTTER, TYPE A

- NOTES**
1. FORMS SHALL BE STEEL AND SET TRUE TO LINE AND GRADE (INSPECTION IS REQUIRED PRIOR TO PLACEMENT OF CONCRETE).
 2. CONCRETE SHALL BE CEMENT CONCRETE CLASS 4000.
 3. BASE COURSE SHALL BE 4" OF 5/8" MINUS CRUSHED ROCK OR AS DIRECTED BY ENGINEER.



JUANITA BAY TOWNHOMES
 PRELIMINARY PLAT
 PRELIMINARY ROAD AND GRADING PLAN
 KIRKLAND, WASHINGTON

STEVE SMITH DEVELOPMENT
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 425.827.2000 OFFICE
 425.827.2002 TOLL FREE
 425.827.2022 FAX
 www.dstrong.com



DATE	BY	REVISION
11-20-06	JAB	REV FOR CITY COMMENTS SUBMIT ROAD

DRAFTED BY: EAB
 DESIGNED BY: JAB
 PROJECT ENGINEER: REDD
 DATE: 11-20-06
 PROJECT NO.: 06019
 SHEET CS OF 7

RECEIVED
DEC - 1 2006
AM
PLANNING DEPARTMENT PM
BY _____ Project No. 06019

**CITY OF KIRKLAND
ENVIRONMENTAL CHECKLIST
JUANITA BAY TOWNHOMES**

PURPOSE OF CHECKLIST:

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a Proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your Proposal (and to reduce or avoid impacts from the Proposal, if it can be done) and to help the agency decide whether an EIS is required.

INSTRUCTIONS FOR APPLICANTS:

This environmental checklist asks you to describe some basic information about your Proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your Proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your Proposal, write "do not know" or "does not apply". Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your Proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your Proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

A. BACKGROUND

1. Name of proposed project, if applicable:
Juanita Bay Townhomes

2. Name of applicant:
Steve Smith Development

3. Address and phone number of applicant and contact person:

Applicant:
Steve Smith Development
9500 Roosevelt Way NE Suite 300
Seattle, WA 98115
206-214-8882

Contact Person:
James A. Barnett, E.I.T.
D. R. STRONG Consulting Engineers Inc.
10604 NE 38 Place, Suite 101
Kirkland WA 98033
425-827-3063

4. Date checklist prepared:
November 17, 2006

5. Agency requesting checklist:
City of Kirkland

6. Proposed timing or schedule (including phasing, if applicable):
Construction will start upon the receipt of all required building and construction permits. This is estimated to occur in Summer 2007.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this Proposal? If yes, explain.
No.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this Proposal.
None known at this time.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your Proposal? If yes, explain.

No.

10. List any government approvals or permits that will be needed for your Proposal, if known.

SEPA Determination	City of Kirkland
Final Plat Approval	City of Kirkland
Building Permit (Structural Vault & Walls)	City of Kirkland
Other Customary Construction Related Permits	City of Kirkland

11. Give brief, complete description of your Proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your Proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.).

Short Plat approximately 0.45 acres into 11 townhomes. Access to the Project will be from 99th Place NE and 98th Ave NE.

12. Location of the Proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a Proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The Project is located in Section 31, Township 26, Range 5, at 11435 99th Place NE.

B. ENVIRONMENTAL ELEMENTS

1. EARTH

a. General description of the site (circle one).
Flat, hilly, steep slopes, mountainous other.

The predominant slope range is between 12 to 18%. Generally, the land slopes from northeast to southwest.

b. What is the steepest slope on the site (approximate percent slope)?

<20%.

- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.

The Soil Survey of King County, Washington, prepared by the U.S. Department of Agriculture, Soil Conservation Service has classified the site as primarily:

Indianola loamy fine sands, 0-4%

- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

None to our knowledge.

- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.

The purpose of the site grading will be to construct the subdivision road, utilities and homes. Project entails 15 CY of excavation and 1140 CY of fill.

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

There could be a short-term increase in the potential for on-site erosion where soils are exposed during site preparation and construction. However, the Project will comply with all applicable erosion control measures, short and long term.

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?
Approximately 69% of the Site will be covered with impervious surfaces.
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any.
A temporary erosion control plan will be implemented at the appropriate time. Erosion control measures may include the following: hay bales, siltation fences, temporary siltation ponds, controlled surface grading, stabilized construction entrance, and other measures which may be used in accordance with requirements of the City of Kirkland.

2. AIR

- a. What types of emissions to the air would result from the Proposal (i.e., dust, automobile odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.
Short-term emissions will be those associated with construction and site development activities. These will include dust and emissions from construction equipment. Long-term impacts will result from increased vehicle traffic.
- b. Are there any off-site sources of emissions or odor that may affect your Proposal? If so, generally describe.
Off-site sources of emissions or odors are those that are typical of residential neighborhoods. These will include but is not limited to automobile emissions from traffic on adjacent roadways and fireplace or barbecue emissions from nearby homes.

- c. Proposed measures to reduce or control emissions or other impacts to air, if any.
The Washington Clean Air Act requires the use of all known, available, and reasonable means of controlling air pollution, including dust. Construction impacts will not be significant and could be controlled by measures such as washing truck wheels before exiting the site and maintaining gravel construction entrances. In addition, dirt-driving surfaces will be watered during extended dry periods to control dust.

3. WATER

a. Surface.

- i. Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.
Yes, Lake Washington.
- ii. Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.
No.
- iii. Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.
N/A.

iv. Will the Proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.
N/A.

v. Does the Proposal lie within a 100-year floodplain? If so, note location on the site plan.
No.

vi. Does the Proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.
No, a public sanitary sewer system will be installed to serve the lots. There will be no discharge of waste materials to surface waters.

b. Ground.

i. Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.
No groundwater will be withdrawn. Public water mains will be installed to serve the development. No water will be discharged to the groundwater.

- ii. Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

No waste material is proposed to be discharged into the ground. The site will be served by public sanitary sewers and a public water system.

- c. Water Runoff (including storm water).

- i. Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

Stormwater runoff will result from the proposed roads, rooftops, and landscaped areas. The runoff generated by the roadway and landscaping will flow into a water quality vault. The storm water facility will be designed in accordance with the 1998 King County Surface Water Design Manual, as adopted by the City.

- ii. Could waste materials enter ground or surface waters? If so, generally describe.

The proposed stormwater system will be designed to minimize or eliminate entry of waste materials or pollutants to ground water resources and/or surface waters. Oils, grease, and other pollutants from the addition of paved areas could potentially enter the groundwater or downstream surface water runoff.

- d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any.

A City approved storm drainage system will be designed and implemented in order to mitigate any adverse impacts from storm water runoff. Permanent water quality will be provided on Site, but detention will not.

4. PLANTS

- a. Check or circle types of vegetation found on the site:

 X deciduous tree: alder, maple, aspen, other: (maple, cypress, apple, blackwood cotton, locust, willow)

 X evergreen tree: fir, cedar, spruce, pine, other: hemlock

 X shrubs

 grass (orchard grass)

 X pasture

 crop or grain

 wet soil plants: cattail, buttercup, bulrush, other:

 water plants: water lily, eelgrass, milfoil, other:

 other types of vegetation (Deer fern, blackberry, holly, scotch broom)

- b. What kind and amount of vegetation will be removed or altered?
Vegetation within the development area will be removed at the time of development.
- c. List threatened or endangered species known to be on or near the site.
None known.
- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any.
The Project is subject to the requirements of Landscaping of the KZC. The Project will retain significant trees on the Site to the maximum extent possible.

5. ANIMALS

- a. Circle any birds and animals, which have been observed on or near the site or are known to be on or near the site.

birds: hawk, heron, eagle, songbirds, other:
 mammals: deer, bear, elk, beaver, small rodents, raccoon, other:
 fish: bass, salmon, trout, herring, shellfish other:

- b. List any threatened or endangered species known to be on or near the site.
No threatened or endangered species are known to be on or near the site.

- c. Is the site part of a migration route? If so, explain.

Western King County as well as the rest of Western Washington, is in the migration path of a wide variety of non-tropical songbirds, and waterfowl, including many species of geese and ducks.

- d. Proposed measures to preserve or enhance wildlife, if any.

None.

6. ENERGY AND NATURAL RESOURCES

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

Electricity and/or natural gas will serve as the primary energy source for residential heating and cooking within the development. Any wood stoves will comply with all local and State regulations.

- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

No.

- c. What kinds of energy conservation features are included in the plans of this Proposal? List other proposed measures to reduce or control energy impacts, if any.

The required measures of the Washington State Energy Code and the Uniform Building Code will be incorporated in the construction of the residential units. Energy conservation fixtures and materials are encouraged in all new construction.

7. ENVIRONMENTAL HEALTH

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this Proposal? If so, describe.

There are no known existing or potential on-site environmental health hazards.

- i. Describe special emergency services that might be required.

No special emergency services will be required.

- ii. Proposed measures to reduce or control environmental health hazards, if any.

Special measures are not anticipated.

b. Noise

- i. What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

The primary source of off-site noise in the area originates from vehicular traffic present on adjacent streets.

- ii. What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

Short-term impacts will result from the use of construction equipment during site development and residential construction. Construction will occur during the daylight hours,

and in compliance with all noise ordinances. Construction noise is generated by heavy equipment, hand tools and the transporting of construction materials and equipment. Long-term impacts will be those associated with the increased use of the property by homeowners.

- iii. Proposed measures to reduce or control noise impacts, if any.
Construction will be performed during normal daylight hours in accordance with City noise ordinances. Construction equipment will be equipped with noise mufflers.

8. LAND AND SHORELINE USE

- a. What is the current use of the site and adjacent properties?
There is one single-family home, and a mobile home on the site with associated landscaping. The current use of adjacent properties is listed as follows:

North:	Commercial
South:	Commercial
East:	Residential
West:	Commercial

- b. Has the site been used for agriculture? If so, describe.
Not to our knowledge.
- c. Describe any structures on the site.
Single family home, mobile home, garages, sheds, etc.
- d. Will any structures be demolished? If so, what?
All of the above mentioned structures.

- e. What is the current zoning classification of the site?
JBD-2
- f. What is the current comprehensive plan designation of the site?
Juanita Business District.
- g. If applicable, what is the current shoreline master program designation of the site?
N/A
- h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.
No.
- i. Approximately how many people would reside or work in the completed project?
Based on 2.3 people per household, we estimate 26 residents for the completed project.
- j. Approximately how many people would the completed project displace?
Based on 2.3 people per household, we estimate 5 residents.
- k. Proposed measures to avoid or reduce displacement impacts, if any.
None at this time.
- l. Proposed measures to ensure the Proposal is compatible with existing and projected land uses and plans, if any.
The proposed development is compatible with the prescribed land use codes and designations for this site. Per the KZC, the development is consistent with the land use of this property.

9. HOUSING

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.
Eleven residential units are proposed.
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
One middle-income housing and one mobile home business.
- c. Proposed measures to reduce or control housing impacts, if any.
None.

10. AESTHETICS

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?
The maximum building height will conform to KZC.
- b. What view in the immediate vicinity would be altered or obstructed?
Views in the vicinity may be obstructed by development of this project.
- c. Proposed measures to reduce or control aesthetic impacts, if any?
The location of the buildings adheres to or exceeds the minimum setback requirements of the zoning district. The landscaping will be installed at the completion of building and paving construction. A Homeowners Association will maintain the common elements.

11. LIGHT AND GLARE

- a. What type of light or glare will the Proposal produce? What time of day would it mainly occur?

Light and glare will be produced from building lighting. Light will also be produced from vehicles using the site. The light and glare will occur primarily in the evening and before dawn.

- b. Could light or glare from the finished project be a safety hazard or interfere with views?

Light and glare from the project will not cause hazards or interfere with views.

- c. What existing off-site sources of light or glare may affect your Proposal?

The primary off-site source of light and glare will be from vehicles traveling along the area roadways. Also, the adjacent residential uses and streetlights may create light and glare.

- d. Proposed measures to reduce or control light and glare impacts, if any.

Street lighting will be installed as per the manufacturer's recommendations.

12. RECREATION

- a. What designated and informal recreational opportunities are in the immediate vicinity?

Juanita Bay Park

- b. Would the proposed project displace any existing recreational uses? If so, describe.

No.

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any.

None.

13. HISTORIC AND CULTURAL PRESERVATION

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.
None known.
- b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.
None.
- c. Proposed measures to reduce or control impacts, if any.
There are no known impacts. If an archeological site is found during the course of construction, the State Historic Preservation Officer will be notified.

14. TRANSPORTATION

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.
Access to the Project is from I-405 at NE 116th Street, then east on NE 116th Street to 99th Place NE, then north on 99th Place NE to the Site.
- b. Is the site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?
The nearest public transit stop is approximately 0.1 mile south at the intersection of NE 116th Street and 98th Avenue NE.

- c. How many parking spaces would the completed project have? How many would the project eliminate?

The completed project will have garage parking spaces. Each home will have a minimum of two-parking spaces. And there will be two off-street parking.

- d. Will the Proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).

A new road will be constructed on site, as well as frontage improvements to 99th Place NE which will include pavement widening, curb, gutter, planter strip, and sidewalk.

- e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

No.

- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

Based on 9.8 trips per unit per day, this project would generate 108 trips.

- g. Proposed measures to reduce or control transportation impacts, if any.

Not known at this time.

15. PUBLIC SERVICES

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.

The project will result in an increased need for public services typical for a short subdivision of this size.

- b. Proposed measures to reduce or control direct impacts on public services, if any.
The project will pay mitigation fees for the impact on public services per the City fee schedule.

16. UTILITIES

- a. Circle utilities currently available at the site:
Electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.
- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.
Electricity.....Puget Sound Energy
Natural Gas.....Puget Sound Energy
Water & Sewer...City of Kirkland
Telephone.....Verizon

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand the lead agency is relying on them to make its decision.

Signature: 
Richard D. Olson, P.E.

Date Submitted: 11/20/06, 2006

CITY OF KIRKLAND123 FIFTH AVENUE ● KIRKLAND, WASHINGTON 98033-6189 ● (425) 587-3000

**DEPARTMENT OF PUBLIC WORKS
MEMORANDUM**

To: Tony Leavitt, Planner

From: Thang Nguyen, Transportation Engineer

Date: January 31, 2007

Subject: Juanita Bay Townhouse Traffic Concurrency, PSB06-00001

The purpose of this memo is to inform you that the traffic concurrency for the proposed Juanita Bay Townhouse development has been completed and the proposed project passed traffic concurrency.

Project Description

The applicant proposes to replace a 1,860 square feet (sf) mixed-office building with 11 townhouses. It is anticipated that the project will be built and fully occupied by the end of 2008. It is calculated that the proposed project will generate 53 daily, 4 AM, and 5 PM peak hour trips

The proposed project passed traffic concurrency. Attached is the result of the concurrency test. This memo will serve as the concurrency test notice for the proposed project. Per *Section 25.10.020 Procedures* of the KMC, this Concurrency Test Notice will expire in one year (January 31, 2008) unless a development permit and certificate of concurrency are issued or an extension is granted.

EXPIRATION

The concurrency test notice shall expire and a new concurrency test application is required unless:

1. A complete SEPA checklist, traffic impact analysis and all required documentation are submitted to the City within 90 calendar days of the concurrency test notice.
2. A Certificate of Concurrency is issued or an extension is requested and granted by the Public Works Department within one year of issuance of the concurrency test notice. (A Certificate of Concurrency is issued at the same time a development permit or building permit is issued if the applicant holds a valid concurrency test notice.)
3. A Certificate of Concurrency shall expire six years from the date of issuance of the concurrency test notice unless all building permits are issued for buildings approved under the concurrency test notice.

APPEALS

The concurrency test notice may be appealed by the public or agency with jurisdiction. The concurrency test notice is subject to an appeal until the SEPA review process is complete and the appeal deadline has passed. Concurrency appeals are heard before the Hearing Examiner along with any applicable SEPA appeal. For more information, refer to the Kirkland Municipal Code, Title 25. If you have any questions, please call me at x3869.

cc: John Burkhalter, Senior Development Engineer
Bill Popp Jr, William Popp Associates

1) Project ID: Juanita Bay Townhomes												4) Transportation Concurrency Status			6) Transportation Concurrency Certificate Date:		
2) Project Description: Replace a mixed use development with 11 units of Townhouse												PASS					
3) Build-out Year: 2009												5) Transportation Concurrency Test Date			7) Certificate of Occupancy Date		
SUMMARY OF TRAFFIC IMPACTS																	
8) Daily Trips 53				PM Peak Trips: 5				Impacted Subarea(s): NW				TAZ: 268					
Signalized Intersection PM Peak Traffic Impact																	
Project PM Peak Turning Volumes																	
Code	Intersection	Eastbound			Westbound			Northbound			Southbound			PM Peak Trips	Daily Trips	Sum of Critical Vol*	Vol. Capacity Ratio*
		LT	TH	RT	LT	TH	RT	LT	TH	RT	LT	TH	RT				
	Driveway/99th PI NE	1											2	3			
	Driveway/98th Ave NE						1				1			2			
														0			
201	98th Ave NE/Juanita Dr									1				1			
205	Market St/Forbes Creek											1		1			
	#N/A													0			
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Transportation Concurrency Test																	
Subarea No	LOS Standards				LOS with Project Impacts				a <= A?	b <= B?							
	A= Max. Intersection LOS	B=Average 2010 V/C			a=No. exceeding 1.4	b=Average V/C											
Southwest (1xx)	1.4	0.90			0	0.82			yes	yes							
Northwest (2xx)	1.4	0.90			0	0.87			yes	yes							
Northeast (3xx)	1.4	0.88			0	0.85			yes	yes							
East(4xx)	1.4	1.05			0	0.99			yes	yes							
TEST RESULTS																	
Result: PASS																	

* Based on Critical Movement, Planning Method TRC #212.
 1. Number of intersection exceeding Average V/C LOS Standard (2012)
 1. Sixth Year Target Average V/C ratio, see step 6, part 1 of the guidelines

Dennis M. Bruce, P.E.

M.S.C.E., M.B.A.

Geotechnical/Civil Engineer

RECEIVED JAN 08 2007

January 2, 2007

Seattle D.P.D.
c/o Real Property Development Company
8001 14th Ave. NE
Seattle, WA 98115

Subject: **Geotechnical Evaluation – Foundation Recommendations
Proposed 11-Unit Juanita Town Homes
11444 98th Ave. NE, Kirkland, Washington**

This engineering report presents the results of a geotechnical evaluation of the R.P.D.C. property at 11444 98th Ave. NE, Kirkland, Washington. This evaluation was required due to owner / contractor concerns, as well as City of Kirkland requirements.

REFERENCES:

- Project Plans for 11-Unit Town Homes by Driscoll Architects (October 2, 2006)
- Site Plan and Topographic Map
- Photographs by D. Bruce, P.E. dated December 28, 2006

BACKGROUND:

The overall property is near rectangular in shape with an average width of approximately 67 feet. The overall depth of the property is approximately 280 feet (see property survey).

The up-slope portion of the property (easterly, abutting 99th Pl. NE) contains an existing single-family residence that will be demolished. The lower portion (westerly, abutting 98th Ave. NE) currently contains mobile / trailer units. The overall property contains approximately 35 feet of elevation change from highest point to lowest point (see topographic map).

It is understood that R.P.D.C. proposes to construct 11 town home units as indicated on the site plan.

Visual evaluation of the existing residence reveals no evidence of any geotechnical distress: no observable foundation cracking, or any evidence of erosional

Seattle D.P.D.
c/o R.P.D.C.
January 2, 2007
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degradation. The overall site revealed no evidence of any slides, tension cracking, or evidence of erosional degradation.

Portions of the site contain lawn and mature trees (see photographs). The north part of the site contains a rockery varying in height from 2 to 5 feet that provides erosion stabilization for the adjacent (northerly) athletic club parking lot.

At the time of this investigation and report, it is understood that property owners / developers propose to place a small amount of **structural fill** in the "low swale" portion of the site. This location is approximately mid-property and will allow for a more even foundation construction sequence (see later section on "Structural Fill Placement").

EVALUATION:

In order to augment the existing site geotechnical information, 3 soil test pits were dug under this engineer's observation on December 28, 2006 (see site plan for test pit locations).

Test Pit No. 1 (on slope immediately below existing easterly house):

0" to 6"	Lawn, organics, roots, and organic silt
6" to 24"	Sandy loam, moderately dense Slight groundwater trickle at 24" depth
24" to 6.0 ft. (bottom of test pit)	Very dense (cemented) slightly silty sand. Very hard digging

Slight groundwater trickle was encountered at 24 inch depth. Test pit walls remained vertical and stable. No sloughing or caving occurred.

Test Pit No. 2 (base of slope):

0" to 6"	Lawn, organics, roots, and organic silt
6" to 30"	Sandy loam, moderately dense. Groundwater inflow (more volume than Test Pit No. 1). Water from the NE direction
30" to 5.0 ft. (bottom of test pit)	Very dense silty clay. (Hard cohesive clay)

Groundwater was encountered at 30 inch depth. Test pit walls remained vertical and stable. No sloughing or caving occurred.

Test Pit No. 3 (western portion of site adjacent athletic club driveway zone):

0" to 6"	Parking area gravel
----------	---------------------

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c/o R.P.D.C.
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6" to 3-½ ft.	Very dense sand
	Groundwater trickle at 3 ft. depth
3-½ ft. to 6 ft. (bottom of test pits)	Very dense / stiff clay

Groundwater was encountered at 3 foot depth. Test pit walls remained vertical and stable. No sloughing or caving occurred.

CONCLUSIONS / RECOMMENDATIONS:

Based on the findings of this investigation, and experience with similar sites in the area, the property at 11444 98th Ave. NE, Kirkland, Washington is **geotechnically approved** for the proposed 11-unit town house project, subject to the following:

- Excavation constraints: At the time of this investigation and report, it is understood that no lower levels are proposed and no excavation is planned deeper than approximately 4 feet below grade. No excavation shoring is required for soil cuts less than 4 feet. If actual excavation depths exceed 4 feet in depth, additional geotechnical review and recommendations for temporary shoring **are required**.
- Standard reinforced continuous and spread footings. Allowable bearing pressure: **2,000 p.s.f.**
- Equivalent fluid pressure of 35 p.c.f. is recommended for any retaining wall design provided drainage zone is inspected and verified by this engineer.
- For retaining wall design, use friction factor of 0.55 and passive pressure of 350 p.c.f.
- Geotechnical inspections by this engineer prior to any foundation concrete placement.

The proposed structure can be supported on conventional continuous and spread footings bearing on undisturbed native soils or on structural fill placed above native soils. See the later sub-section entitled General Earthwork and Structural Fill for structural fill placement and compaction recommendations. Continuous and individual spread footings should have **minimum** widths of eighteen (18) and twenty-four (24) inches, respectively, and should be bottomed at least eighteen (18) inches below the lower adjacent finish ground surface.

Depending on the final site grades, some over-excavation may be required below footings to expose competent native soils. Unless lean concrete is used to fill the over

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 c/o R.P.D.C.
 January 2, 2007
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excavated hole, the width of the over-excavation at the bottom must be at least as wide as the sum of two times the depth of the over-excavation and the footing width. For example, an over-excavation extending two feet below the bottom of a three-foot wide footing must be at least seven feet wide at the base of the excavation.

Footings constructed according to the above recommendations may be designed for an allowable soil bearing pressure of two thousand (2,000) pounds per square foot (p.s.f.). A one-third increase in this design bearing pressure may be used when considering short-term wind or seismic loads. For the above design criteria, it is anticipated that total post-construction settlement of footings founded on competent, native soils (or on structural fill up to five (5) feet in thickness) will be about one-half inch, with differential settlements on the order of one-quarter inch.

NOTE: The bearing capacity of 3,000 p.s.f. applies to over-excavated and backfill conditions. Footings placed on native soils may be designed for 2,000 p.s.f.

Lateral loads due to wind or seismic forces may be resisted by friction between the foundations and the bearing soils, or by passive earth pressure acting on the vertical, embedded portions of the foundations. For the latter condition, the foundations must either be poured directly against undisturbed soil or the backfill placed around the outside of the foundation must be level structural fill. We recommend the following design values be used for the foundation's resistance to lateral loading:

<u>Parameter</u>	<u>Design Value</u>
Coefficient of Friction	0.55
Passive Earth Pressure	350 p.c.f.

Where:

- (1) p.c.f. is pounds per cubic foot.
- (2) Passive earth pressure is computed using the equivalent fluid density.

We recommend that a safety factor of at least 1.5 be used for design of the foundation's resistance to lateral loading.

SLABS-ON-GRADE:

Slab-on-grade floors may be supported on undisturbed, competent native soils or on structural fill. The slabs may be supported on the existing soils provided these soils can be re-compacted prior to placement of the free-draining sand or gravel underneath the slab. This sand and gravel layer should be a minimum of four (4) inches thick. We

Seattle D.P.D.
c/o R.P.D.C.
January 2, 2007
Page 5

also recommend using a vapor barrier such as 6-mil. plastic membrane beneath the slab with minimum overlaps of 12 inches for sealing purposes.

PERMANENT FOUNDATION AND RETAINING WALLS:

Retaining walls backfilled on one side only should be designed to resist lateral earth pressures imposed by the soils retained by these structures. The following recommended design parameters are for walls less than twelve (12) feet in height, which restrain level backfill:

<u>Parameter</u>	<u>Design Value</u>
Active Earth Pressure*	35 p.c.f.
Passive Earth Pressure	350 p.c.f.
Coefficient of Friction	0.55
Soil Unit Weight	125 p.c.f.

Where:

- (1) p.c.f. is pounds per cubic foot
- (2) Active and passive earth pressures are computed using equivalent fluid densities.

* For restrained walls which cannot deflect at least 0.002 times the wall height, a uniform lateral pressure of one hundred (100 p.s.f. should be added to the active equivalent fluid pressure).

The values given above are to be used for design of permanent foundation and retaining walls only. An appropriate safety factor should be applied when designing the walls. We recommend using a safety factor of at least 1.5 for overturning and sliding.

The above design values do not include the effects of any hydrostatic pressures behind the walls and assume that no surcharge slopes or loads will be placed above the walls. If these conditions exist, then those pressures should be added to the above lateral pressures. Also, if sloping backfill is desired behind the walls, then we will need to be given the wall dimensions and slope of the backfill in order to provide the appropriate design earth pressures.

Heavy construction equipment should not be operated behind retaining and foundation walls within a distance equal to the height of the wall, unless the walls are designed for the additional lateral pressures resulting from the equipment. Placement and compaction of retaining wall backfill should be accomplished with hand-operated equipment.

Seattle D.P.D.
c/o R.P.D.C.
January 2, 2007
Page 6

Retaining Wall Backfill

Backfill placed within eighteen (18) inches of any retaining or foundation walls should be free-draining structural fill containing no organics. This backfill should contain no more than five (5) percent silt or clay particles and have no particles greater than four (4) inches in diameter. The percentage of particles passing the No. 4 sieve should be between twenty-five (25) and seventy (70) percent. Due to their high silt content, if the native soils are used as backfill, a drainage composite, such as Mirafi and Enkadrain, should be placed against the retaining walls. The drainage composites should be hydraulically connected to the foundation drain system. The purpose of these backfill requirements is to assure that the design criteria for the retaining wall is not exceeded because of a build-up of hydrostatic pressure behind the wall. The subsection entitled General Earthwork and Structural Fill contains recommendations regarding placement and compaction of structural fill behind retaining and foundation walls.

EXCAVATION AND SLOPES:

At the time of this investigation and report, it is understood that no deep excavation is proposed (deeper than approximately 4 feet in depth). Thus no temporary shoring is required.

If, however, actual conditions exceed 4 feet in excavation depths then additional geotechnical review and recommendations for temporary shoring are required.

In no case should excavation slopes be greater than the limits specified in local, state and national government safety regulations. Temporary cuts up to a height of four (4) feet deep in unsaturated soils may be vertical. For temporary cuts having a height greater than four (4) feet, the cut should have an inclination no steeper than 1:1 (Horizontal:Vertical) from the top of the slope to the bottom of the excavation. Under **specific recommendations by the geotechnical engineer**, excavation cuts may be modified for site conditions. All permanent cuts into native soils should be inclined no steeper than 2:1 (H:V). Fill slopes should not exceed 2H:1V. It is important to note that sands do cave suddenly, and without warning. The contractors should be made aware of this potential hazard.

Water should not be allowed to flow uncontrolled over the top of any temporary or permanent slope. All permanently exposed slopes should be seeded with an appropriate species of vegetation to reduce erosion and improve stability of the surficial layer of soil.

Seattle D.P.D.
c/o R.P.D.C.
January 2, 2007
Page 7

DRAINAGE CONSIDERATIONS:

Footing drains are recommended at the base of all footings and retaining walls. These drains should be surrounded by at least six (6) inches of one-inch-minus washed rock wrapped in non-woven geotextile filter fabric (Mirafi 140N, Supac 4NP, or similar material). At the highest point, the perforated pipe invert should be at least as low as the bottom of the footing and it should be sloped for drainage. All roof and surface water drains must be kept separate from the foundation drain system.

Groundwater was encountered in all 3 test pits during the fieldwork. This groundwater was located below anticipated footing depths and will not adversely impact foundations, **subject to** on-site geotechnical inspections and verifications. Seepage into the planned excavation is possible, and likely if excavation occurs during winter months, and if encountered should be drained away from the site by use of drainage ditches, perforated pipe, French drains, or by pumping from sumps interconnected by shallow connector trenches at the bottom of the excavation.

The excavation of the site should be graded so that surface water is directed off the site and away from the tops of slopes. Water should not be allowed to stand in any area where foundations, slabs, or pavements are to be constructed. Any exposed slopes to be covered with plastic to minimize erosion. Final site grading in areas adjacent to buildings should be sloped at least two (2) percent away from the building, except where the area adjacent to the building is paved.

GENERAL EARTHWORK AND STRUCTURAL FILL:

The proposed building and pavement areas should be stripped and cleared of all surface vegetation, all organic matter, and other deleterious material. The stripped or removed materials should not be mixed with any materials to be used as structural fill.

Structural fill is defined as any fill placed under the building, behind permanent retaining or foundation walls, or in other areas where the underlying soils needs to support loads. This engineer should observe site conditions during and after excavation prior to placement of any structural fill.

All structural fill should be placed in horizontal lifts with a moisture content at or near the optimum moisture content. The optimum moisture content is that moisture content which results in the greatest compacted dry density. The moisture content of fill soils is very important and must be closely controlled during the filling and compaction process.

The allowable thickness of the fill lift will depend on the material type, compaction equipment, and the number of passes made to compact the lift. In no case should the

Seattle D.P.D.
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January 2, 2007
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lifts exceed twelve (12) inches in loose thickness. The following table presents recommended relative compaction for structural fill:

<u>Location of Fill Placement</u>	<u>Minimum Relative Compaction</u>
Beneath footings, slabs or walkways	95%
Behind retaining walls	90%
Beneath pavements	95% for upper 12 inches of Sub-grade, 90% below that level

Where: Minimum relative compaction is the ratio, expressed in percentages, of the compacted dry density to the maximum dry density, as determined in accordance with ASTM Test Designation D-1557-78 (Modified Proctor).

Use of On-Site Soils

If grading activities take place during wet weather, or when the clay / silty, on-site soils are wet, site preparation costs may be higher because of delays due to rains and the potential need to import granular fill. The on-site soils are generally silty and thus are highly moisture sensitive. Grading operations will be difficult when the moisture content of these soils exceeds the optimum moisture content.

Moisture sensitive soils will also be susceptible to excessive softening and "pumping" from construction equipment traffic when the moisture content is greater than the optimum moisture content.

Ideally, structural fill, which is to be placed in wet weather, should consist of a granular soil having no more than five (5) percent silt or clay particles. The percentage of particles passing the No. 200 sieve should be measured from that portion of the soil passing the three-quarter-inch sieve.

The use of "some" on-site soils for fill material **may be acceptable** if the upper organic materials are segregated and moisture contents are monitored by engineering inspection.

DRAINAGE CONTROLS:

No drainage problems were evident with the existing residence and overall property at 11444 98th Ave. NE.

Seattle D.P.D.
c/o R.P.D.C.
January 2, 2007
Page 9

It is understood that the proposed 11-unit town home project will comply with City of Kirkland requirements for gutters, downspouts and tight line storm water connections into the existing City of Kirkland storm water system.

CONCRETE:

All foundation concrete (footings, stem walls, slabs, any retaining walls, etc.) shall have a minimum cement content of 5-1/2 sacks per cubic yard of concrete mix.

INSPECTIONS:

The recommendations of this report are **only valid** when key geotechnical aspects are inspected by this engineer during construction:

- Soil cuts
- Foundation sub-grade verification
- Any retaining wall, or rockery placement
- Any fill placement
- Subsurface drainage installation
- Temporary and permanent erosion control measures

SUMMARY:

The proposed 11-unit town home project at 11444 98th Ave. NE, Kirkland, Washington is **geotechnically viable** when constructed in accordance with the recommendations herein, compliance with City of Kirkland approved plans and requirements, and key geotechnical inspections during construction.

GEOTECHNICAL REVIEW OF FINAL PLANS:

At the time of this investigation and report, the October 2, 2006 Driscoll Architect plans were available for review.

As stated in this report, the dense, no excavation deeper than approximately 4 feet is proposed.

Prior to final permit issuance, this engineer should review the **final** project plans to verify compliance with the recommendations of this report.

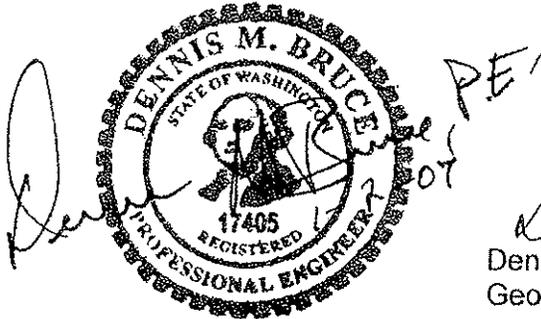
Upon satisfactory review, a "Statement of Minimal Risk" will be issued.

Seattle D.P.D.
c/o R.P.D.C.
January 2, 2007
Page 10

CLOSURE:

The findings and recommendations of this report were prepared in accordance with generally accepted professional engineering principles and practice. No other warranty, either express or implied, is made. The conclusions are based on the results of the field exploration and interpolation of subsurface conditions between explored locations. If conditions are encountered during construction that appear to be different than those described in this report, this engineer should be notified to observe the situation and review and verify or modify the recommendations.

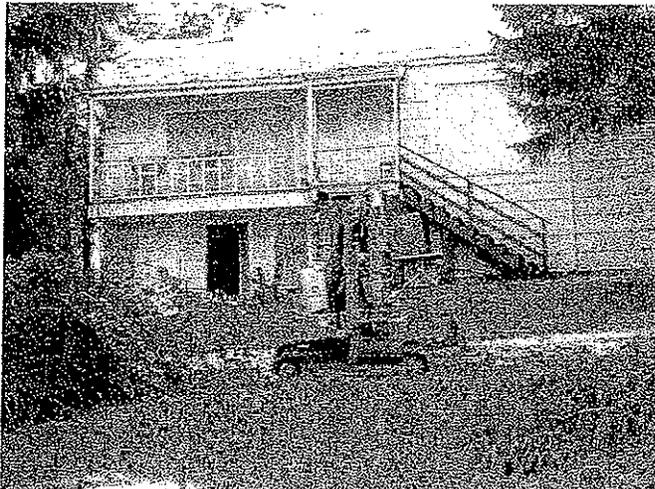
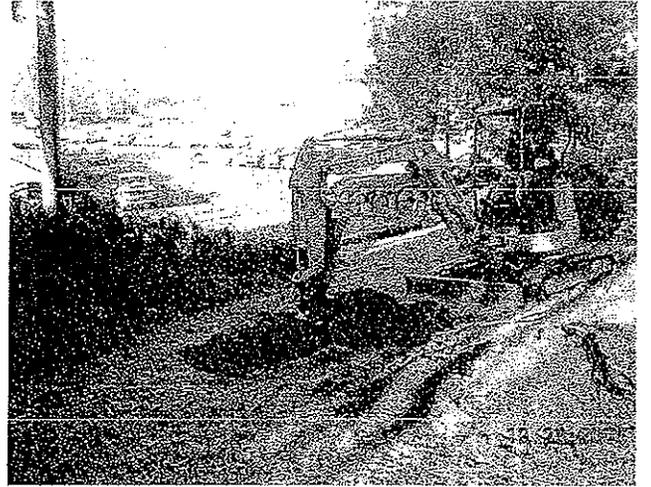
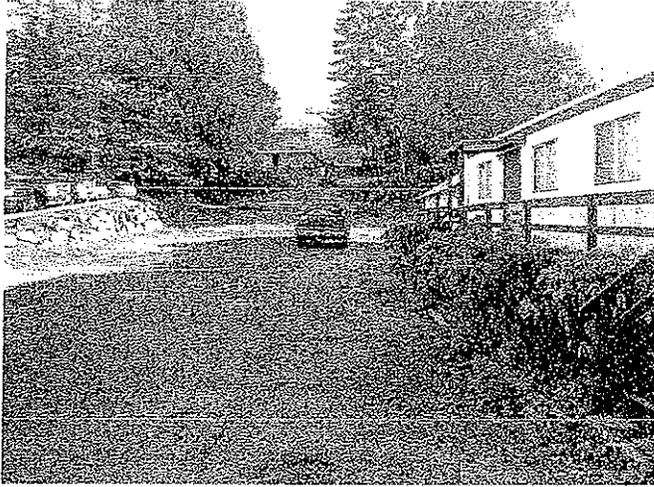
If there are any questions, do not hesitate to call.

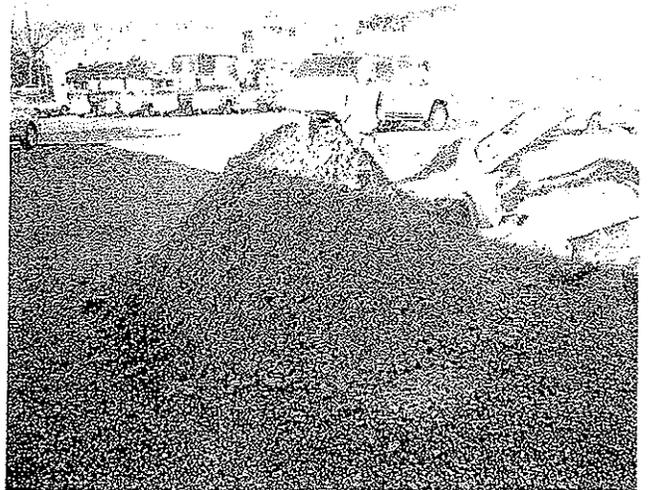
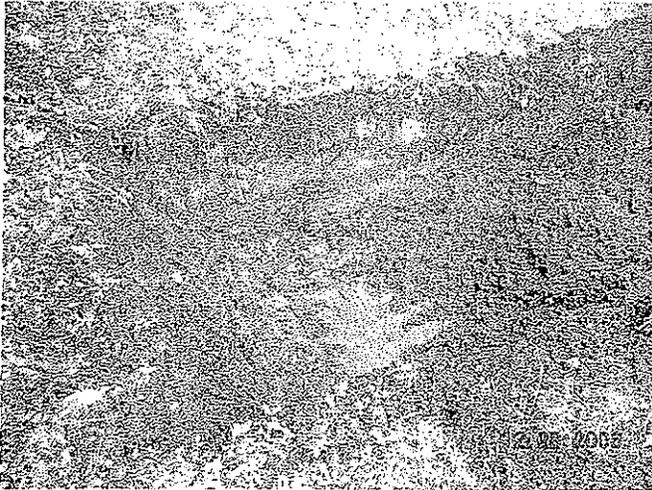
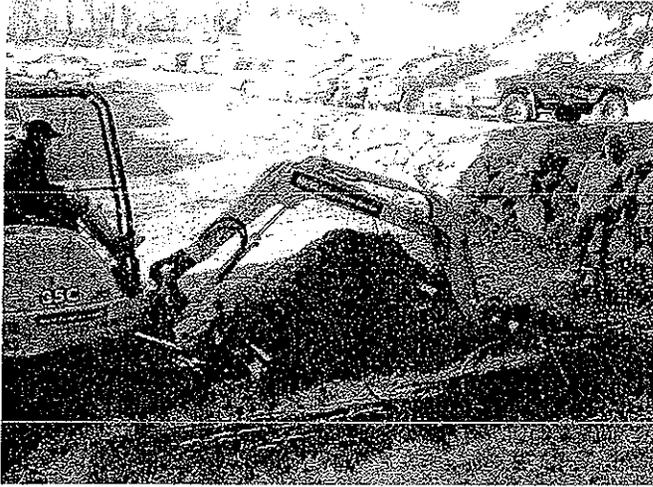


Dennis M. Bruce, P.E.
Dennis M. Bruce, P.E.
Geotechnical / Civil Engineer

DMB:abj

EXPRES 12/23 2007





Jan Jordan, RPA®
Lease Compliance Administrator
Telephone 469.759.5331
Facsimile 469.759.5586
E-Mail JordanJ@Michaels.COM

RECEIVED
APR 19 2007
AM PM
PLANNING DEPARTMENT
BY _____

Michaels
THE ARTS AND CRAFTS STORE®

April 16, 2007

Tony Leavitt
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

RE: Michaels Store, Kirkland, Washington
Notice of Application
Juanita Townhomes Preliminary Subdivision File. PSB06-00001

Dear Mr. Leavitt:

Michaels is concerned about the disruption to our business that could occur based upon the construction of this subdivision. We are concerned about short term congestion with construction vehicles and long term congestion with subdivision traffic on 116th Street. We are also concerned about the need for closures/detours on 116th Street when streets are cut and utility lines are run.

We would appreciate information about how these items will be addressed.

Sincerely,



Jan Jordan, RPA®
Lease Compliance Administrator

LAW OFFICES
LIVENGOOD, FITZGERALD & ALSKOG

A PROFESSIONAL LIMITED LIABILITY COMPANY

JAMES S. FITZGERALD*
DAVID A. ALSKOG
DAVID B. JOHNSTON
JOHN J. WHITE, JR.
DAVID J. SEELEY**
KEVIN B. HANSEN
THOMAS K. WINDUS+
GREGORY A. McBROOM
HUGH W. JUDD, P.S.+

PHILIP L. CARTER, RETIRED
ROBERT P. TOSSEM, RETIRED

RECEIVED
APR 19 2007
A/M 4:52 PM
PLANNING DEPARTMENT
BY TJA

121 THIRD AVENUE
POST OFFICE BOX 908
KIRKLAND, WASHINGTON 98083-0908

PHONE: (425) 822-9281
FAX: (425) 828-0908
E-mail: fitzgerald@lfa-law.com

*ALSO ADMITTED IN OREGON
**ALSO ADMITTED IN CALIFORNIA
+OF COUNSEL

GORDON A. LIVENGOOD (1921 - 2001)

April 19, 2007

Hand-delivered

Mr. Tony Leavitt
Project Planner
Planning and Community Development Department
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

Re: Juanita Townhomes Preliminary Subdivision File No. PSB06-00001

Dear Mr. Leavitt:

I am writing on behalf of Columbia Athletic Clubs, Inc. ("CAC"), owner and operator of the Juanita Bay Club immediately adjacent to the above-referenced subject property on the north side thereof. Please list me and my client as a party of record to this application and all other matters involving the subject property and forward all notices pertaining to the subject property to both of us. My client's name and address is:

Mr. Allen Oskoui
Vice President
Columbia Athletic Clubs, LLC
11400 98th Ave. N.E., Suite 300
Kirkland, WA 98033

This letter constitutes CAC's comments on the above-referenced application. CAC opposes the application for the reasons stated hereinbelow. However, CAC is in discussions with the applicant to mitigate the adverse impacts of the proposal and if agreement is reached, reserves the right to withdraw the objection.

It is my understanding that the applicant has acquired title to the subject property and thus is now the owner. As part of a settlement of a lawsuit between CAC and the applicant's

Mr. Tony Leavitt
April 19, 2007
Page 2

predecessor-in-interest, an easement was created on February 1, 1983 across the CAC property for the benefit of the subject property. At this time, access to the subject property was limited. The home on the east portion was (and is) accessed from 99th Place N.E., and the business property on the west portion was (and is) accessed from 98th Avenue N.E. through the CAC property. No traversing between 98th and 99th was or is possible. The easement was for ingress, egress, maneuvering and backing, but not for loading, unloading or parking. It was created expressly so that the owner of the subject property could access his business with the occasional trucks which serviced it.

Enclosed with this letter is an aerial photo which depicts the subject property and the CAC property. The buildings are clearly visible. The cross-hatched area is the location of the easement where the trucks used to need to turn-around. The proposed use of the subject property eliminates the need for such turn-around.

The easement was not and is not intended to be a thoroughfare between 98th Avenue N.E. and 99th Place N.E. Any attempt to make it so will be strongly resisted for a number of reasons, not the least of which are the following:

- The easement is limited for users solely of the subject property, and not for any others (such as neighbors to the east).
- A tremendous danger to CAC patrons exists if vehicles are allowed to use the easement as a thoroughfare. CAC patrons include children who are accompanying their caretakers to and from their vehicles and a serious safety risk would result.
- Such use would burden the easement and exceed its contemplated allowable use. The easement states it is "primarily for access purposes." When written, this meant access to the commercial structure on the west end of the subject property.
- The easement would be used as a shortcut to avoid the traffic on 98th Avenue N.E. and its intersection with N.E. 116th Street. This is not a permissible use of the easement.

We understand that the application is to subdivide the subject property into eleven (11) separate parcels, to be developed with eleven (11) townhome units. The DRB approval states that primary vehicular access is to be via 99th Place N.E., with secondary access to 98th Avenue N.E. via the easement. The secondary access is for the purpose of allowing emergency vehicle access to the subject property. It allows full use of the west parcel without the need for an emergency vehicle turnaround which would cause a loss of units.

Mr. Tony Leavitt
April 19, 2007
Page 3

Dealing with eleven different owners to trying and control use of the easement, given its limited purpose, would be difficult at best and impossible at worst. Assuring that the easement was only used by such owners would likewise be impossible without certain measures being taken.

CAC has additional objections based on its review of the plans. On the northeast corner of the subject property, it appears that the applicant seeks to grade on CAC's property. Consent for such grading or even temporary use for construction purposes has not been granted.

In addition, the grading for the roadway to provide access to the lots in the proposed plat would intrude on CAC's property. Permission for this has not been granted.

Accordingly, in view of the limited purpose of the easement, CAC opposes the application unless a condition is imposed which would require a fence and gate to be placed between the subject property and the CAC property, with the gate to be located at the point of ingress and egress between the respective properties on the easement premises. The gated access should be accessible only by emergency vehicles, with a Knox key. The fence and gate would be designed to prevent unauthorized parking by either the townhome owners or CAC patrons, to the benefit of both.

We have already verified with Public Works that such an arrangement would be acceptable.

The fact is that this is a significant and serious safety issue for both the patrons of CAC and the residents and guests of the subject property.

CAC has made an effort to meet with the developer and that effort continues. A modification of the easement and placement of a gate is under discussion. If acceptable arrangements are able to be made, then CAC believes that the impact and issues, although not eliminated, will be reduced to acceptable and tolerable levels. If an appropriate gate and fence is installed to CAC's satisfaction, agreement is likely to be reached on the other issues mentioned above. We will continue to work with the applicant to reach mutual agreement but if such is not reached, CAC's opposition will remain for the reasons stated.

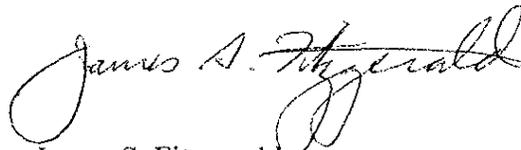
If you have any questions regarding the foregoing, please do not hesitate to contact me. Please advise when the hearing before the Hearing Examiner will be held.

Mr. Tony Leavitt
April 19, 2007
Page 4

In advance, thank you for your consideration of this matter.

Very truly yours,

LIVENGOOD, FITZGERALD
& ALSKOG, PLLC


James S. Fitzgerald

JSF:me

Enclosure

cc: Columbia Athletic Clubs, LLC

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LAW OFFICES

LIVENGOOD, FITZGERALD & ALSKOG

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JAMES S. FITZGERALD*
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PHILIP L. CARTER, RETIRED
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RECEIVED
JUN 27 2007
2:30 PM
PLANNING DEPARTMENT
BY TL

121 THIRD AVENUE
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KIRKLAND, WASHINGTON 98083-0908

PHONE: (425) 822-9281
FAX: (425) 828-0908
E-mail: fitzgerald@lfa-law.com

*ALSO ADMITTED IN OREGON
**ALSO ADMITTED IN CALIFORNIA
+OF COUNSEL

GORDON A. LIVENGOOD (1921 - 2001)

June 27, 2007

Ms. Nancy Cox
Environmental Coordinator
Planning and Community Development Department
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

Re: Juanita Townhomes Preliminary Subdivision File No. PSB06-00001—Appeal of
SEPA Determination of Non-Significance (“DNS”)

Dear Ms. Cox:

I am writing on behalf of Columbia Athletic Clubs, Inc. and its owners, as well as the Oskoui Family Limited Partnership (“OFLP”). Columbia Athletic Clubs, Inc. is the owner and operator of the Juanita Bay Club immediately adjacent to the above-referenced subject property on the north side thereof. OFLP is the owner of the property on which the Juanita Bay Club is located. The parties appealing will be collectively referred to herein as “CAC.”

CAC appeals the SEPA Determination of Non-Significance issued in the above-referenced file on June 12, 2007. The \$150 Appeal Fee is enclosed.

CAC is a party of record to this application and has standing to file this appeal. CAC’s business and property location is immediately adjacent to the applicant’s property and is burdened with an easement which the applicant desires to use as part of its access. CAC is specifically and directly affected by the proposed application and action. CAC’s contact information is as follows:

Mr. Allen Oskoui
Vice President
Columbia Athletic Clubs, LLC
11400 98th Ave. N.E., Suite 300
Kirkland, WA 98033

Ms. Nancy Cox
City of Kirkland Environmental Coordinator
June 27, 2007
Page 2 of 4

CAC has by previous letter stated its opposition to this application. If suitable mitigation of probable significant adverse environmental impacts can be agreed upon with the applicant, CAC reserves the right to withdraw this appeal.

CAC respectfully submits that the DNS Threshold Determination issued by the Responsible Official in this case is in error. The Determination ignores or fails to take proper account of probable significant adverse environmental impacts resulting from the applicant's plan for access to its property and use of that access by others unrelated to the applicant. In short, CAC's SEPA Appeal focuses on traffic—not just traffic generated by the project, but by traffic that can be reasonably expected to use the subject property as a street when the project is constructed. The plan will open a throughway that does not presently exist. A probable significant adverse environmental impact will result and this has not been properly or adequately addressed by either the applicant or the City.

Factual Background

CAC understands that the application is to subdivide the subject property into eleven (11) separate parcels, to be developed with eleven (11) town home units. The DRB approval states that primary vehicular access is to be via 99th Pl. N.E., with secondary access to 98th Ave. N.E. via an easement. The secondary access is for the purpose of allowing emergency vehicle access to the subject property. It allows full use of the west parcel without the need for an emergency vehicle turnaround which would cause a loss of units.

The Easement

As part of a settlement of a lawsuit between CAC and the applicant's predecessor-in-interest, an easement was created on February 1, 1983 across the CAC property for the benefit of the subject property. At this time, access to the subject property was limited. The home on the east portion was (and is) accessed from 99th Pl. N.E., and the business property on the west portion was (and is) accessed from 98th Ave. N.E. through the CAC property. No traversing between 98th and 99th was or is possible. The easement was for ingress, egress, maneuvering and backing, but not for loading, unloading or parking. It was created expressly so that the owner of the subject property could access his business with the occasional trucks which serviced it. CAC is of the opinion that the easement is so limited and may not be used as proposed by the applicant.

Adverse Environmental Impacts

The easement was not and is not intended to be a thoroughfare between 98th Ave. N.E.

Ms. Nancy Cox
City of Kirkland Environmental Coordinator
June 27, 2007
Page 3 of 4

and 99th Pl. N.E. The easement may not be used as proposed by the applicant. This means that the planned secondary access may not be available as desired by the applicant. Please be advised that CAC will resist any attempt to use the easement as planned by the applicant for a number of reasons, not the least of which are the following:

1. The easement is limited for users solely of the subject property, and not for any others (such as neighbors to the east).
2. A tremendous danger to CAC patrons exists if vehicles are allowed to use the easement as a thoroughfare. CAC patrons include children who are accompanying their caretakers to and from their vehicles and a serious safety risk would result.
3. Such use would burden the easement and exceed its contemplated allowable use. The easement states it is "primarily for access purposes." When written, this meant access to the commercial structure on the west end of the subject property.
4. The easement would be used a shortcut to avoid the traffic on 98th Ave. N.E. and its intersection with N.E. 116th St. This is not a permissible use of the easement.
5. Use of the easement as planned by the applicant would result in exacerbating an already difficult traffic situation in the vicinity of 98th Ave. N.E., N.E. 116th St. and 99th Pl. N.E. This has not been adequately addressed. The probable significant adverse impacts will arise out of the reasonably anticipated use by those not having permission for such use, such as vehicles desiring to avoid the intersection in order to access neighborhoods to the east and vice versa. These impacts have not been addressed and are both serious and dangerous.
6. The Traffic Concurrency analysis assumes 53 daily, 4 AM and 5 PM peak hour trips. CAC does not necessary contest this assumption. The SEPA Checklist represents that there were be 9.9 trips per unit per day, generating 108 trips. However, these assumptions are based solely on traffic generated by the anticipated residents of the proposed project. They do not account for or consider the fact that as proposed, a new road is effectively being opened in a very congested traffic area. That will result in a far different picture than the foregoing assumptions.
7. The fact is that this is a significant and serious safety issue for the patrons of

Ms. Nancy Cox
City of Kirkland Environmental Coordinator
June 27, 2007
Page 4 of 4

CAC, the residents and guests of the subject property, and the motoring public who will bear the impact of the improper and illegal easement use.

Mitigation Measures

CAC has previously gone on record that the only reasonable manner to mitigate the probable significant adverse environmental impacts identified above (and which CAC reserves the right to supplement), is to impose a condition which would require a fence and gate to be placed between the subject property and the CAC property, with the gate to be located at the point of ingress and egress between the respective properties on the easement premises. The gated access should be accessible only by emergency vehicles, with a Knox key. The fence and gate would be designed to prevent unauthorized parking by either the townhouse owners or CAC patrons, to the benefit of both. We have already verified with Public Works that such an arrangement would be acceptable.

We request a hearing as authorized by the Kirkland Municipal Code. Please advise when the hearing will be held.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

In advance, thank you.

Very truly yours,

LIVENGOOD, FITZGERALD
& ALSKOG, PLLC

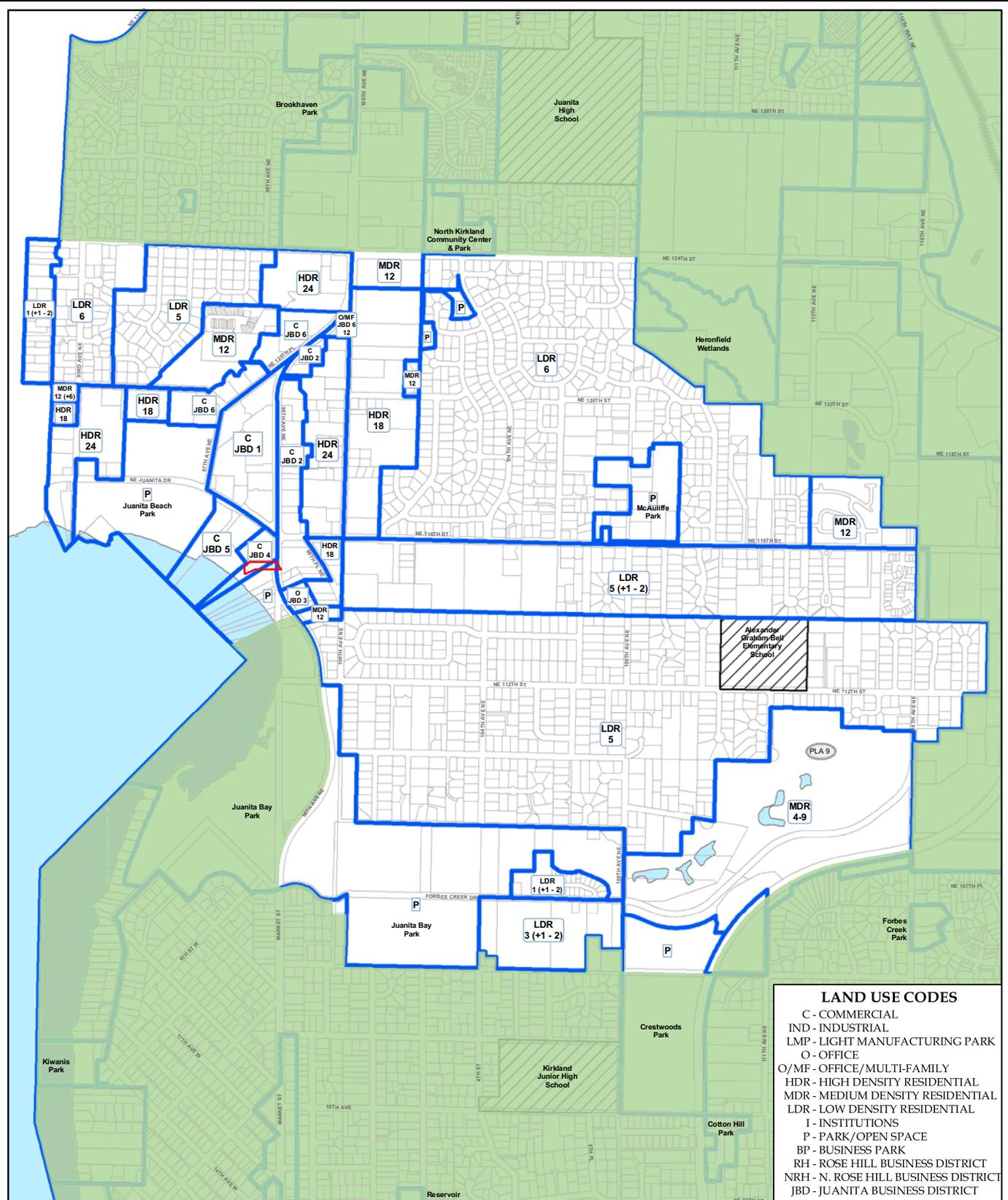


James S. Fitzgerald

JSF:me

Enclosure

cc: Columbia Athletic Clubs, LLC
Eric Shields
Steve Smith Development LLC



LAND USE CODES

- C - COMMERCIAL
- IND - INDUSTRIAL
- LMP - LIGHT MANUFACTURING PARK
- O - OFFICE
- O/MF - OFFICE/MULTI-FAMILY
- HDR - HIGH DENSITY RESIDENTIAL
- MDR - MEDIUM DENSITY RESIDENTIAL
- LDR - LOW DENSITY RESIDENTIAL
- I - INSTITUTIONS
- P - PARK/OPEN SPACE
- BP - BUSINESS PARK
- RH - ROSE HILL BUSINESS DISTRICT
- NRH - N. ROSE HILL BUSINESS DISTRICT
- JBD - JUANITA BUSINESS DISTRICT

South Juanita Neighborhood Land Use Map

ORDINANCE NO. 3974
ADOPTED by the Kirkland City Council
December 14, 2004

LAND USE BOUNDARIES	PUBLIC FACILITIES
PLANNED AREA NUMBER	PARCEL BOUNDARIES
SUBAREA BOUNDARY	LAND USE CODE DENSITY (UNITS/ ACRE)
TOTEM CENTER	NOTE: WHERE NOT SHOWN, NO DENSITY SPECIFIED * INDICATES CLUSTERED LOW DENSITY

Maps produced March 10, 2005.
Produced by the City of Kirkland. (c) 2005, the City of Kirkland, all rights reserved.
No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.



RESOLUTION R-4718

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE SUBDIVISION AND FINAL PLAT OF JUANITA BAY TOWNHOMES BEING DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. FSB08-00001 AND SETTING FORTH CONDITIONS TO WHICH SUCH SUBDIVISION AND FINAL PLAT SHALL BE SUBJECT.

WHEREAS, a subdivision and preliminary plat of Juanita Bay Townhomes was approved by the Hearing Examiner on July 31, 2007; and

WHEREAS, thereafter the Department of Planning and Community Development received an application for approval of subdivision and final plat, said application having been made by Steve Smith Development, the owner of the real property described in said application, which property is within a Juanita Business District 2 zone; and

WHEREAS, pursuant to the City of Kirkland's Concurrency Management System, KMC Title 25, a concurrency application has been submitted to the City of Kirkland, reviewed by the responsible Public Works official, the concurrency test has been passed, and a concurrency test notice issued; and

WHEREAS, pursuant to the State Environmental Policy Act, RCW 43.21C and the Administrative Guideline and local ordinance adopted to implement it, an environmental checklist has been submitted to the City of Kirkland, reviewed by the responsible official of the City of Kirkland, and a negative determination reached; and

WHEREAS, said environmental checklist and determination have been made available and accompanied the application throughout the entire review process; and

WHEREAS, the Director of the Department of Planning and Community Development did make certain Findings, Conclusions and Recommendations and did recommend approval of the subdivision and the final plat, subject to specific conditions set forth in said recommendation;

WHEREAS, the City Council, in regular meeting, did consider the environmental documents received from the responsible official, and

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

Section 1. The Findings, Conclusions and Recommendations of the Director of the Department of Planning and Community Development, filed in Department of Planning and Community Development File No. FSB08-00001, are hereby adopted by the Kirkland City Council as though fully set forth herein.

Section 2. Approval of the subdivision and the final plat of Juanita Bay Townhomes is subject to the applicant's compliance with the conditions set forth in the recommendations hereinabove adopted by the City Council.

Section 3. Nothing in this resolution shall be construed as excusing the applicant from compliance with all federal, state or local statutes, ordinances or regulations applicable to this subdivision, other than as expressly set forth herein.

Section 4. A copy of this resolution, along with the Findings, Conclusions and Recommendations hereinabove adopted shall be delivered to the applicant.

Section 5. A completed copy of this resolution, including Findings, Conclusions and Recommendations adopted by reference, shall be certified by the City Clerk who shall then forward the certified copy to the King County Department of Assessments.

PASSED in open meeting of the Kirkland City Council on the _____ day of _____, 20____.

SIGNED IN AUTHENTICATION thereof this ____ day of _____, 20____.

Mayor

Attest:

City Clerk

**CITY OF KIRKLAND****Planning and Community Development Department**
123 Fifth Avenue, Kirkland, WA 98033 425.587.3225
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Eric Shields, Planning Director

Date: July 22, 2008

Subject: Countywide Planning Policies

RECOMMENDATION

Approve the proposed resolution ratifying amendments to the King County Countywide Planning Policies adopted by King County Council Ordinance No. 16151 on June 23, 2008.

BACKGROUND DISCUSSION

The amendments adopted by the County Council were first adopted by the Growth Management Planning Council through the following seven motions:

- Motion No. 08-1 approved an adjustment of the Potential Annexation boundary between the cities of Federal Way and Milton;
- **Motion No. 08-2 approved an adjustment of the Potential Annexation boundary between the cities of Kirkland and Redmond (for the Bridle View area);**
- Motion No. 08-3 approved a revision to the Potential Annexation map for the North Highline area to indicate an overlap in the Potential annexation area of more than one city;
- Motion No. 07-1 approved adjustment of the Potential Annexation boundary of the City of Sammamish;
- Motion No. 07-2 approved a revision to the Potential Annexation map for the North Highline area to indicate an overlap in the Potential annexation area of more than one city (same as motion No. 08-3);
- Motion No. 07-4 approved adjustment of the Potential Annexation boundary of the City of Covington;
- Motion No. 08-4 approved amendments to policies LU-31 and LU-32 of the Countywide Planning Policies which only affect annexation of the North Highline area.

Pursuant to the amendment procedures established in the Countywide Planning Policies, the amendment will become effective when ratified by ordinance or resolution, within 90 days of adoption, by 30 percent of city and county governments representing 70 percent of the county population. The deadline for ratification is September 19, 2008.

Attachments:

1. Letter and supporting materials from King County



King County

July 15, 2008

The Honorable James Lauinger
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033-6189

Dear Mayor Lauinger:

We are pleased to forward for your consideration and ratification the enclosed amendments to the King County Countywide Planning Policies (CPP).

On June 23, 2008, the Metropolitan King County Council approved and ratified the following amendments on behalf of unincorporated King County. Copies of the King County Council staff report, ordinance and Growth Management Planning Council motions are enclosed to assist you in your review of these amendments.

- Ordinance No. 16151, GMPC Motion Nos. 08-1, 08-2, 08-3, 07-1, 07-2, 07-4 and 08-4 by the Growth Management Planning Council of King County

In accordance with the Countywide Planning Policies, FW-1, Step 9, amendments become effective when ratified by ordinance or resolution by at least 30 percent of the city and county governments representing 70 percent of the population of King County according to the interlocal agreement. A city will be deemed to have ratified the amendments to the Countywide Planning Policies unless, within 90 days of adoption by King County, the city takes legislative action to disapprove the amendments. **Please note that the 90-day deadline for the amendments is September 19, 2008.**

RESOLUTION R-4719

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RATIFYING AMENDMENTS TO THE KING COUNTY COUNTYWIDE PLANNING POLICIES.

WHEREAS, the King County Council adopted the original King County Countywide Planning Policies in July 1992; and;

WHEREAS, the Growth Management Planning Council (GMPC) was established by interlocal agreement in 1991 to provide collaborative policy development of King County Countywide Planning Policies; and

WHEREAS, the 1991 interlocal agreement requires ratification of the King County Countywide Planning Policies and amendments to the Countywide Planning Policies by 30% of the jurisdictions representing at least 70% of the population of King County, within 90 days of adoption by the King County Council; and

WHEREAS, the King County Growth Management Planning Council passed motions 08-1, 08-2 and 08-3 on April 16, 2008, motion 07-1 on June 20, 2007, motions 07-2 and 07-4 on October 3, 2007, and motion 08-4 on June 18, 2008, all of which recommend amendments to the King County Countywide Planning Policies; and

WHEREAS, on June 24, 2008, the Metropolitan King County Council adopted Ordinance 16151 approving amendments to the King County Countywide Planning Policies recommended by the GMPC.

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

Section 1. The Kirkland City Council hereby ratifies King County Ordinance 16151 amending the King County Countywide Planning Polices.

Passed by majority vote of the Kirkland City Council in open meeting this 5th day of August, 2008.

Mayor

ATTEST:

City Clerk



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Katy Coleman, Development Engineering Analyst
Daryl Grigsby, Public Works Director

Date: July 16, 2008

Subject: RESOLUTION TO RELINQUISH THE CITY'S INTEREST IN A PORTION OF UNOPENED RIGHT-OF-WAY

RECOMMENDATION:

It is recommended that the City Council adopt the enclosed Resolution relinquishing interest in a portion of unopened alley being identified as the east 8 feet of the unopened alley abutting the west boundary of Lots 2, 3, 4, and 5, Block 56, Blewett's 1st Addition to Kirkland, according to the plat thereof recorded in Volume 6 of Plats, page 82, records of King County, Washington.

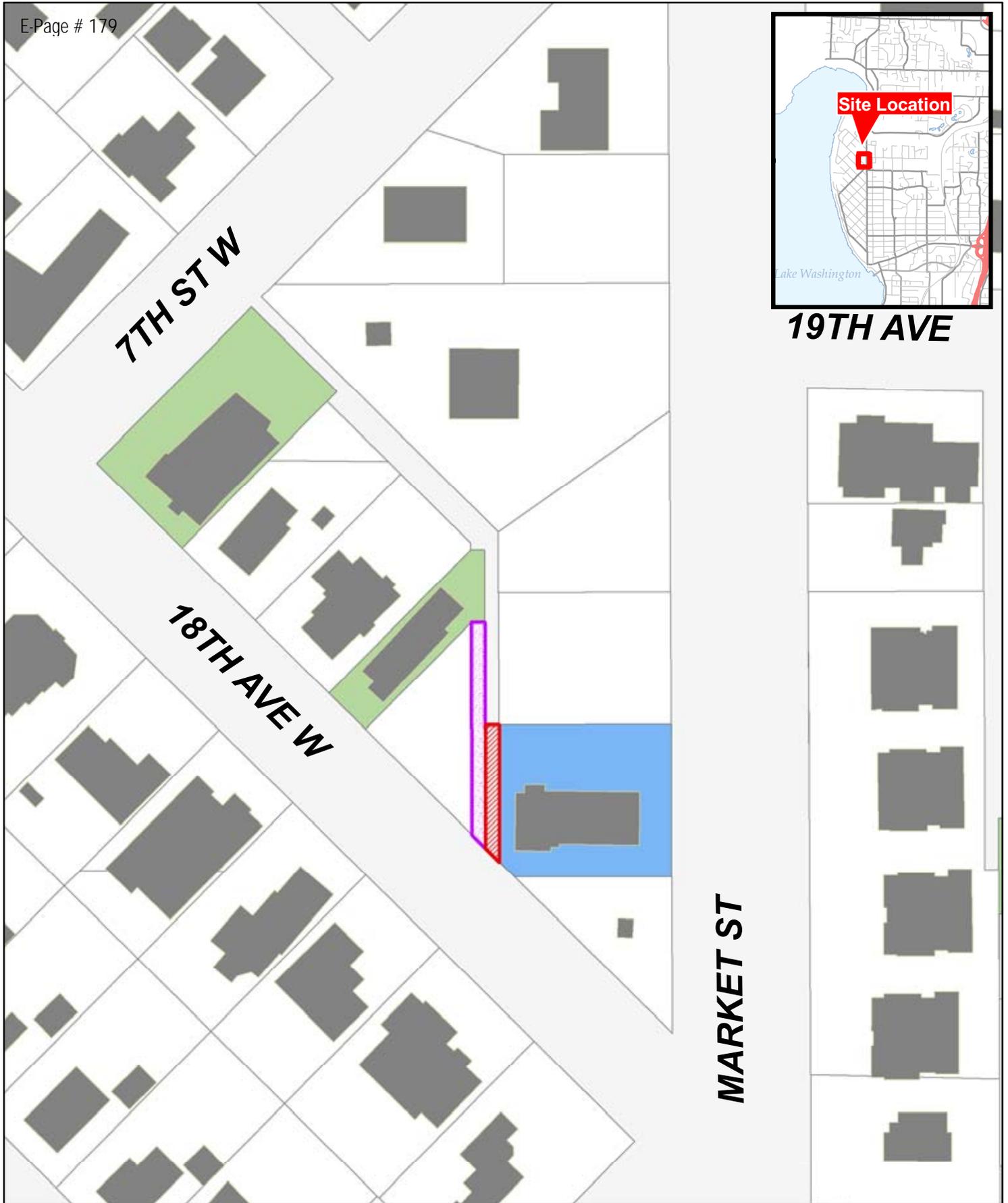
BACKGROUND DISCUSSION:

The unopened portion of the alley abutting the property of 1811 Market Street was originally platted and dedicated in 1890 as Blewett's 1st Addition to Kirkland. The Five Year Non-User Statute provides that any street or right-of-way platted, dedicated, or deeded prior to March 12, 1904, which was outside City jurisdiction when dedicated and which remains unopened or unimproved for five continuous years is then vacated. The subject right-of-way has not been opened or improved.

Cedomir and Lucia Iovanovici, the owners of the property abutting this right-of-way, submitted information to the City claiming the right-of-way was subject to the Five Year Non-User Statute (Vacation by Operation of Law), Laws of 1889, Chapter 19, Section 32. After reviewing this information, the City Attorney believes the approval of the enclosed Resolution is permissible.

Attachments: Vicinity Map
Resolution

Copy: Rob Jammerman, Development Engineering Manager

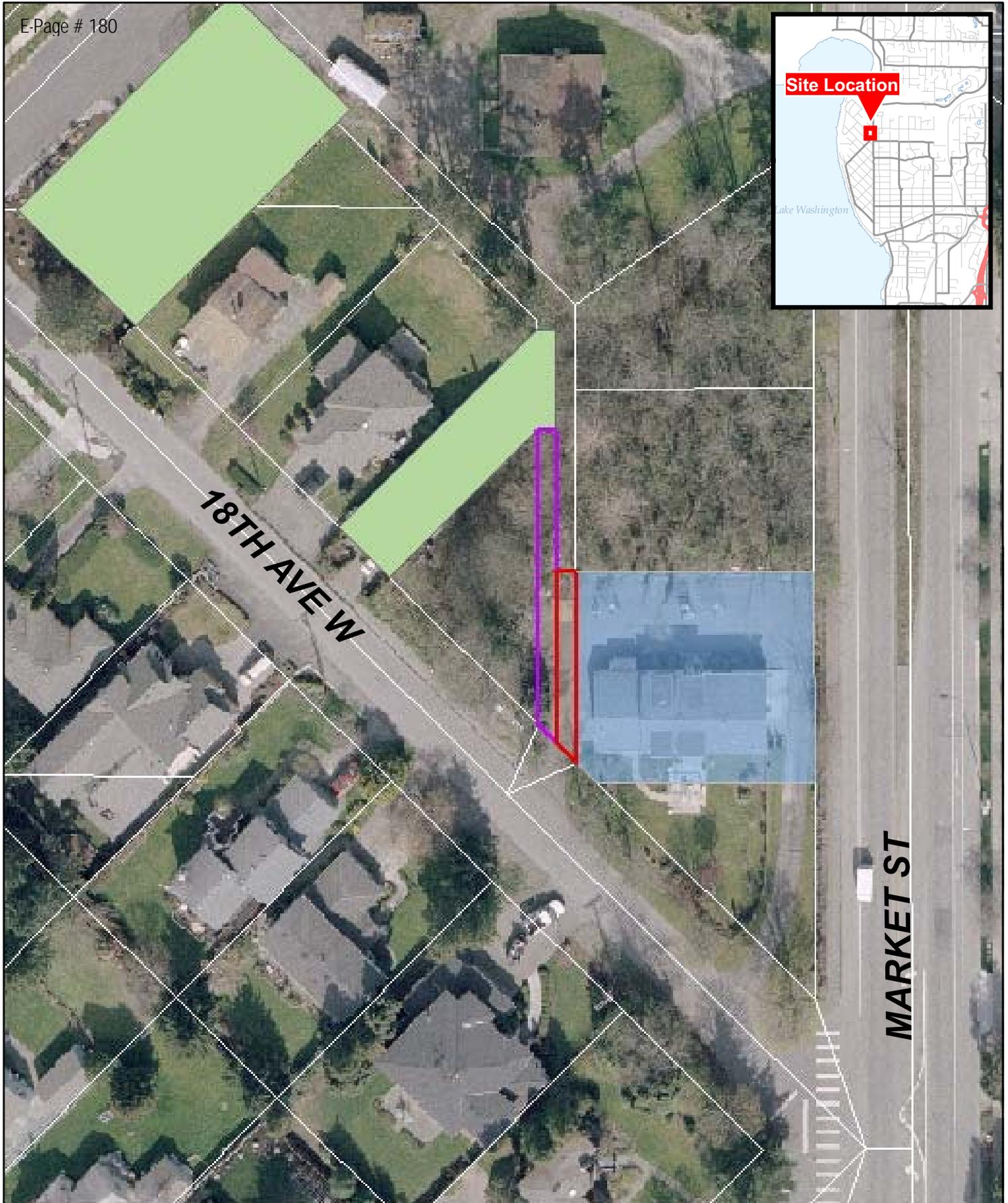
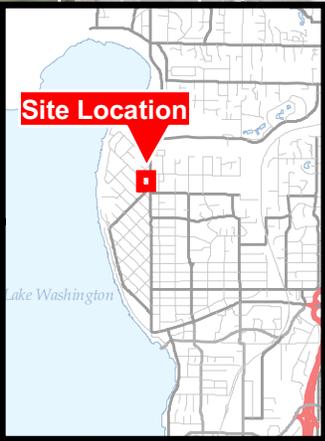


Iovanovici Property Non-User Vacation 1811 Market St

- Iovanovici Property
- Pedestrian Easement
- Proposed Vacation
- Building Outline
- Other Pending Vacation
- Granted Non-User Vacations



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**Iovanovici Property Non-User Vacation
1811 Market St**

- Iovanovici Property
- Pedestrian Easement
- Granted Non-User Vacations
- Proposed Vacation
- Other Pending Vacations



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RESOLUTION R-4720

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELINQUISHING ANY INTEREST THE CITY MAY HAVE IN AN UNOPENED RIGHT-OF-WAY AS DESCRIBED HEREIN AND REQUESTED BY PROPERTY OWNER CEDOMIR AND LUCIA IOVANOVICI

WHEREAS, the City has received a request to recognize that any rights to the land originally dedicated in 1890 as right-of-way abutting a portion of the Blewett's 1st Addition to Kirkland have been vacated by operation of law; and

WHEREAS, the Laws of 1889, Chapter 19, Section 32, provide that any county road which remains unopened for five years after authority is granted for opening the same is vacated by operation of law at that time; and

WHEREAS, the area which is the subject of this request was annexed to the City of Kirkland, with the relevant right-of-way having been unopened; and

WHEREAS, in this context it is in the public interest to resolve this matter by agreement,

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

Section 1. As requested by the property owners Cedomir and Lucia Iovanovici, the City Council of the City of Kirkland hereby recognizes that the following described right-of-way has been vacated by operation of law and relinquishes all interest it may have, if any, in the portion of right-of-way described as follows:

A portion of unopened alley being identified as the east 8 feet of the unopened alley abutting the west boundary of Lot 2, 3, 4, and 5, Block 56, Blewett's 1st Addition to Kirkland, according to the plat thereof recorded in Volume 6 of Plats, page 82, records of King County, Washington.

Section 2. This resolution does not affect any third party rights in the property, if any.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2008

Signed in authentication thereof this ____ day of _____, 2008.

MAYOR

Attest:

City Clerk



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Katy Coleman, Development Engineering Analyst
Daryl Grigsby, Public Works Director

Date: July 16, 2008

Subject: RESOLUTION TO RELINQUISH THE CITY'S INTEREST IN A PORTION OF UNOPENED RIGHT-OF-WAY

RECOMMENDATION:

It is recommended that the City Council adopt the enclosed Resolution relinquishing interest in a portion of unopened alley being identified as the south 8 feet of the unopened alley abutting the north boundary of the following described property: Lots 37 to 41, inclusive, and the west half of Lot 42, Block 21, Lake Avenue Addition to Kirkland, according to the plat thereof recorded in Volume 6 of Plats, page 86, records of King County, Washington.

BACKGROUND DISCUSSION:

The unopened portion of the alley abutting the property of 642/644 12th Avenue was originally platted and dedicated in 1890 as Lake Avenue Addition to Kirkland. The Five Year Non-User Statute provides that any street or right-of-way platted, dedicated, or deeded prior to March 12, 1904, which was outside City jurisdiction when dedicated and which remains unopened or unimproved for five continuous years is then vacated. The subject right-of-way has not been opened or improved.

Douglas J. and Linda M. Jamieson, the owners of the property abutting this right-of-way, submitted information to the City claiming the right-of-way was subject to the Five Year Non-User Statute (Vacation by Operation of Law), Laws of 1889, Chapter 19, Section 32. After reviewing this information, the City Attorney believes the approval of the enclosed Resolution is permissible.

Attachments: Vicinity Maps
Resolution

Copy: Rob Jammerman, Development Engineering Manager

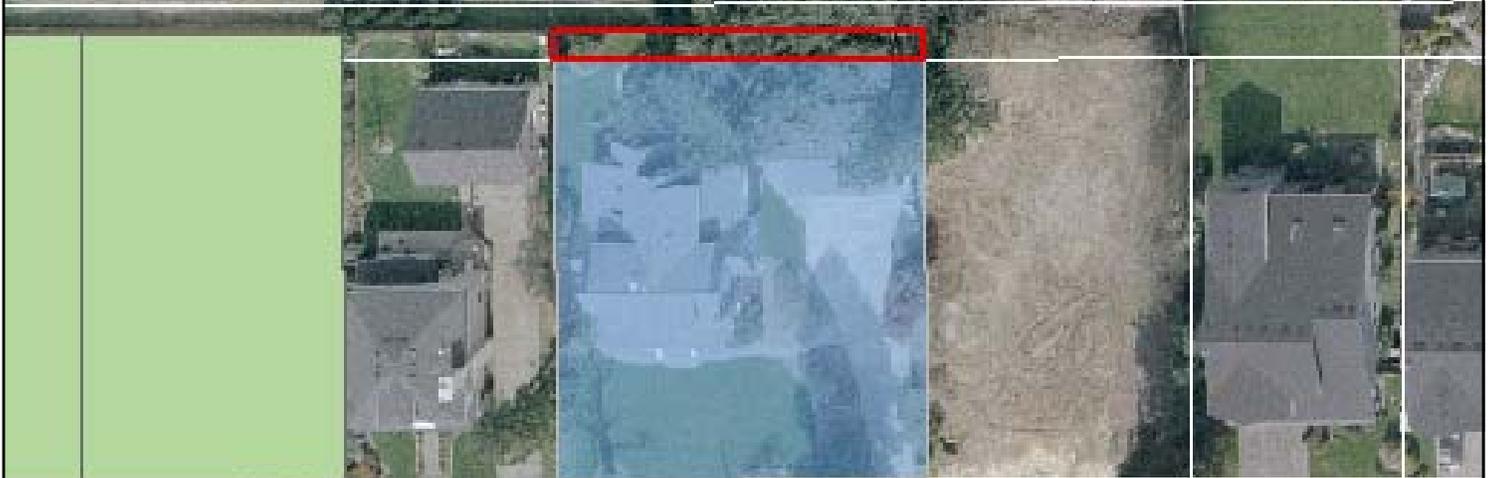
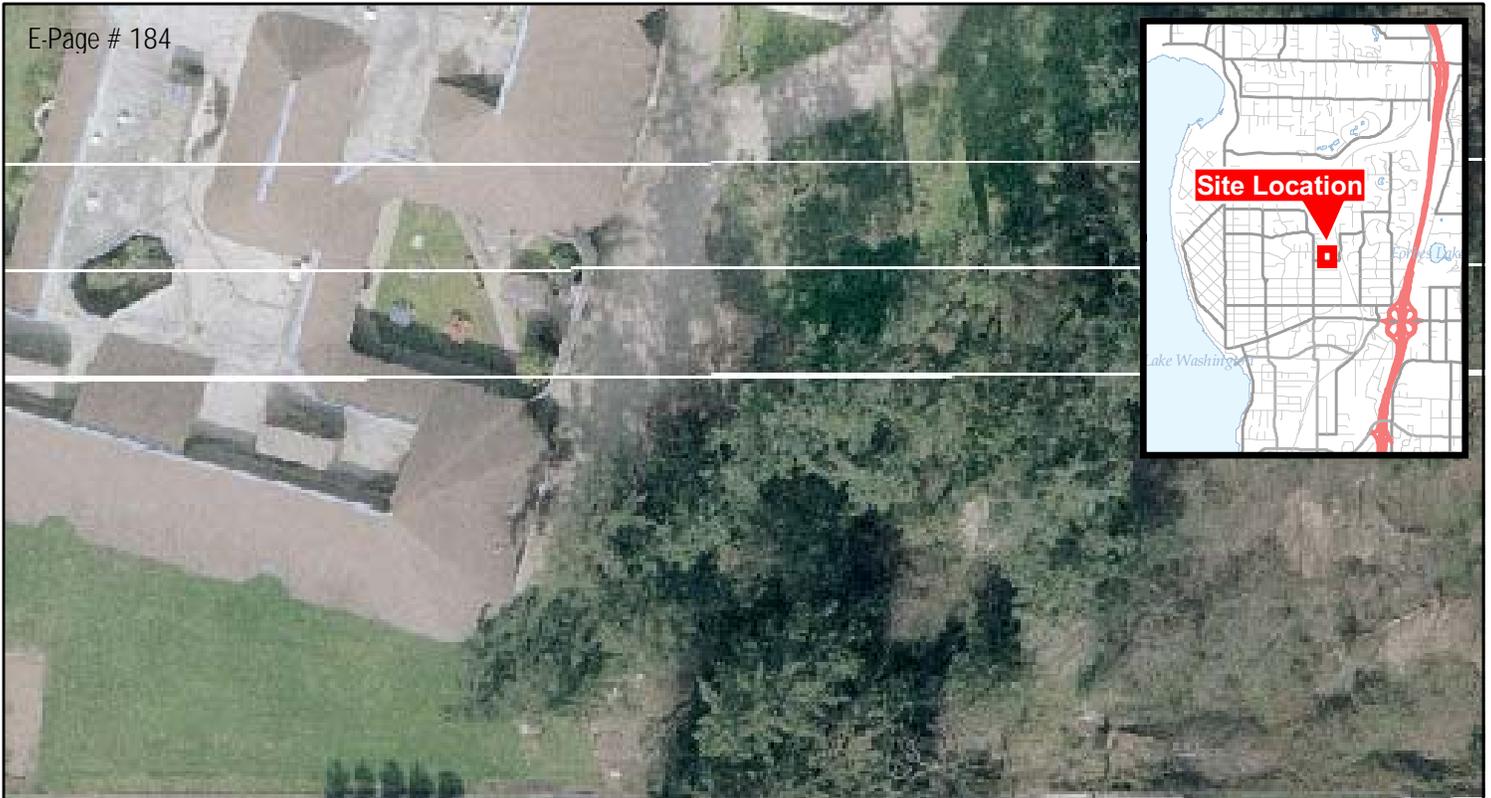
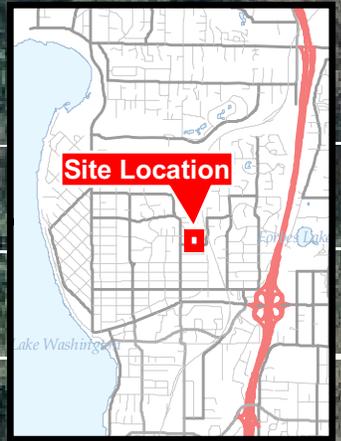


Jamieson Residence Non-User Vacation 642 12th Ave

- | | |
|---|---|
|  Jamieson Residence |  Pedestrian Easement |
|  Proposed Vacation |  Building Outline |
|  Granted Non-User Vacations | |



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Jamieson Residence Non-User Vacation 642 12th Ave

- Jamieson Residence
- Pedestrian Easement
- Proposed Vacation
- Granted Non-User Vacations



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RESOLUTION R-4721

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELINQUISHING ANY INTEREST THE CITY MAY HAVE IN AN UNOPENED RIGHT-OF-WAY AS DESCRIBED HEREIN AND REQUESTED BY PROPERTY OWNERS DOUGLAS J. AND LINDA M. JAMIESON

WHEREAS, the City has received a request to recognize that any rights to the land originally dedicated in 1890 as right-of-way abutting a portion of the Lake Avenue Addition to Kirkland have been vacated by operation of law; and

WHEREAS, the Laws of 1889, Chapter 19, Section 32, provide that any county road which remains unopened for five years after authority is granted for opening the same is vacated by operation of law at that time; and

WHEREAS, the area which is the subject of this request was annexed to the City of Kirkland, with the relevant right-of-way having been unopened; and

WHEREAS, in this context it is in the public interest to resolve this matter by agreement,

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

Section 1. As requested by the property owners Douglas J. and Linda M. Jamieson, the City Council of the City of Kirkland hereby recognizes that the following described right-of-way has been vacated by operation of law and relinquishes all interest it may have, if any, in the portion of right-of-way described as follows:

A portion of unopened alley being identified as the south 8 feet of the unopened alley abutting the north boundary of the following described property: Lots 37 to 41, inclusive, and the west half of Lot 42, Block 21, Lake Avenue Addition to Kirkland, according to the plat thereof recorded in Volume 6 of Plats, page 86, records of King County, Washington.

Section 2. This resolution does not affect any third party rights in the property, if any.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2008

Signed in authentication thereof this _____ day of _____, 2008.

MAYOR

Attest:

City Clerk



CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Katy Coleman, Development Engineering Analyst
Daryl Grigsby, Public Works Director

Date: July 16, 2008

Subject: RESOLUTION TO RELINQUISH THE CITY'S INTEREST IN A PORTION OF UNOPENED RIGHT-OF-WAY

RECOMMENDATION:

It is recommended that the City Council adopt the enclosed Resolution relinquishing interest in a portion of unopened alley being identified as the west 8 feet of the unopened alley abutting the east boundary of Lot 25, Block 56, Blewett's 1st Addition to Kirkland, according to the plat thereof recorded in Volume 6 of Plats, page 82, records of King County, Washington.

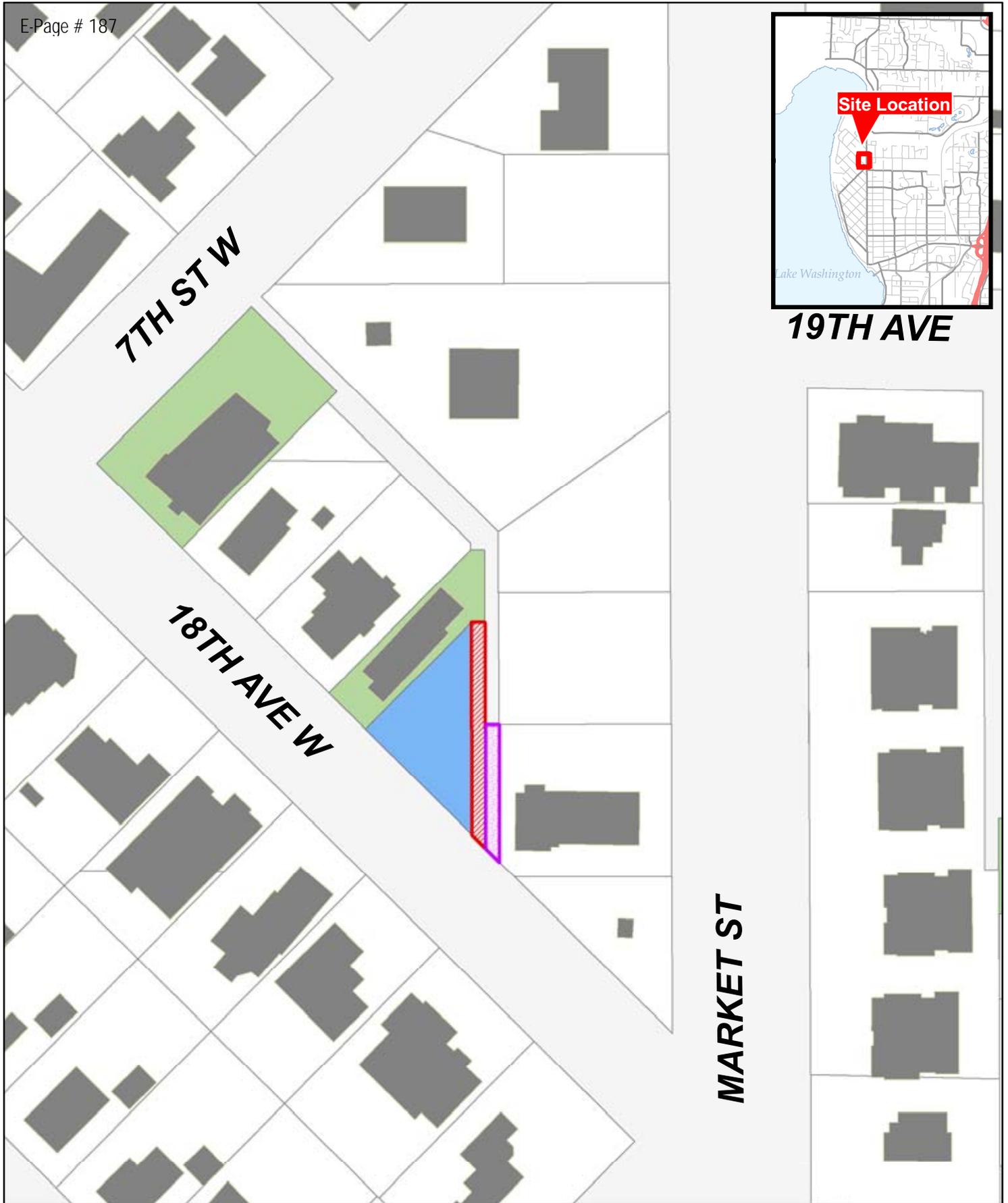
BACKGROUND DISCUSSION:

The unopened portion of the alley abutting the vacant tax parcel in the 600 block of 18th Ave W was originally platted and dedicated in 1890 as Blewett's 1st Addition to Kirkland. The Five Year Non-User Statute provides that any street or right-of-way platted, dedicated, or deeded prior to March 12, 1904, which was outside City jurisdiction when dedicated and which remains unopened or unimproved for five continuous years is then vacated. The subject right-of-way has not been opened or improved.

Thomas Wolter, the owner of the property abutting this right-of-way, submitted information to the City claiming the right-of-way was subject to the Five Year Non-User Statute (Vacation by Operation of Law), Laws of 1889, Chapter 19, Section 32. After reviewing this information, the City Attorney believes the approval of the enclosed Resolution is permissible.

Attachments: Vicinity Map
Resolution

Copy: Rob Jammerman, Development Engineering Manager



Wolter Property Non-User Vacation 600 Block 18th Ave W

- | | | | |
|--|------------------------|---|----------------------------|
|  | Wolter Property |  | Pedestrian Easement |
|  | Proposed Vacation |  | Granted Non-User Vacations |
|  | Other Pending Vacation |  | Building Outline |

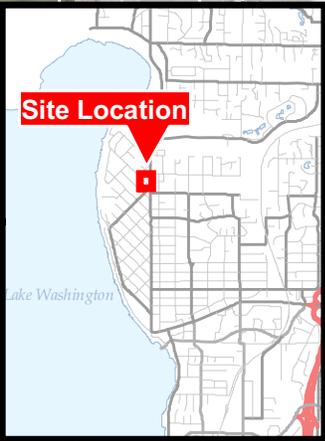


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Printed July 8, 2008 - Public Works GIS



Wolter Property Non-User Vacation 600 Block 18th Ave W

- Wolter Property
- Pedestrian Easement
- Proposed Vacation
- Granted Non-User Vacations
- Other Pending Vacations



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RESOLUTION R-4722

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELINQUISHING ANY INTEREST THE CITY MAY HAVE IN AN UNOPENED RIGHT-OF-WAY AS DESCRIBED HEREIN AND REQUESTED BY PROPERTY OWNER THOMAS WOLTER

WHEREAS, the City has received a request to recognize that any rights to the land originally dedicated in 1890 as right-of-way abutting a portion of the Blewett's 1st Addition to Kirkland have been vacated by operation of law; and

WHEREAS, the Laws of 1889, Chapter 19, Section 32, provide that any county road which remains unopened for five years after authority is granted for opening the same is vacated by operation of law at that time; and

WHEREAS, the area which is the subject of this request was annexed to the City of Kirkland, with the relevant right-of-way having been unopened; and

WHEREAS, in this context it is in the public interest to resolve this matter by agreement,

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

Section 1. As requested by the property owner Thomas Wolter, the City Council of the City of Kirkland hereby recognizes that the following described right-of-way has been vacated by operation of law and relinquishes all interest it may have, if any, in the portion of right-of-way described as follows:

A portion of unopened alley being identified as the west 8 feet of the unopened alley abutting the east boundary of Lot 25, Block 56, Blewett's 1st Addition to Kirkland, according to the plat thereof recorded in Volume 6 of Plats, page 82, records of King County, Washington.

Section 2. This resolution does not affect any third party rights in the property, if any.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2008

Signed in authentication thereof this _____ day of _____, 2008.

MAYOR

Attest:

City Clerk



CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Tracey Dunlap, Director of Finance and Administration

Date: July 18, 2008

Subject: Remittance of Concours d'Elegance Admissions Tax Receipts to Evergreen Hospital

RECOMMENDATION:

Approve the remittance of the Concours d'Elegance admissions tax receipts to the Evergreen Hospital Women's and Children's uncompensated care program.

BACKGROUND DISCUSSION:

The City Council received the request described below from the Concours d' Elegance organizers at the July 15th Council meeting and requested that an action item be brought back to the City Council.

The Kirkland Concours d'Elegance was founded in 2003 by four local business people whose mission was to give back to the community by creating a unique event that could not be duplicated in the Pacific Northwest. The event provides a venue to see some of the finest and most unique cars in the world while at the same time raising money to help seriously ill children. This event has been growing each year, and currently raises over \$200,000 annually for Evergreen Women's Health Center and Children's Hospitals.

All organizations that charge admission to a Kirkland event are required to collect and remit admissions tax to the City. The admission tax due is based on the established ticket price at a rate of five percent. Following the event, the admissions tax is remitted to the city. In this case, Concours organizers request that the City remit the admissions tax receipts associated with their event to Evergreen Hospital's Women and Children's uncompensated care program as part of Evergreen Hospital's share of the proceeds from the event.

FISCAL NOTE

Source of Request

Tracey Dunlap, Director of Finance & Administration

Description of Request

Request for approval to remit approximately \$3,000 from the Concours d'Elegance admissions tax receipts to the Evergreen Hospital Women's and Children's uncompensated care program. The admissions tax receipts amount is based on the organizer's estimate based on the attendance in prior years. Full payment will reflect actual admissions tax revenue received.

Legality/City Policy Basis

Fiscal Impact

One-time remittance of approximately \$3,000 to be funded from admissions tax revenue collected at the Concours d'Elegance. The full payment will reflect the actual admissions tax received.

Recommended Funding Source(s)

	Description	2008 Est End Balance	Prior Auth. 2007-08 Uses	Prior Auth. 2007-08 Additions	Amount This Request	Revised 2008 End Balance	2008 Target
	Reserve						
Revenue/Exp Savings							
Other Source	All organizers that charge admission to a Kirkland event are required to collect and remit admissions tax to the City. The admission tax due is five percent of the established ticket price. The Concours d'Elegance organizer has estimated that approximately \$3,000 would be collected at this year's event based on attendance records of prior years.						

Other Information

Prepared By	Sandi Hines, Financial Planning Manager	Date	July 21, 2008
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CITY OF KIRKLAND
 Department of Finance & Administration
 123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
 www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Barry Scott, Purchasing Agent

Date: July 22, 2008

Subject: REPORT ON PROCUREMENT ACTIVITIES FOR COUNCIL MEETING OF AUGUST 5, 2008

This report is provided to apprise the Council of recent and upcoming procurement activities where the cost is estimated to be in excess of \$50,000. This report also includes the process being used to determine the award of the contract.

Following is a report on the City's major procurement activities initiated since July 2, 2008:

	Project	Process	Estimate/Price	Status
1.	Police Audio Logging System	Cooperative Purchase	\$90,000	Purchased from Western States Contracting Alliance (WSCA) contract. This system is being purchased with E-911 funds and will ultimately be transferred to NORCOM.
2.	Broadcast Automation System	RFP	\$85,000-\$200,000 (Final cost will depend on how many components of our existing system can be integrated into a new system.)	RFP to be issued on 7/25. Proposals due on 8/22.

Please contact me if you have any questions regarding this report.

**CITY OF KIRKLAND****Department of Finance & Administration****123 Fifth Avenue, Kirkland, WA 98033 425.587.3100****www.ci.kirkland.wa.us**

MEMORANDUM

To: David Ramsay, City Manager

From: Tracey Dunlap, Director of Finance and Administration

Date: July 23, 2008

Subject: Tax Burden Study

At the May 29, 2008 Budget Study Session, the City Council approved contracting with Berk & Associates to update Kirkland's 2001 Tax Burden Study. The goal of the update is to provide data and interpretation to support the City of Kirkland's upcoming budget discussions. The attached report contains a Summary of Findings, followed by a detailed compendium of analytic findings containing many charts and figures that serve as the basis for the findings.

The study addresses two key concepts: tax contribution and tax burden. *Tax contribution* addresses the amount that various activities contribute to Kirkland's overall fiscal well-being and *tax burden* is the amount that individual taxpayers bear or pay of each tax category. Both perspectives are informative as most financially-strong cities are strong because they have a robust urban fabric that relies on the interconnections between residents and businesses. Kirkland is attractive to residents because of proximity to jobs and amenities, including a broad range of retail, restaurants, and other commercial services. At the same time, Kirkland is attractive to a broad range of businesses because of its strong resident base and talented workforce.

The key findings from the study include:

- The vast majority of City general fund tax revenues come from three sources: sales tax, property tax, and utility tax. In 2007, these sources combined to generate nearly \$34 million of Kirkland's General Fund revenues of \$54 million. Kirkland's expansion of business license fees and addition of the license fee surcharge has received a good deal of attention in recent years, but in contrast to the above sources, revenues from business license fees and surcharge are quite modest—roughly \$1.5 million.
- There has been a shift in tax contributions from commercial toward residential from 1997 to 2007. In 1997, Kirkland's residents contributed 50% towards the General Fund revenues discussed above. That share increased to 59% by 2007. Conversely, the share contributed by commercial payers decreased from 50% to 41%. There were three major reasons behind the shift:
 - Shifts of property tax burden onto households as residential values have increased more than commercial values;
 - Larger increases in utility tax payments by households; and
 - Increases in the overall number of households outpaced increases in commercial activity – population has increased while employment has decreased over this period.
- Overall, Kirkland has taken three significant steps to raise taxes in recent years to maintain and/or enhance City services: (1) tapped \$1.8 million of its banked property tax capacity; (2) increased its business license fee and added a business license surcharge; and (3) increased selected utility tax rates. Generally, households and small businesses have equally shared in the increased City tax burden. Large and medium-

sized businesses have seen a much more modest impact from these changes. The more modest increase on mid- to large-size businesses is due to the structure of the City's business license fee and surcharge.

- Kirkland's 2001 Tax Burden Study found that Kirkland had lower tax burdens than most, if not all, of its peers. Due to the actions discussed above, tax burdens in Kirkland now tend to fall in the middle of the range. Some peer cities have higher taxes, some have lower. Compared with the cities of Bellevue, Redmond, Renton, Kent, and Bothell, total taxes paid in Kirkland are somewhat more skewed towards residential payers than commercial payers.
- The City's revenues have been able to keep up with demands for City services through policy choices to raise taxes and the natural growth in its core tax bases (taxable retail sales, utility revenues, and new construction assessed value). Some of the factors that will present fiscal risks for the City in the future include:
 - The growth in the City's sales tax base has been significantly - concentrated in auto sales and construction activity, two sectors that can be volatile, subject to local economic conditions.
 - The majority of the City's banked property tax capacity has been used and so the ability of property taxes to grow will be limited to 1% plus the impact of new construction.
 - The business surcharge revenues are tied primarily to the number of businesses in the City and thus will likely grow at very modest rates absent changes in the fees or structure (e.g., a charge per employee/FTE or B&O tax).
 - Outside of construction and auto sales, sales taxes have grown modestly, and in some instances remained largely unchanged over time, suggesting that the City's core commercial base is not growing. If this continues, the trend in contributions will likely continue to put larger shares of the fiscal responsibility on the City's residential base.

The consultant's from Berk & Associates will be attending the August 5 City Council meeting to present these findings and respond to questions.

Kirkland Tax Burden Study Update



Draft Findings DISCUSSION MATERIALS



July 23, 2008

Key Findings

This 2008 *Tax Burden Study* seeks to support Kirkland's future budget discussions by shedding light on a series of key questions regarding tax contributions and tax burdens in Kirkland. In their most distilled form, we present key findings of the study in the form of answers to six questions:

Where do Kirkland's revenues come from?

The vast majority of City tax revenues come from three sources: sales tax, property tax, and utility tax. In 2007, these sources combined to generate nearly \$33 million of Kirkland's General Fund revenues.

Kirkland's expansion of business license fees and addition of the license fee surcharge has received a good deal of attention in recent years, but in contrast to the above sources, revenues from business license fees are quite modest—roughly \$1.5 million.

Has the City seen a shift in residential versus commercial tax contributions?

Yes. From 1997 to 2007, resident's share of contribution has increased significantly. Berk & Associates estimates that, in 1997, Kirkland's residents contributed 50% towards the General Fund revenues discussed above. That share increased to 59% by 2007. Conversely, the share contributed by commercial payers decreased from 50% to 41%. There were three major reasons behind the shift:

- Shifts of property tax burden onto households as residential values have increased more than commercial values;

- Larger increases in utility tax payments by households; and
- Increases in the overall number of households outpaced increases in commercial activity -- population has increased while employment has decreased over this period.

While the overall residential contribution share has increased, what has happened to individual taxpayer burdens in recent years?

Overall, Kirkland has taken three significant steps to raise taxes in recent years to maintain and/or enhance City services:

- It tapped \$1.8 million of its banked property tax capacity;
- It increased its business license fee from \$25 per year to \$100 per year, and it added a business license surcharge; and
- It increased selected utility tax rates.

Generally, households and small businesses have equally shared in the increased City tax burden. Large and medium-sized businesses have seen a much more modest impact from these changes. From 1997 to 2007, a single family household and a small business might have seen an increase in City taxes in excess of 30% (in inflation-adjusted terms). Medium and large businesses, on the other hand, might have seen increases ranging 2% to 10%.

The more modest increase on mid- to large-size businesses is due to the structure of the City's business license fee and surcharge. On a per-employee basis, the surcharge is much smaller for a business with 130 employees (\$20

Key Findings

per employee) than it is for a business with 7 employees (in excess of \$100 per employee).

How do Kirkland's tax burdens compare with those found in other cities?

Kirkland's 2001 *Tax Burden Study* found that Kirkland had lower tax burdens than most, if not all, of its peers. Due to the actions discussed above, tax burdens in Kirkland now tend to fall in the middle of the range. Some peer cities have higher taxes, some have lower.

How does Kirkland's balance of residential versus commercial burdens compare with the balance struck by other cities?

Compared with the cities of Bellevue, Redmond, Renton, Kent, and Bothell, total taxes paid in Kirkland are somewhat more skewed towards residential payers than commercial payers.

What fiscal risks might the City face in the future?

The City's revenues have been able to keep up with demands for City services through policy choices to raise taxes and the natural growth in its core tax bases (taxable retail sales, utility revenues, and new construction assessed value). Some of the factors that will present fiscal risks for the City in the future include:

- The growth in the City's sales tax base has been significantly

concentrated in auto sales and construction activity, two sectors that can be volatile, subject to local economic conditions.

- The majority of the City's banked property tax capacity has been used and so the ability of property taxes to grow will be limited to 1% plus the impact of new construction. Using the banked capacity provided the largest increase in tax revenues of any City policy changes in the past seven years.
- The business surcharge revenues are tied primarily to the number of businesses in the City and thus will likely grow at very modest rates absent changes in the structure or fees.
- Outside of construction and auto sales, sales taxes have grown modestly, and in some instances remained largely unchanged over time, suggesting that the City's core commercial base is not growing. If this continues, the trend in contributions will likely continue to put larger shares of the fiscal responsibility on the City's residential base.

Summary of Findings



Summary of Findings - Background

BACKGROUND

In June of 2008, the City of Kirkland contracted with Berk & Associates to perform an update of Kirkland's 2001 Tax Burden Study. As was true of the City's 2001 study, the goal of the 2008 study is to provide data and interpretation to support the City of Kirkland's upcoming budget discussions.

This Tax Burden Study is designed to offer a level of continuity with the City's 2001 study, following the same general framework, but extending the analysis in certain areas while scaling it back in others.

The following summary of findings is organized to answer a series of key questions:

- Where do Kirkland's revenues come from?
- How do Kirkland's households and businesses contribute to City revenues?
- Has the City seen a shift in tax contributions?
- How have tax burdens shifted in Kirkland in recent years?
- How do Kirkland's tax burdens compare with those found in other cities?
- How does Kirkland's balance of residential versus commercial burdens compare with the balance struck by other cities?

- What fiscal risks might the City face in the future?

Following the Summary of Findings, readers will find a detailed compendium of analytic findings. This compendium includes *many* charts and figures that serve as the analytic basis for the findings presented here. The final section of the report is the Technical Appendix, which includes discussion of the methods and assumptions that underlie the analysis.

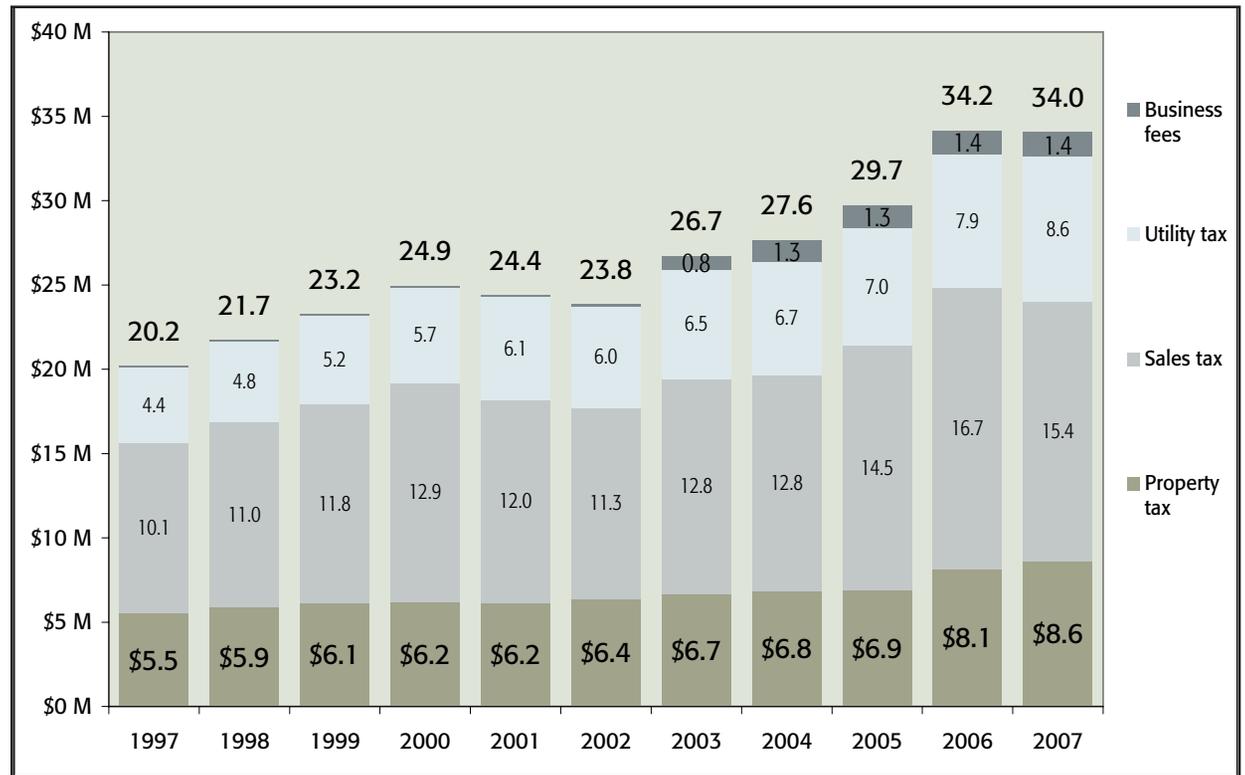
Summary of Findings - Tax Contribution

WHERE DO KIRKLAND'S REVENUES COME FROM?

Like most cities, the vast majority of Kirkland's general operating revenues come from three sources: local sales tax, property tax, and utility tax.

From 1997 through 2007, Kirkland's major sources of General Fund tax revenues have increased \$13.8 million (Exhibit 1). This translates to compounded annual growth of 5.4% per year.

Exhibit 1: City of Kirkland Historic General Fund Tax Revenues



Source: City of Kirkland; Washington State Auditors Office; Berk & Associates, 2008



Summary of Findings - Tax Contribution

In inflation-adjusted terms (viewing historical General Fund revenues in 2008 dollars), General Fund tax revenues have increased by \$7.6 million (Exhibit 2). This translates to an average *real* increase in revenues of roughly 2.5% per year.

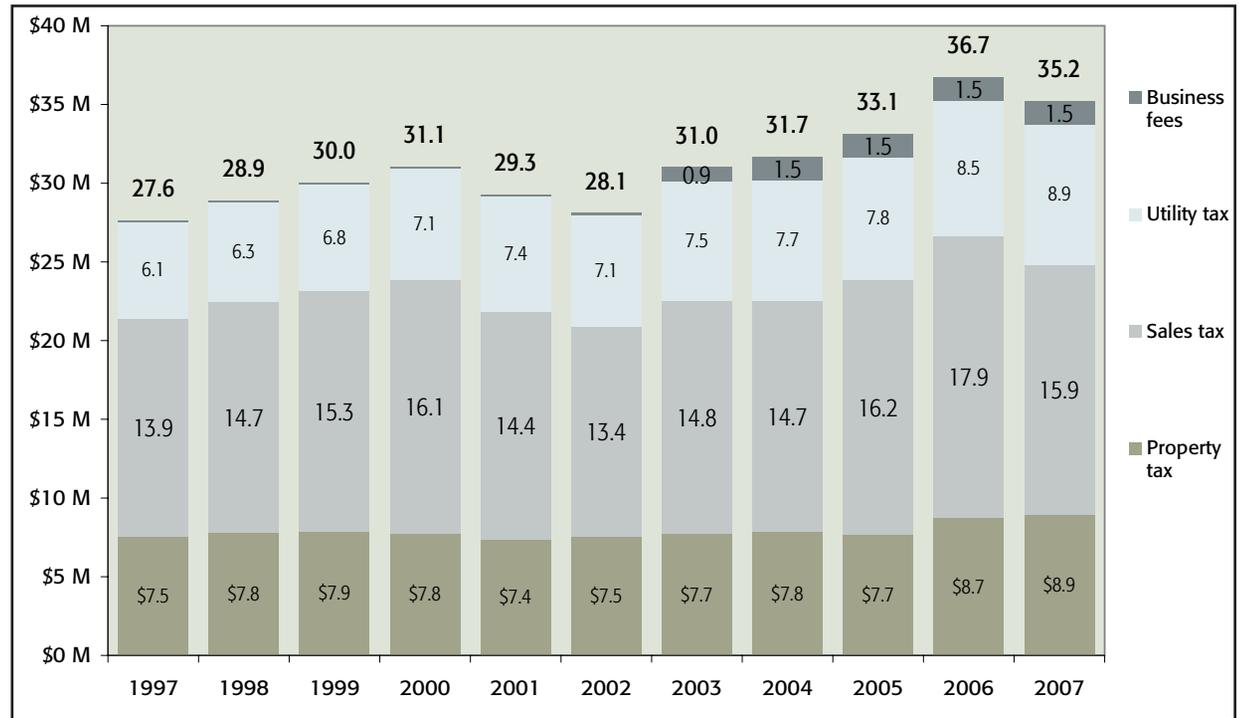
The largest contributor in the inflation-adjusted increase was the utility tax (\$2.8 M) followed by sales tax (\$2.0 M) and then property taxes and business license fees (both growing by \$1.4 M).

Sales tax revenue gains were largely a product of increased auto sales and increased construction, but gains in the remaining three revenue streams were largely due to City actions:

- Increased Business License Fee and Business License Surcharge;
- Selected increases to utility tax rates; and
- Use of \$1.8 million of Kirkland’s banked property tax levy capacity.

Note that if the City had not used \$1.8 million of its banked property tax capacity, property tax revenues in the City would have *decreased* by \$400,000 over the period, in inflation-adjusted dollars.

Exhibit 2: City of Kirkland Historic General Fund Tax Revenues - Inflation-Adjusted (2008\$)



Source: City of Kirkland; Washington State Auditors Office; Berk & Associates, 2008

Sources of Real General Fund Tax Increases (1997 to 2007)

Inflation-Adjusted Increase in Tax Revenues (Millions of \$2008)	
Utility tax	\$2.8 M
Sales tax	\$2.0 M
Property tax	\$1.4 M
Business fees	\$1.4 M
Total Gain	\$7.6 M



Summary of Findings - Tax Contribution

One major finding of Kirkland's 2001 *Tax Burden Study* was that the City was becoming increasingly reliant on sales taxes from construction and auto sales. By taking the above actions, in effect, the City took steps to dilute that reliance.

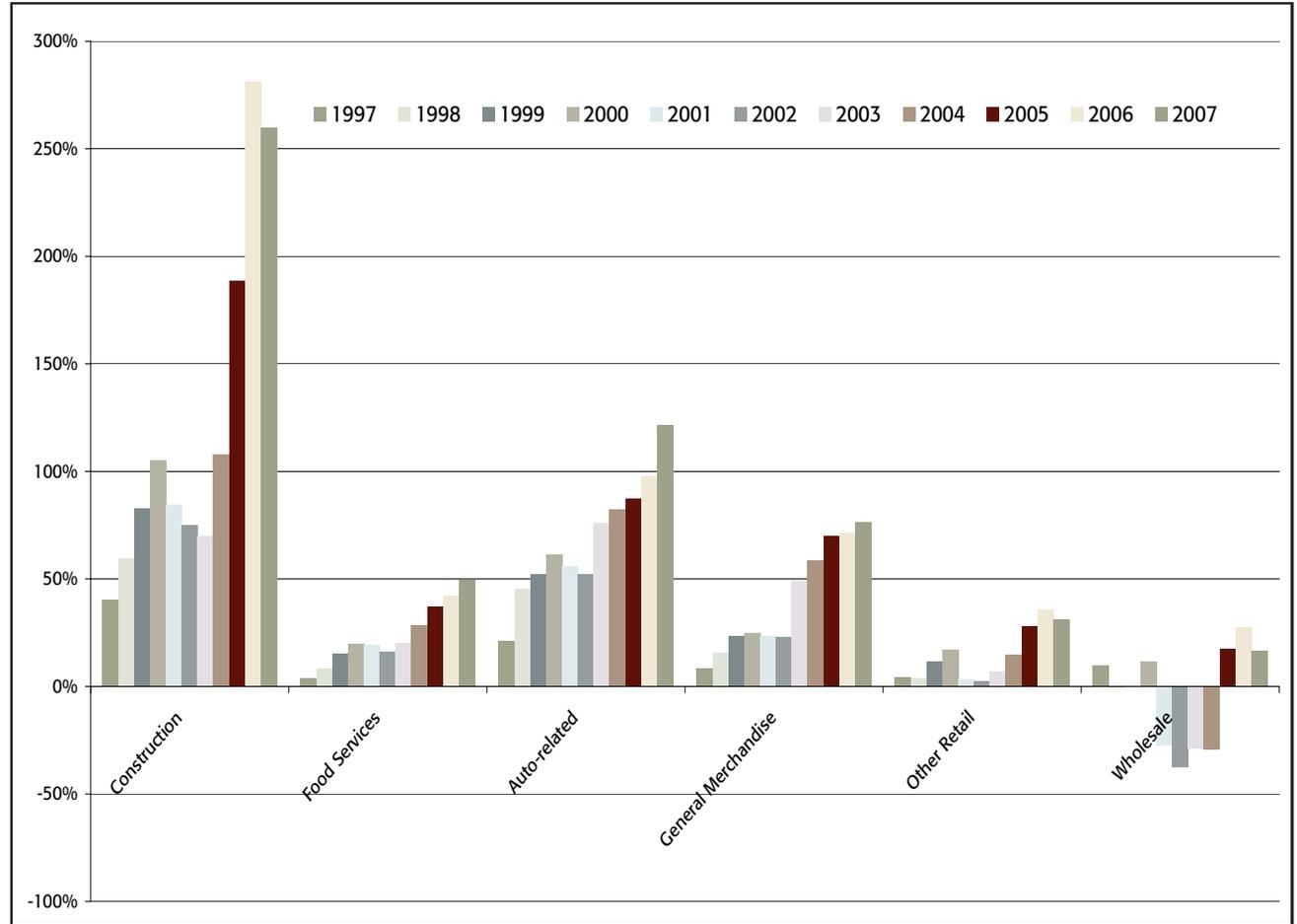
Due to continued strong growth in auto sales and construction, however, Kirkland remains highly dependent on these two sources of revenue growth.

Taxable retail sales from construction activities grew by more than 250% from 1997 to 2007 (growing from \$99 million in taxable activity to \$358 million in 2007). This translates to annual growth of more than 12% per year in actual dollars, and more than 9% in inflation-adjusted terms.

Auto sales did not show the same kind of skyrocketing growth, but sales did increase by 120% in actual dollars (7.5% per year in actual terms, and more than 4% per year in inflation-adjusted terms).

Exhibit 4, on the following page, shows how Kirkland performs in terms of its ability to capture retail purchases. In the exhibit, horizontal bars indicate the number of "typical person's expenditures" Kirkland captures within a given retail sector. The dashed vertical line represents Kirkland's population for the

Exhibit 3: Cumulative Change in Sales Tax Revenues Since 1996



Source: Washington Department of Revenue; Berk & Associates, 2008



Summary of Findings - Tax Contribution

same year (47,890 residents in 2007).

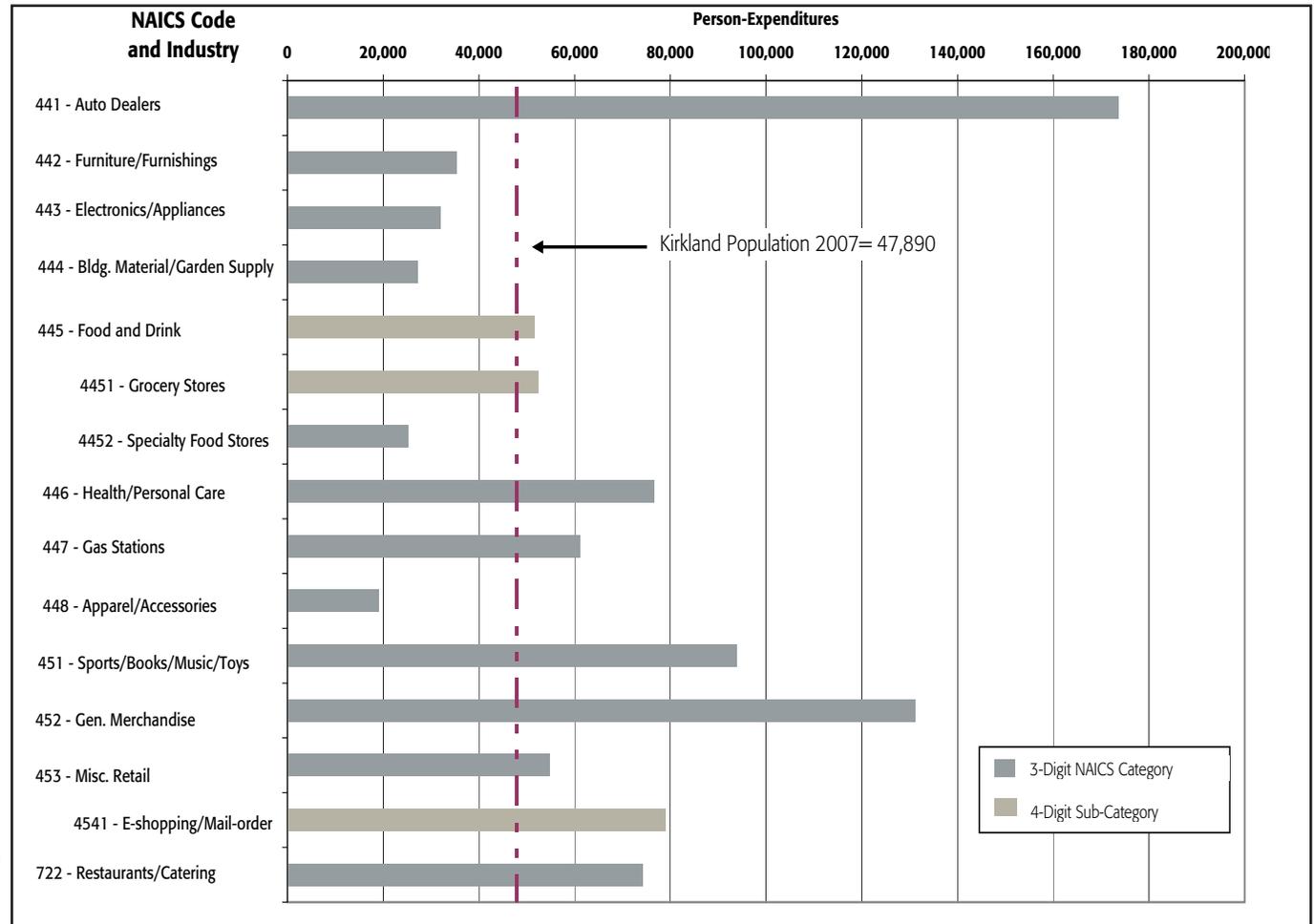
In this analysis, a *person-expenditure* is defined as the total retail spending in a given category in King County divided by the county population—generating an estimate of the average yearly expenditure per resident.

In the places where the person-expenditures-captured exceed Kirkland’s population, one can say that the businesses in that sector are “importing” purchases from outside the City (the business captures the equivalent of all of the purchases made by city residents, *plus* they draw in purchases from areas beyond).

Overall, within retail sectors, Kirkland is strongest in its capture of sales from *Auto Dealers* and *General Merchandise*, the latter category being the one that includes Costco.

Other strong sectors for the City (sectors where captured person-expenditures exceeded Kirkland’s population) included Health/Personal Care, Sports/Books/Music/Toys, E-shopping/ Mail-order, and Restaurants.

Exhibit 4: Person-Expenditures Captured in Kirkland by Industry



Source: Washington Department of Revenue; Berk & Associates, 2008



Summary of Findings - Tax Contribution

HOW DO KIRKLAND'S HOUSEHOLDS AND BUSINESSES CONTRIBUTE TO CITY REVENUES?

This study focuses on the City of Kirkland's taxing policy from the perspective of (1) the *burden* that individual payers bear (i.e. How much does each payer pay in the way of city, regional, and state taxes?) and the (2) *contribution* that various activities make to Kirkland's overall fiscal well-being.

To illustrate the difference between the notions of *burden* and *contribution*, it is helpful to consider an example: the hypothetical automobile dealership we use as one of our representative taxpayers for purposes of tax burden assessments. According to our analysis, the hypothetical auto dealer pays roughly \$18,500 in taxes each year to the City of Kirkland. This \$18,500 reflects property and utility taxes paid by the dealership, business license fees, and sales taxes on taxable purchases *made by the business* (as opposed to purchases made by consumers *at* the business).

When we look at the question of *contribution*, on the other hand, we are considering the *revenue the City receives* as a result of the auto dealership being located within city boundaries. In the case of an auto dealership, it is clear that the dealership plays a large role in the fiscal well-being of the City. With gross revenues of roughly \$54 million, City sales taxes collected at the hypothetical dealership would probably exceed \$450,000 (a figure vastly larger than the direct tax *burden* the dealership faces).

Because auto dealerships draw customers from a very large area, and because

those sales tax dollars could very easily accrue to another jurisdiction if the dealership were to relocate to another city, one can safely say that the City of Kirkland relies on the existence of the auto dealer for a large portion of City revenues. Thus, from a perspective of *contribution*, the auto dealer plays a very important role in the City's fiscal health.

At the other end of the commercial spectrum, one might consider a typical neighborhood convenience store. If the owners of a neighborhood convenience store were to move their business to another city, then one would not expect to see a marked reduction in revenues to the City. Residents of the neighborhood might do a *bit* more of their shopping outside the city (you might choose to stop and buy chips at a convenience store near work), but for the most part, residents' purchases of convenience items would be redistributed to other retail locations within the city.

In the convenience store example, one could argue that neighborhood residents are the *source* of sales tax revenues collected at the convenience store, and therefore, from a perspective of revenue *contribution* to the City, that dynamic should be recognized.

In reality, most financially-strong cities are strong because they have a robust urban fabric that relies on the interconnections between residents and businesses. Kirkland is attractive to residents because of proximity to jobs and amenities, including a broad range of retail, restaurants, and other commercial services. At the same time, Kirkland is attractive to a broad range of businesses because of its strong resident base.

Summary of Findings - Tax Contribution

Has the City Seen a Shift in Tax Contributions?

Recognizing how interlinked residents and businesses are in the City, Berk & Associates analyzed the tax contribution that residents and businesses have made to City operations. Berk’s analysis focused on Kirkland’s four major General Fund tax sources:

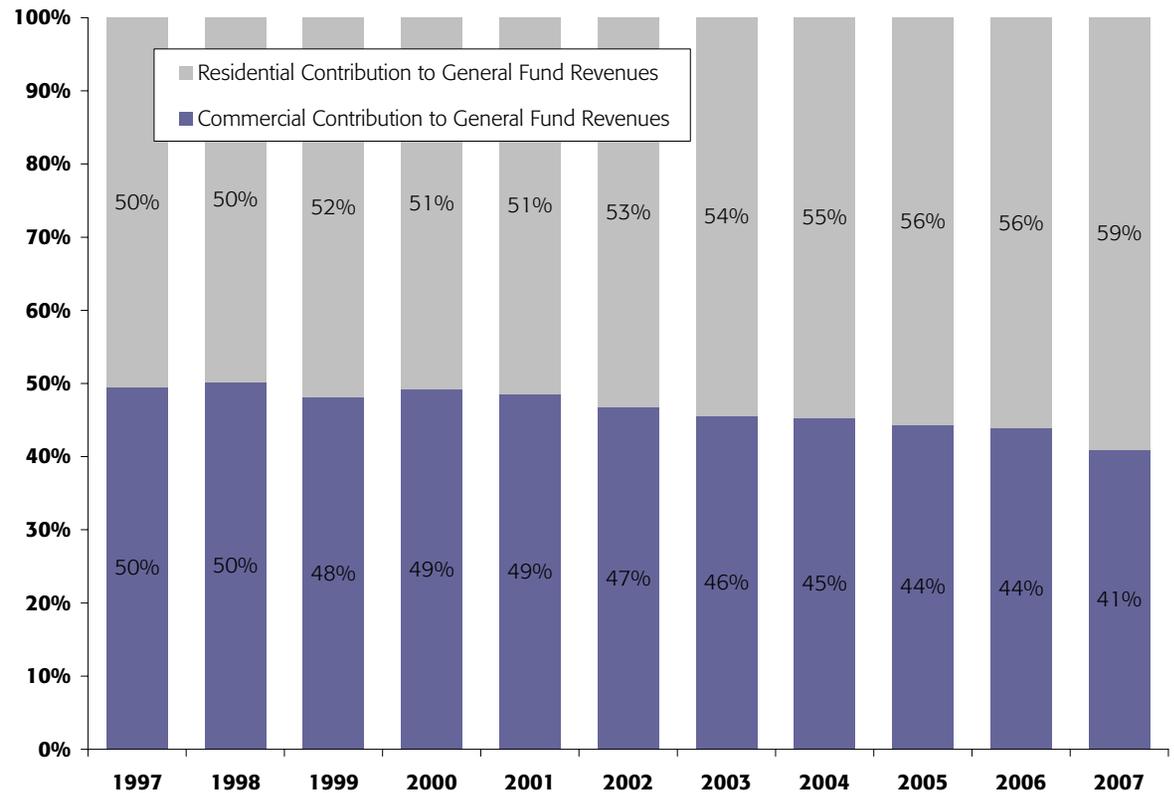
- Property tax
- Utility tax
- Sales tax; and
- Business license fees (Business license fees are not technically a tax, but for ease of discussion, we will refer to it as a tax in this discussion).

Overall, we found that the commercial contribution to these tax sources decreased from 50% in 1997 to 41% in 2007. The decline in commercial tax contributions has been relatively steady, interrupted in 2000 and 2001 (two years of strong employment growth in Kirkland).

The drivers of this shift in contribution included (1) differentials in the growth of commercial versus residential assessed values in Kirkland; (2) recent strong increases in utility purchases by households; and (3) only limited growth in overall commercial activity in Kirkland at a time when population in the City grew at a more robust pace. (Households represent a greater share

of the City’s constituents, therefore, households as a group pay a greater share of total City taxes.)

Exhibit 5: Residential and Commercial Contributions to Major General Fund Tax Revenues (Sales Tax, Property Tax, Utility Tax, and Business License Fees)



Source: City of Kirkland; Washington State Department of Revenue; King County Assessor; Berk & Associates, 2008



Summary of Findings - Tax Contribution

The figures in Exhibit 5 reflect Berk & Associates' estimates of:

- Commercial versus residential property tax payments;
- Commercial versus residential utility tax payments;
- Business license fee and surcharge payments; and
- An allocation of sales tax revenues to businesses and residents that is consistent with the sales-capture analysis presented in the preceding section.

For retail sectors that capture person-expenditures that exceed the population of the City (e.g. auto dealers), the portion of the contribution that is the imported sales tax revenues are credited to the commercial sector. For those sectors where person-expenditures-captured was less than City population, sales tax revenues were credited to residents. Sales tax revenues from non-retail sectors like *Manufacturing; Wholesale; Real Estate, Rental, and Leasing; and Services* were credited to businesses, with the exception of a \$15 per resident credit for home-based purchases of goods and services like telephone services and delivery of heating oil, etc. Finally, non-store retail purchases were credited to households.

Sales taxes on construction were excluded from the analysis (largely because it is very difficult to determine how those taxes should be allocated). Given that population growth in Kirkland has outpaced employment growth, and given the surge in construction activity in recent years, one would expect that including construction would exacerbate the decline in commercial contributions (since homeowners are likely the payers of the taxes on

residential construction activity). However, even if one were to hypothetically assign all construction sales taxes to the commercial side, the extent of the contribution shift is still only diminished a bit (instead of declining by 9 percentage points from 1997 to 2007, commercial contribution would diminish by 7 points).

Shortcomings of a Broad Analysis of Contribution

As noted above, one of the reasons why contributions of City revenues have been shifting to residents in recent years is because, over that same period, growth in Kirkland's residential base has been more rapid than growth in its commercial base (measured by number of employees).

In theory, it is possible that a given business owner could have seen her contribution increase from 1997 to 2007, while at the same time, the overall contribution from Kirkland businesses decreased (as a share of the whole). It is for precisely this reason that this study assesses both the question of *tax contribution and tax burden*.

The following two sections address questions of tax burden.

- How have taxes changed for specific households and businesses over recent years? and
- How do tax burdens in Kirkland compare with those of peer cities?

Summary of Findings - Tax Burden Shifts

TAX BURDEN - BACKGROUND AND APPROACH

Berk & Associates' analysis of tax burden shifts builds on the framework developed for Kirkland's 2001 *Tax Burden Study*. This 2008 analysis looks at taxes that were paid by representative households and businesses in 1997 (taxes that were born directly by the household or business owner in question), and it looks at how those burdens have changed over the last 11 years.

Following the 2001 Study structure, Berk & Associates relied on a series of hypothetical taxpayers—taxpayers that were designed to be representative of a cross-section of the City's residential and commercial constituents.

These taxpayer types were designed to remain consistent with the taxpayer units used in Kirkland's 2001 study, with the addition of three new representative taxpayers: (1) the home-based business; (2) the large office user (an office user with 150 employees); and (3) the small office user (with 10 employees). The latter two users were added to bracket the engineering firm (44 employees) that was included in the 2001 study.

When looking at tax burdens for representative taxpayers, all reported taxes in this analysis are estimates based on particular characteristics of the various taxpayer units. Property taxes, for instance, are based on the applicable levy rate multiplied by the assumed assessed value of the house or condo, or in the case of the apartment or businesses, based on a pro-rata share of assumed total assessed value for the tax parcel.

Taxpayers who rent their house or business space do not pay any direct property taxes. Regardless of who owns the property, however, property taxes are levied. In the long run, the costs of most, if not all, property taxes are passed on to renters in the form of higher rents.

Households

- Single Family
- Condominium
- Apartment

Businesses

- Home-Based Business
- Grocery Store
- Automobile Dealership
- Furniture Store
- Electronics Store (Small)
- Restaurant
- Big Box Retail
- Large Office (150 Employees)
- Medium Office - Engineering Firm (44 Employees)
- Small Office (10 Employees)

For more details about the characteristics of the representative taxpayers, readers should see the Detailed Presentation of Analytic Findings that follows this Summary of Findings. Profiles of the taxpayer units and estimated changes in tax burdens begin on page 27.

Summary of Findings - Tax Burden Shifts

In addition to looking at City of Kirkland tax burdens, Berk & Associates estimated total tax burdens for each representative taxpayer, including City taxes, school taxes, regional taxes, and state taxes (see Detailed Presentation of Analytic Findings). Overall, all representative taxpayers saw increased taxes over the period. Depending on the taxpayer, tax increases may have been driven in greatest part by increases in state, regional, or City taxes.

For the representative households, the greatest portion of tax increases came from increases in regional taxes—driven by increases property taxes and increased sales taxes.

For businesses, the biggest source of overall tax increases tended to vary by the size of business and the rate of revenue growth. For smaller businesses, increases in City tax burdens tended to dominate, while tax increases for larger businesses were driven by state taxes.

Tax Burden Comparisons are Calculated in Inflation-Adjusted Terms

In the preceding discussion of tax contributions we presented information about tax revenues in nominal dollars (the actual number of dollars collected in a given year) and in inflation-adjusted dollars (presenting the value of the revenue collected each year translated into 2008 dollars). For discussions of tax burden shifts, all tax burdens are presented in inflation-adjusted, 2008 dollars.

Summary of Findings - Tax Burden Shifts

HOW HAVE TAX BURDENS SHIFTED IN KIRKLAND IN RECENT YEARS?

Overall, City tax burdens have increased for all representative taxpayers in real (inflation-adjusted) terms over the past 12 years. These increased burdens are driven primarily by (1) increased utility tax rates, (2) increases in Kirkland's Business License Fee and creation of a Business License Surcharge, and (3) appreciation in property values that have not been accompanied by parallel reductions in the Kirkland's city levy rate. This last effect is a result of the City using \$1.8 million of its banked levy capacity.

In inflation-adjusted terms, the greatest percentage increases in City tax burdens were felt by:

- Small businesses—driven by higher business fees and higher utility taxes;
- The representative single family households—driven by higher utility taxes, and large increases in assessed values; and
- The representative apartment dweller—driven by increased utility tax rates and recent, large increases in assessed values.

Among all taxpayers, large businesses have seen the smallest percentage increases in taxes by far. Because Kirkland's Business License Fee is a fixed amount (\$100 for all businesses) and because the Business License Surcharge is capped at \$2,500, on a per-employee basis, business license costs are smaller for large businesses.

Under the current structure, a business with seven employees pays a total of \$850 in business license fees (more than \$120 per employee). A business with 130 employees, on the other hand, pays \$2600 (\$20 per employee).

In regard to the residential taxpayers (the single family, condominium, and apartment households) the single family households saw the greatest increase in their tax burden. This increase was driven by (1) large increases in the value of their home; and (2) significant increases in their assumed income, which translated to significant increases in taxable purchases.

On the other hand, the representative condominium household saw relatively modest increases in tax burdens. Condominiums in Kirkland did not see the same level of property appreciation over the period, so the condominium household saw most of their tax increases as a result of increased utility taxes and increased retail sales tax (which, again, was a function of increased household income).

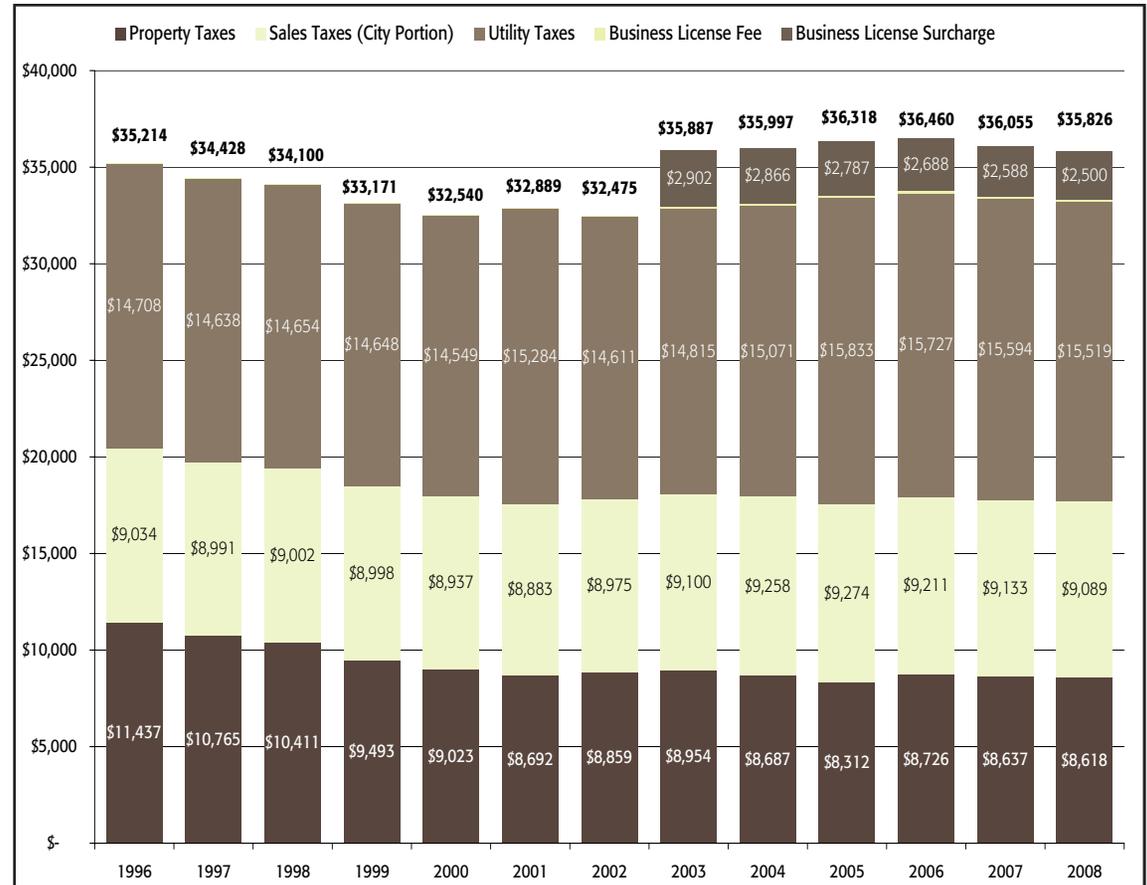
Summary of Findings - Tax Burden Shifts

For the reasons discussed above, or hypothetical large office user (with 150 employees) saw only a very small tax increase from 1997 to 2008 (less than 2% in real, inflation-adjusted terms). Our hypothetical single family household, by contrast, saw real increases of more than 30% over the same period, as did some of the small businesses that were most heavily impacted by the business license fee structure.

What this means, overall, is that from 1997 to 2007, relative tax burdens have shifted away from mid-sized and large businesses (particularly large office users) while shifting onto households and small businesses.

Exhibit 7, on the following page, provides some insight into one of the principal drivers of this shift: differentials in the growth of residential and commercial assessed values.

Exhibit 6: City Taxes Paid by a Representative Kirkland Business - Large Office User (\$2008)



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Summary of Findings - Tax Burden Shifts

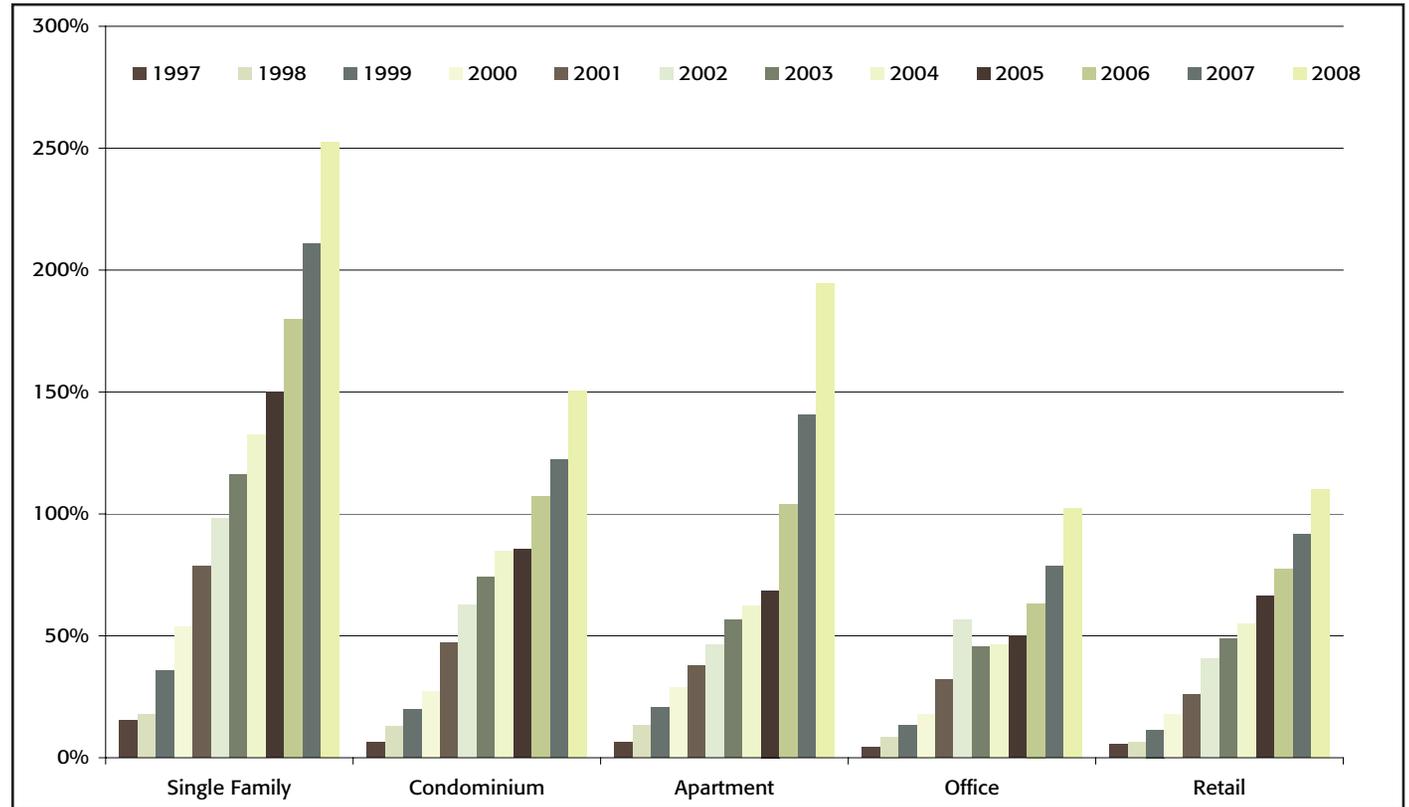
Berk & Associates' analysis of average property value gains (excluding new construction) found that single family houses experienced the greatest average gains in value, increasing by 250% from 1997 to 2008 (Exhibit 7). Assessed values of many commercial uses, by contrast, increased by roughly 100%.

This means that, each year, a greater proportion of the burden for the City property tax levy is shifted onto households, while burdens on businesses are decreased.

As an example (as illustrated in Exhibit 6 on the preceding page), for the hypothetical large office user, City property taxes paid by the business *decreased* from roughly \$11,400 in 1997 to a bit more than \$8,600 in 2008 (again, in inflation-adjusted terms).

For smaller businesses (businesses that were most heavily impacted by the City's business license fee structure) real decreases in City property taxes were made up by increases in costs for business license fees. Costs from business license fees

Exhibit 7: Cumulative Percentage Increases in Assessed Values by Category



Source: King County Assessor; Berk & Associates, 2008

put tax increases on these businesses more-or-less on par with tax increases on households. For large businesses, however, because business license fee impacts were small, virtually no net increase in tax burdens occurred.



Summary of Findings - Peer Comparisons

HOW DO KIRKLAND'S TAX BURDENS COMPARE WITH OTHER CITIES?

In addition to looking at the relative shifts in tax burdens among payers, there is also value in looking at how Kirkland's tax burdens compare with peer jurisdictions.

When considering the issue of relative tax burdens between residents and businesses, no set formula exists for determining the balance that is appropriate or fair. Ultimately, the answer to the question: "What is appropriate?" is driven by questions of competitiveness and by the political process:

- Do our tax burdens allow businesses in our city to compete with businesses located in nearby cities?
- Do our constituents generally feel that the distribution of tax burdens is fair?

The analyses included in this section focus on comparisons with peer jurisdictions. The analysis is designed to address the first of the above questions, and to inform the debate around the second.

Every city engages in an ongoing process of balancing tax burdens on residents and businesses. Given this ongoing process, one can learn a great deal about what falls within the realm of an equitable distribution by looking

at how Kirkland stacks up.

Within this context, the following pages summarize tax burdens for each of our representative taxpayers in Kirkland and in six other peer jurisdictions.

This analysis answers the question:

In 2008, how would the tax burden of our representative taxpayers be different if they were to pick up their home or businesses and put it down in another city?

What would the picture look like, for example, if our representative single family household took their house, their cars, and everything else, and put those things down in another city? Would their tax burden be higher, lower, or about the same?

Summary of Findings - Peer Comparisons

So How Does Kirkland Compare?

Kirkland's 2001 *Tax Burden Study* found that Kirkland's tax burdens for both households and businesses were among the lowest when compared with peer jurisdictions.

In 2008, Kirkland's burdens now tend to fall in the middle of the pack. For both households and businesses, Kirkland's tax burden is now higher than some and lower than others.

Exhibit 8 provides a comparison of city taxes (or local county taxes in the case of unincorporated King County) for our representative single family household. What it shows is that the representative household pays significantly less in Kirkland than it would pay in Kent or Renton, more than it would pay in Bellevue, Redmond, or unincorporated King County, and about the same as they would pay in Bothell.

To be clear, this comparison looks at what the situation would be if one could pick up the hypothetical household and put it down, with the same assessed value, the same income, and all of their same stuff, in another city.

Exhibit 8: Comparison of 2008 City Taxes Paid by a Representative Single Family Home by Jurisdiction



Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



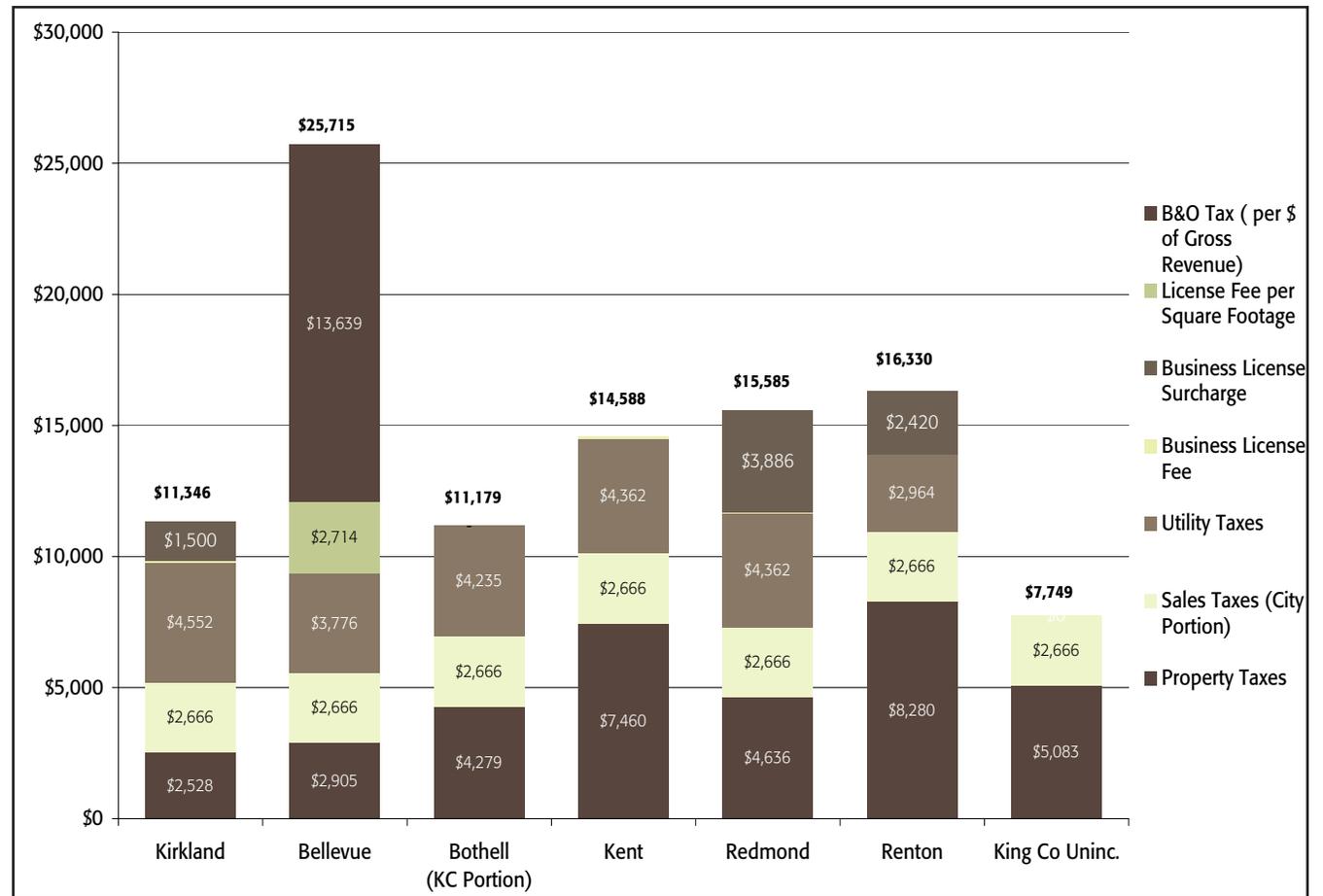
Summary of Findings - Peer Comparisons

Exhibit 9 shows a parallel comparison of tax burdens that would be faced by the hypothetical, mid-size engineering firm we use as one of our representative taxpayers.

Again, Kirkland's tax burden tends to fall in the middle of the range, higher than that of a couple of jurisdictions, but lower than others.

In general, due to the structure of Kirkland's business license fee and surcharge, Kirkland's tax burden for smaller businesses tends to fall in the mid-to-high end of the spectrum, while the City's tax burdens on mid- to large-size businesses tend to fall in the lower part of the range.

Exhibit 9: Comparison of 2008 City Taxes Paid by a Mid-size Engineering Firm by Jurisdiction



Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Summary of Findings - Peer Comparisons

How Does Kirkland’s Balance of Residential Versus Commercial Burdens Compare with The Balance Struck by Other Cities?

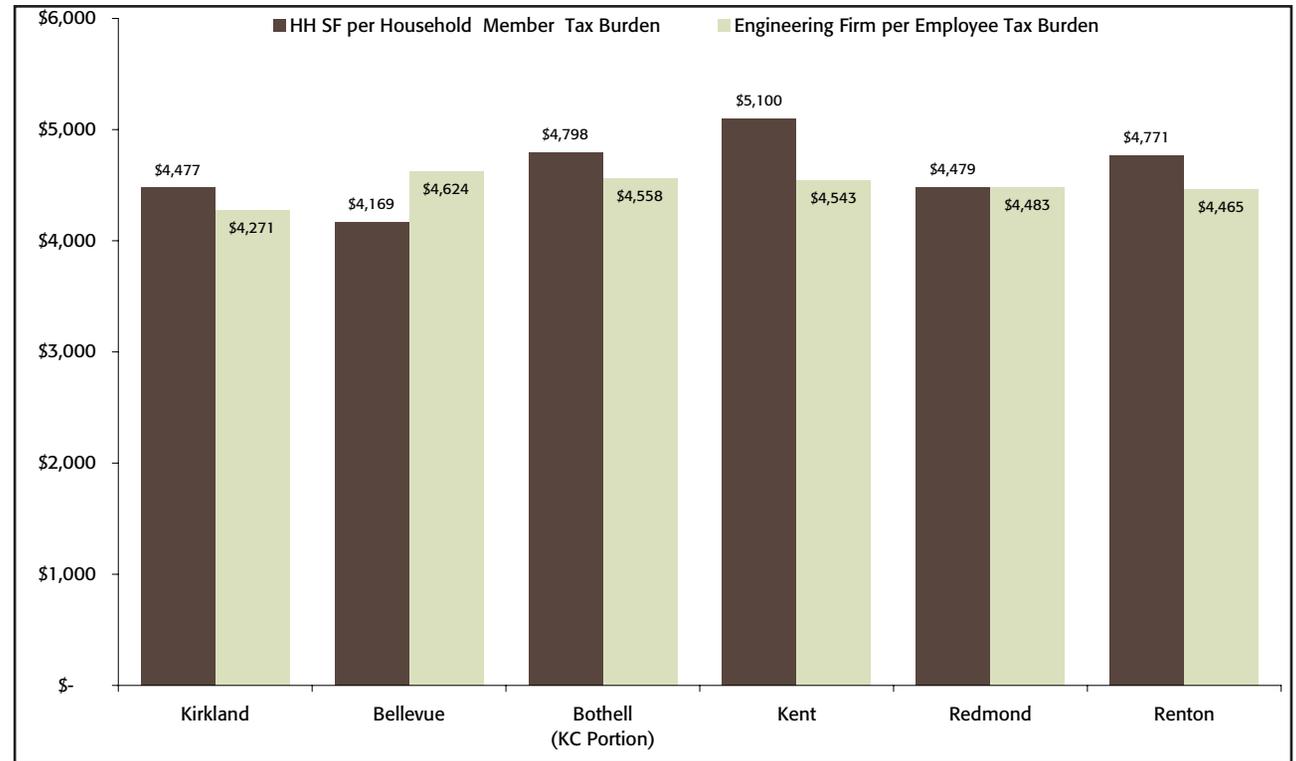
Through its political processes, every city looks at its constituent households and its constituent businesses and attempts to strike *some* balance of tax burdens through selected fiscal policies.

If one looks at the total tax burden paid by the representative single family household and the representative engineering firm (translated into per-resident and per-employee terms), one sees that the tax burden in Kirkland is skewed, with the larger burden falling on the household. Only in the cities of Kent and Renton is the balance more skewed towards the household.

In reality, however, the representative single family household used for this analysis is not very representative of households in Kent and Renton.

The representative household used for this analysis is relatively well off—by regional standards—with an income of roughly \$165,000 in 2008, and a house value of a bit more

Exhibit 10: Total Tax Burden per Resident/Employee - Single Family vs Mid-size Engineering Firm (2008)



Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Summary of Findings - Peer Comparisons

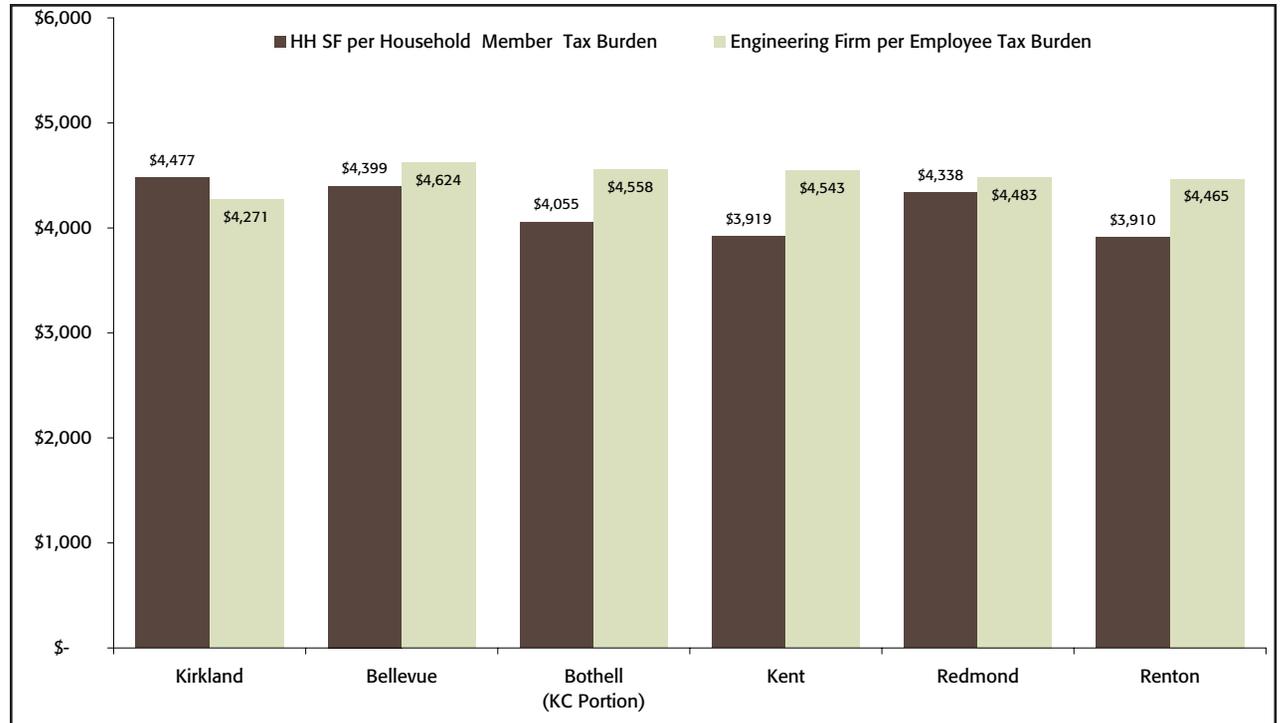
than \$630,000. While this household may be representative of an upper-middle-class household in Kirkland, this same household would probably be considered relatively affluent if it was located in Renton or Kent. This is somewhat higher than the overall average value of a home in Kirkland which includes a large number of condominiums.

To get a true sense of the balance that cities like Renton and Kent have struck between taxes paid by an engineering firm and a “typical” upper-middle-class family in their community, one might adjust the income and the home value to reflect incomes in these communities.

Exhibit 11 presents a comparison of household and engineering firm taxes, parallel to the comparison presented in Exhibit 10, but in this case, the household taxes are adjusted to reflect the typical incomes found in each city (based on average incomes reported by the Census).

With the household’s profile adjusted to reflect typical income levels in each city, the balance between household tax burdens and the engineering firm tax burdens is striking. In Kirkland, the balance is skewed towards households, while in all

Exhibit 11: Total Tax Burden per Resident/Employee - Single Family vs Mid-size Engineering Firm (2008) with Adjustments for Average Income Differences Among Cities



Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; U.S. Census; Berk & Associates, 2008



Summary of Findings - Peer Comparisons

five of the comparison cities, the burden is skewed in the other direction.

This skewing of tax burdens towards households also holds when one compares income-adjusted-households and smaller businesses—businesses that are more heavily impacted by Kirkland’s business license fee and surcharge.

The pattern suggests that, through their political processes, these other cities have struck a balance of burdens that differs from the one struck by Kirkland, placing a greater relative burden on the commercial component of the tax base versus the residential tax base.

Summary of Findings - Fiscal Risks

What fiscal risks might the City face in the future?

There are two key areas of risk for the City to keep in mind as it considers its long-term fiscal challenges. The first is related to the City's reliance on increasing taxes since 2001 to balance revenues and expenses. The second is the concentration of the natural tax revenue growth in two key sectors: construction and auto sales.

Of the \$9.3M (unadjusted for inflation) added to the City's revenues since 2001, approximately \$3.4M are the result of policy changes (37%). The other 63% was the result of natural growth in the City's tax base. Of the \$5.9M in natural growth, \$2.5M came from increased sales tax on construction activity and auto sales alone. Leaving \$3.4M, or 37% of all new revenue having been generated by all other sources.

- The City's tax base continues to rely heavily on construction and auto sales, two sectors which can be volatile and susceptible to downturns during recessionary periods.
- The City has made policy changes that resulted in net increases to tax rates and fees since 2001 have generated the following revenue gains:
 - Banked capacity -- \$1.8M
 - Business license fee increase and surcharge -- \$1.3M
 - Utility tax rate changes -- \$0.6M

The combination of changes to City tax policy and higher than expected

growth in construction and auto sales has provided the City with annual revenue growth of 5.6% per year since 2001. This rate of growth is in-line with historic rates of expenditure growth. However, if you remove the changes in tax policy, the annual growth rate in City revenues since 2001 drops to 3.7%.

The single largest gain that derived from policy actions resulted from making use of the \$1.8M in banked property tax capacity. This allowed property taxes to grow by an average 5.7% per year since 2001. Without the banked capacity, the growth rate would have been 1.7% per year (the amount in excess of 1% is due to new construction).

The current expenditure outlook assumes that costs of maintaining existing services will grow at approximately 6% per year. It will be a challenge for City to support this level of expenditure given the trends in core growth in current City tax bases. The major reasons for this appear to be:

- Retail tax base (other than autos) has not been expanding
- Having virtually exhausted the City's banked capacity, property taxes will be limited by the 1% property tax limit.
- Business license surcharge, in its current form, is unlikely to grow significantly as it is tied to number of businesses, total fees are capped and fees are not indexed to inflation.

Detailed Presentation of Analytic Findings



TAX BURDEN SHIFTS

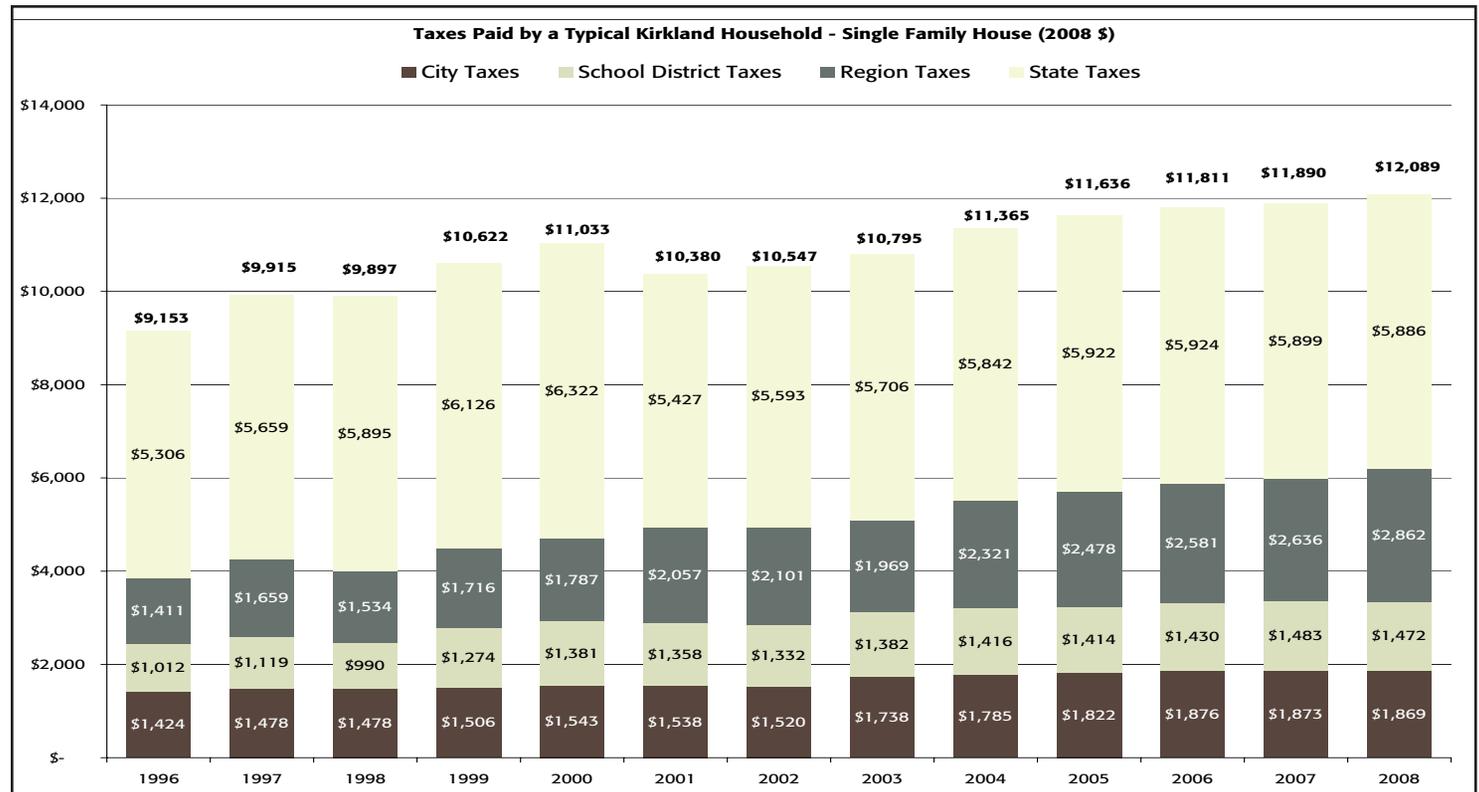
DETAILED PRESENTATION OF ANALYTIC FINDINGS

Single-Family Household

Characateristics of Representative Households (2008)	
Single-Family	
Taxable Assessed Value (per housing unit)	632,534
Square Footage Living	2,100
Square Footage Basement	800
Bedrooms	3.50
HH Size	2.70
HH Income	165,765
Vehicles Owned	2
New Value of First Vehicle	30,000
New Value of Second Vehicle	30,000
Age of Primary Vehicles (years)	3
Age of Secondary Vehicle (years)	6
Gallons of Gas Consumed (per year)	1,240

The representative single family household is based on the single family household used in Kirkland's 2001 *Tax Burden Study*. With an income in excess of \$160,000 and a home with a 2008 assessed value in excess of \$630,000, this household is not designed to reflect Kirkland's average household. (The study also includes a condominium household and an apartment household try to capture a range of residential taxpayers.) Rather, the representative single family household is intended to reflect the experience of an upper-middle class household in Kirkland (roughly twice the median household income in all of King County).

- The overall tax burden has increased at an annual rate of 2.3% in inflation-adjusted terms.
- While City taxes have grown at same rate as the total burden (2.3%), the burden from other jurisdictions has varied with:
 - State taxes having grown the least at less than 1% per year;
 - Schood district taxes growing at 3.2% per year; and
 - Regional taxes growting at 6.1% per year, primarily due to higher transit sales taxes.

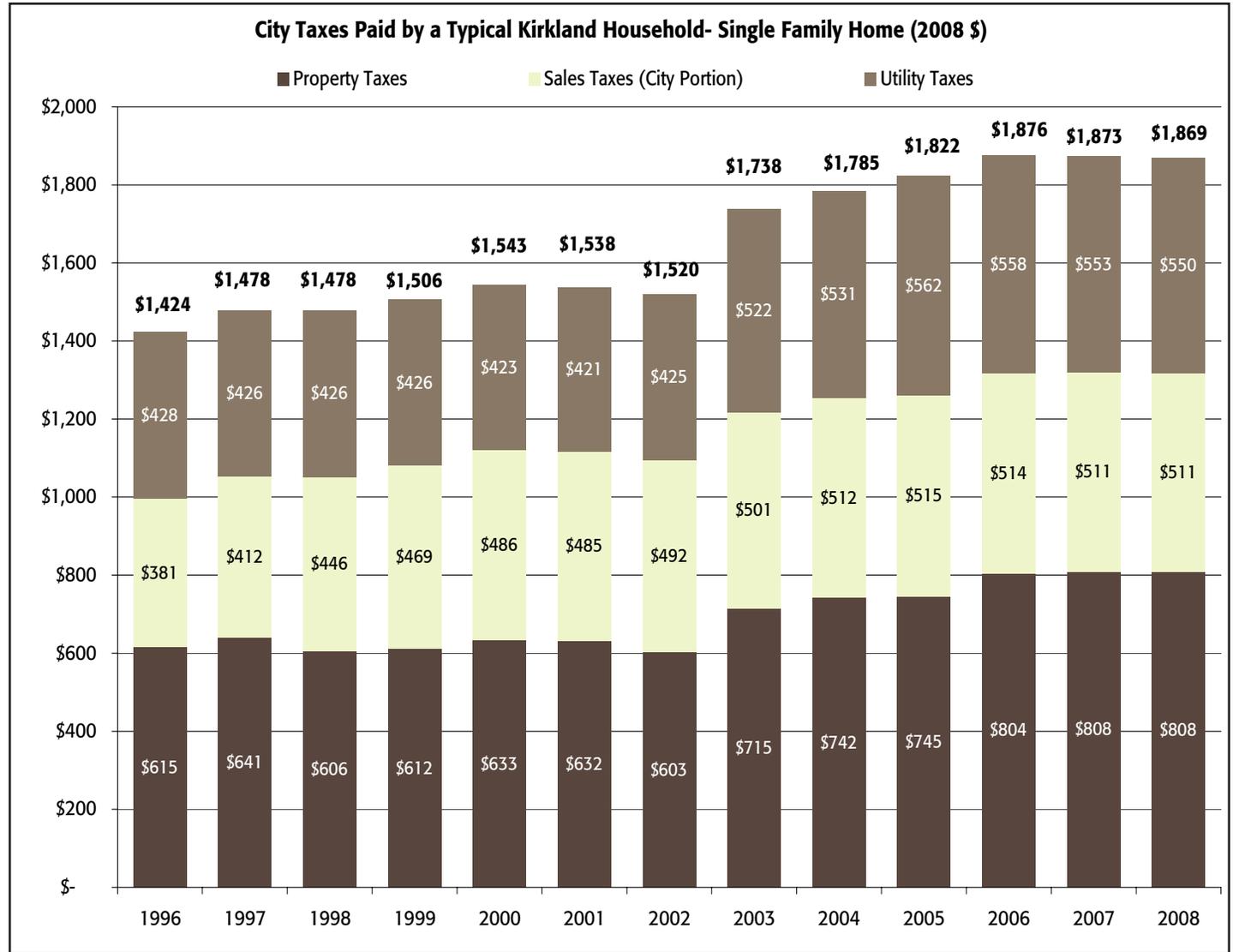


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Single-Family Household

- City tax burden increases have been driven in greatest part by increases in utility tax rates and by large increases in assessed value that have not been accompanied by parallel decreases in the City levy rate (due to the City choosing to use its banked levy capacity).
- The increase in sales taxes reflect an increase in household expenditures on taxable items (a function of income growth assumed for this representative taxpayer).
 - The household income of this taxpayer has grown from approximately \$90,000 in 1996 to \$165,000 in 2008, which is consistent with gains experienced by upper-middle income households in King County over this period.



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

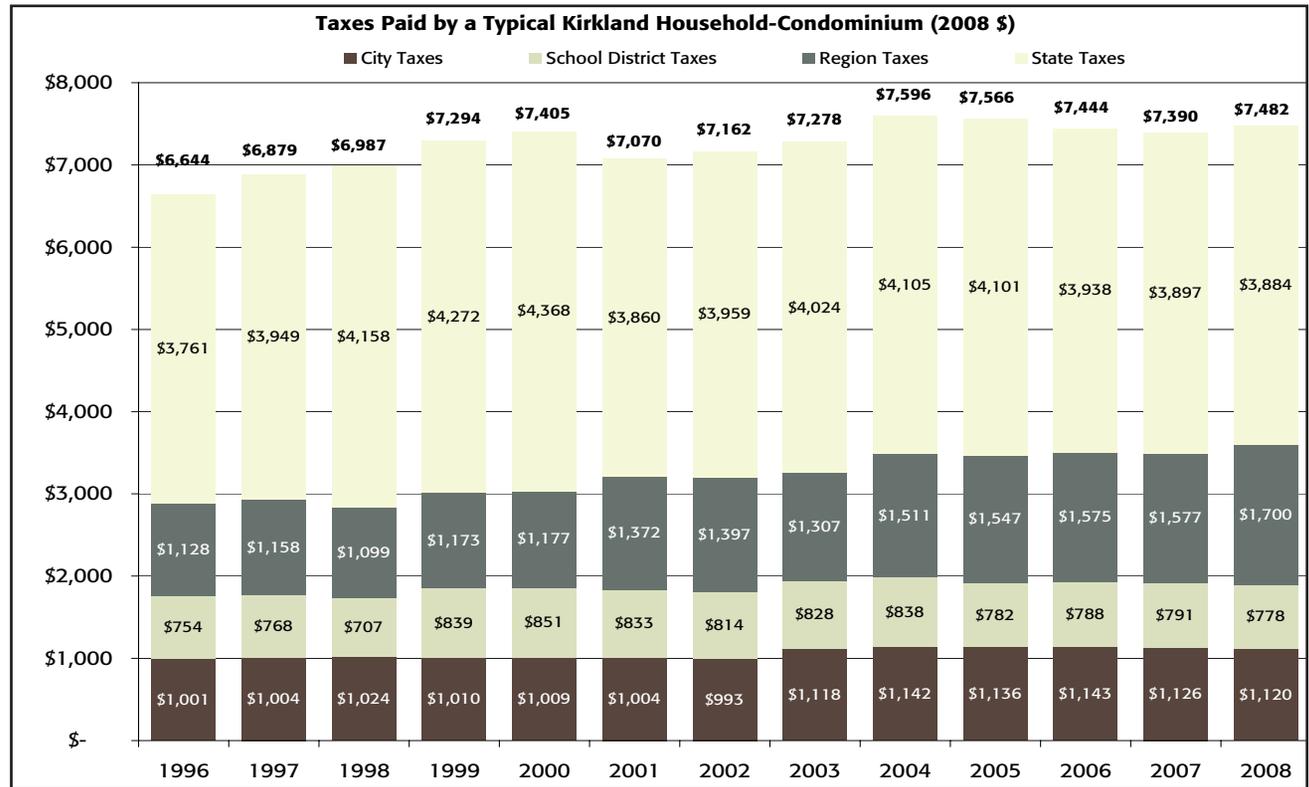


Condominium

Characteristics of Representative Households (2008)	
Condo Owner	
Taxable Assessed Value (per housing unit)	334,449
Square Footage Living	980
Square Footage Basement	-
Bedrooms	1
HH Size	2
HH Income	117,640
Vehicles Owned	1
New Value of First Vehicle	30,000
New Value of Second Vehicle	
Age of Primary Vehicles (years)	3
Age of Secondary Vehicle (years)	
Gallons of Gas Consumed (per year)	620

The hypothetical condominium household used for this analysis lives in a 980 square foot condominium currently valued at a bit less than \$335,000. Assumed household income is nearly 118,000 which would put the household about 40% higher than the median household income for all of King County. Because the condominium household is lower on the income ladder than the hypothetical single family household, the household is assumed to have experienced more modest income gains from 1997 to 2006—consistent with overall patterns within King County.

- The overall tax burden for the Condominium household has increased at a much slower rate relative to the single family household (0.3% in inflation-adjusted terms since 1996).
- The impacts among the other jurisdictions are also much smaller, with the largest impact coming from the regional taxes which grew at a real annual rate of 1.2%.
- There are two primary reasons for the smaller change in burdens for this taxpayer:
 - Property valuation increases for the condo property have been approximately half of the single family appreciation; and
 - Assumed incomes gains are lower, resulting in less growth in real expenditures.

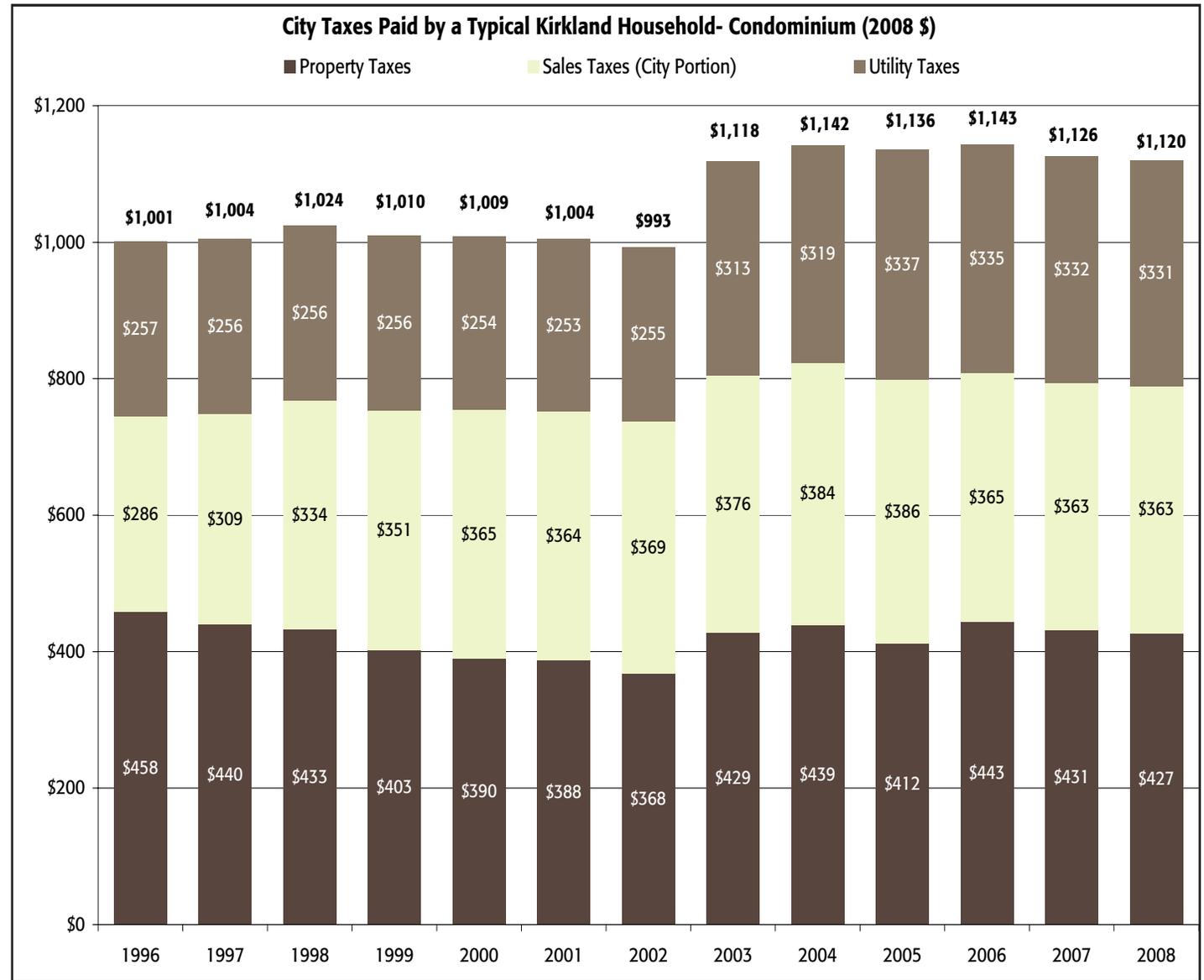


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Condominium

- City tax burden increases for the condominium taxpayer have been driven in greatest part by increases in utility tax rates and increases sales taxes (driven by increases in income and expenditures).
- The increases in utility taxes and sales taxes have been partially mitigated by a net reduction in property taxes as the assessed value of condominiums has lagged the overall rate of property appreciation (driven primarily by increases in single family property values).



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

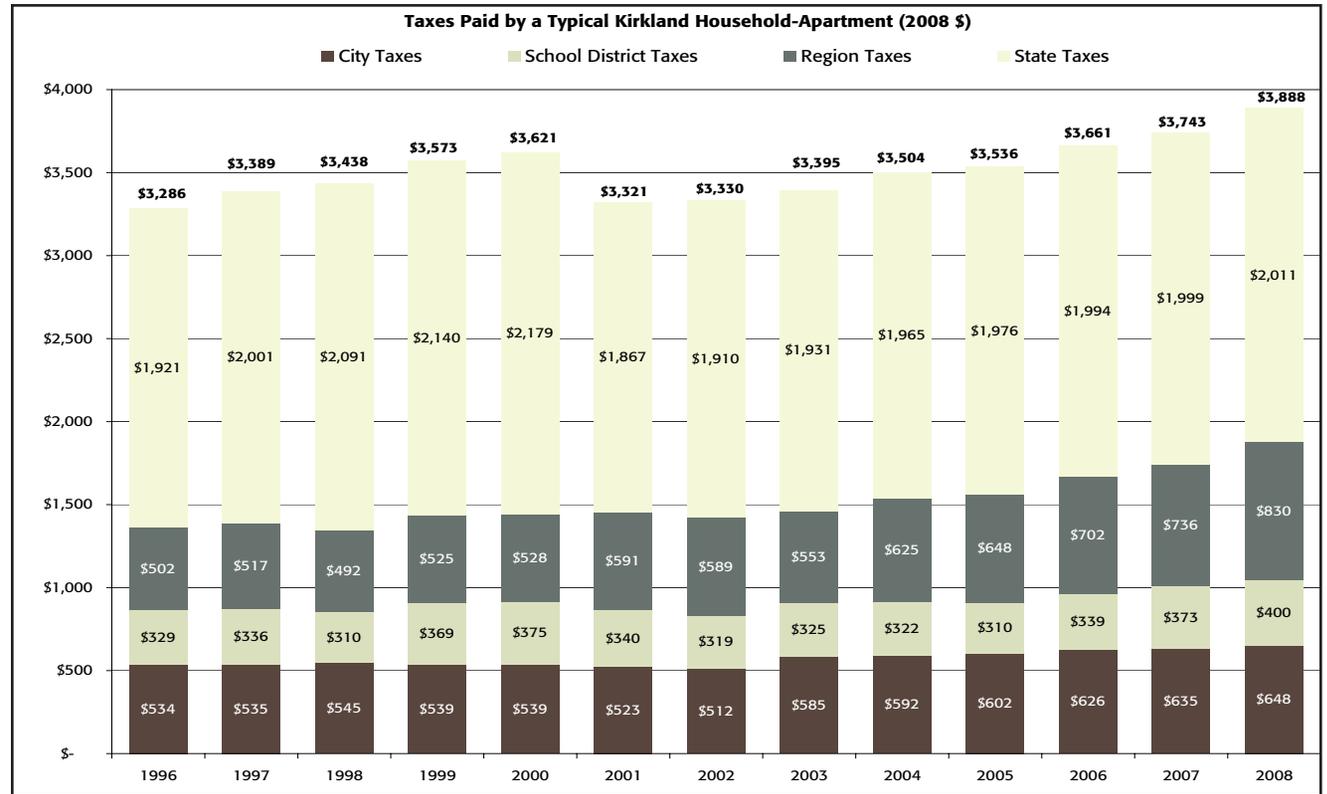


Apartment Rental

Characateristics of Representative Households (2008)	
Apartment Renter	
Taxable Assessed Value (per housing unit)	171,743
Square Footage Living	840
Square Footage Basement	-
Bedrooms	-
HH Size	1
HH Income	52,891
Vehicles Owned	1
New Value of First Vehicle	20,000
New Value of Second Vehicle	-
Age of Primary Vehicles (years)	5
Age of Secondary Vehicle (years)	-
Gallons of Gas Consumed (per year)	620

The hypothetical apartment household lives in an 840 square foot apartment, with an assessed value of nearly \$172,000. The household income of the apartment dwellers is assumed to be about \$53,000 in 2008 (roughly 60% of the King County median household income). Because income gains for lower-income families have tended to be modest in King County since 2000, household income gains for the apartment household were estimated to be modest (slightly less than 3% per year, which more or less keeps up with the underlying rate of inflation).

- The overall tax burden for the Apartment household has followed a similar pattern as the Condominium household, with overall inflation-adjusted increase in taxes of 1.4% per year. The biggest increase for the apartment household came from the change in regional taxes, which averaged 4.3% per year.

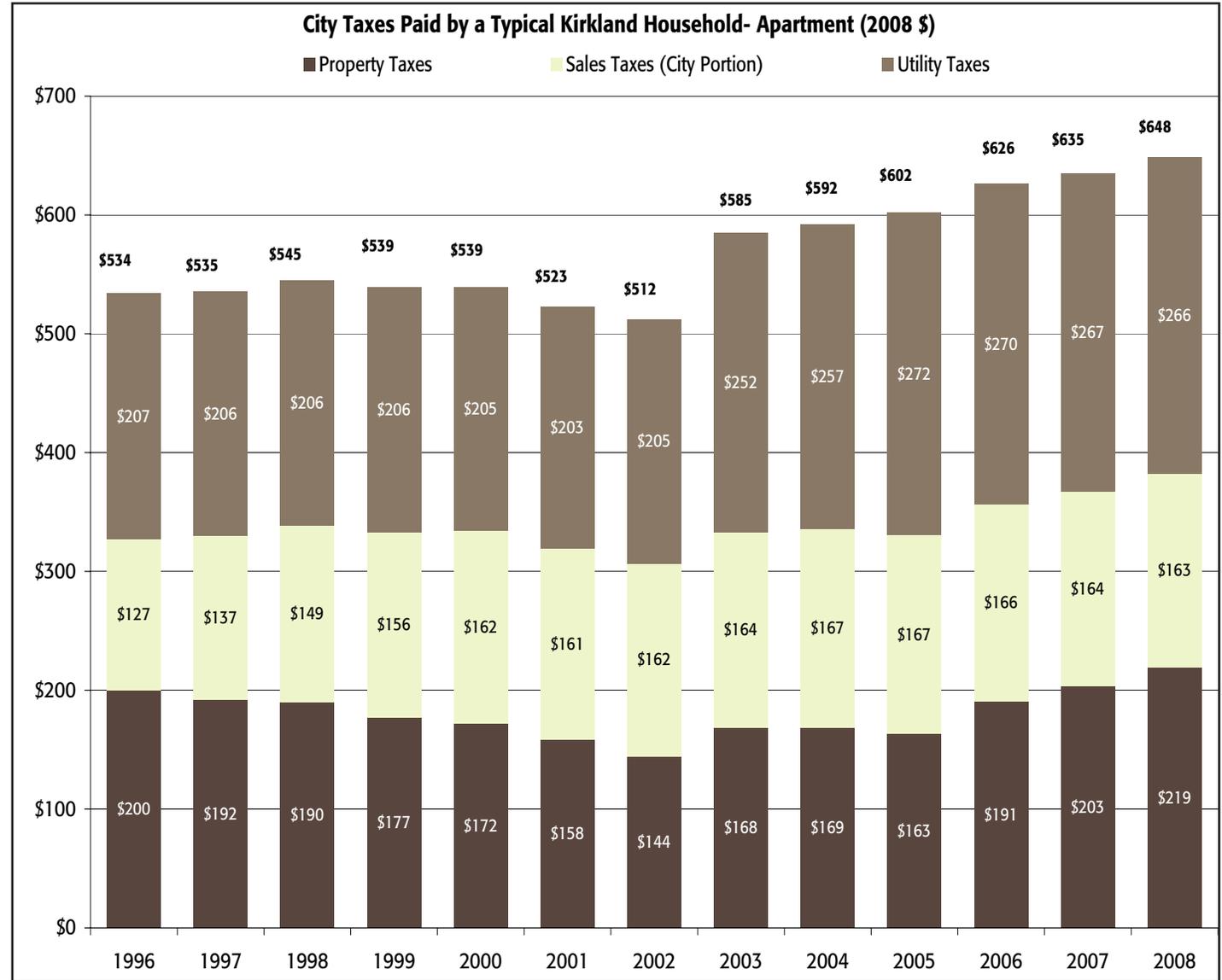


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Apartment Rental

- City tax burden increases for the condominium taxpayer have been driven in by increases in utility tax rates, increases in sales taxes paid, and a small increase in property taxes.
- While renters do not directly pay the property tax, our assumption is that the cost is passed on by the owner in the form of higher rents.
- The property values for rental properties have grown somewhat more rapidly than condominiums, but slower than single family homes.
- The growth in values have followed an increase in rents starting around 2002. A key factor in this growth was the attractiveness of condominium development in this timeframe, which included some apartment conversions. These, in turn, resulted in a reduction in apartment supply and pressure on rents.



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

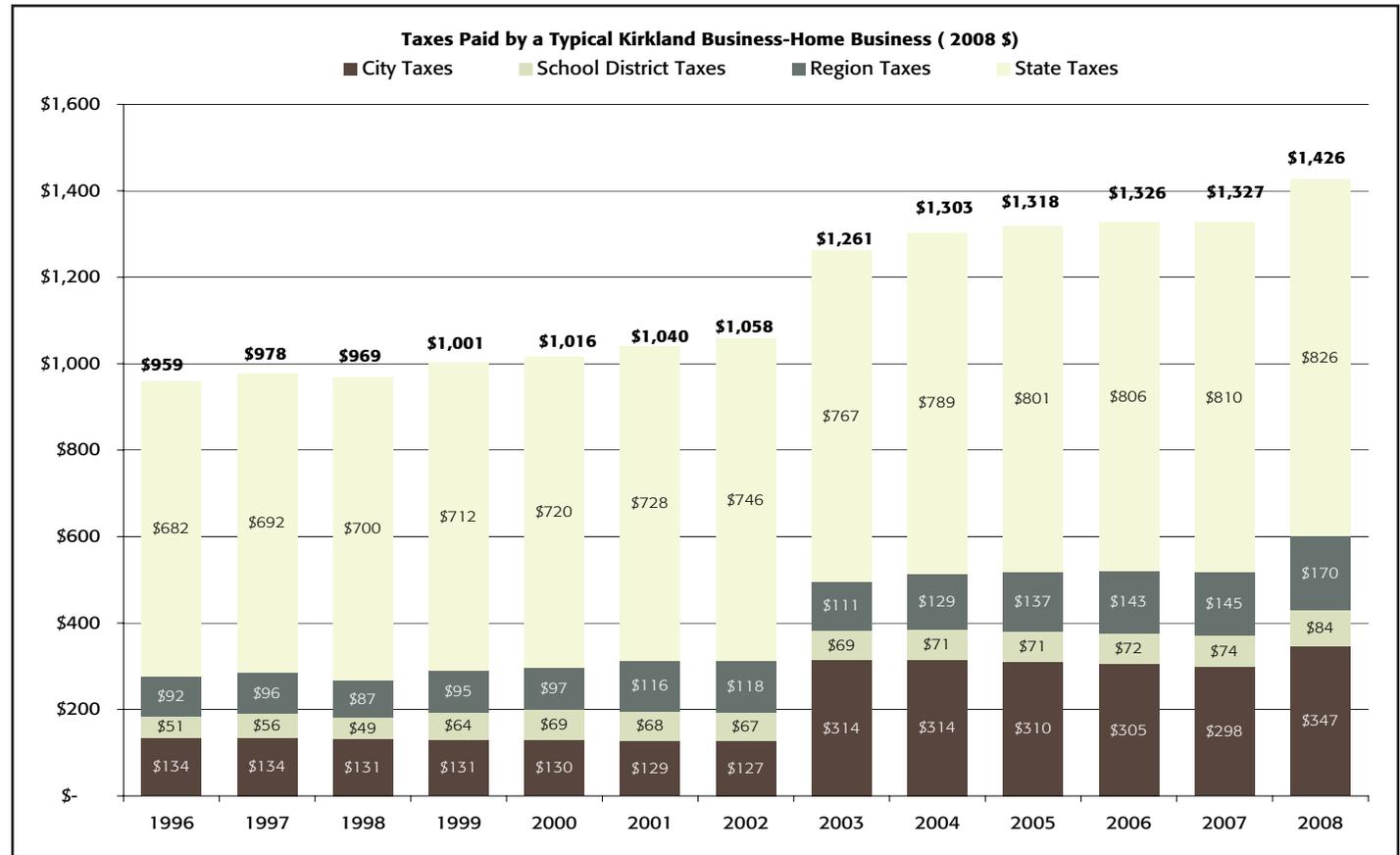


Home Business

Characateristics of Representative Business (2008)	
Home-Based Business - Graphic Design	
NAICS Code	442110
Number of Employees	1
Gross Revenues - Per Employee	100,000
Gross Revenues - Total	100,000
Floor Area Ratio (SF floor space/SF land)	0.30
Floor Area per Employee (SF)	120
Floor Area (SF)	120
Land Area (SF)	na
Taxable Assessed Value	36,000

For the hypothetical home-based business, Berk & Associates assumed that modest portions of operating a household would be allocated to the business. In effect, we assumed that the business would consume 120 square feet of the house (and would therefore pay a small portion of the property taxes). We also assumed that the existance of the business would increase usage of electricity and telecom services, which generated modest utility taxes.

- The overall tax burden for this particular home-based business is estimated to have increased at an annual rate of 3.4% in inflation-adjusted terms.
- This result is particularly sensitive to the assumptions about the business:
 - Property taxes are a key component of the higher growth rate in taxes, as this business is assumed to be located in a single family home which saw significant appreciation

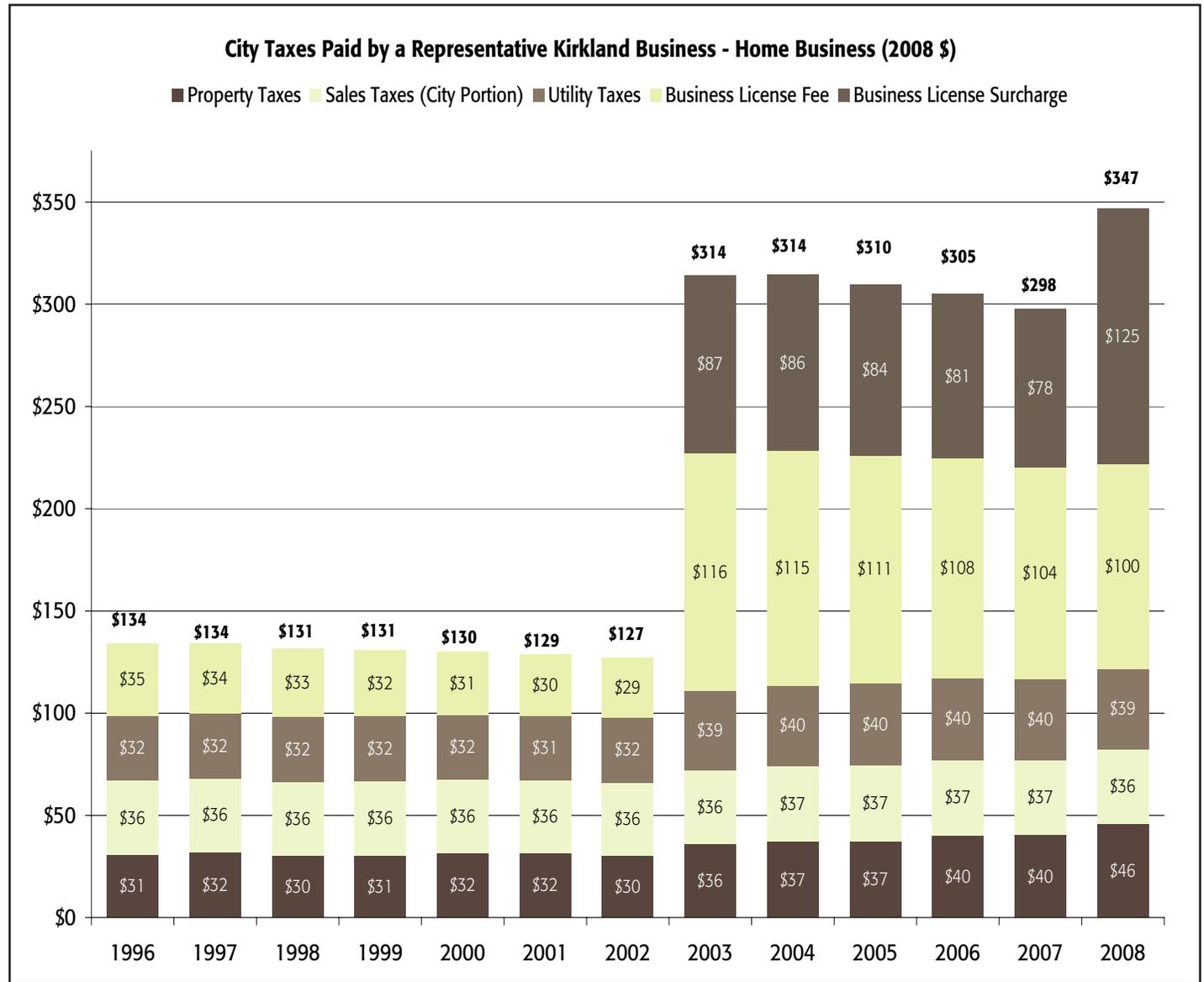


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Home Business

- For the home business, and all businesses to follow, Kirkland's business license fee and surcharge are affected by the inflation adjustment. Because historical costs are reported in 2008 dollars, the \$100 spent on the fee in 2005, has an inflation-adjusted cost of \$111 when expressed in 2008 dollars.
- Among all businesses, a business with only one employee, but \$100,000 in gross revenues is most disadvantaged by Kirkland's current business license fee/surcharge structure. In 2008 (the year that the business achieved \$100,000 in gross revenues, the business license fee and the business license surcharge account for roughly two-thirds of city taxes.



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

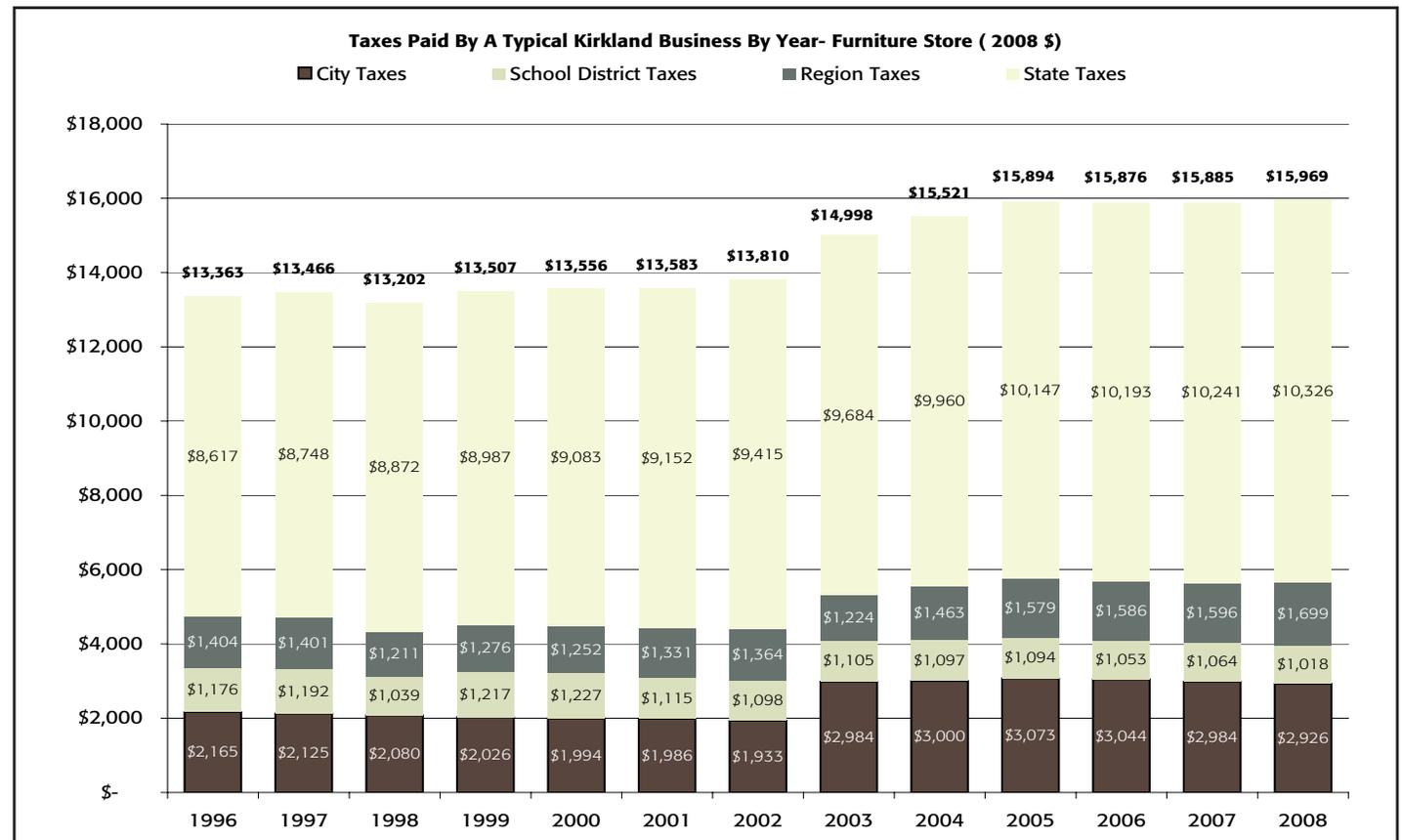


Grocery Store

Characteristics of Representative Business 2008	
Grocery	
NAICS Code	445110
Number of Employees	65
Gross Revenues - Per Employee	289,909
Gross Revenues - Total	18,844,109
Floor Area Ratio (SF floor space/SF land)	0.35
Floor Area per Employee (SF)	350
Floor Area (SF)	22,750
Land Area (SF)	65,000
Taxable Assessed Value	2,275,000

The hypothetical grocery store was structured to reflect a relatively small grocery store, with a bit less than 27,000 square feet. The store is assumed to have 65 employees, and generate gross revenues of nearly \$19 million—a high revenue figure for a store of that size. In 2008, the store is assumed to have an assessed value of a bit less than \$2.3 million, which translates to \$100 per square foot.

- Overall taxes for the hypothetical grocery store increased by roughly \$2,500 in inflation adjusted terms (an average of 1.4% per year).
- The largest source of tax increases came at the state level, with the second largest increase coming from additional city taxes.

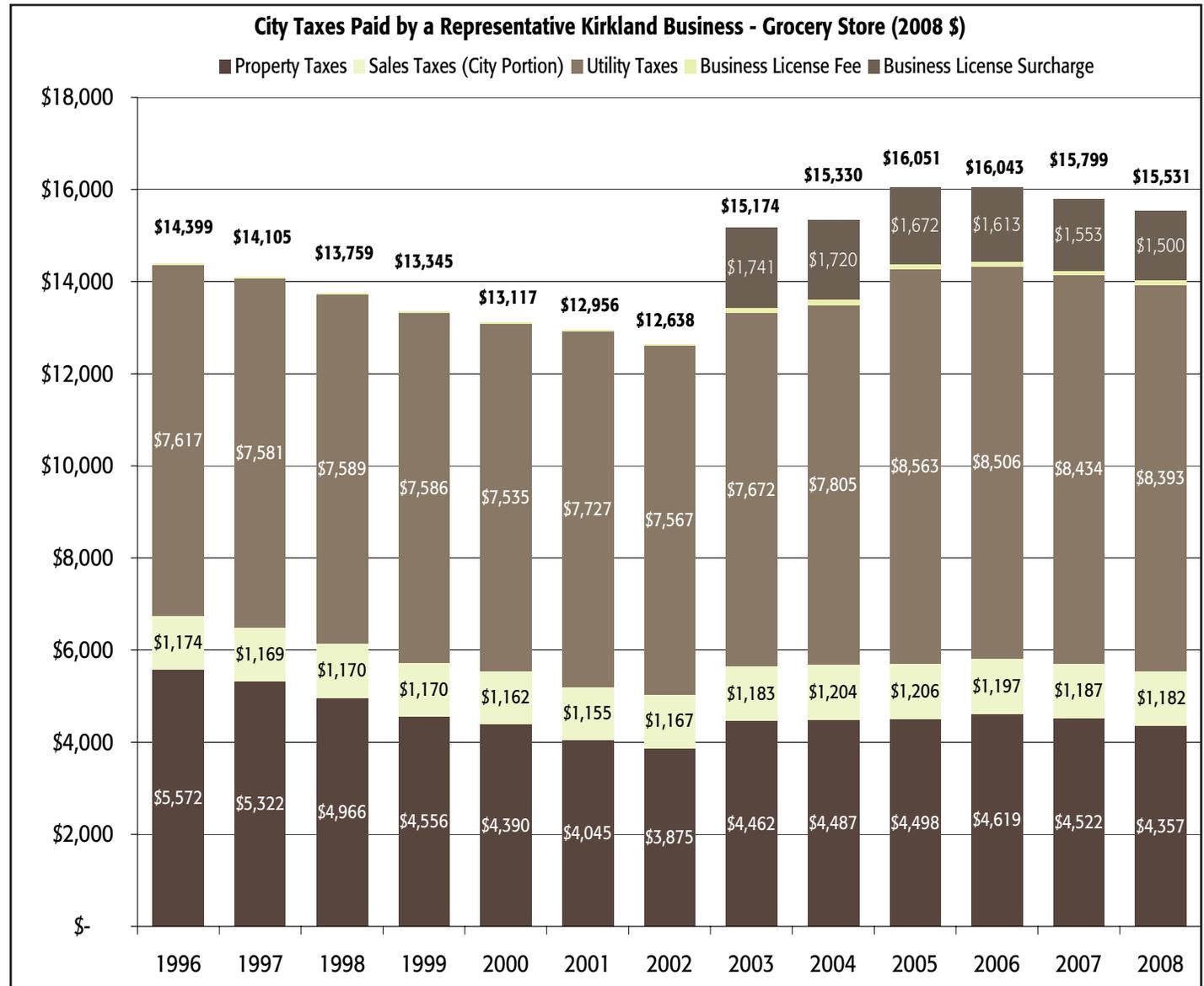


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Grocery Store

- Through 2002, the city tax burden for the hypothetical grocery store declined steadily. With an increase in Kirkland's business license fee, addition of the license fee surcharge, and subsequent increases in utility taxes, however, the grocery tax burden increased and then began to wane in the most recent years.
- Overall, in inflation-adjusted terms, the representative grocery store saw city tax increases of a bit more than \$1,100, an annual growth rate of less than 1%.



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

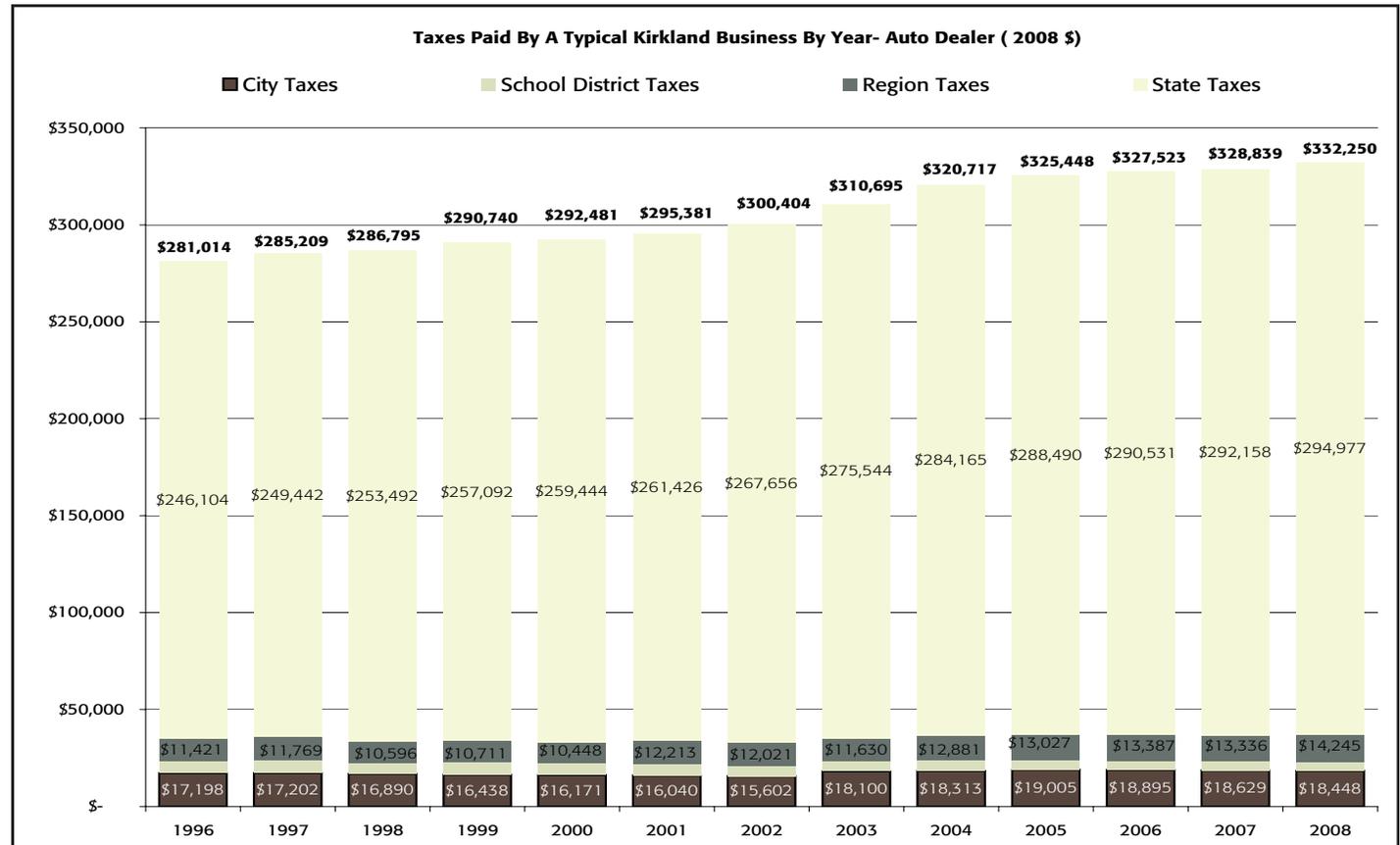


Auto Dealer

Characateristics of Representative Business (2008)	
Auto Dealers	
NAICS Code	441110
Number of Employees	75
Gross Revenues - Per Employee	724,773
Gross Revenues - Total	54,358,006
Floor Area Ratio (SF floor space/SF land)	0.20
Floor Area per Employee (SF)	350
Floor Area (SF)	26,250
Land Area (SF)	131,300
Taxable Assessed Value	1,968,750

The hypothetical auto dealer is assumed to have 75 employees and generate nearly \$725,000 per employee. This latter figure reflects the reality that auto dealerships are high value, low margin businesses. In terms of built space, the dealership is assumed to have a bit more than 26,000 square feet of facilities.

- For the hypothetical auto dealer, inflation-adjusted tax increases have been driven, far-and-away, by increase state taxes (driven by increases in B&O taxes, which in turn, are driven by increases in sales). Assumptions about rates of revenue growth for auto dealers and other representative businesses are based on Berk & Associates' analyses of revenue gains by commercial categories over the period.

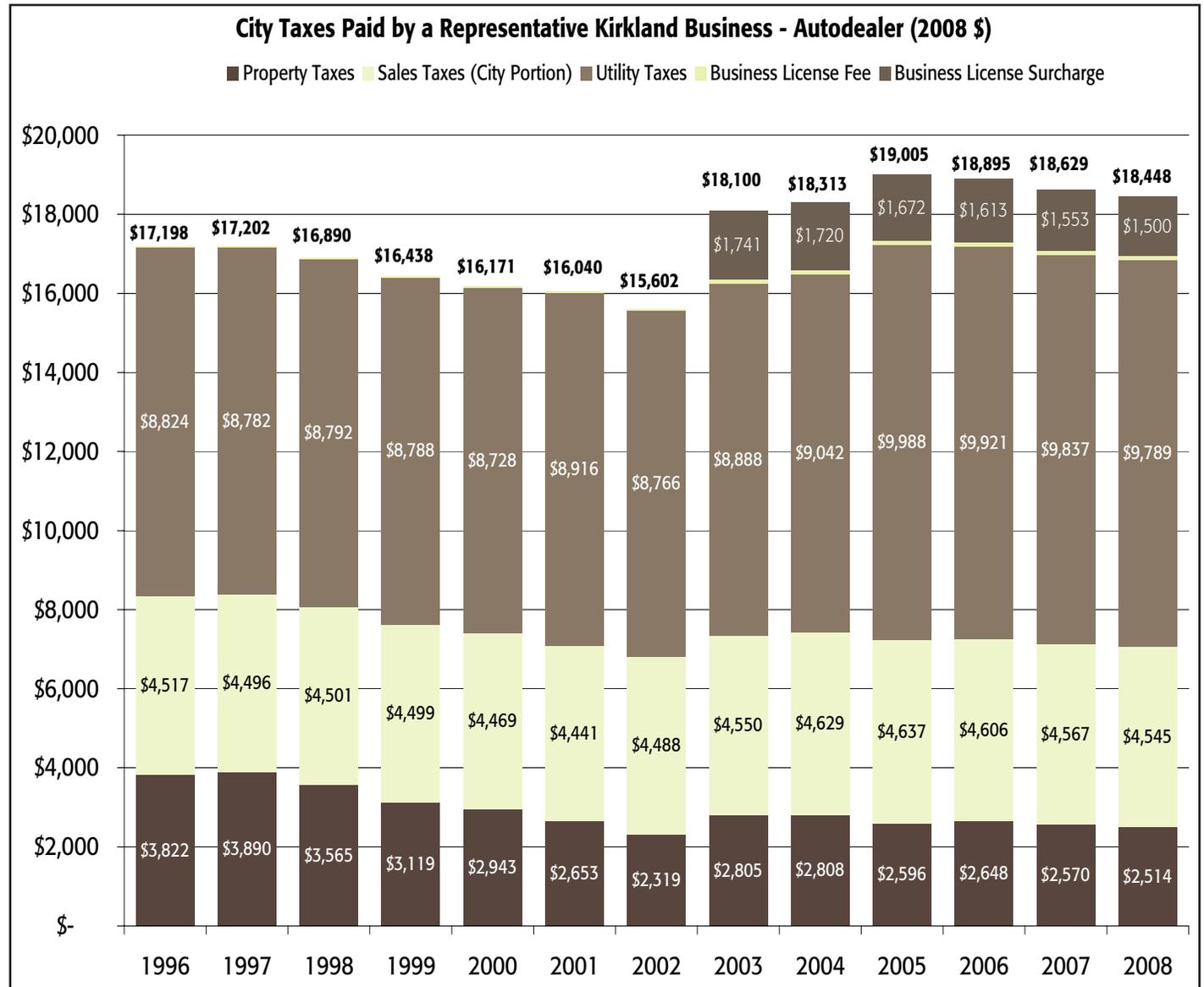


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Auto Dealer

- From the city perspective, the auto dealer saw relatively modest increases in city taxes (especially compared with those shouldered by the representative single family household and small businesses). In inflation-adjusted terms, city tax burdens increased by roughly 7 percent over the 12-year period (an average annual increase of about 0.6%).



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

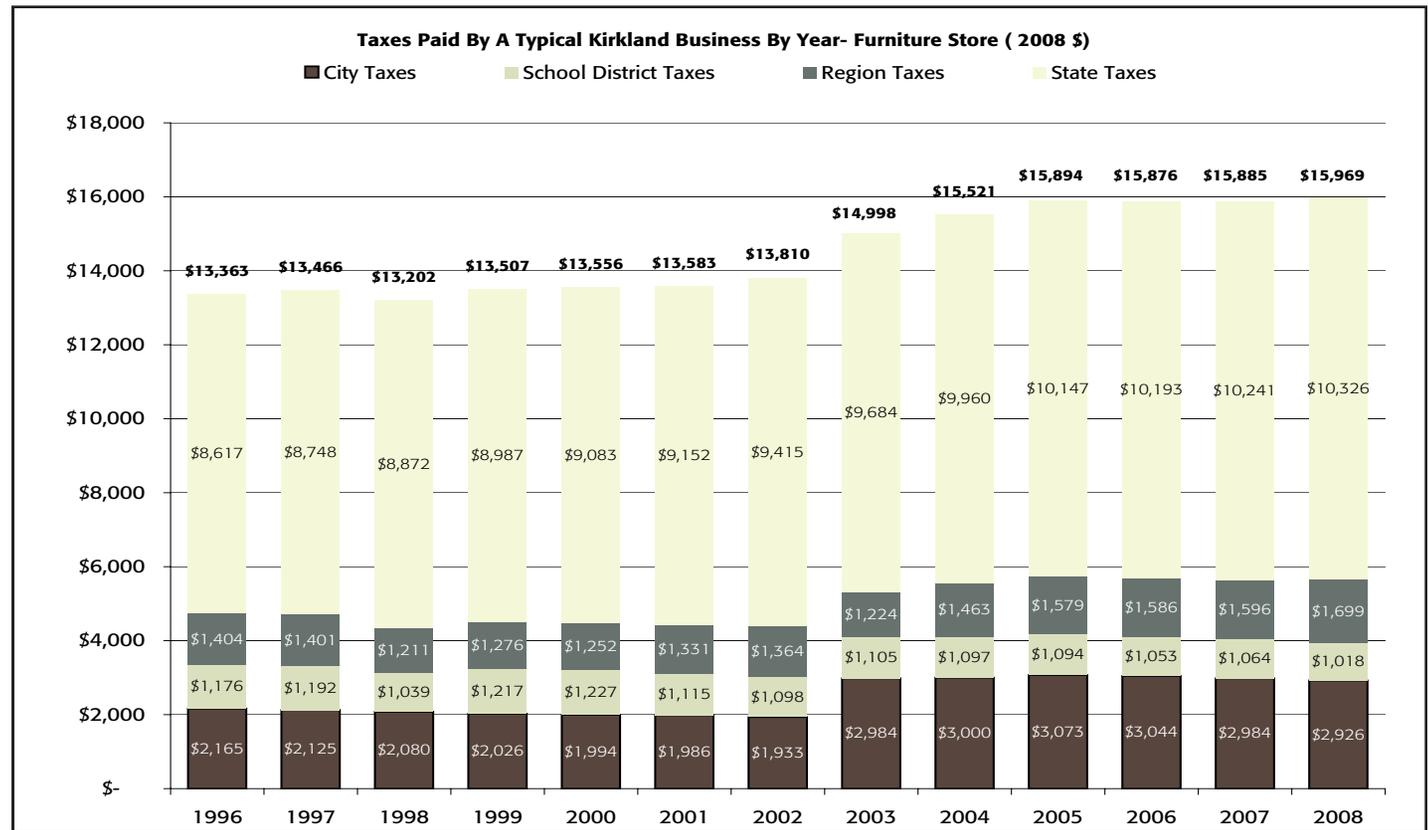


Furniture Store

Characteristics of Representative Business (2008)	
Furniture Store	
NAICS Code	442110
Number of Employees	7
Gross Revenues - Per Employee	225,875
Gross Revenues - Total	1,581,125
Floor Area Ratio (SF floor space/SF land)	0.30
Floor Area per Employee (SF)	500
Floor Area (SF)	3,500
Land Area (SF)	11,700
Taxable Assessed Value	437,500

The hypothetical furniture store is a relatively small store (3,500 square feet) with a total of 7 employees. The store is assumed to have a total assessed value of less than 440,000 (\$125 per square foot), and generate about \$1.6 million in total sales.

- As was true of the grocery store, the overall tax burden increase for the hypothetical furniture store is driven primarily by increases in state B&O taxes, with increased city taxes playing a secondary role.

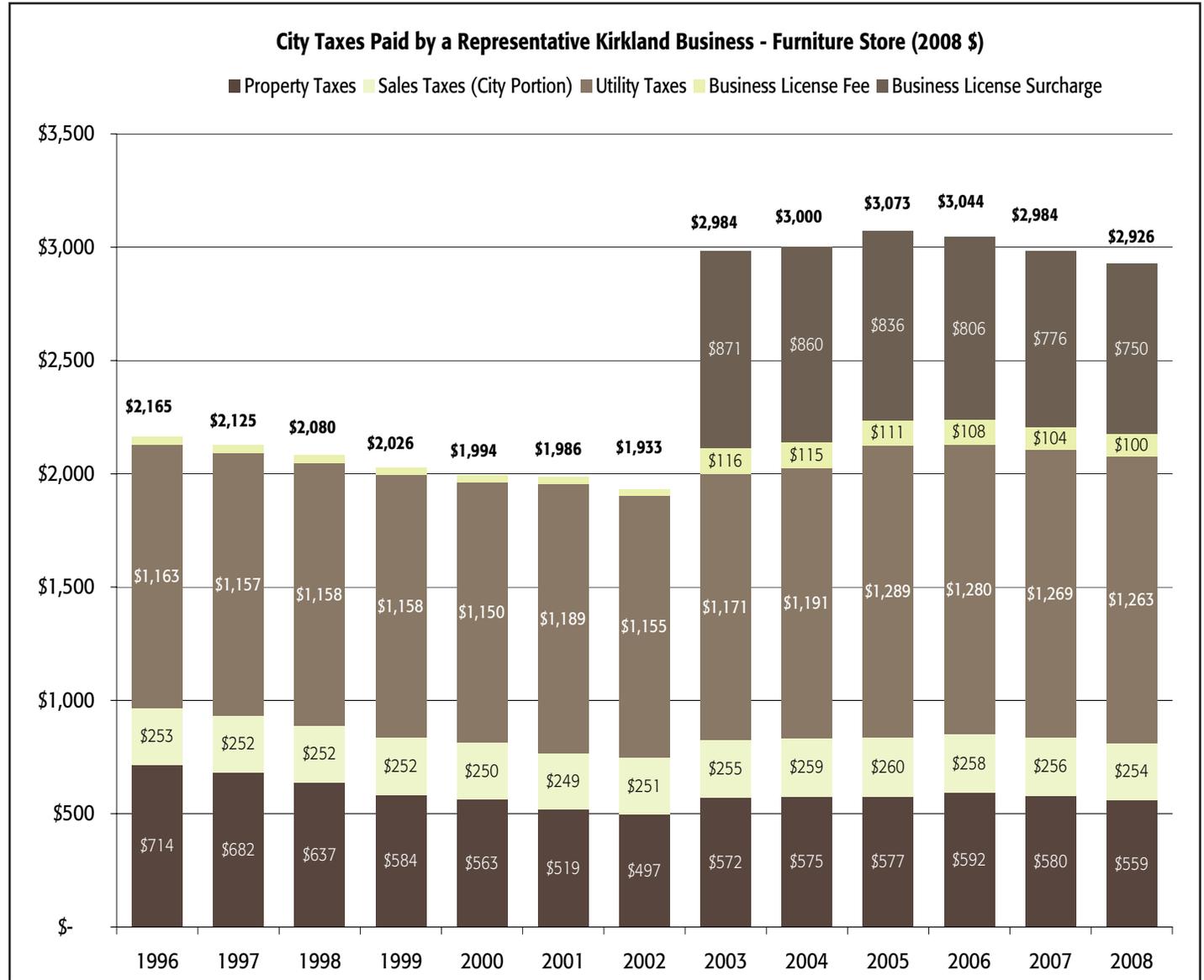


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Furniture Store

- Increased city taxes for the furniture store came from the increased business license fee, the adoption of the business license surcharge, and increased utility taxes.
- As was true of the representative single family household, and other small businesses, the representative furniture store saw city tax increases of more than 30%.



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

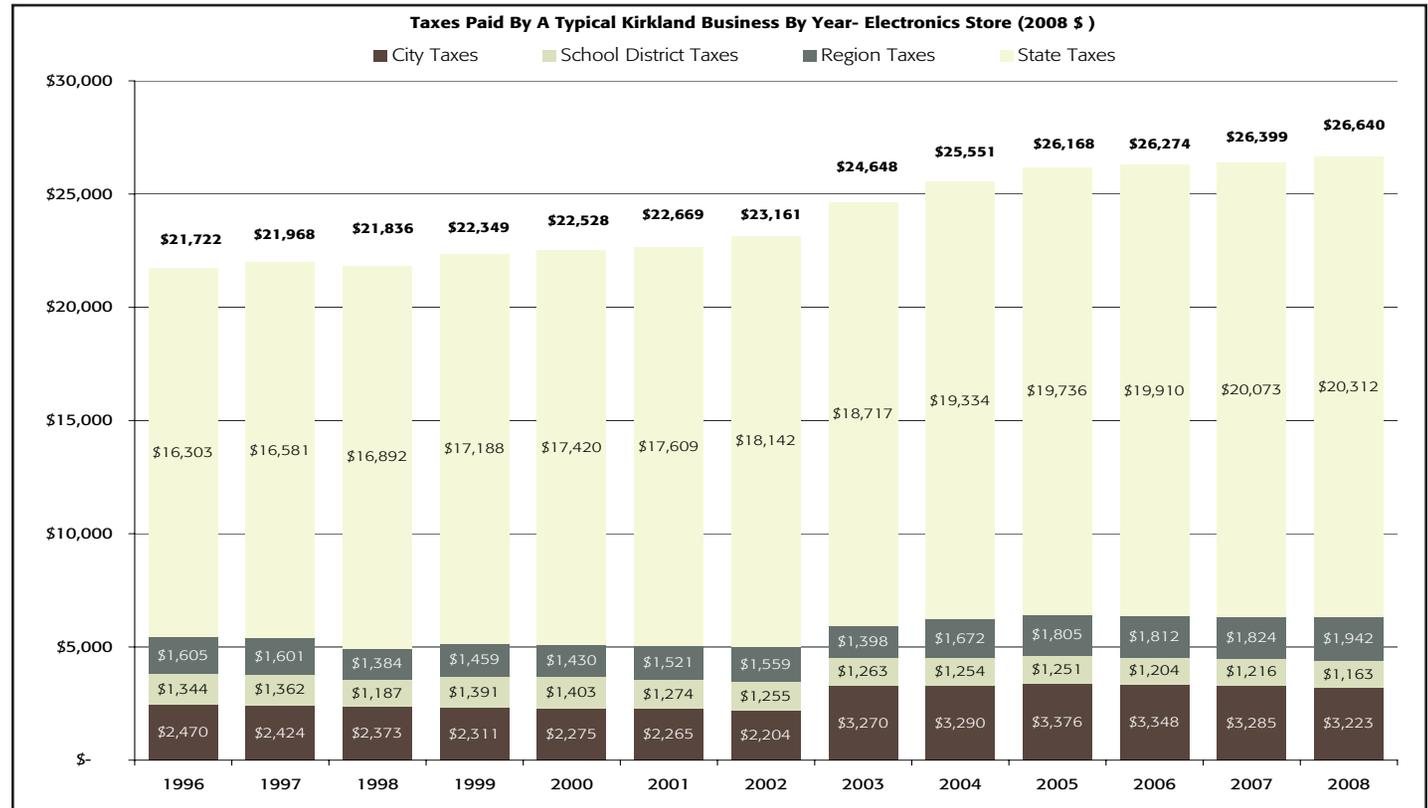


Electronics Store

Characateristics of Representative Business (2008)	
Consumer Electronics Store	
NAICS Code	443112
Number of Employees	8
Gross Revenues - Per Employee	451,750
Gross Revenues - Total	3,613,999
Floor Area Ratio (SF floor space/SF land)	0.30
Floor Area per Employee (SF)	500
Floor Area (SF)	4,000
Land Area (SF)	13,300
Taxable Assessed Value	500,000

The hypothetical electronics store was designed to be similar to the representative furniture store in some ways, but different in others. The store is similar in size and number of employees, but is assumed to generate significantly higher total sales (reflecting a lower-margin business).

- For the hypothetical electronics store, as was true of the furniture store, the increase in total taxes was driven primarily by increased state taxes and secondarily by increased city taxes.

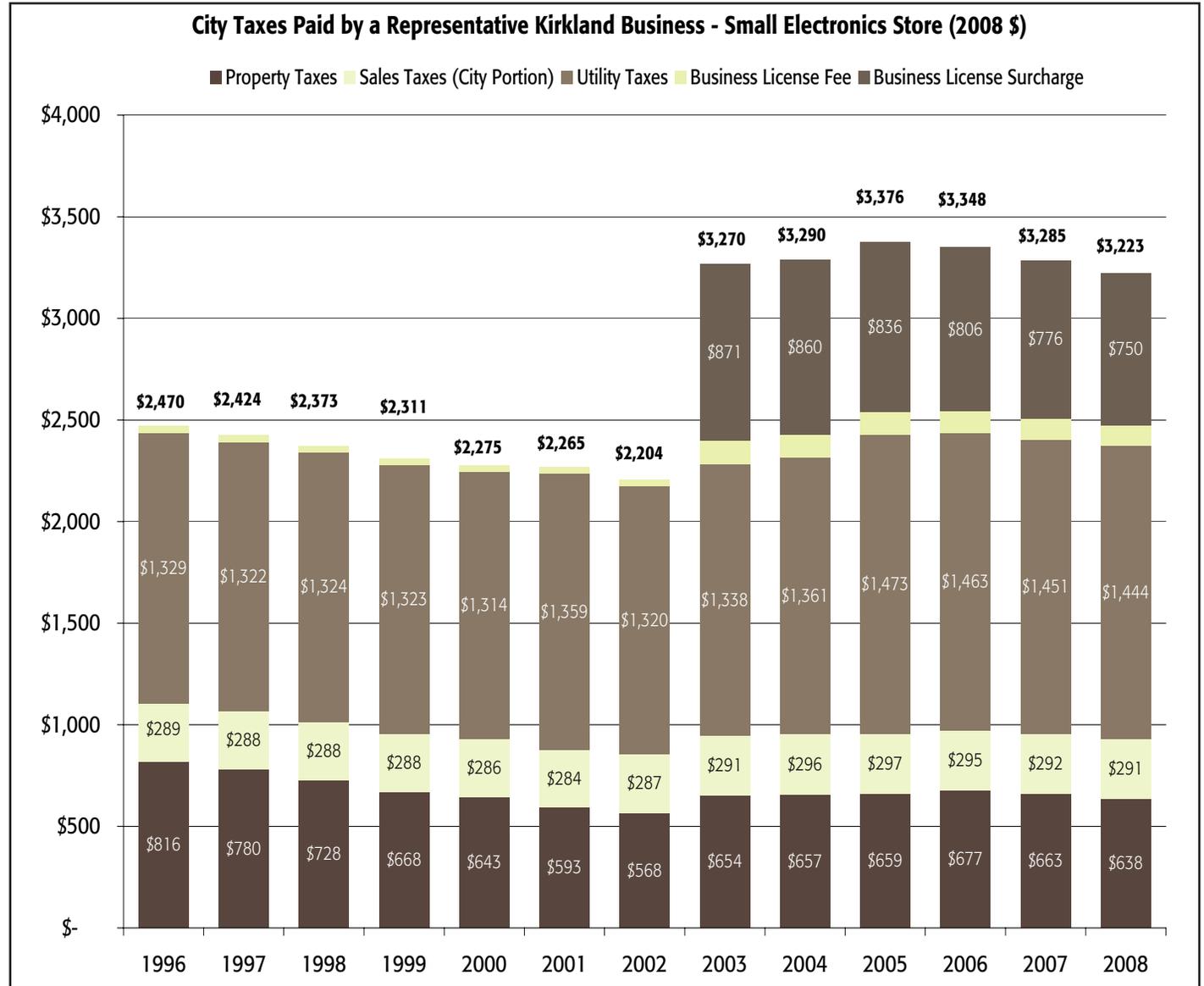


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Electronics Store

- The electronics store also saw city tax increases in excess of 30% (in inflation-adjusted terms). With eight employees, the electronics store is among the businesses most disadvantaged by Kirkland's business license fee/surcharge structure. Like the furniture store, the business license fee and surcharge costs the business more than \$100 per employee.



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

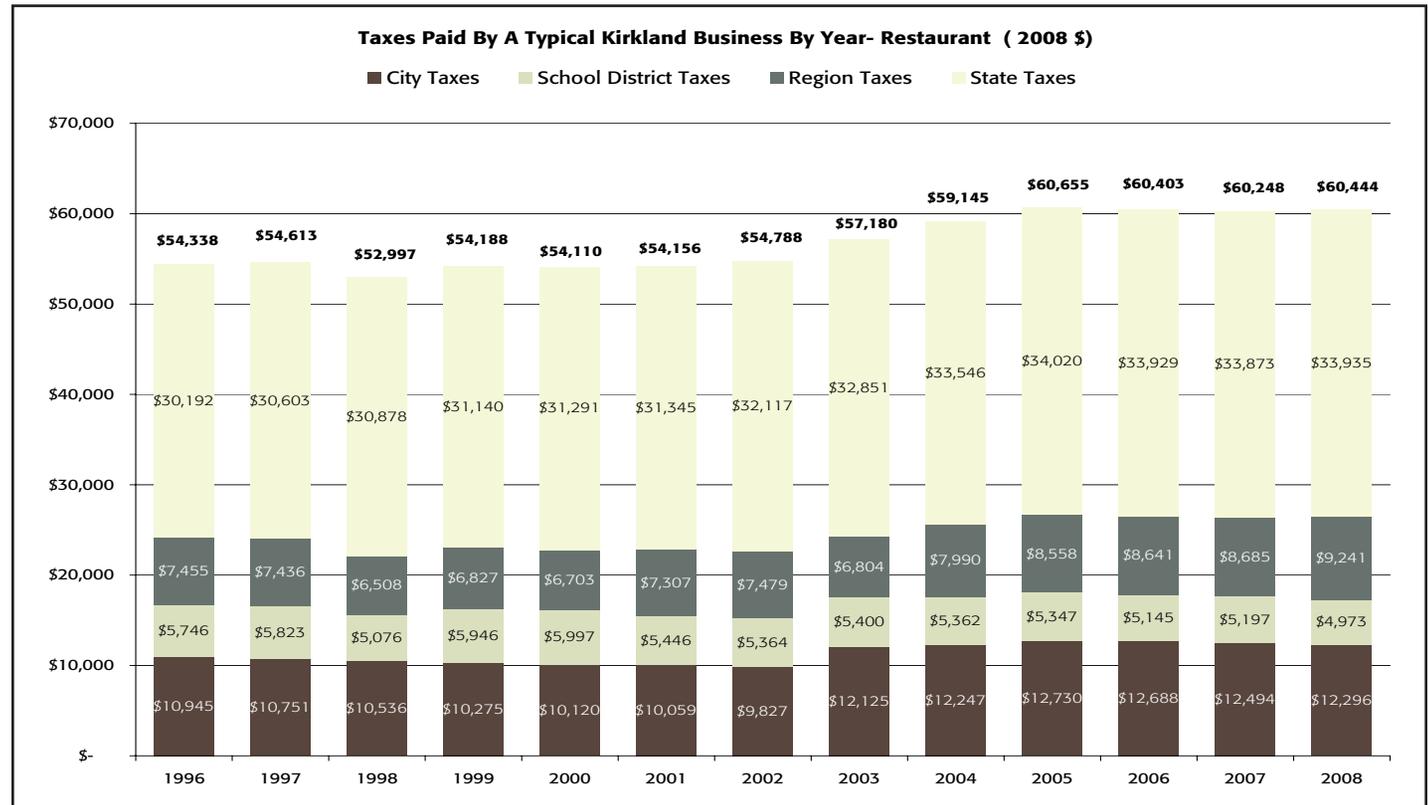


Restaurant

Characteristics of Representative Business (2008)	
Restaurant	
NAICS Code	722110
Number of Employees	57
Gross Revenues - Per Employee	60,233
Gross Revenues - Total	3,433,299
Floor Area Ratio (SF floor space/SF land)	0.30
Floor Area per Employee (SF)	300
Floor Area (SF)	17,100
Land Area (SF)	57,000
Taxable Assessed Value	2,137,500

The hypothetical restaurant reflects a big restaurant (more than 17,000 square feet) with a large number of employees (57). Gross revenues per employee are low compared to other businesses, reflecting the reality that, in many ways, restaurants tend to act more like manufacturers than retailers. Restaurants use relatively inexpensive labor and a steady supply of raw materials (mostly food) to produce goods that are sold and consumed on the premises.

- The representative restaurant, as a larger employer, and with a different operating profile than some other businesses, saw more modest increases in total tax burden.

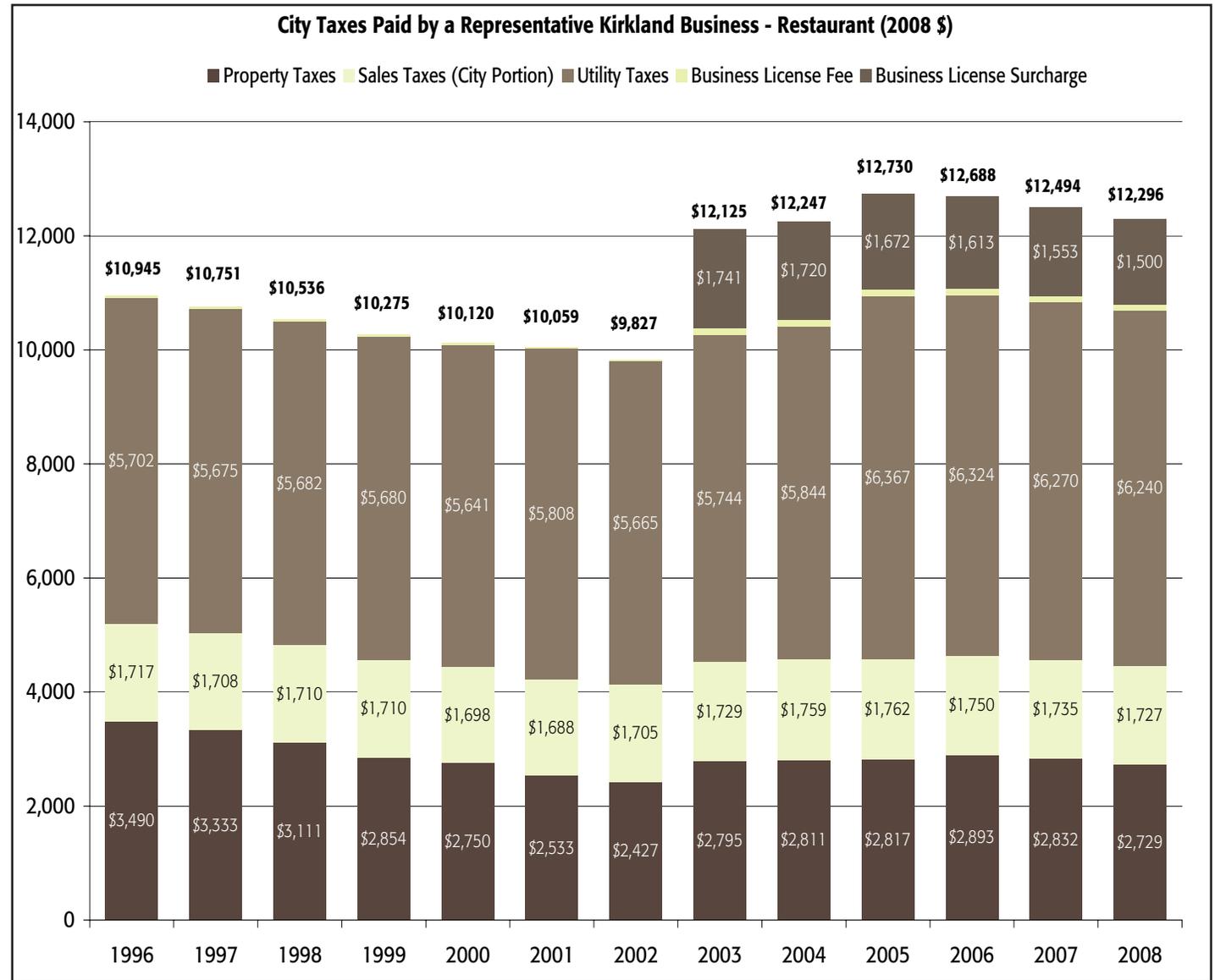


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Restaurant

- As a mid-sized business (with an assumed 57 employees), the hypothetical restaurant saw more modest increases in city taxes (12% over the entire period, or just a bit less than 1% per year).



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

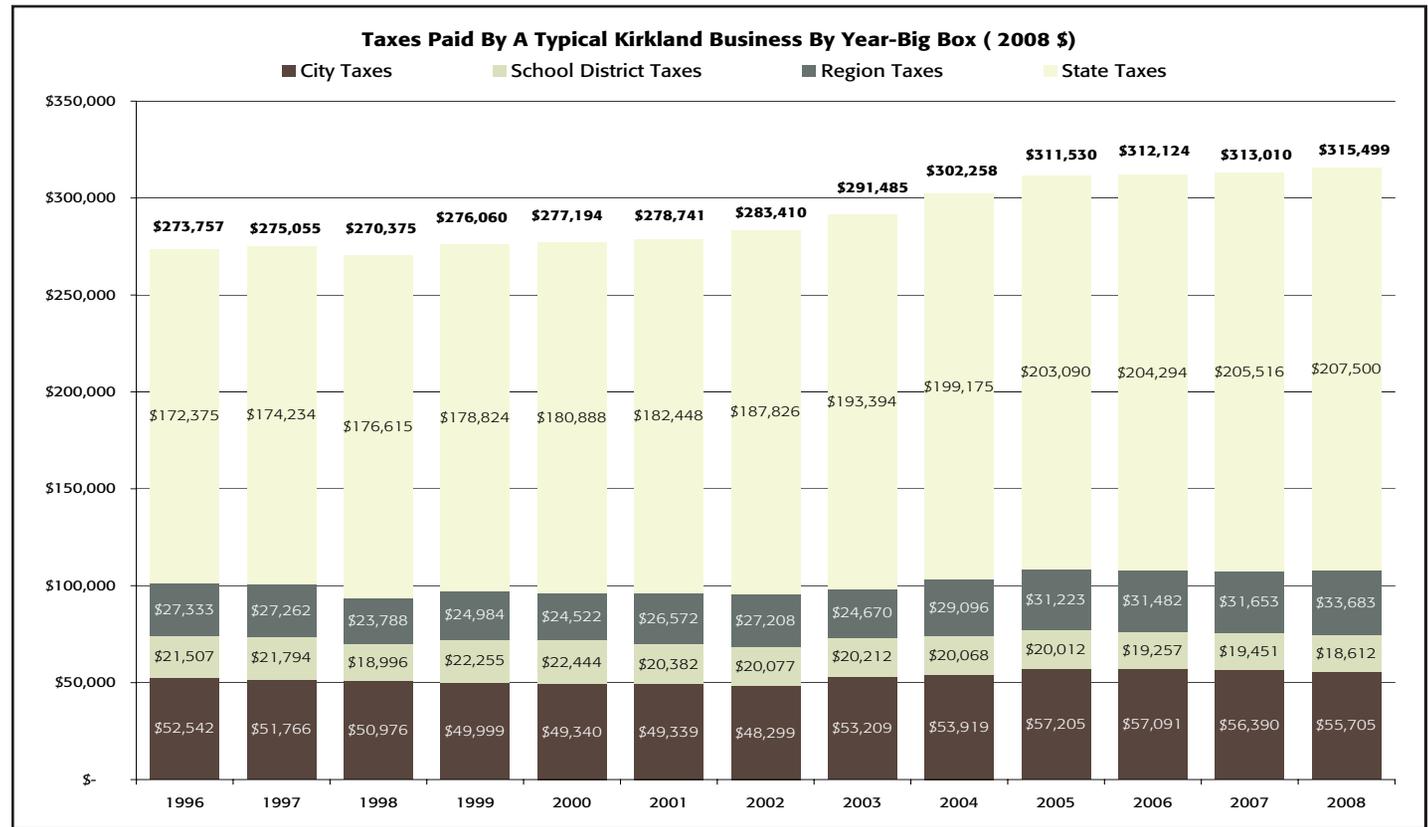


Big Box Retail

Characteristics of Representative Business (2008)	
Big Box	
NAICS Code	452112
Number of Employees	165
Gross Revenues - Per Employee	186,023
Gross Revenues - Total	30,693,730
Floor Area Ratio (SF floor space/SF land)	0.35
Floor Area per Employee (SF)	606
Floor Area (SF)	100,000
Land Area (SF)	377,100
Taxable Assessed Value	8,000,000

The hypothetical big box store is assumed to be a 100,000 square foot store with 165 employees. The store is assumed to have more than 600 square feet per employee, and generate more than \$30 million in gross revenue. This translates to a bit more than \$300 in sales per square feet, a typical but certainly not spectacular performance.

- Like all other representative businesses, the hypothetical big-box retailer saw increased overall taxes. However, as a big business with many employees, the vast majority of the tax increases came at the state level.

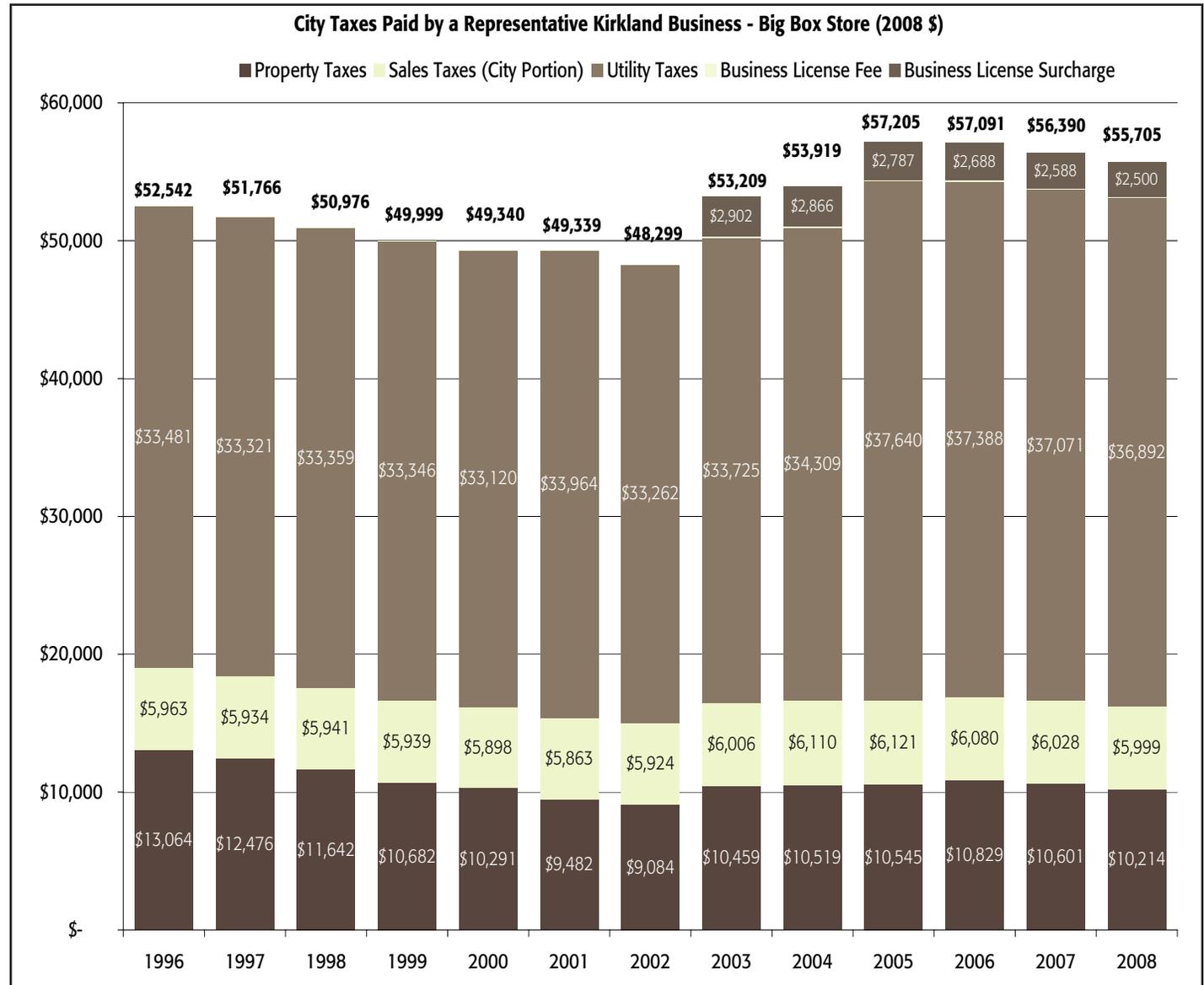


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Big Box Retail

- At the city level, most of the tax increases seen by the big box retailer came from increased utility taxes, with the business license fee and surcharge adding an additional \$2,600.
- Overall, in inflation-adjusted terms, the big box retailer saw tax increases of 6% over the period (an average of less than 0.5% per year).



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

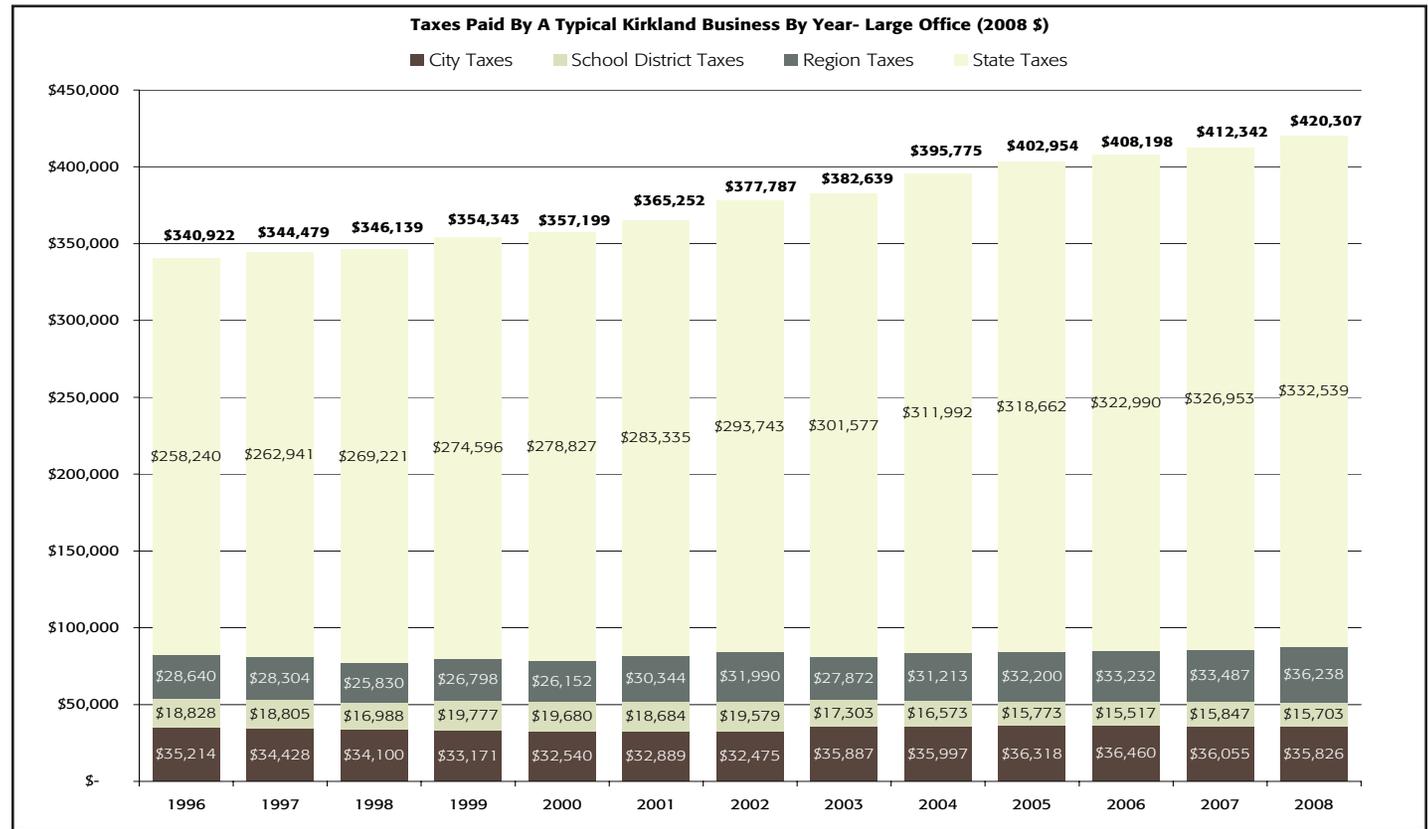


Large Office (150 FTE)

Characteristics of Representative Business (2008)	
Office - Large	
NAICS Code	561421
Number of Employees	150
Gross Revenues - Per Employee	110,507
Gross Revenues - Total	16,576,020
Floor Area Ratio (SF floor space/SF land)	0.40
Floor Area per Employee (SF)	300
Floor Area (SF)	45,000
Land Area (SF)	112,500
Taxable Assessed Value	6,750,000

The hypothetical large office user has 150 employees and takes up 45,000 square feet of office space, valued at \$150 per square foot. Compared with the mid- and small-size office users, the large office user is assumed to generate less revenue per employee (roughly \$110,000 in 2008).

- In terms of its tax profile, the hypothetical large office user has experienced overall tax increases similar to those seen by the big box retailer.

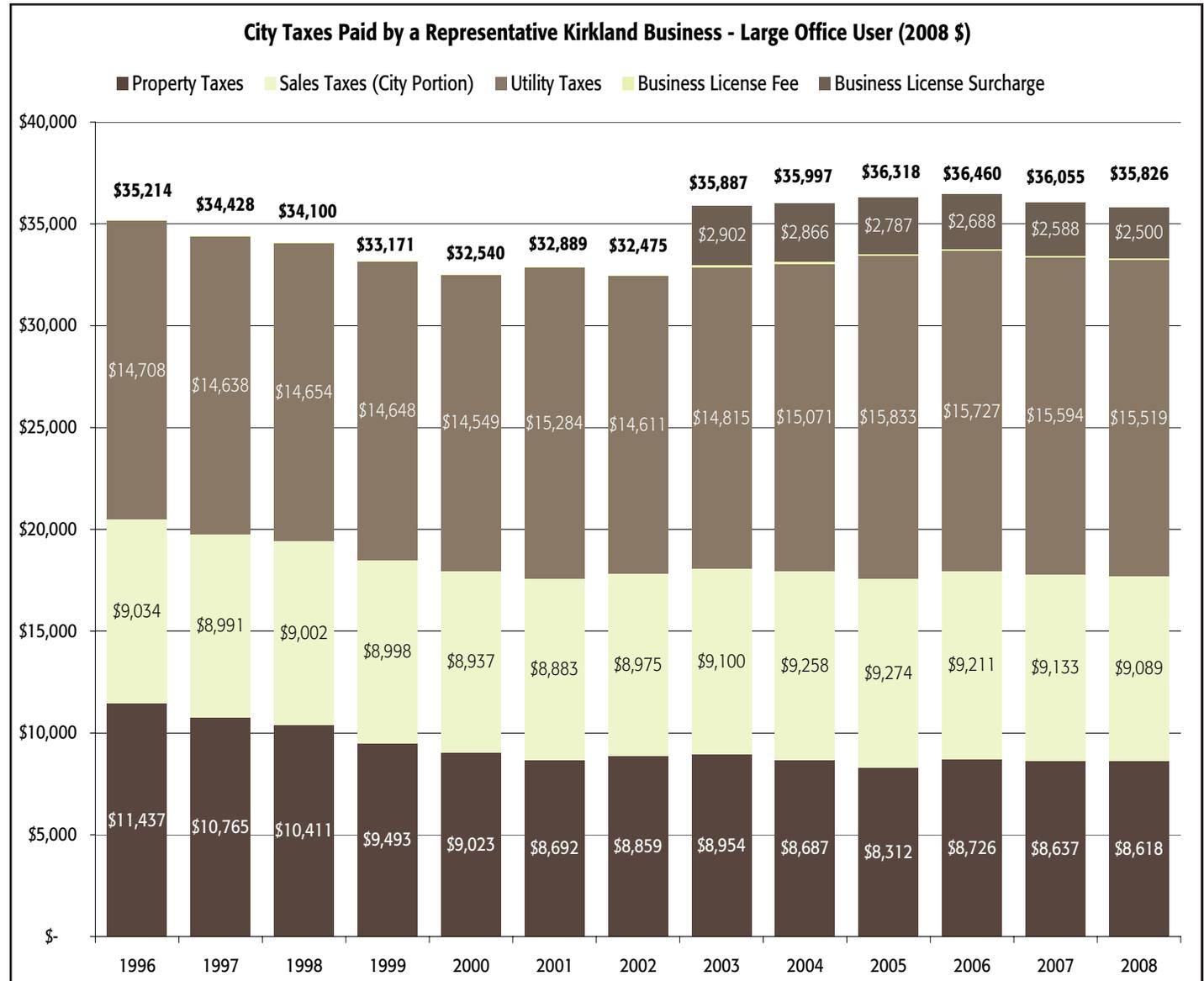


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Large Office (150 FTE)

- As a large business (for whom Kirkland's license fee/surcharge structure is most advantageous, and it is assumed, a more modest consumer of utilities, the large office user saw city tax increases of only 2% over the entire period.



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

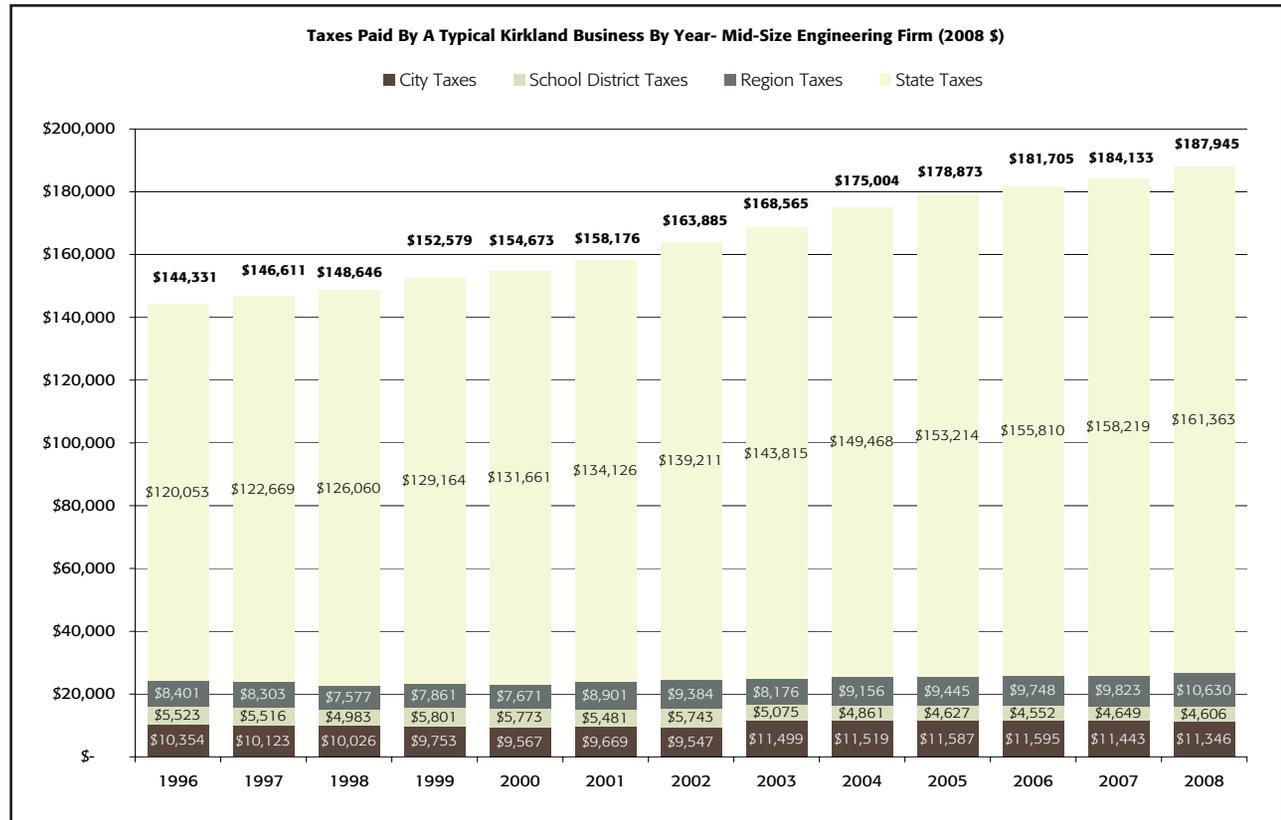


Engineering Firm/Medium Office

Characateristics of Representative Business (2008)	
Engineering Services	
NAICS Code	541,330
Number of Employees	44
Gross Revenues - Per Employee	207,200
Gross Revenues - Total	9,116,811
Floor Area Ratio (SF floor space/SF land)	0
Floor Area per Employee (SF)	300
Floor Area (SF)	13,200
Land Area (SF)	3,300
Taxable Assessed Value	1,980,000

The mid-size office user is based on the hypothetical engineering firm that was used in Kirkland's 2001 *Tax Burden Study*. The firm has 44 employees and is assumed to generate a bit more than \$200,000 in revenue per employee. With 13,200 square feet of office space, the firm represents an efficient user of space.

- The hypothetical engineering firm saw also saw total tax increases being driven by state B&O taxes.

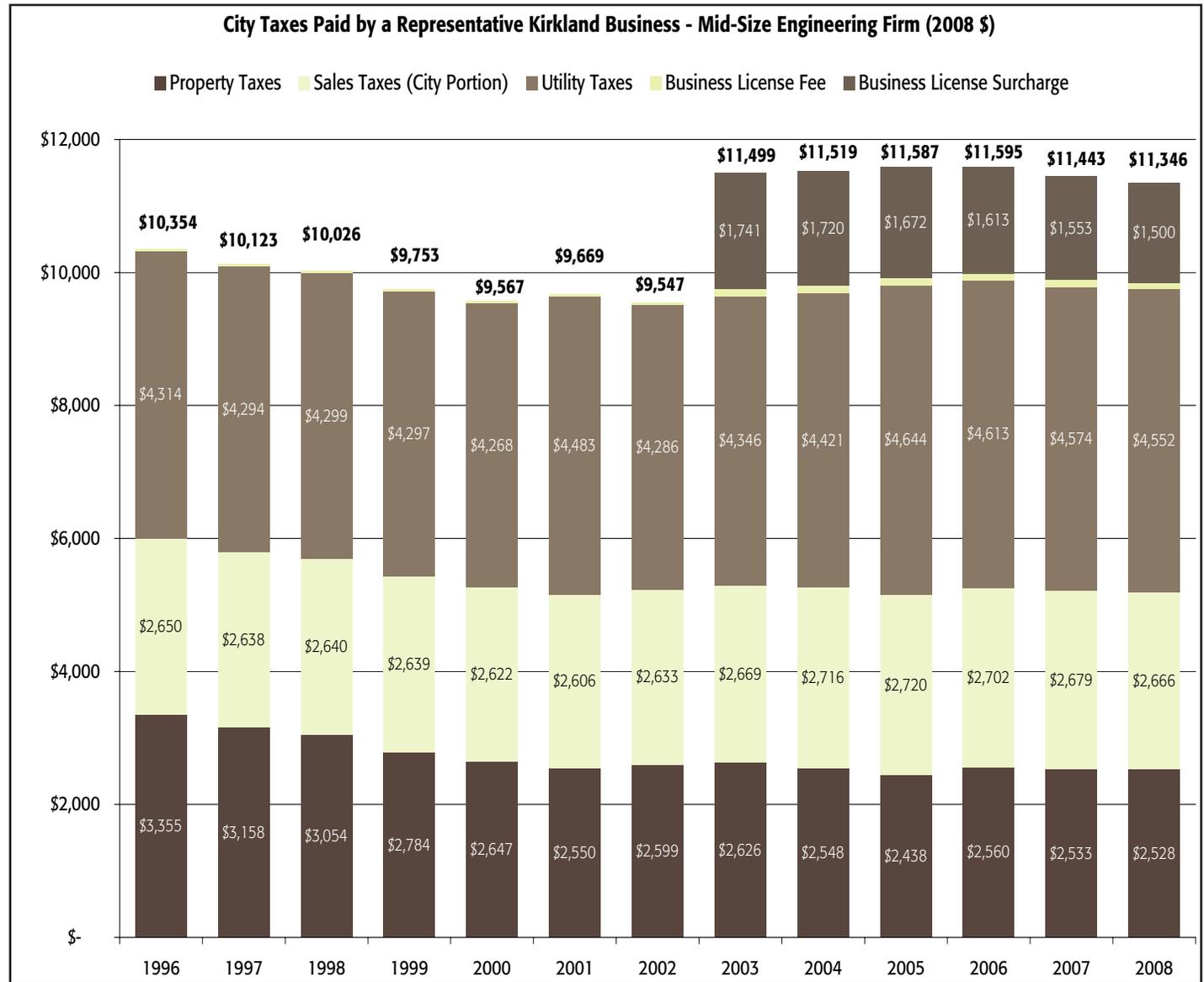


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Engineering Firm/Medium Office

- At the city level, increases in utility taxes more-or-less canceled out inflation-adjusted decreases in property taxes.
- As a medium-sized business, the engineering firm saw increases of 10% over the period. In per-employee terms, the business license fee/surcharge cost the firm less than \$30 per employee. As a result, the engineering firm saw percentage increases in city taxes that were substantially less than increases seen by small businesses.



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

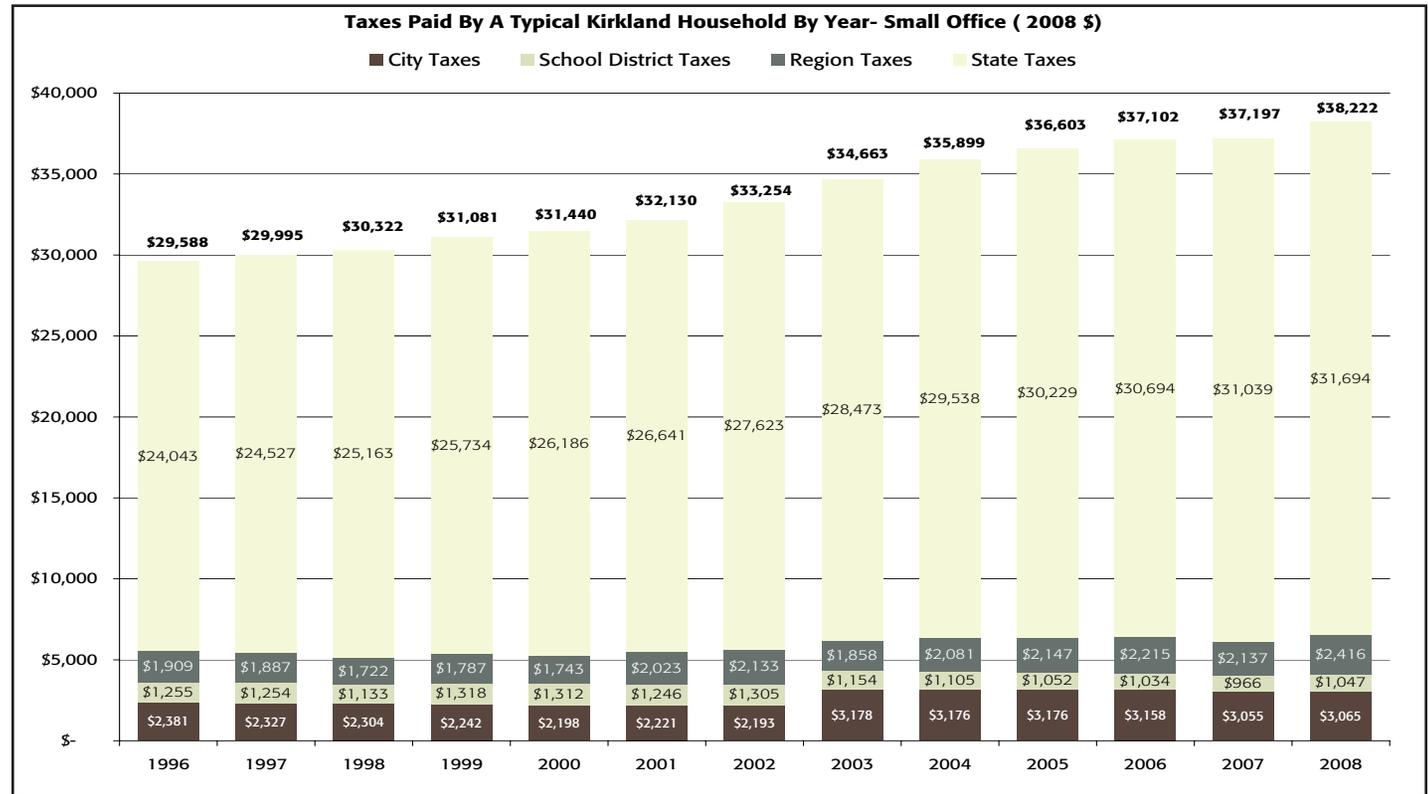


Small Office (10 FTE)

Characateristics of Representative Business (2008)	
Office - Small	
NAICS Code	541380
Number of Employees	10
Gross Revenues - Per Employee	174,004
Gross Revenues - Total	1,740,045
Floor Area Ratio (SF floor space/SF land)	0.40
Floor Area per Employee (SF)	300
Floor Area (SF)	3,000
Land Area (SF)	7,500
Taxable Assessed Value	450,000

The hypothetical small office user is a firm of 10 employees, with gross revenues per employee that approach those of the engineering firm (\$174,000 per employee versus the \$210,000 per employee for the engineering firm). Again, the small office user is assumed to use 300 square feet of office space per employee, and the space is assumed to be valued at \$150 per square foot.

- The hypothetical small office user saw more marked increases in total taxes, drive by both state and city taxes.

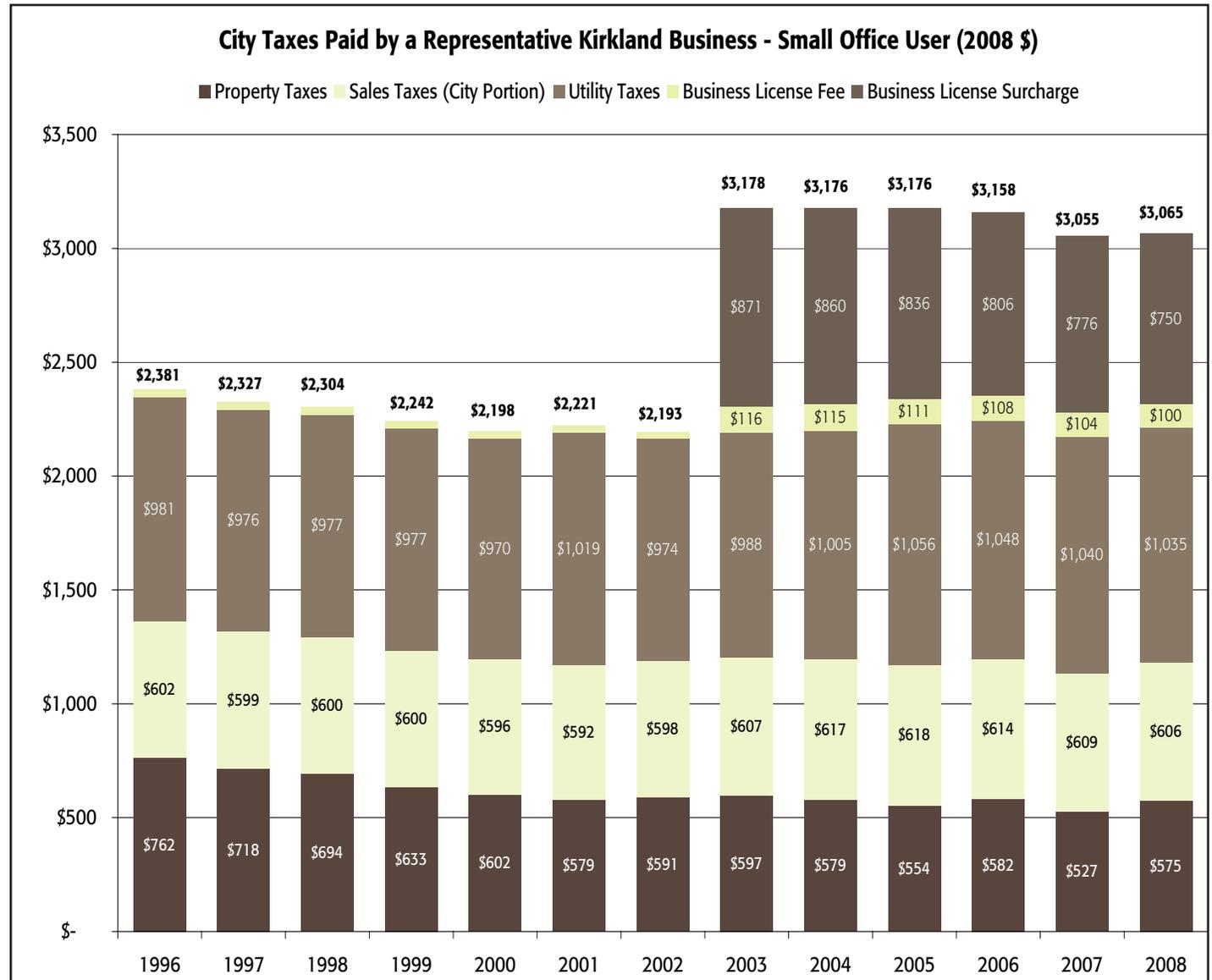


Source: City of Kirkland; King County Assessor; Berk & Associates, 2008



Small Office (10 FTE)

- In inflation-adjusted terms, the small office user saw increases in city taxes of a bit less than 30%.



Source: City of Kirkland; King County Assessor; Berk & Associates, 2008

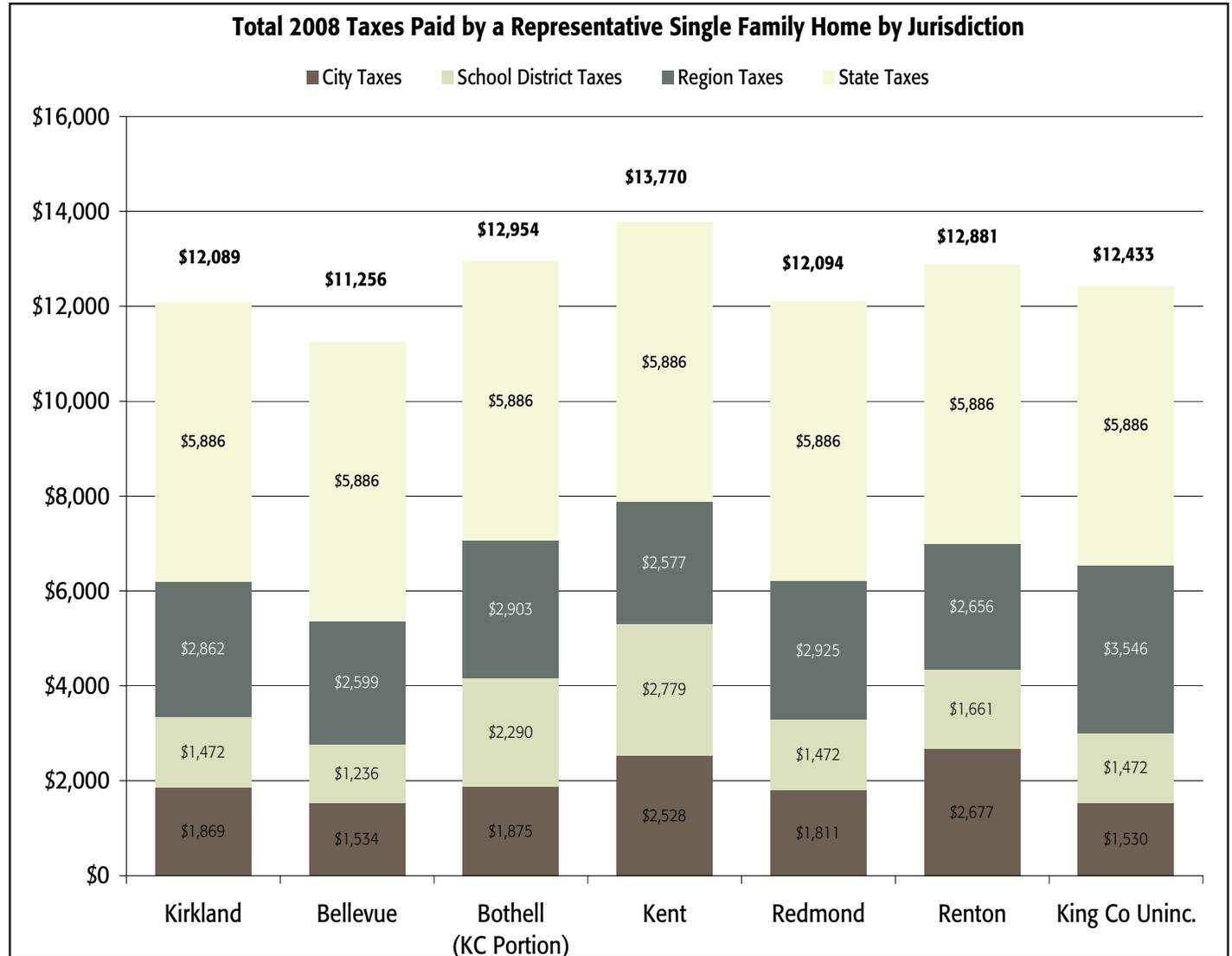


2008 PEER CITY COMPARISONS

PRESENTATION OF DETAILED ANALYTIC FINDINGS

Single-Family Household

- Comparisons of tax burdens among jurisdictions present information about what a given taxpayer would pay (in 2008) if one were to lift that specific taxpayer up and put them down in a different place. For the single family household, for example, the comparison assumes the household would have the same house (with the same assessed value) the same income, the same number and value of cars, etc. Differences in tax burdens, therefore, are entirely a function of different tax structures and rates among jurisdictions.
- For single family households (and all other representative taxpayers), the biggest drivers of tax burden variation are differences in school and city taxes.
- Overall, the cities with the lowest burdens: Bellevue, Redmond, and Kirkland, are the cities with the highest underlying property values.

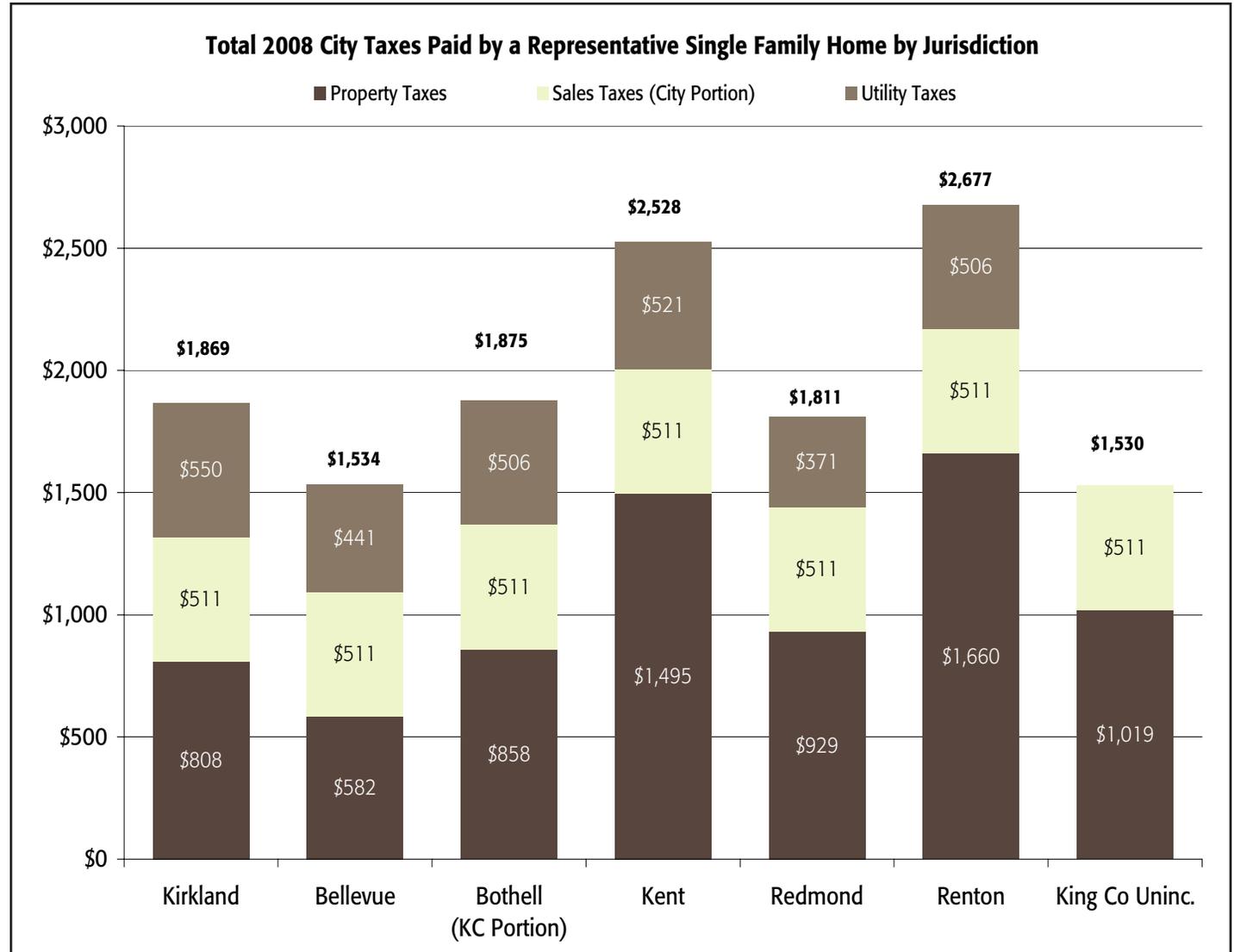


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Single-Family Household

- Consistent with the pattern for total taxes, the cities with the lowest city tax burdens were Bellevue, Redmond, and Kirkland—and most of the reduced burden is the result of lower city property tax levies.
- Unincorporated King County is not a city, so the term “city taxes” is not as meaningful. For this and all other representative taxpayers, the “city” property tax presented for unincorporated King County refers to the unincorporated county Road Levy—the one tax that would certainly go away if the area were to incorporate or be annexed. In case of unincorporated King County, lower “city” tax burdens are offset by higher “regional” taxes due to levies like the fire district levy.

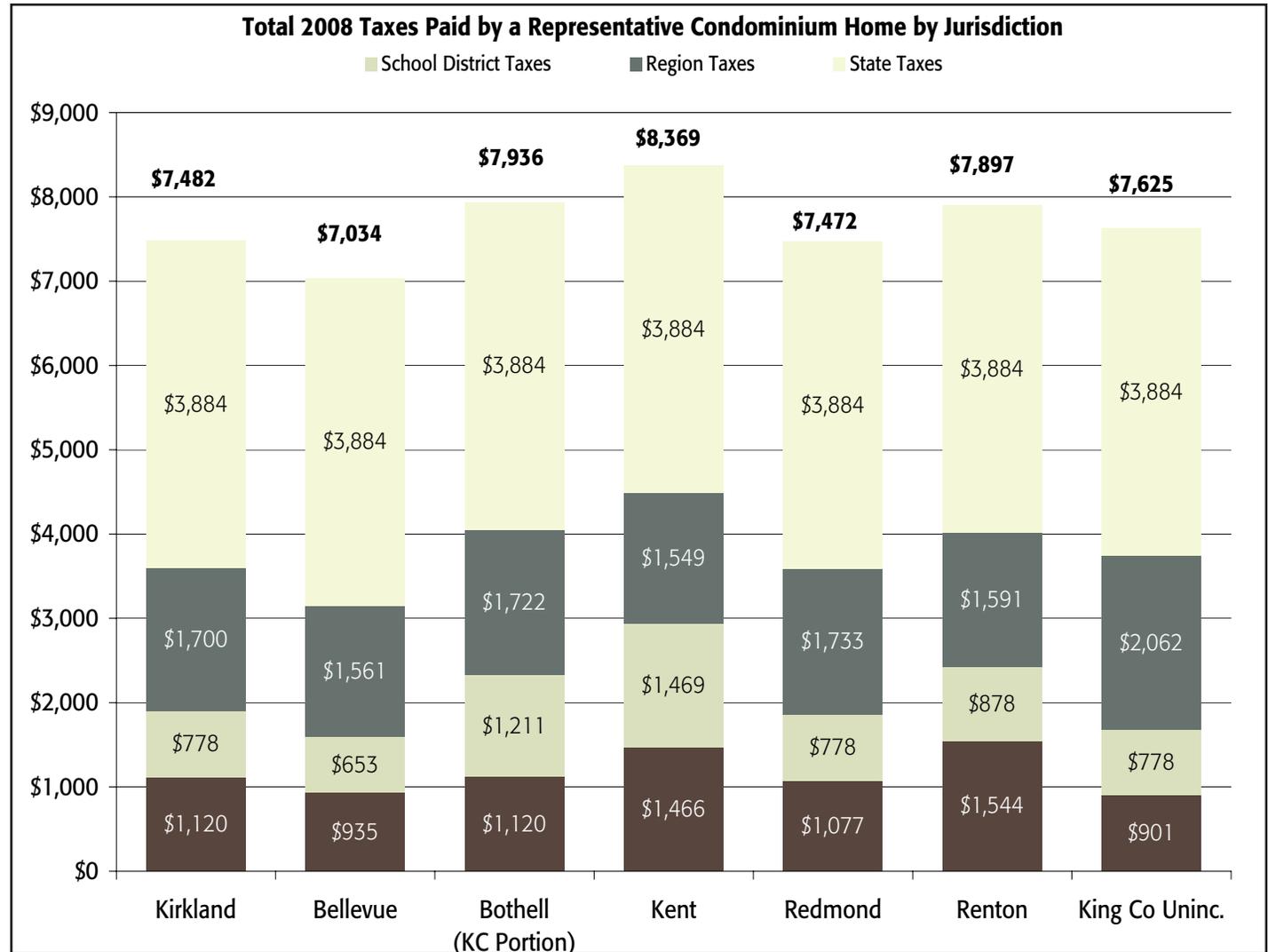


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Condominium

- Taxes on the condominium taxpayer reflect the same pattern as taxes on the single family household, with the lowest taxes being levied by Bellevue, with Redmond and Kirkland coming in second and third, respectively.

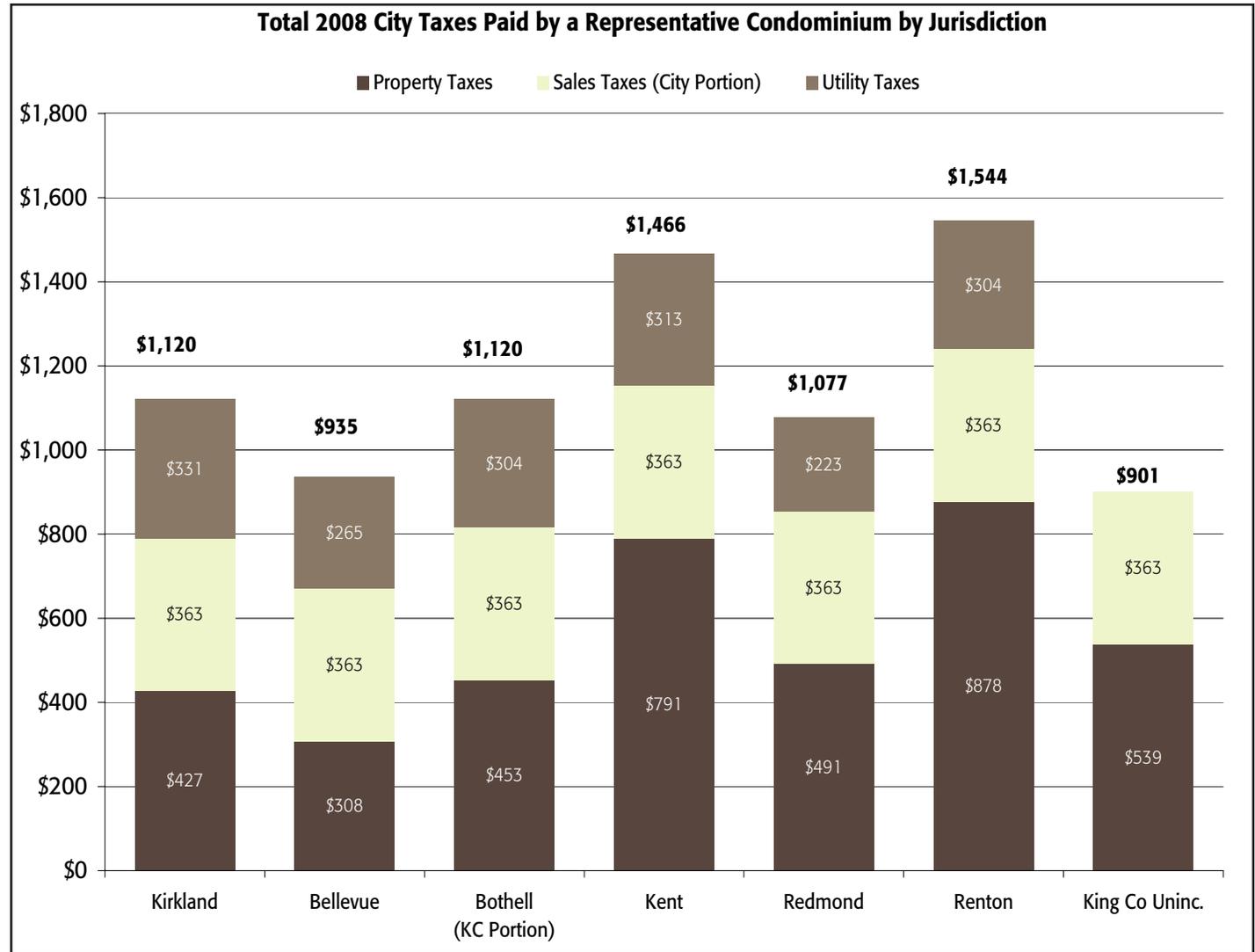


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Condominium

- While the pattern of tax burdens for the condominium household are similar to those of the single family household, in absolute terms, the condominium taxes are lower (perhaps equal to 60% of the taxes paid by the single family household). This lower figure reflects the combination of lower property value of the home, lower assumed income, and a smaller household size (which translates into reduced usage of things like utilities).

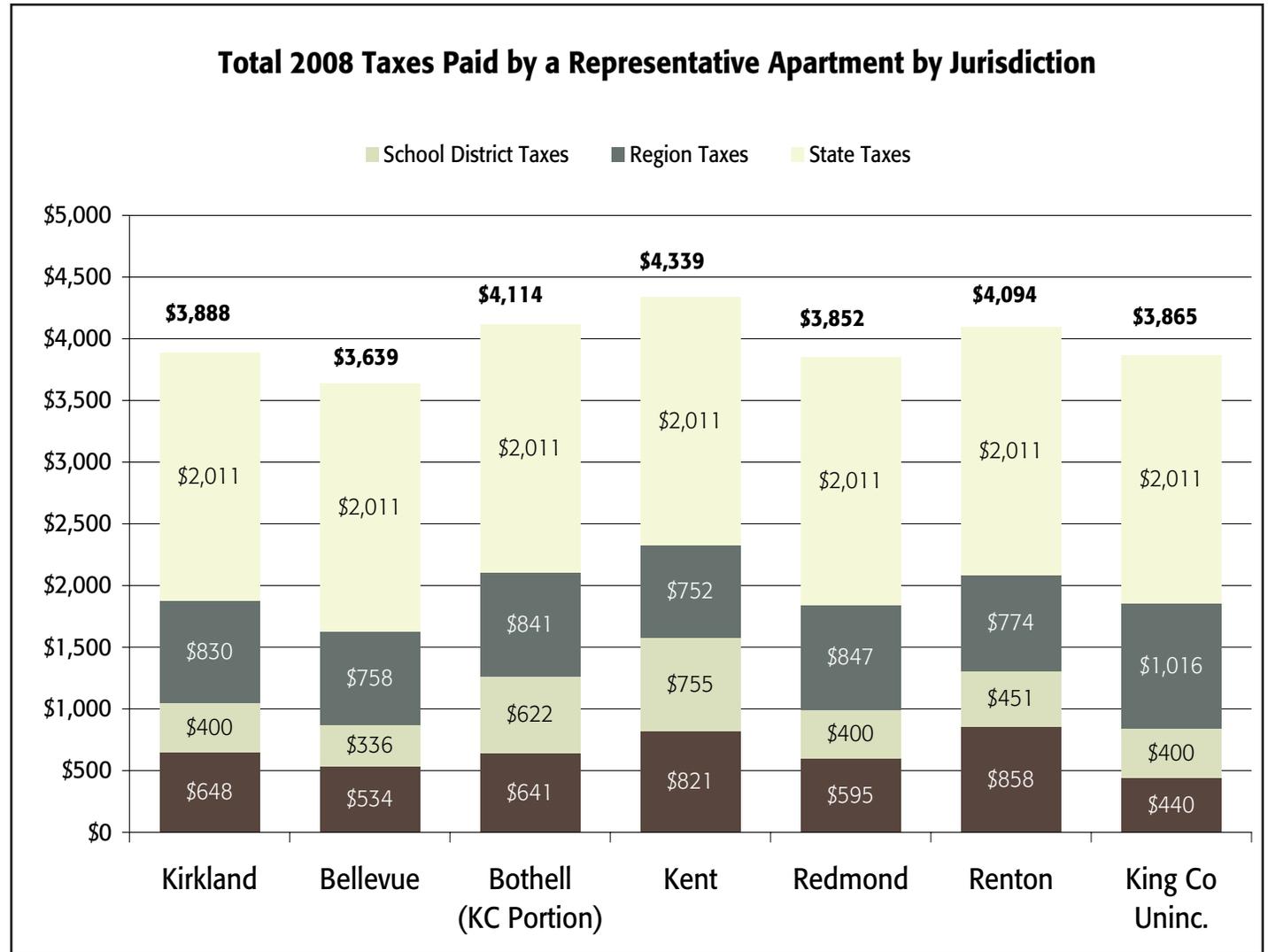


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Apartment Rental

- Total taxes paid by the representative apartment household in Kirkland fall a bit higher in the scale when compared to the other jurisdictions (i.e. the Kirkland tax burden is higher than it would be in unincorporated King County and closer to the tax burdens in Bothell, Kent, and Redmond). This difference is almost entirely due to higher city taxes in Kirkland.

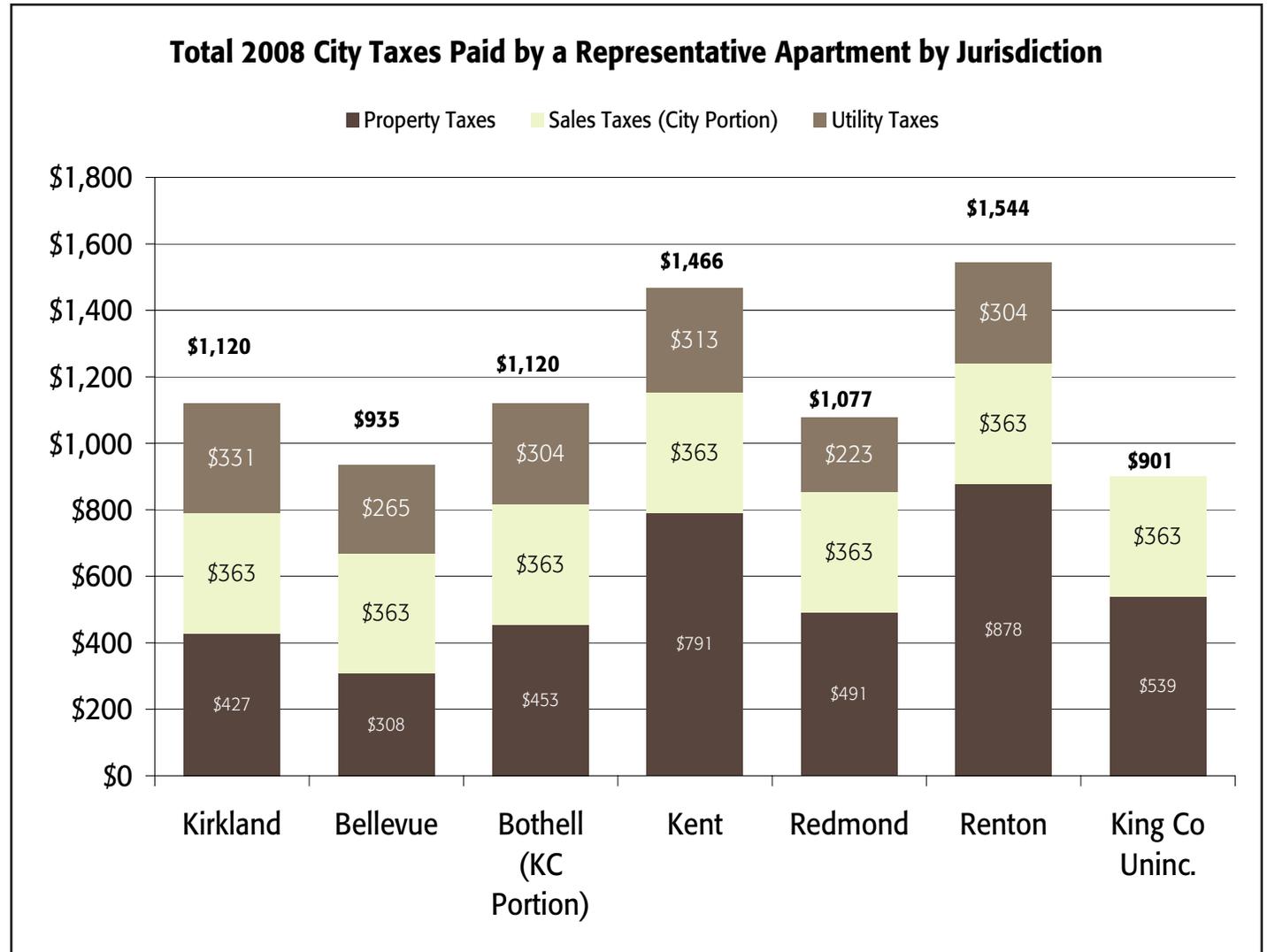


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Apartment Rental

- In the case of the apartment household, Kirkland's city tax burden is higher than the burden in Redmond, and equal to the burden in Bothell. The difference for the apartment household (compared to the single family and condominium household) is driven by Kirkland's higher utility taxes. Apartments have lower assessed values, so they pay less in property taxes (indirectly, through higher rents), but they tend to use similar amounts of utilities. Therefore, utility taxes rates become a bigger deal for apartment dwellers.

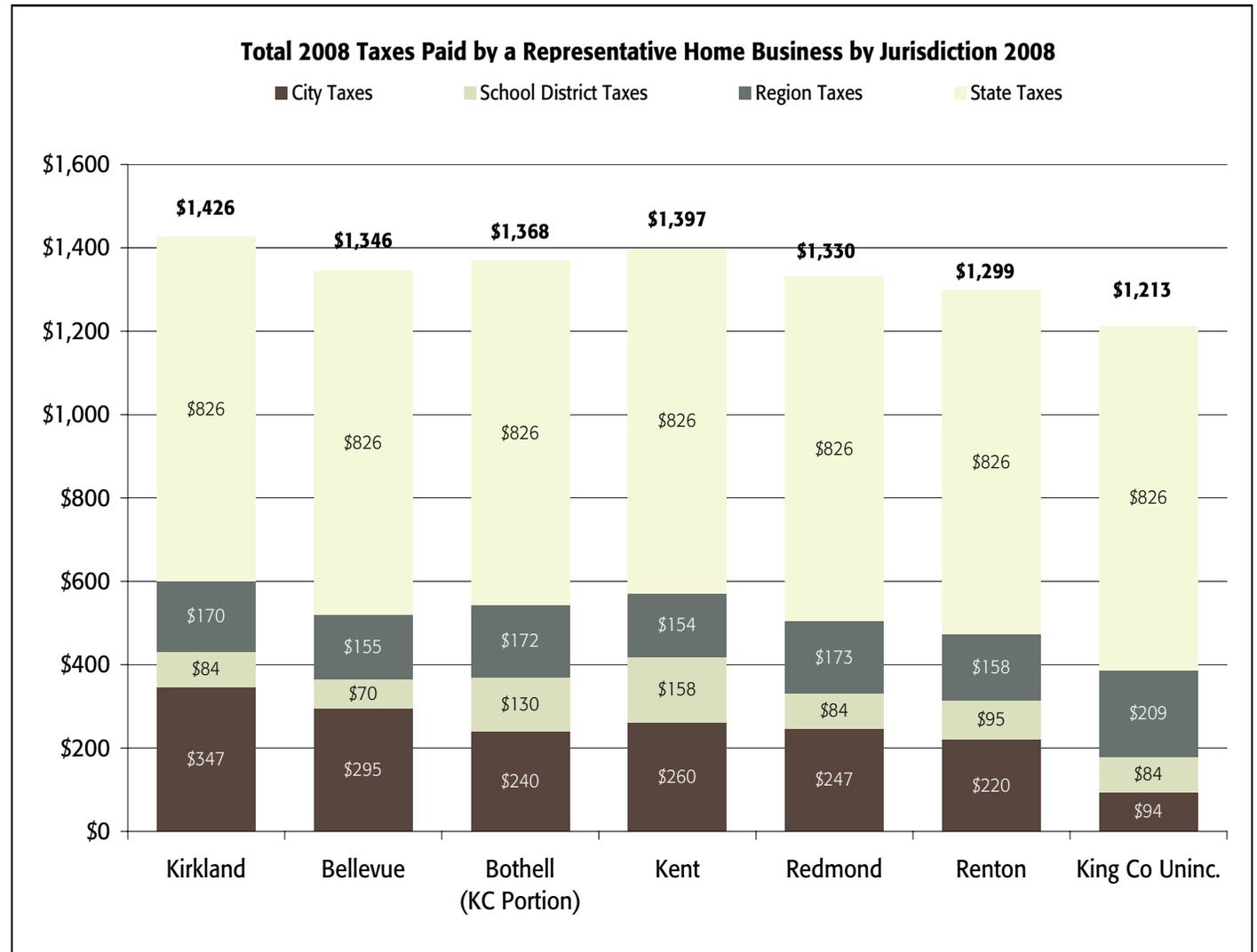


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Home Business

- Overall tax burdens for the representative home-based business are higher in Kirkland than in any other jurisdiction. This is almost entirely due to higher city taxes.

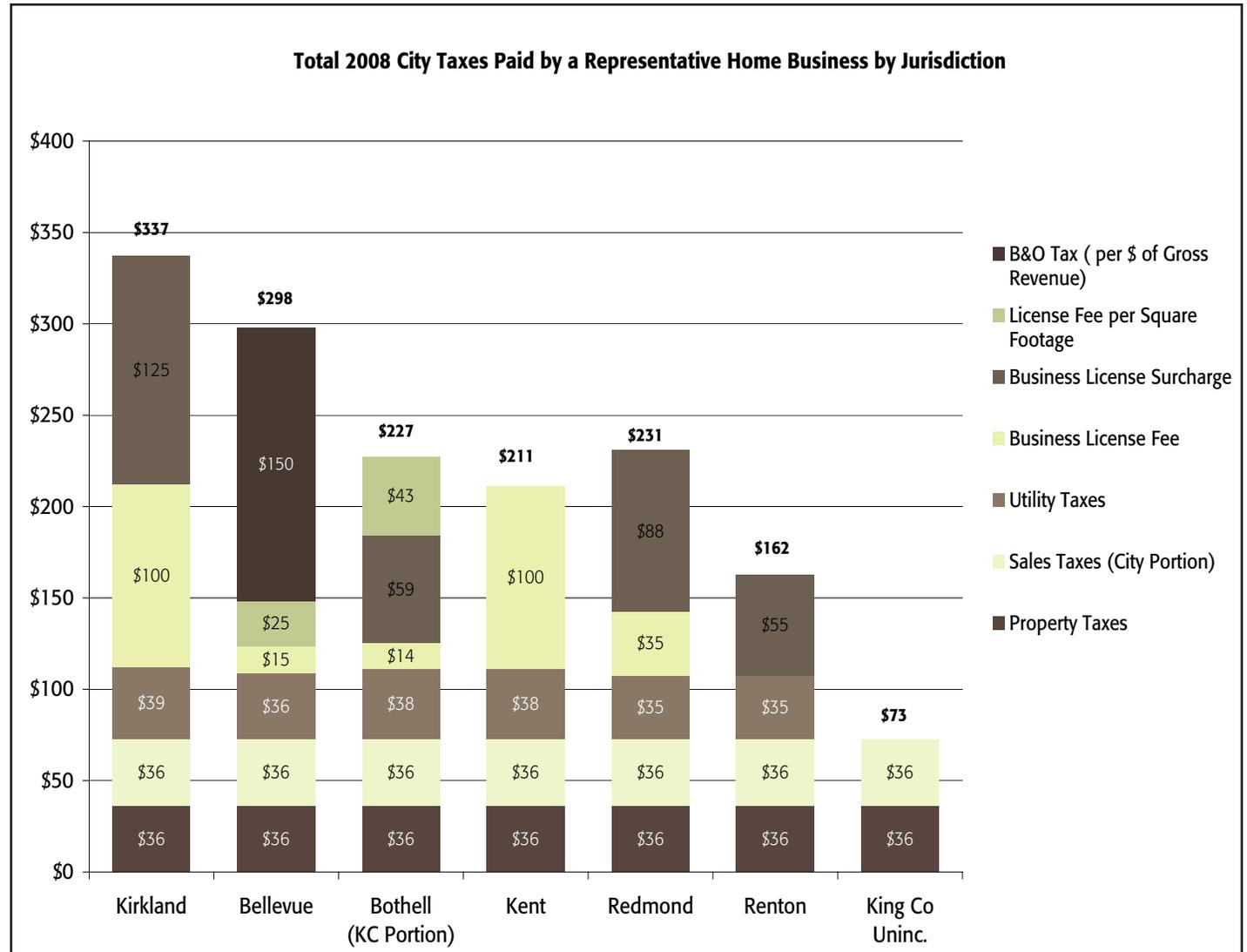


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Home Business

- The structure of Kirkland's existing business license fee a surcharge means that a home-based business with \$100,000 of gross revenues pays \$225 each year for its business license fee and surcharge. On a per-employee basis, this amount is more than 10 times greater than the amount paid by a large firm that employs 130 people.

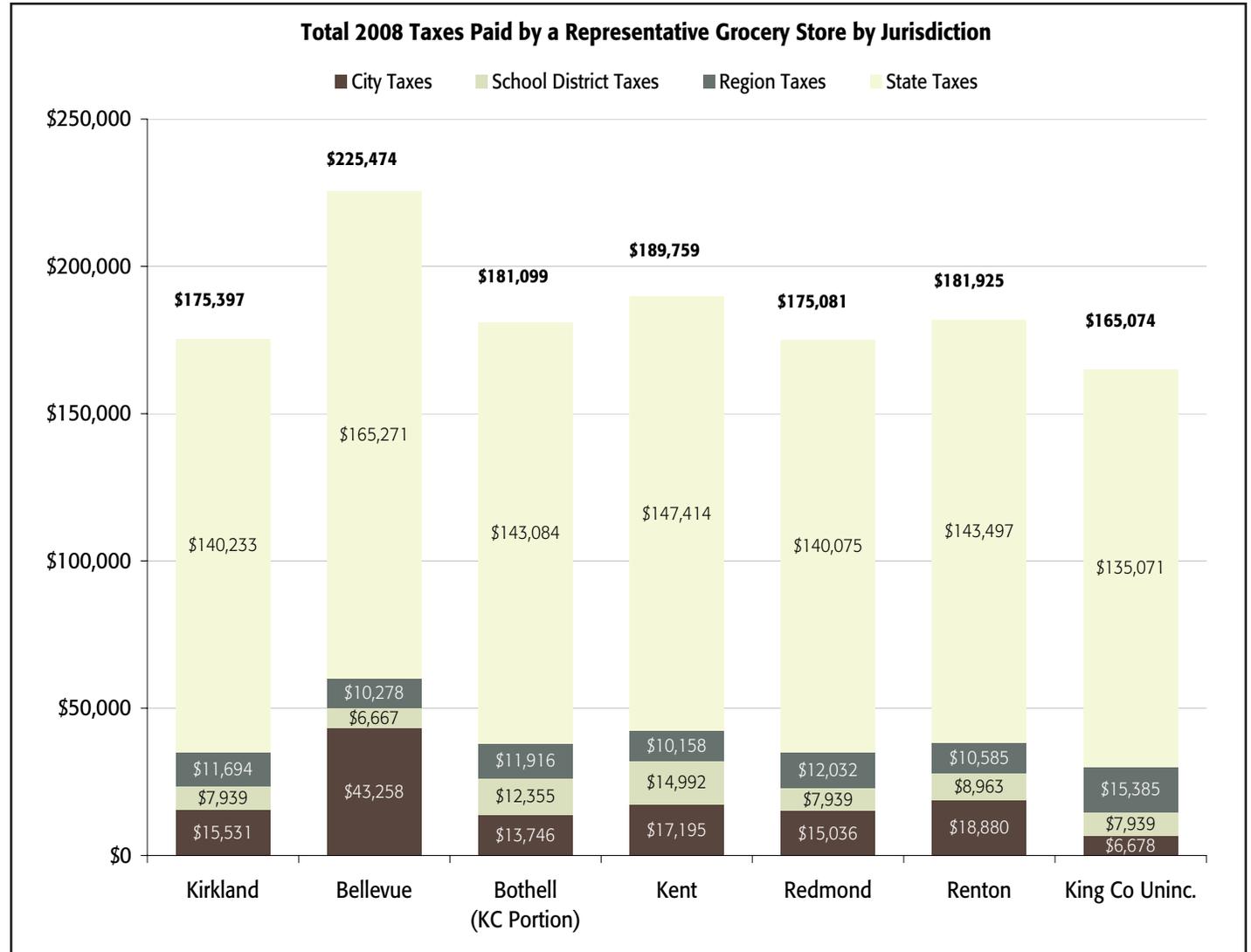


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Grocery Store

- For a grocery store, much more of the total tax burden is centered around the state's B&O tax, which is calculated as a percent of gross revenues. Grocery stores have high gross revenues but relatively low profit margins. These are the businesses that are most disadvantaged by reliance on B&O taxes as opposed to some form of tax on profits.

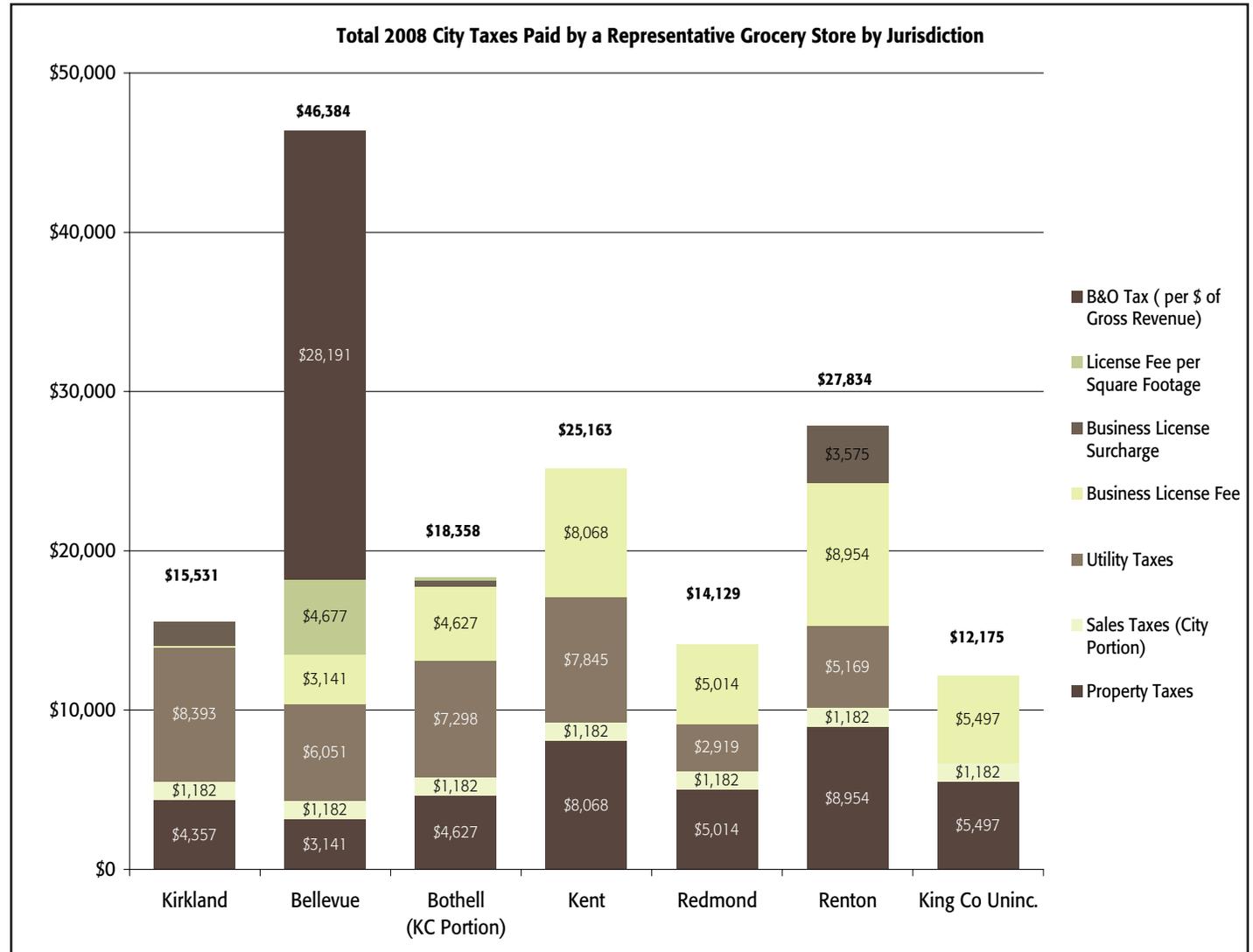


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Grocery Store

- The representative grocery store is assumed to have 65 employees, so in relative terms, the impact of Kirkland's business license fee and surcharge is much smaller. For these mid-sized to large employers, Kirkland's tax burdens are quite low compared with most other jurisdictions.
- Bellevue is the only jurisdiction that levies a city B&O tax. As a result, Bellevue's tax burden on the grocery store is roughly three times greater than Kirkland's.

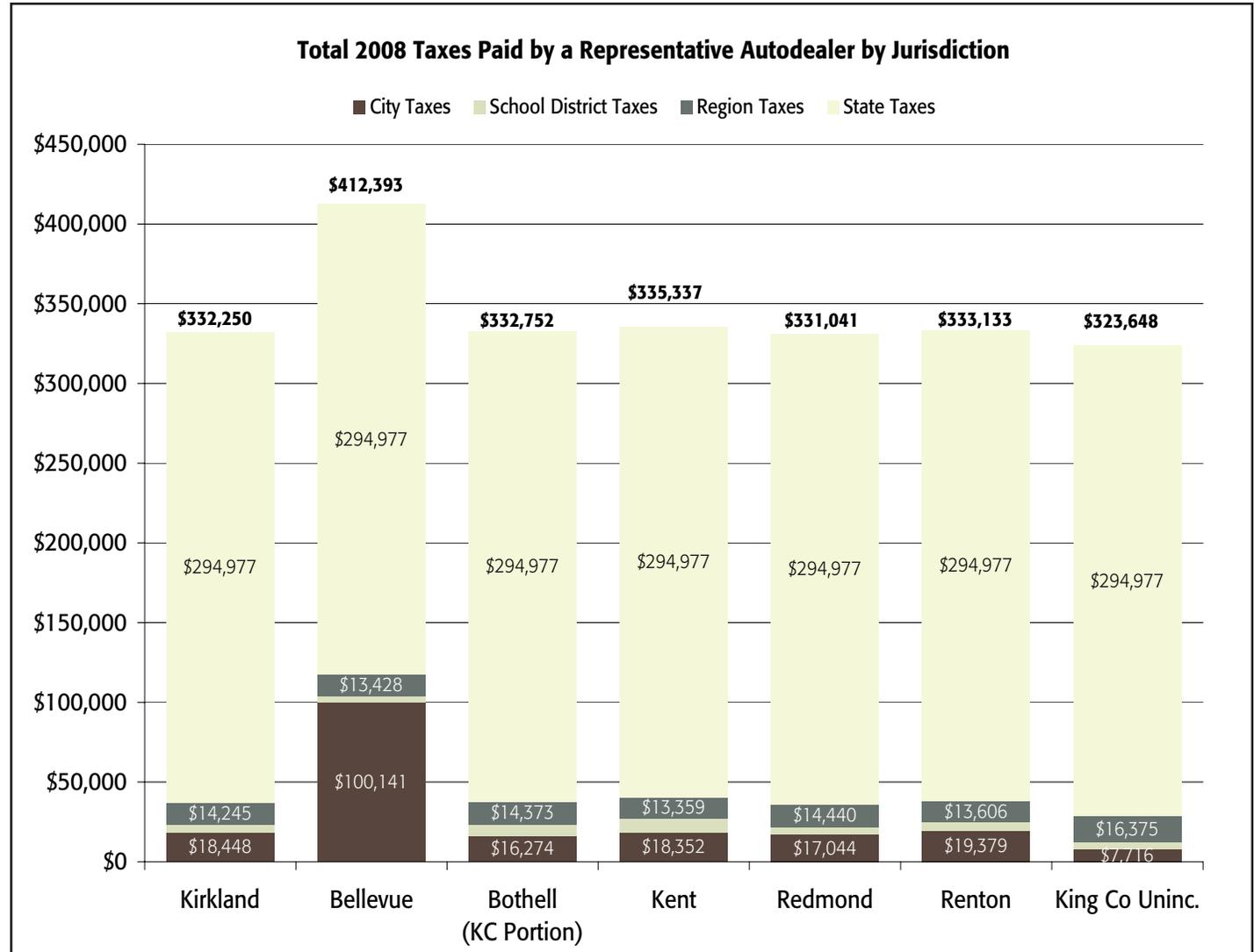


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Auto Dealer

- Like grocery stores, auto dealers have very high gross revenues but relatively low profit margins. For auto dealers, then, the impact of B&O taxes tend to dwarf the impact of all other taxes.

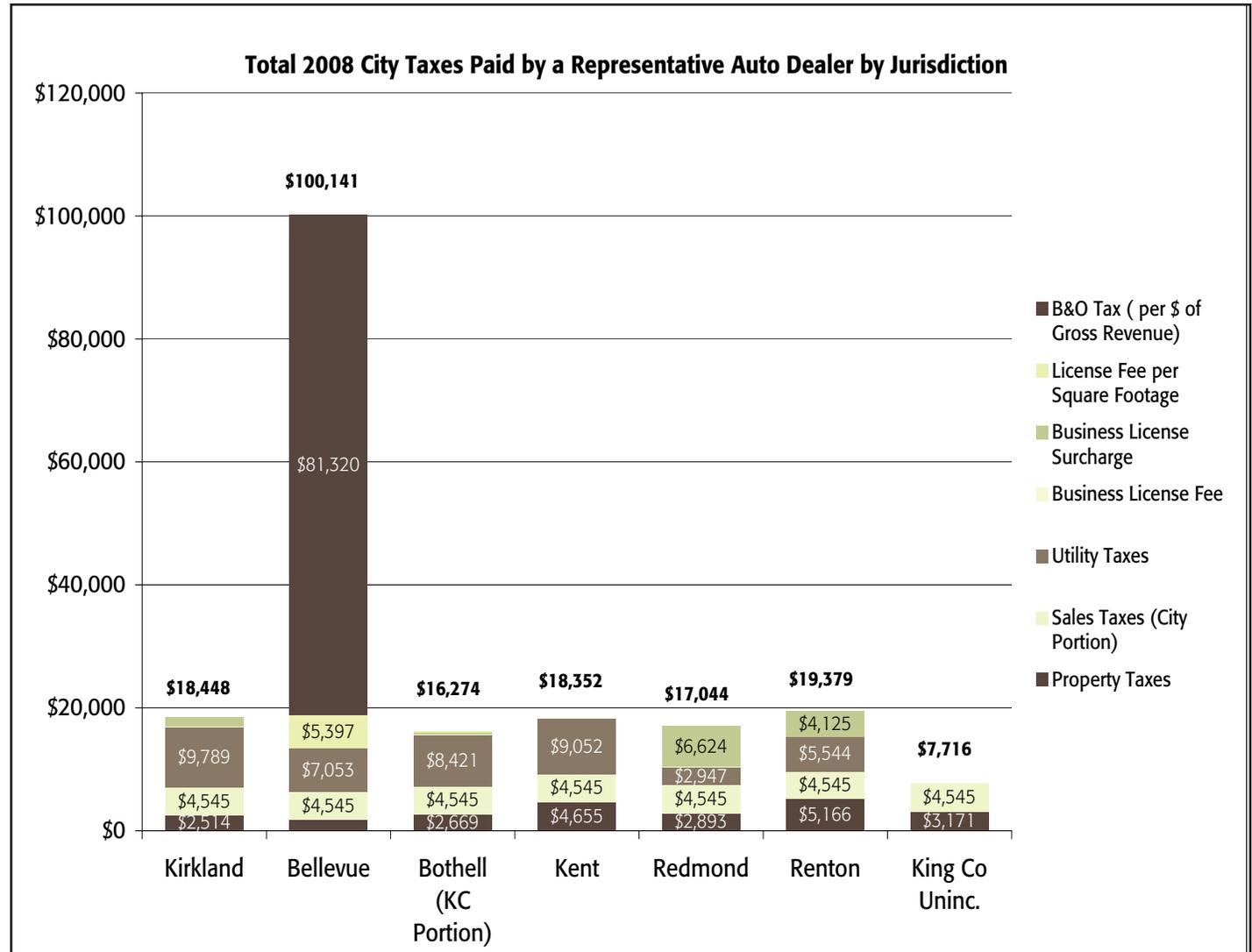


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Auto Dealer

- Bellevue's taxes on the representative auto dealer are more than five times greater than those of any other jurisdiction. In that context, all other jurisdictions (with the exception of unincorporated King County) have very similar burdens.

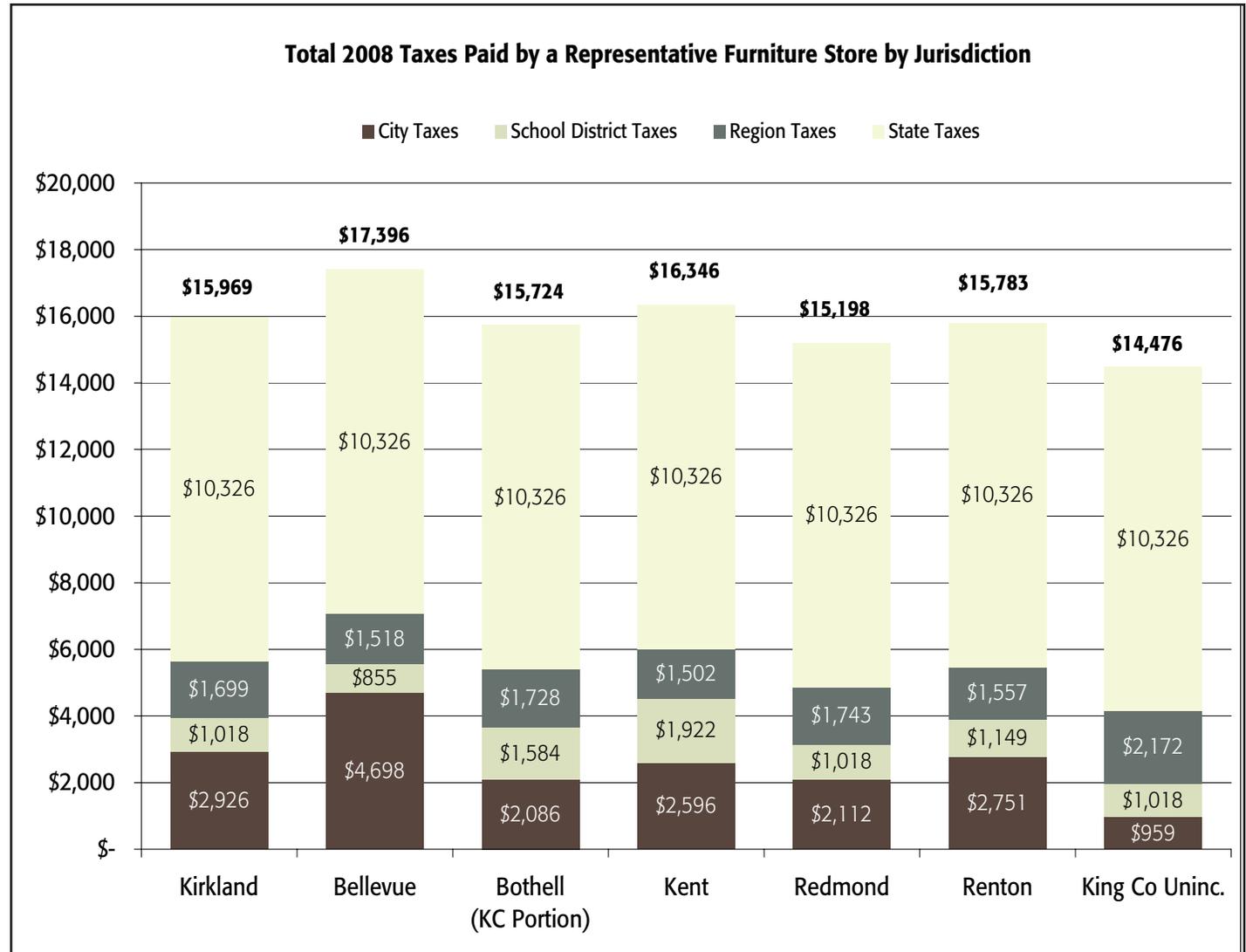


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Furniture Store

- For the representative furniture store, roughly two-thirds of its tax burden comes from state taxes, while Kirkland city taxes represent less than one-fifth of its burden.

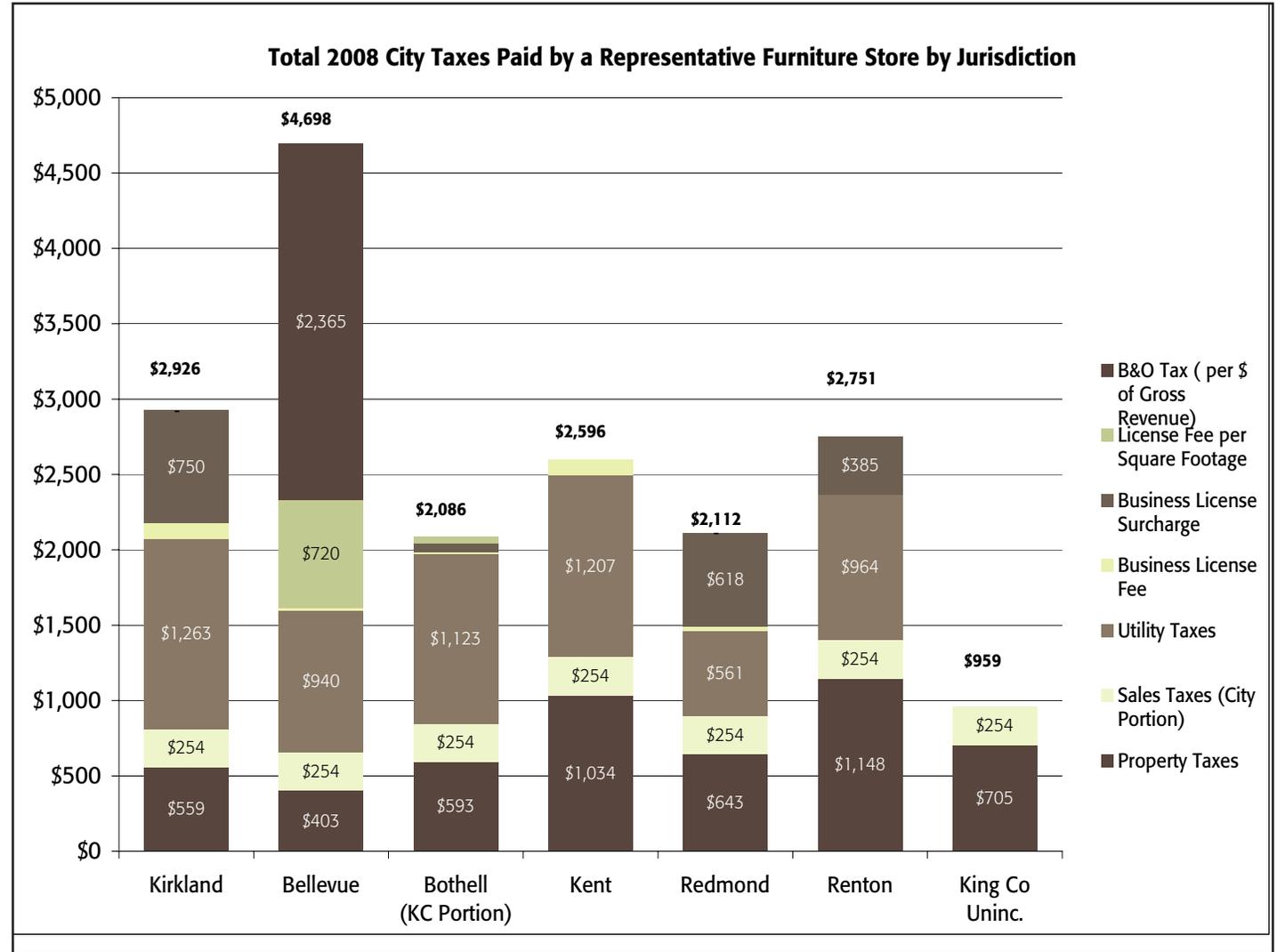


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Furniture Store

- Because the hypothetical furniture store has only 7 employees, the store owner pays more than \$120 per employee for Kirkland's business license fee and surcharge. This, combined with high utility taxes, puts Kirkland's tax burden second only to Bellevue.

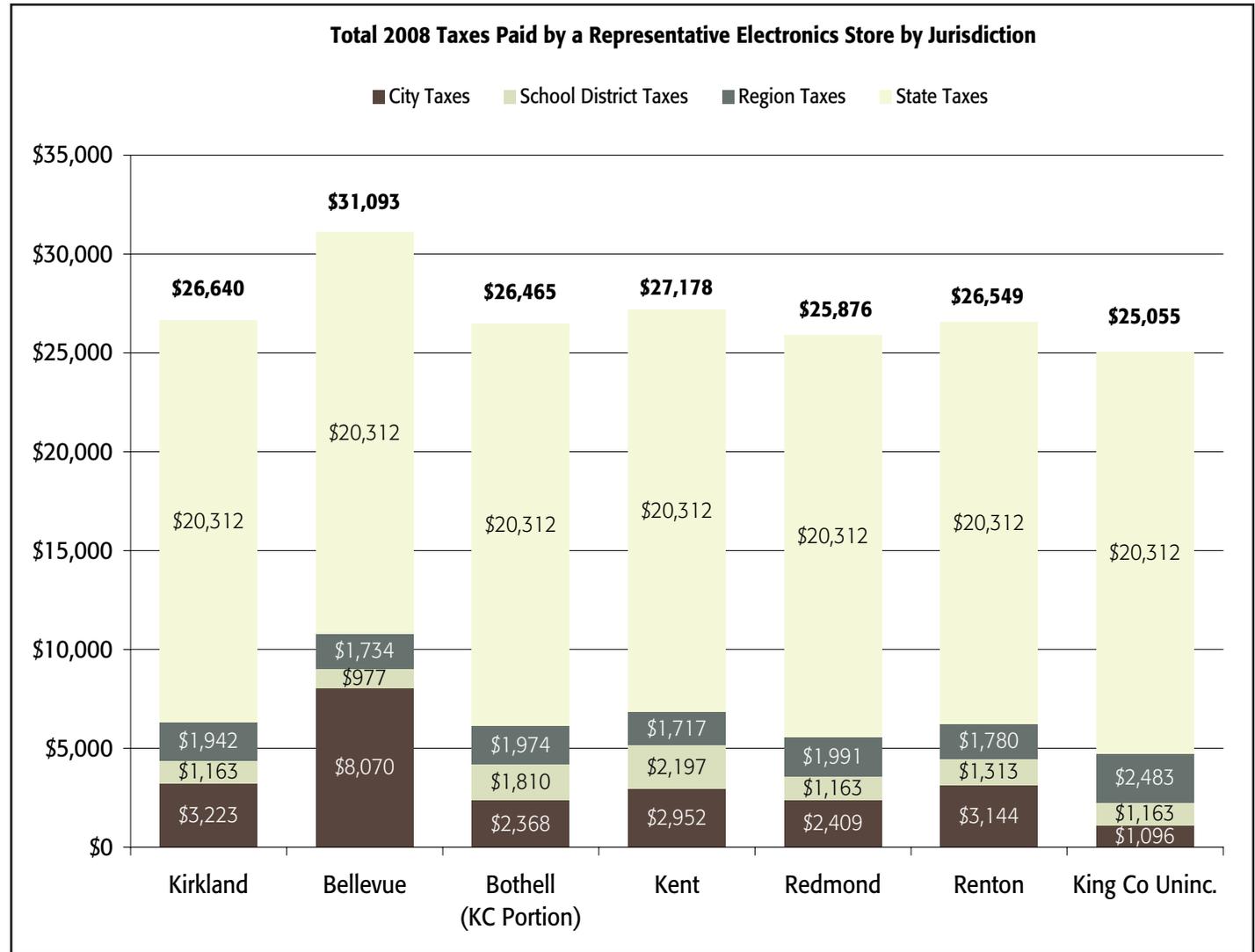


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Electronics Store

- The hypothetical small electronics store has a tax burden distribution that is very similar to the representative furniture store.

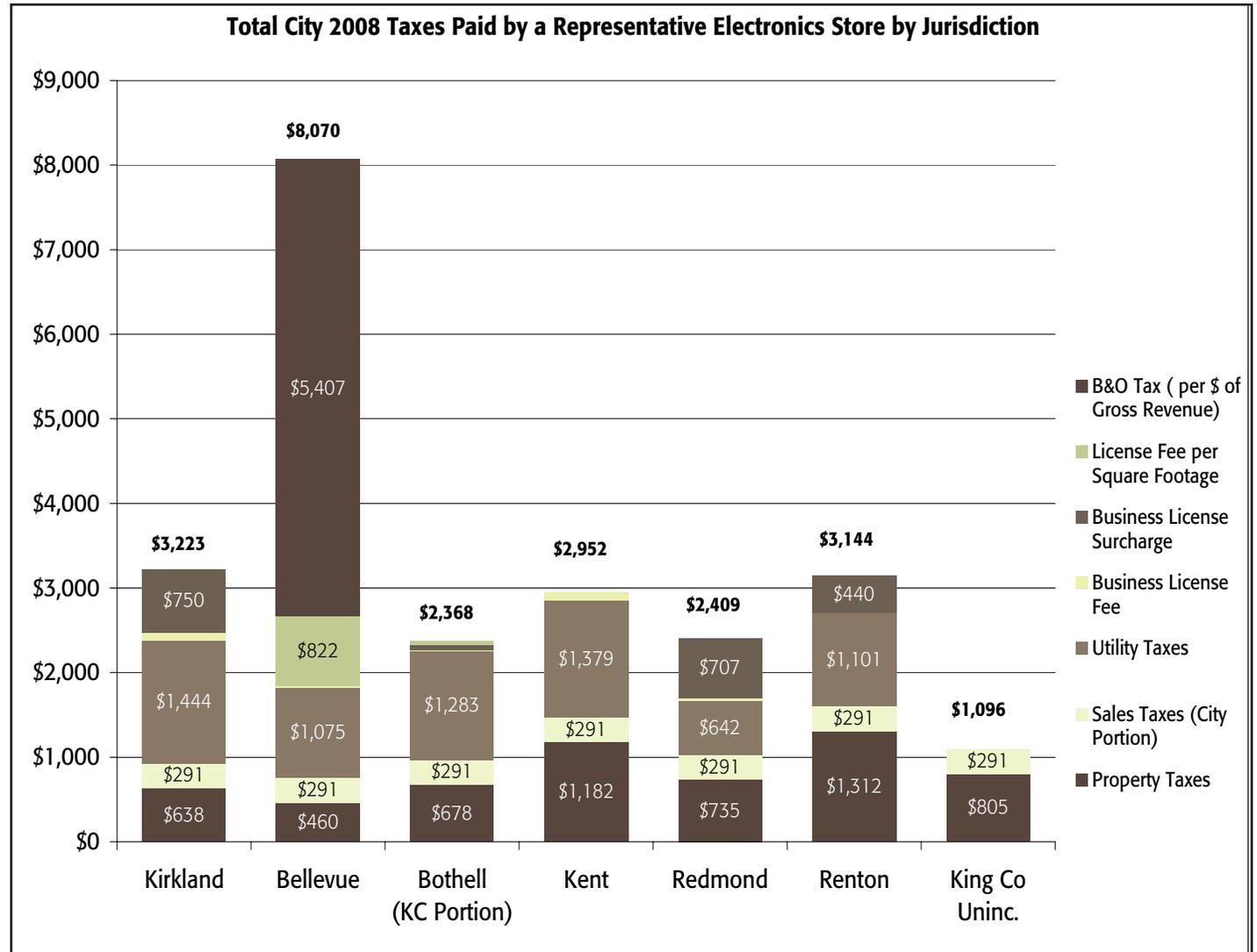


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Electronics Store

- Again, because the hypothetical small electronics store has relatively few employees, it pays more than \$120 per employee for Kirkland's business license fee and surcharge. This, combined with relatively high utility taxes, makes Kirkland's tax burden second highest. Overall, however, Bellevue's tax burden is more than twice as high, and Kirkland's tax burden is roughly in line with most of the other cities.

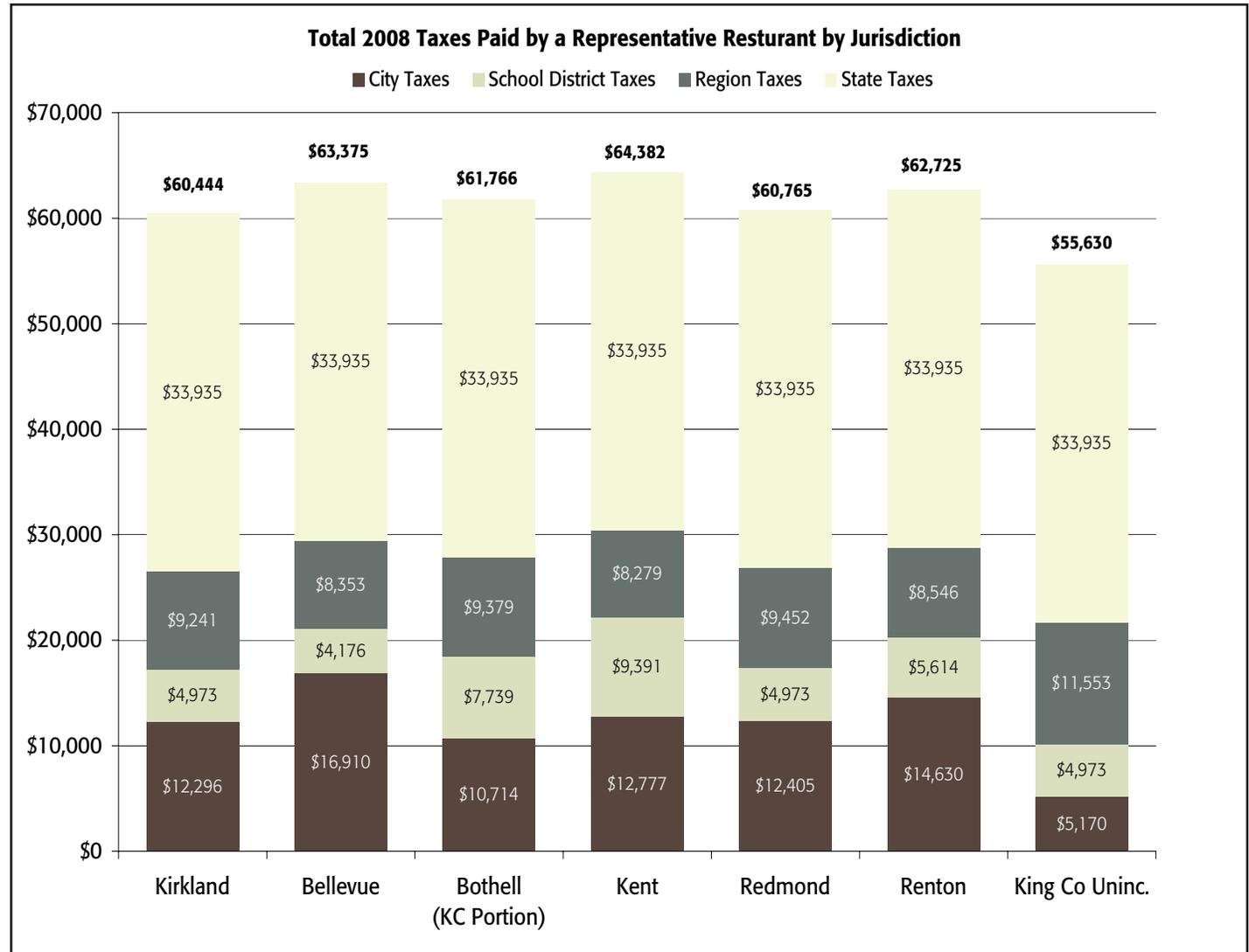


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Restaurant

- For a business like a restaurant, which in many ways acts more like a *manufacturer* of goods than a retailer, differences in total tax burdens among jurisdictions are relatively small.

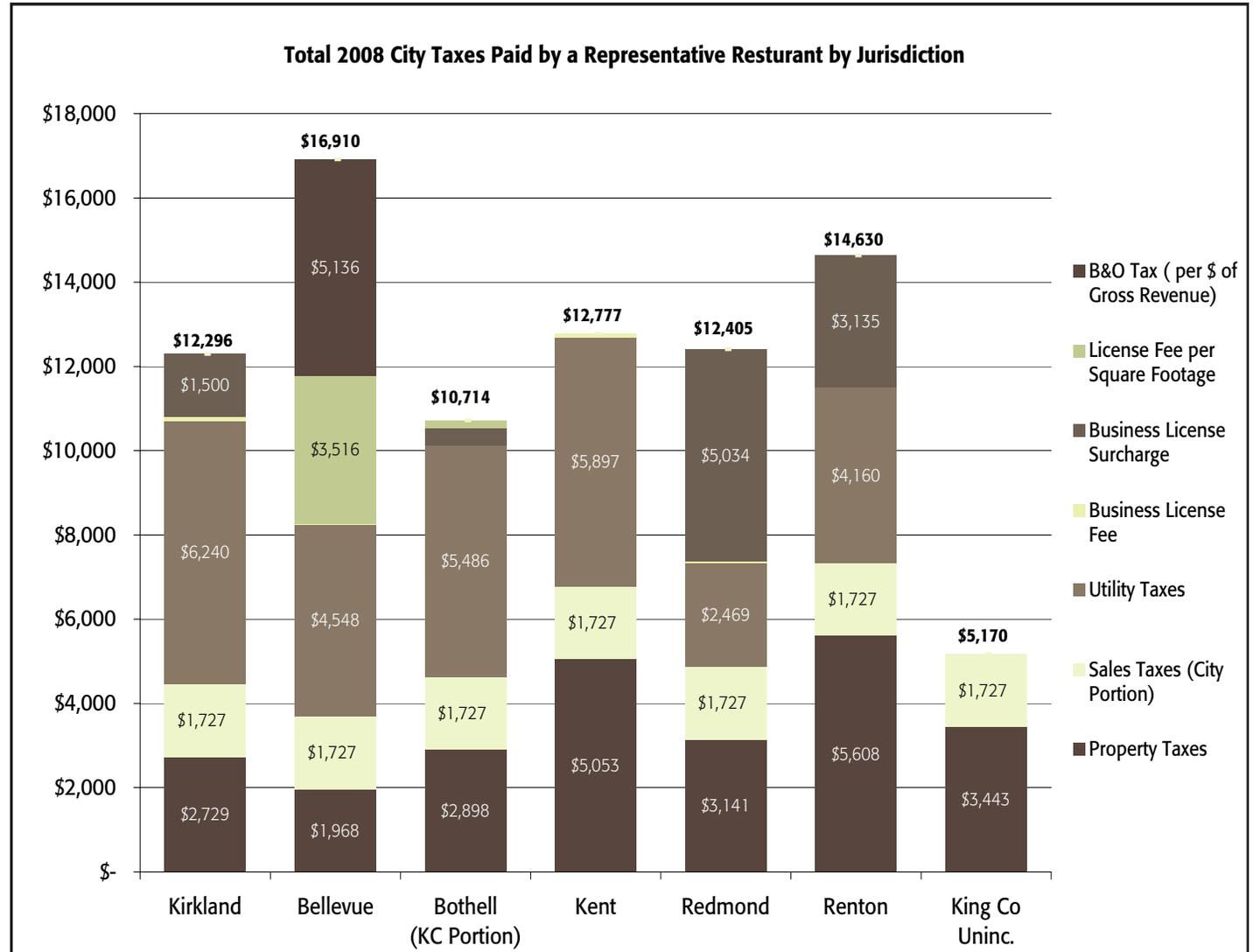


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Restaurant

- The hypothetical restaurant has 57 employees, which means that Kirkland's current business license fee structure has only a modest impact. This, in turn, means that the tax burden in Kirkland ranks lower than most cities.

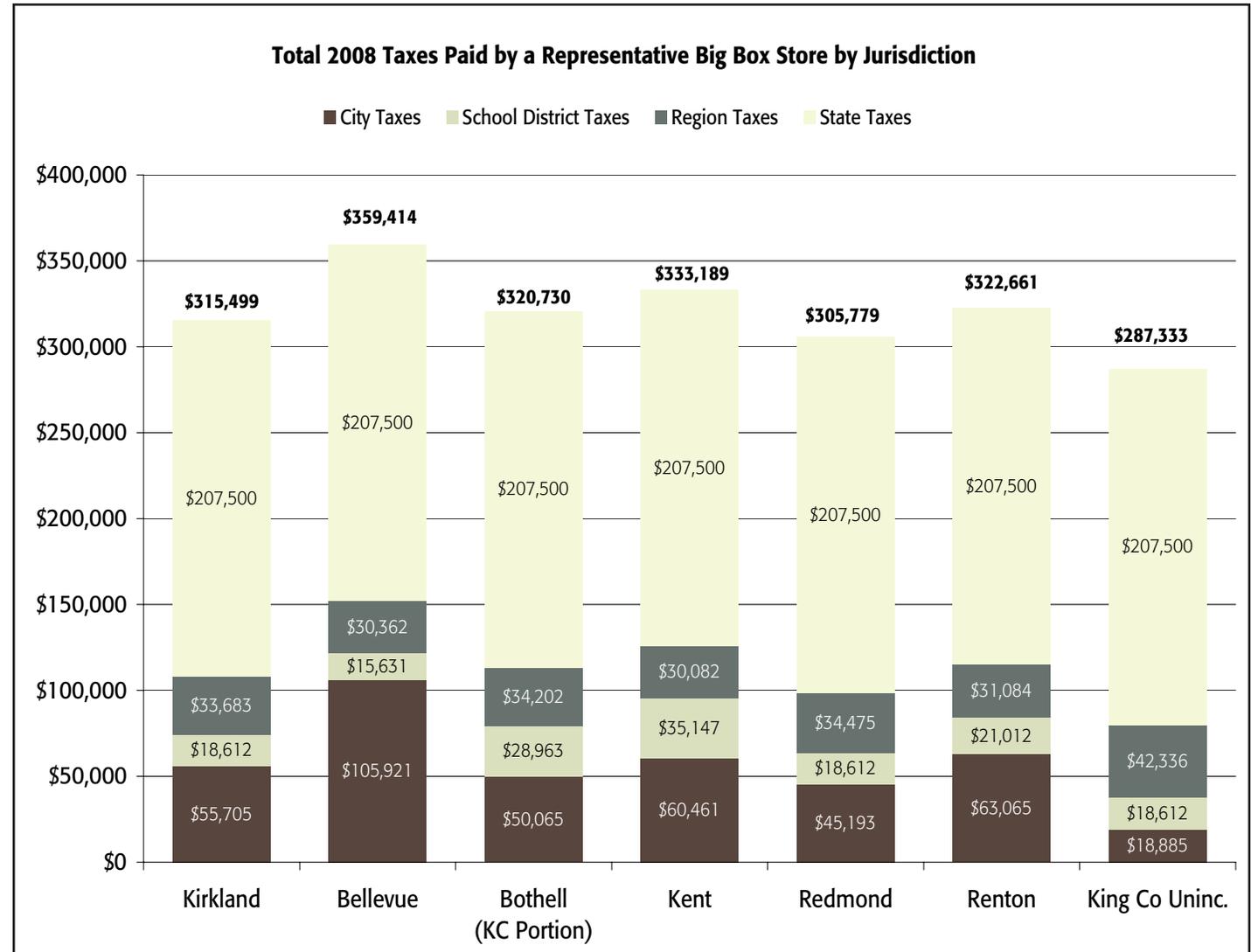


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Big Box Retail

- The hypothetical big box retailer is similar in some ways to the grocery store or auto dealer. Most of its tax burden derives from state B&O Taxes, while city taxes in all jurisdictions but Bellevue represent only a small portion of its burden.

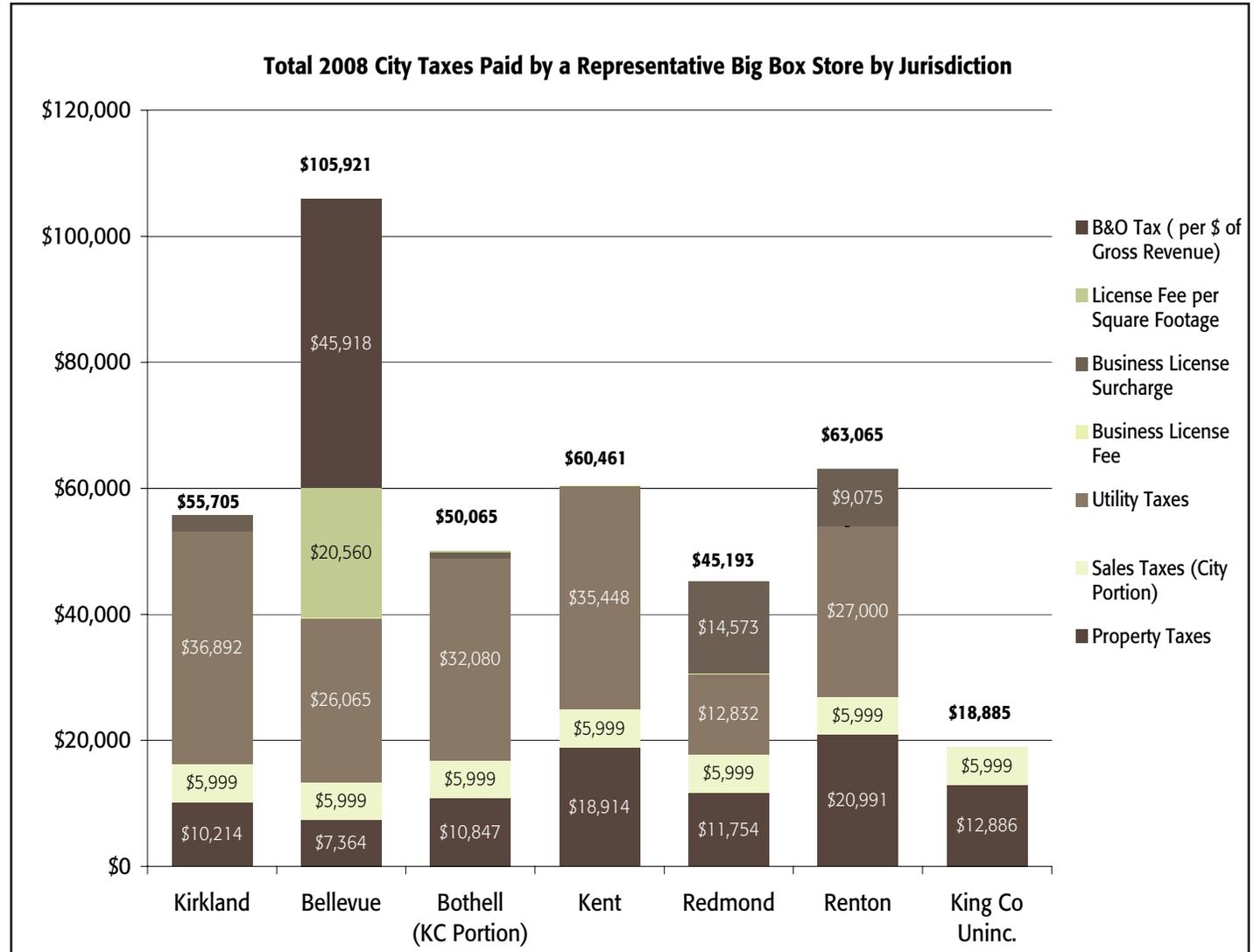


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Big Box Retail

- In the case of the hypothetical big box retailer, Kirkland's tax burden is lower than 3 cities and higher than the remaining 3 jurisdictions. In relative terms, Kirkland's business license fee and surcharge impose modest costs, but utility tax impacts (solid waste taxes in particular) cause Kirkland to rise in the rankings.

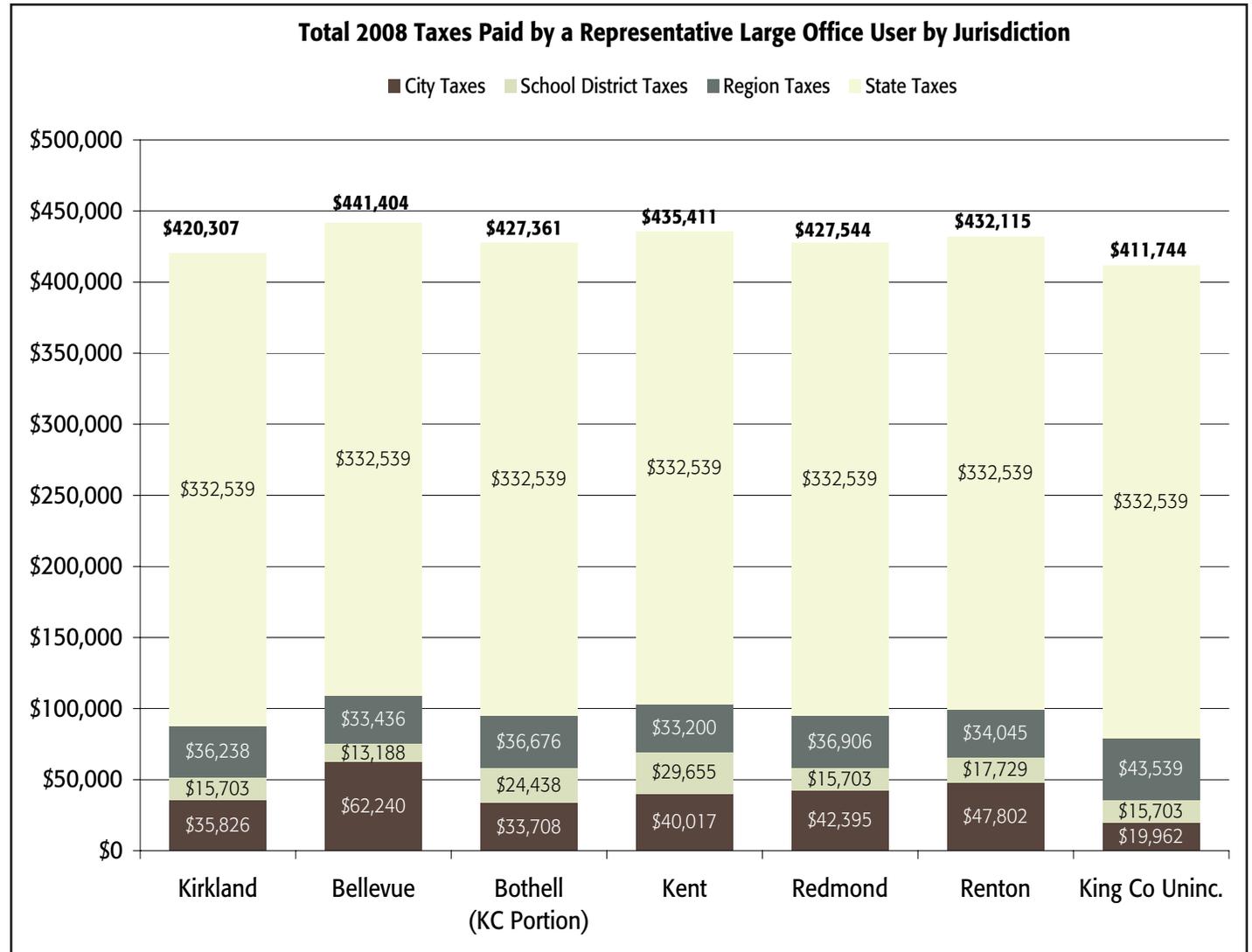


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Large Office (150 FTE)

- For the hypothetical large office user, overall tax burdens are, again, dominated by state B&O taxes.

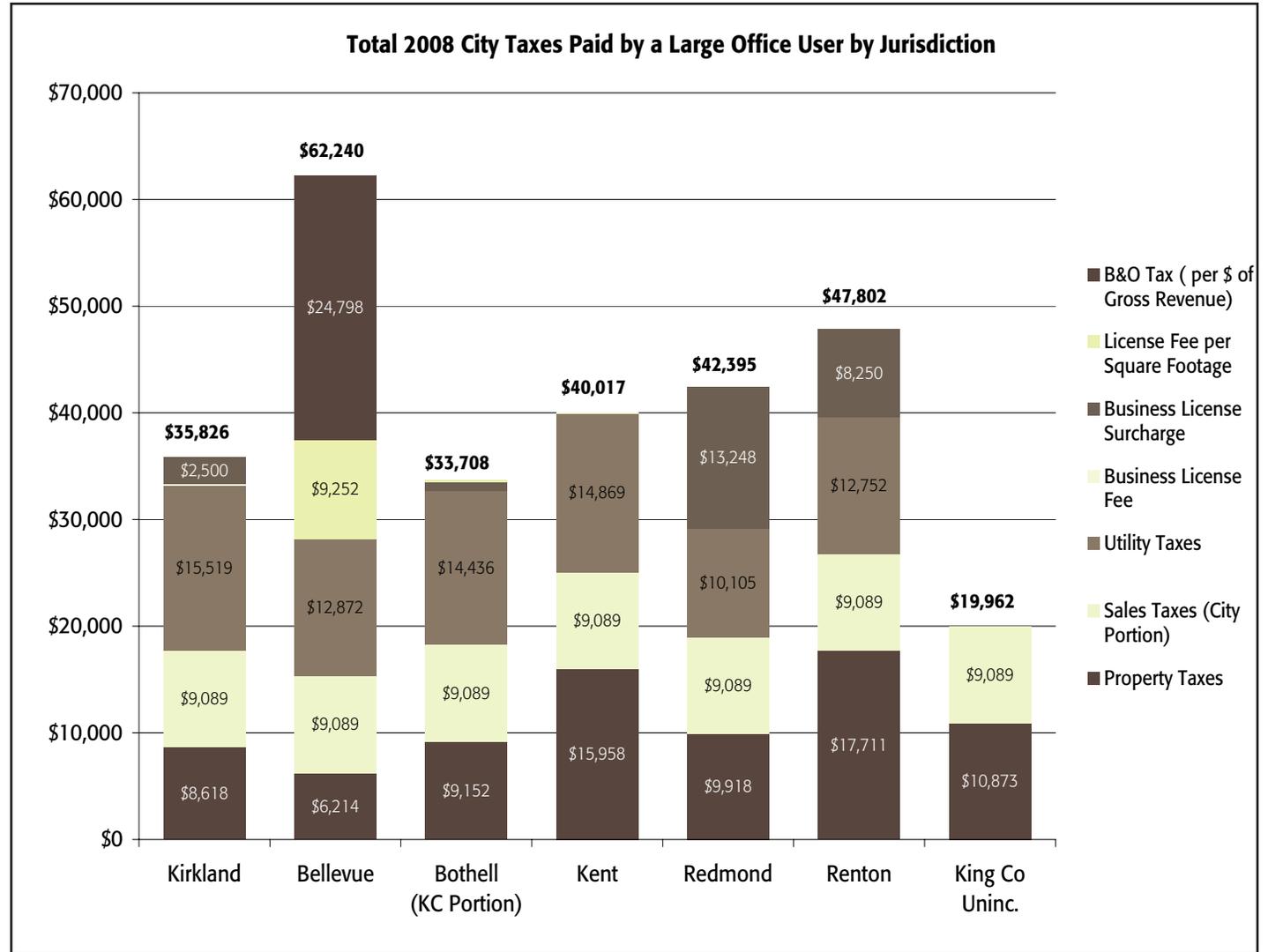


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Large Office (150 FTE)

- As the employer of the largest workforce among all of our hypothetical businesses, the large office user is most clearly benefitted by Kirkland's existing business license fee and surcharge structure, paying a bit more than \$17 per employee.

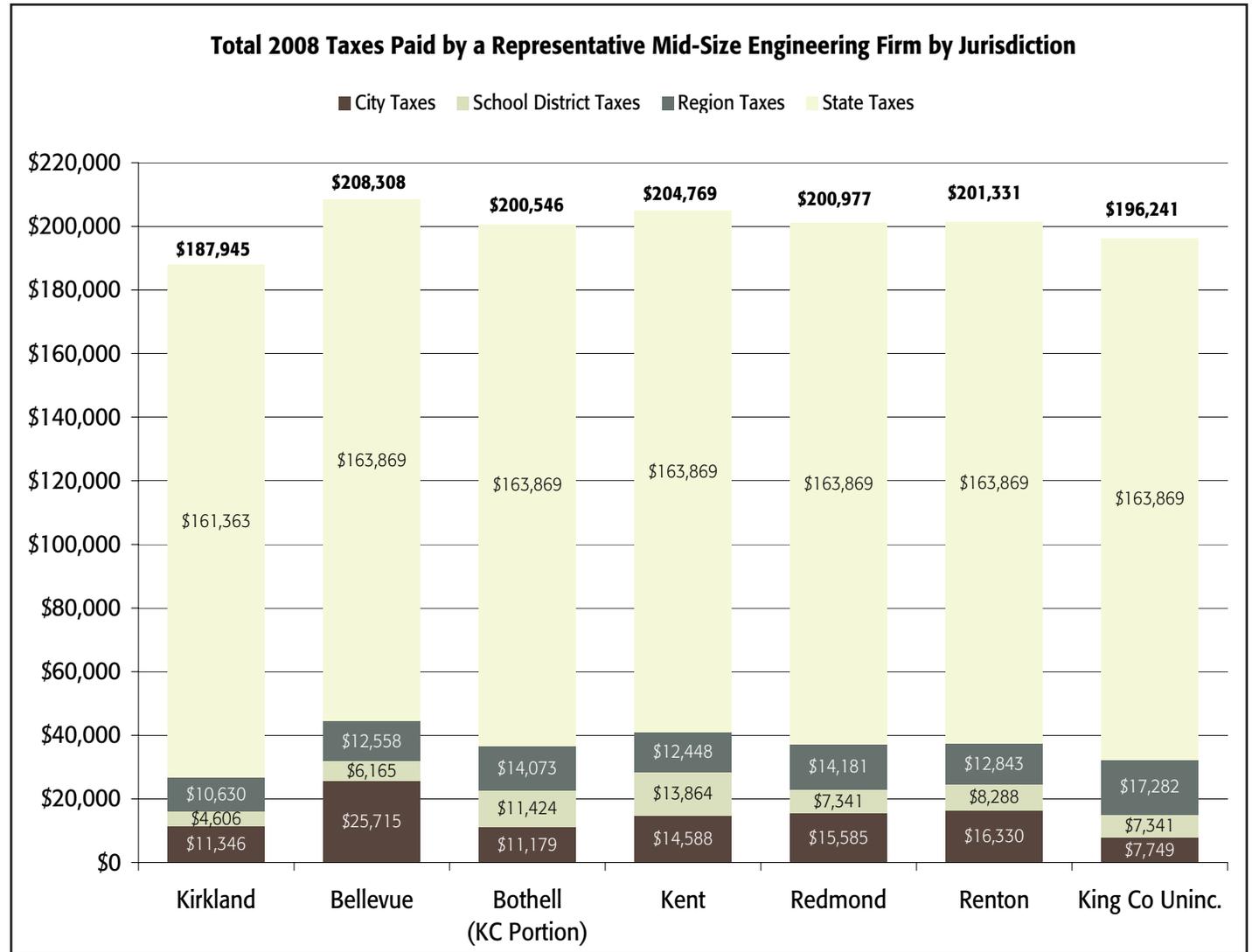


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Engineering/Medium Office (44 FTE)

- Compared with the large office user, the hypothetical engineering firm is assumed to generate more gross revenues per employee. Therefore, overall tax burdens are skewed even more towards the state B&O tax. City taxes represent only 6% of the tax burden for this business.

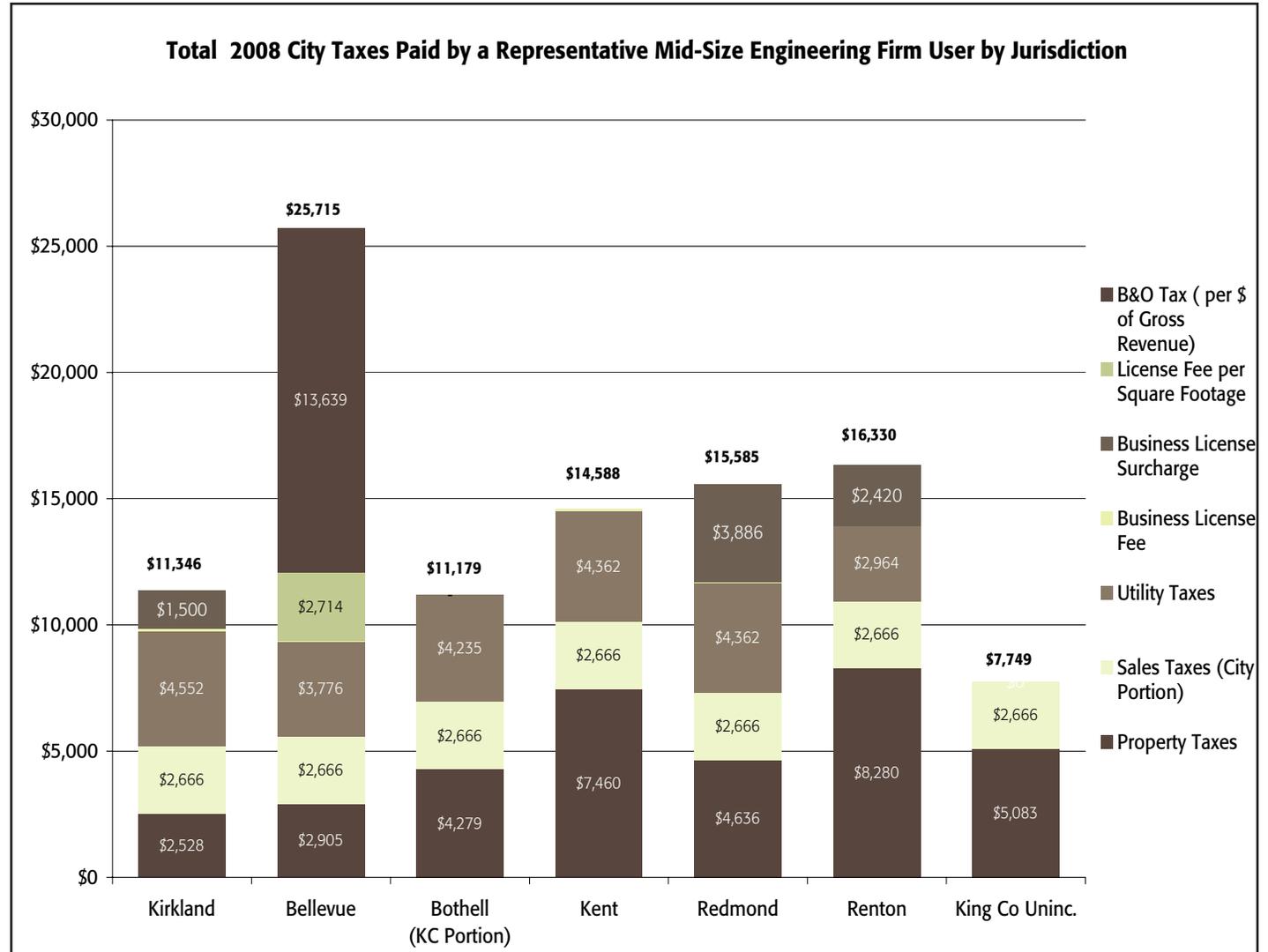


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Engineering/Medium Office (44 FTE)

- Consistent with the other large- to mid-sized businesses, the hypothetical engineering firm pays city taxes in Kirkland that are lower than most of the peer jurisdictions.

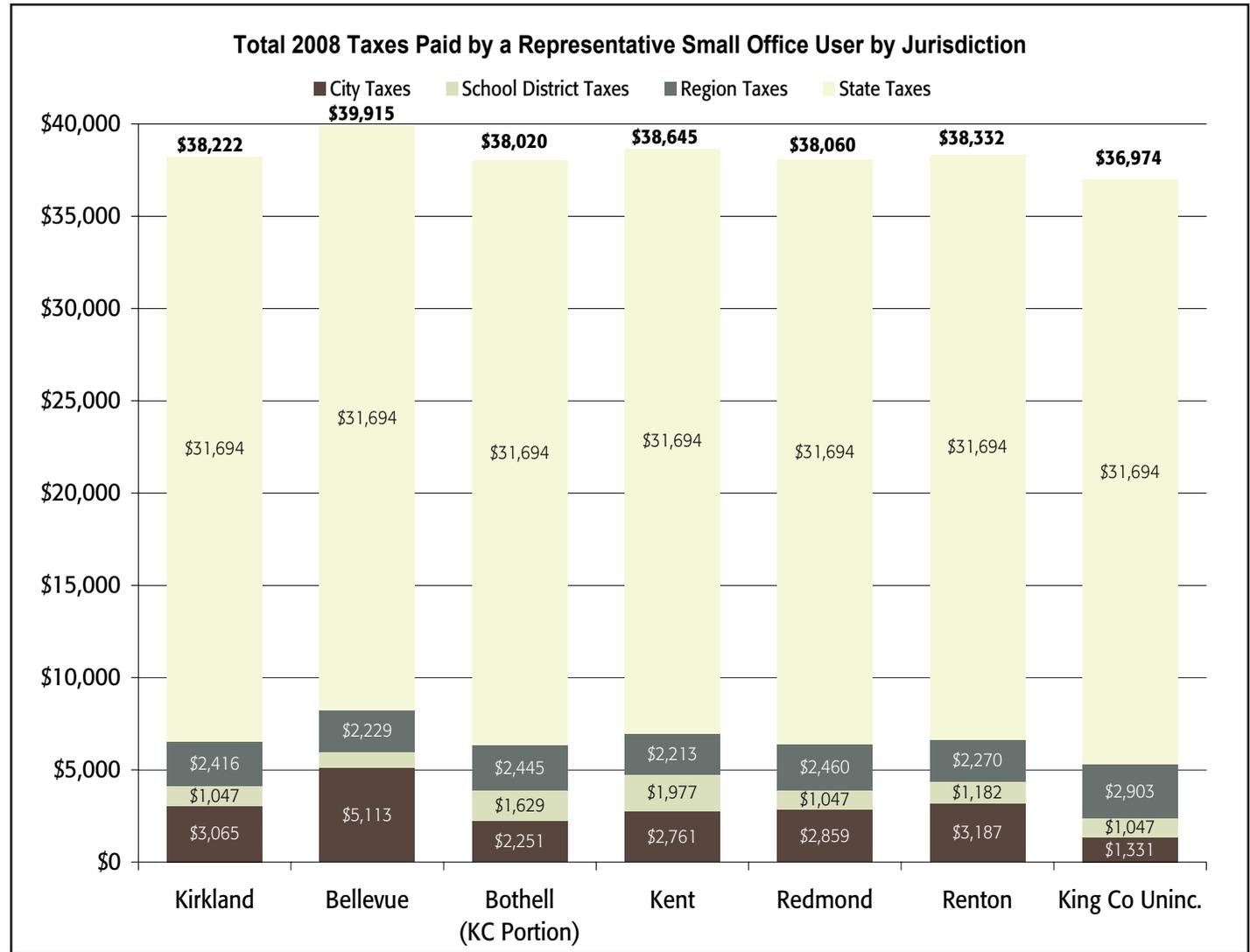


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Small Office (10 FTE)

- The hypothetical small office user also has assumed revenues-per-employee that are relatively high. Therefore, for this payer as well, state B&O taxes dominate the overall tax burden picture.

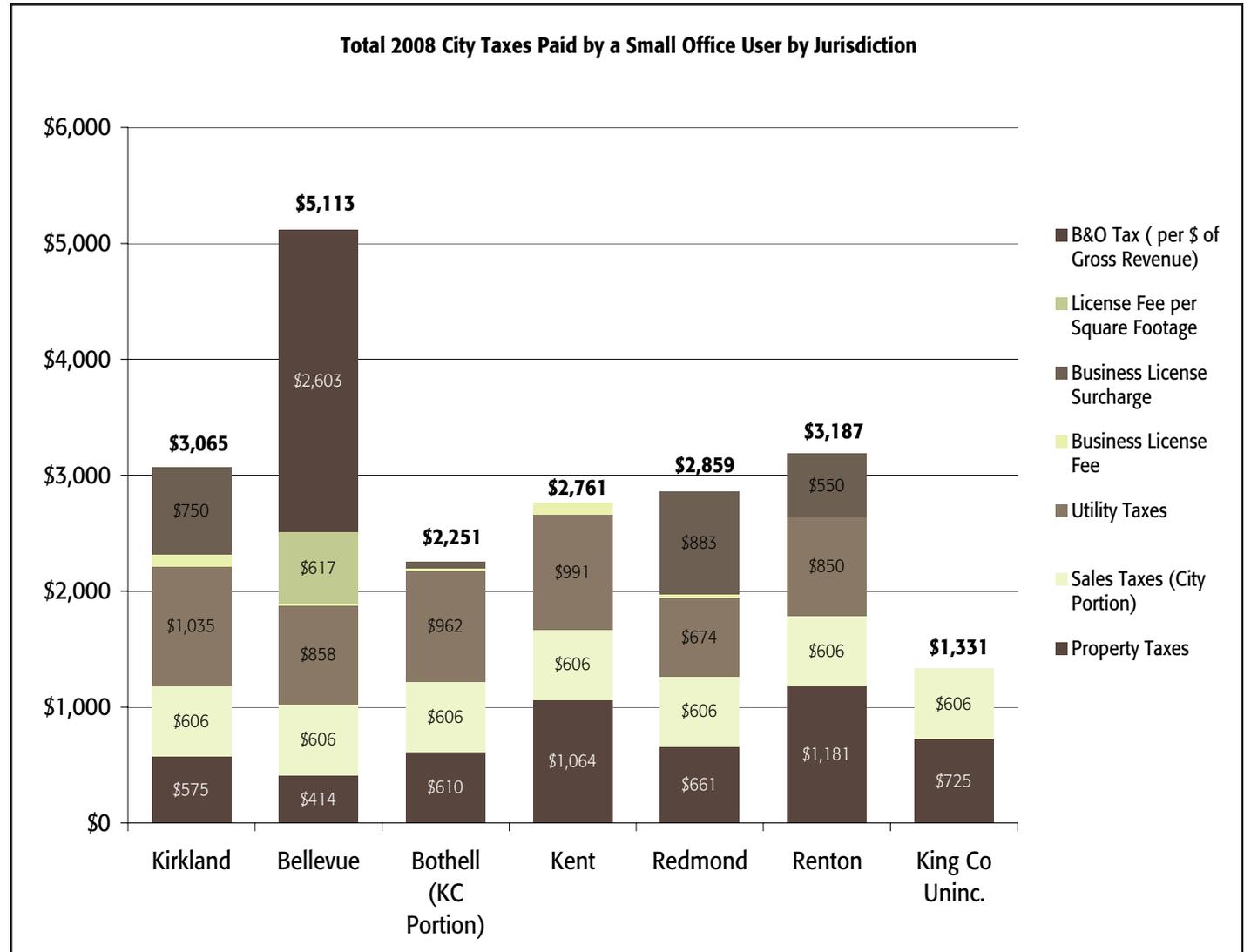


Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



Small Office (10 FTE)

- As is the case for the other small businesses, Kirkland's tax burden for the small office user ranks significantly below Bellevue. In the broad scope, however, even this business that is relatively disadvantaged by Kirkland's business license fee and surcharge has a burden in Kirkland that is similar to most of the other cities.



Source: City of Kirkland; City of Bellevue; City of Bothell, City of Kent; City of Redmond; City of Renton; King County Assessor; Berk & Associates, 2008



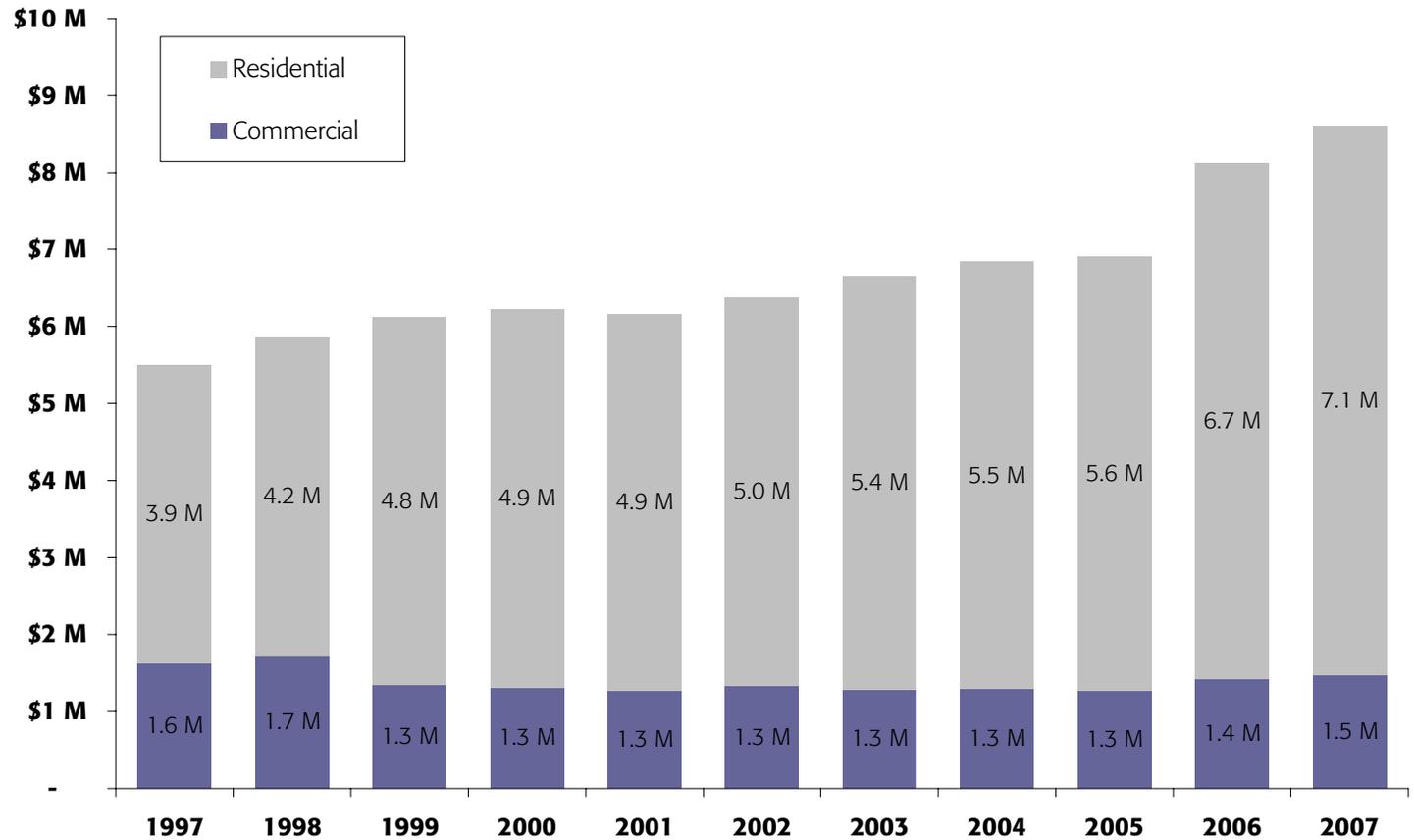
TAX CONTRIBUTION CALCULATIONS

PRESENTATION OF DETAILED ANALYTIC FINDINGS

Tax Contributions - Property Tax

- Estimates of property tax contributions reflect Berk & Associates' analyses of King County Assessors Office data extracts. Berk & Associates identified all parcels within the City of Kirkland, and based on their designation (in 2008) as commercial or residential, we calculated total assessed value for each category using historical tax value data. (While apartment buildings are coded in the Assessors data as commercial parcels, for this analysis they were included within the residential pool.)
- What the analysis shows is that most of the property value increases in Kirkland in recent years have been concentrated in residential uses. This reflects (1) underlying increases in assessed value of property and (2) investments in renovations and new construction of residential properties.
- For businesses, a combination of modest property value increases and reduced levy rates translated into limited growth in overall City property tax payments.

**General Fund - Property Tax Contributions
Not Inflation-Adjusted**



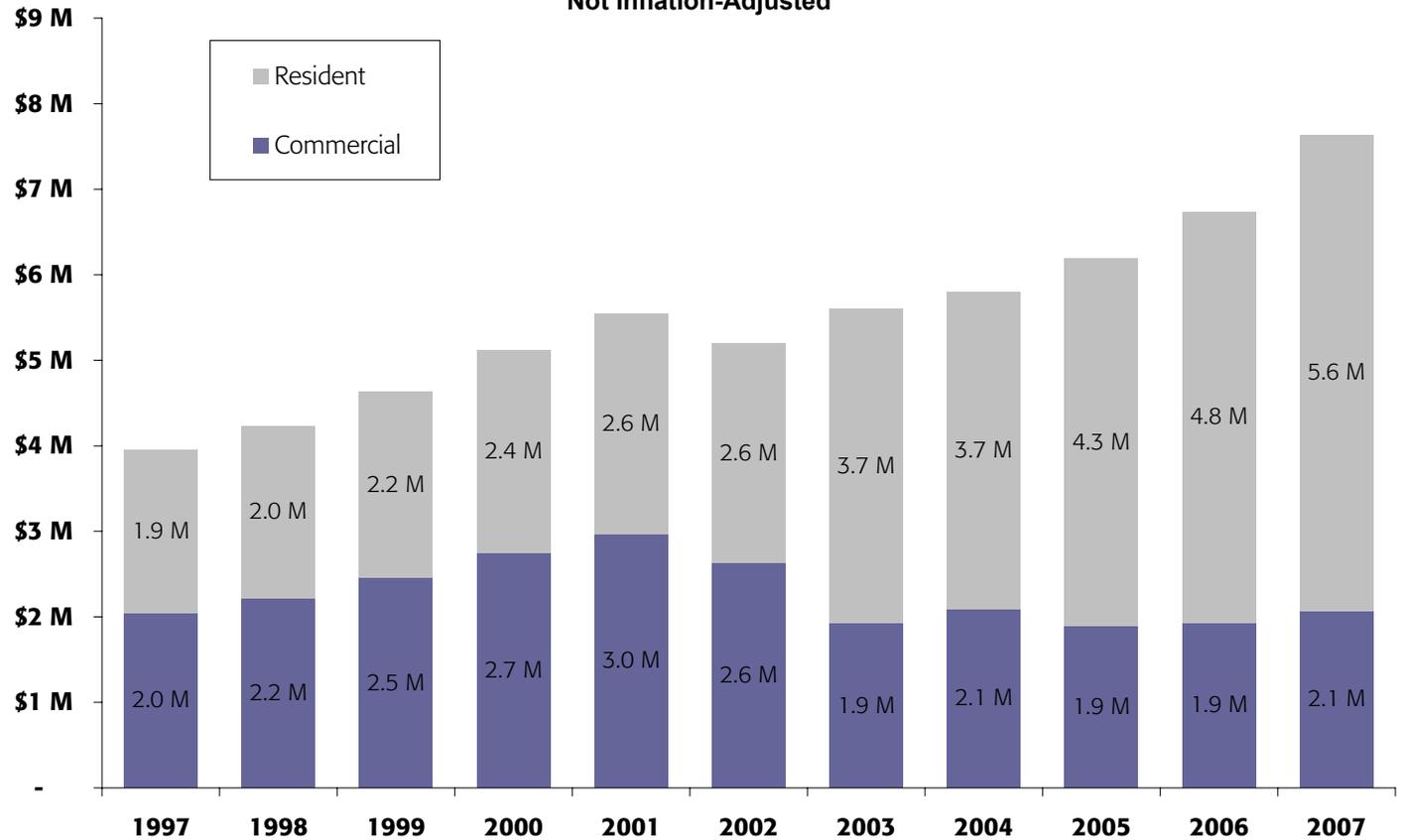
Source: King County Assessor; Berk & Associates, 2008



Tax Contributions - Private Utility Tax

- Utility tax payments from revenues generated by private utilities are based on a combination of existing City of Kirkland data and analyses, and Berk & Associate’s interpolation. Data for 2004 through 2007 reflect City of Kirkland estimates of residential versus business utility tax payments. Data for years preceding 2004 are based on Berk & Associates analysis of detailed revenue data, City population, and employment within the City.
- The rise and fall of utility tax payments by commercial payers from 1997 to 2003 reflects the rise and fall in commercial employment in the City for the same period (and reductions in the City tax rate for commercial users from 6.5% to 6%).
- It is difficult to know what factors have driven the modest gains in commercial taxes from 2003 to 2007, but they may be a result of increased availability of more cost-effective telecom options. Increases in residential taxes are likely the result of higher household telecom expenditures.

**General Fund - Contributions from Taxes on Private Utilities
(Electricity, Telephone, Gas, and Garbage Tax)
Not Inflation-Adjusted**

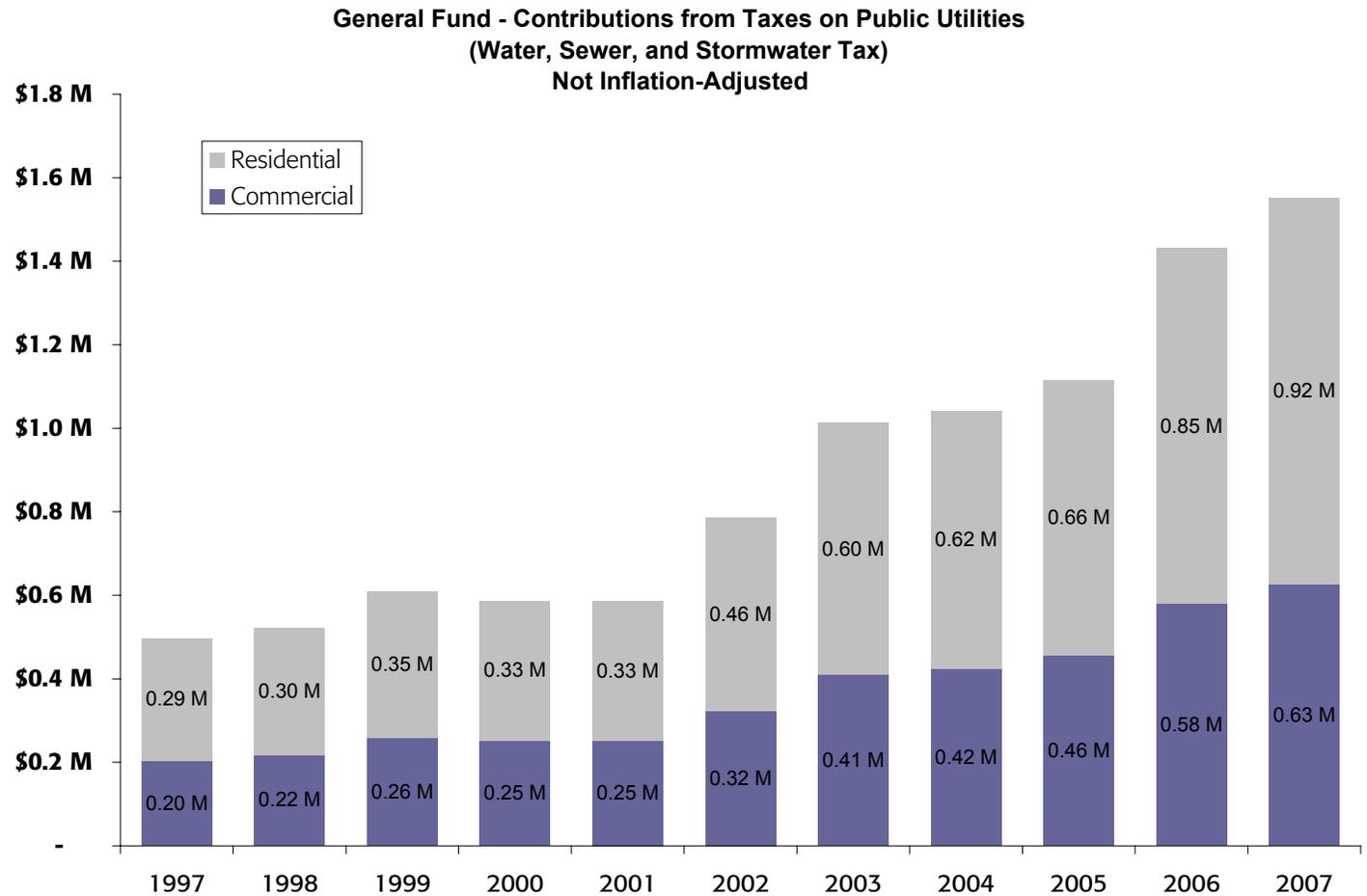


Source: City of Kirkland; Washington State Auditor’s Office; Berk & Associates, 2008



Tax Contributions - Public Utility Tax

- Virtually no detailed data are readily available from which to estimate commercial versus residential contributions for public utility tax payments. Therefore, for purposes of allocating these relatively modest streams of revenue, Berk & Associates allocated annual utility tax payments equally among residents and employees within the city. Yearly variations reflect a combination of (1) annual variations in overall revenues, and (2) annual variations in the number of city residents and employees.
- Overall growth in revenues has been driven by creation of a stormwater tax in 2002 and increases in tax rates.



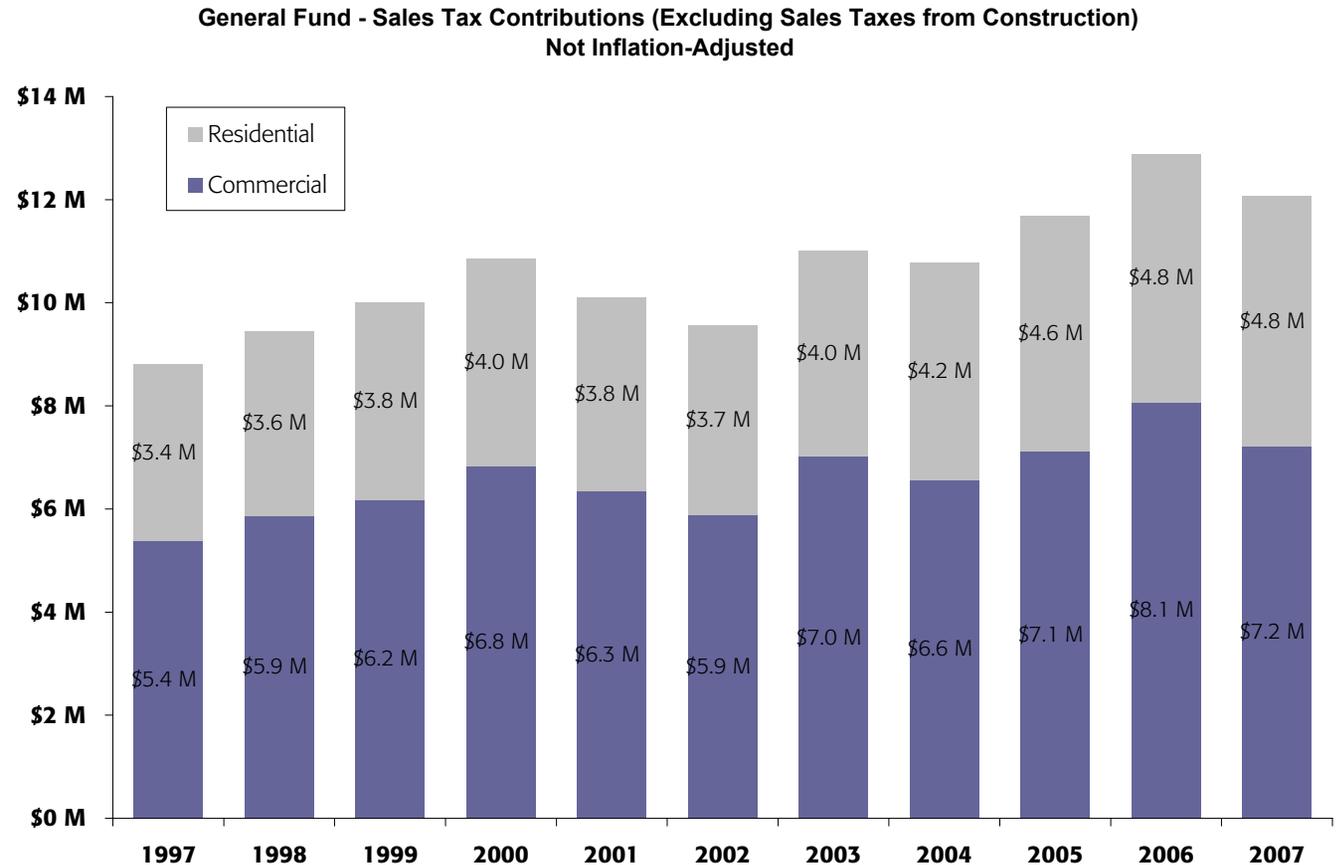
Source: City of Kirkland; Washington State Auditor's Office; Berk & Associates, 2008



Tax Contributions - Sales Tax

- Retail sales tax contributions were allocated to households and businesses based on a framework that considers capture rates for retail expenditures. For retail sectors that capture person-expenditures that exceed the population of the City (e.g. auto dealers), the portion of the contribution that represents the *imported* sales tax revenues are credited to the commercial sector. For those sectors where person-expenditures-captured was less than City population, sales tax revenues were credited to residents. Sales tax revenues from non-retail sectors like Manufacturing; Wholesale; Real Estate, Rental, and Leasing; and Services were credited to businesses, with the exception of a \$15 per resident credit for home-based purchases of goods and services like telephone services and delivery of heating oil, etc. Finally, non-store retail purchases were credited to households.

- From 1997 to 2006, growth the commercial contribution to sales taxes outpaced growth from residents. Most of this growth in commercial contribution was driven by auto sales, which is Kirkland’s most successful retail category in terms of “imported” retail sales.



Source: City of Kirkland; Washington State Department of Revenue; Berk & Associates, 2008



Technical Appendix



Technical Appendix

STUDY METHODOLOGY

This appendix details the methodology employed to generate and examine profiles used throughout this analysis. Included in this appendix are the following:

- Construction of hypothetical households and businesses
- Tax rates schedules and methodologies used to examine tax burdens
- Comparison of Kirkland to other jurisdictions

Construction of Household and Business Profiles

Berk & Associates (Berk) created hypothetical households and businesses with characteristics that are representative of the City of Kirkland. Each of these profiles was then examined individually to identify the tax burden these hypothetical households and businesses face.

Household and Business profiles were constructed using several sources including the Office of Financial Management, United States Bureau of Labor Statistic's (BLS) *Consumer Expenditure Survey* and the State Department of Revenue (DOR). Each household profile exhibits expenditures on taxable retail sales based on BLS data. Business expenditures on taxable retail sales were estimated using gross revenue estimates and statewide business taxable retail expenditures provided DOR. Utility expenditures were based on the size of the home or business, number of persons in household, and the number of employees employed by a business.

As assessed value is a driver in tax revenue, annual changes in assessed values were given particular attention. Annual changes in assessed values for hypothetical taxpayers represent citywide, compound annual growth rate for six different land-use categories in Kirkland: single-family residential, condominiums, multi-family residential (rental), auto-dealerships, retail commercial, and office commercial.

Change in Assessed Value

Berk used the King County Assessor's Real Property Accounts database extract to calculate assessed value change over time. Berk selected all parcels in Kirkland with records for 1996 through 2008 from the Real Property Accounts database. This was done to have a consistent number of parcels for each year in which to measure changes in assessed value. Berk then linked building year-built data from the assessor's commercial building extract and residential building extract to the dataset, and subtracted all parcels with buildings constructed in 1995 or after. We also subtracted any parcels with an increase in assessed value over 150 percent in one year. This was done to eliminate any large increases in assessed value due to new construction or unusual assessment revaluations, which

Technical Appendix

would skew the dataset. Finally, we calculated the percent growth per year and the compound annual growth rate from 1996-2000 and 2001-2008 in assessed value for each one of the land-uses categories above.

Tax Rate Schedules

Sources for all property tax rates were either the King County Assessor's annual report or the Assessor's annual codes and levies book for taxing districts. Individual 2008 city budgets and city codes were the source of business tax rates and fees for each city. **Exhibit 1** depicts the tax or fee and the rates used by each comparative city.

Business license fees for most of the cities are flat rates, with the exception of Bothell. Employee "head" taxes are determined in a variety of ways for each city. The City of Kirkland has a graduated scale for the employee tax depending how many employees a business has, where as the City of Redmond charges a rate based on the number of hours an employee works per year.

Exhibit 1 2008 Business Taxes and Fees

	Kirkland	Bellevue	Bothell	Kent	Redmond	Renton	Unincorp. KC (Finn Hill)
Annual Business License Fee	\$100	\$15	See Attached	\$100	\$35		-
Business License Surcharge	\$125*		See Attached	-	\$0.046**		-
Employee "Head" Tax	-		See Attached	-		\$55	-
B&O Tax (per \$ of gross revenue)	-	0.15%	See Attached	-		-	-
License Fee per SF		\$0.21					-

Source: City of Kirkland, City of Bellevue, City of Bothell, City of Kent, City of Redmond, City of Renton, King County.

Notes: * Kirkland's Business License Surcharge is on a sliding scale with a minimum payment of \$125; for 2 or more employees the fee is \$225, 6 or more employees \$750, and 21 or more \$1500.

**Redmond's Business License Surcharge is calculated per employee hour.

The City of Bothell has a unique method for determining business license fees. The City bases business license fees on a combination of three categories: the number of employees, the type of business, and the size of the business. There is also a Special Classification Fees for certain types of businesses. **Exhibit 2** below lists the specific fees and their rates for the City of Bothell.

Technical Appendix

Exhibit 2 City of Bothell Business License Fee Schedule

City of Bothell 2008 Business License Fee Schedule

License Year: July 1 – June 30
Contractors Please Note: In-City: Pay the appropriate fees from Categories A, B, and C.
 Out-of-City: Pay fees from Category A only.
Non-Profit Organizations: No fees required for Non-profit Organizations. Registration is required.
Special Endorsements: Additional application and fees required. Please see details below.

Locate the Appropriate Fees From Each of the Following Categories and Enter on Application Form

CATEGORY A – Number of Employees				
	Number of Employees	License Fee	Number of Employees	License Fee
*Business owner counts as one employee.	1-2	\$21.00	51-75	\$416.00
• Contractors pay according to the number of employees on the job.	3-10	\$59.00	76-100	\$556.00
	11-25	\$127.00	101+	\$556.00 + \$5.00 for each employee over 100
	26-50	\$276.00		

CATEGORY B – Type of Business			
Code	Business Type	Description	Fee
100	Public Assembly	Public recreation, funeral homes, clubs, restaurants, food service, and theater.	\$28.00
150	Non-Profit Organization	An enterprise, without private profit for a public, charitable, educational, literary, or fraternal purpose, when its not-for-profit status is demonstrated through Internal Revenue Service Documentation.	No fees, registration required
200	Educational Use	Various types of training schools.	\$28.00
300	Institutional Use	Health care facilities of various types. Adult daycare centers and adult family homes.	\$28.00
400	Residential	Business where primary use is residential. Includes hotels, motels, and lodging houses. For home offices, see "Store, Office" below.	\$21.00
401	Apartments	All apartments are included.	\$115.00
500	Store, Office	Business involved in the sale, service, or maintenance of products.	\$14.00
501	Contractors – in-City	Contractors who maintain a home office within the City limits, but do not have employees working at that home office location.	\$14.00
502	Contractors – out-of-City	Contractors whose offices are outside city limits.	\$14.00
503	Gross Proceeds Less Than \$1,000 Per Month	Business whose gross monthly proceeds are less than \$1,000.	No fees, registration required
506	Home Occupation Business	Home-based business where the primary use of the dwelling is residential. Maximum of 2 workers, one of whom must reside in that home.	\$14.00
507	Family Daycare Home	State-licensed daycare provider who regularly provides daycare for not more than 12 children in the provider's home in the family living quarters.	Subject to \$14.00 fee from Category B only.
600	Basic Industry, Utility	Research/laboratory, military/defense, communications.	\$36.00
700	Manufacturing Use	Manufacturing/assemblying of goods.	\$36.00
800	Storage Use	All types, except hazardous waste.	\$28.00

CATEGORY C – Square Footage			
Square Footage	License Fee	Square Footage	License Fee
Less than 3,000	\$0	15,001 to 17,000	\$155.00
3,001 to 5,000	\$43.00	17,001 to 20,000	\$175.00
5,001 to 10,000	\$71.00	20,001 to 50,000	\$211.00
10,001 to 15,000	\$113.00	Greater than 50,000	\$245.00

Special Classification Fees			
505	Peddler	Persons who travel door-to-door, or street-to-street, selling their wares. Includes ice cream vendors	\$71.00 initial fee \$14.00 annual renewal fee \$13.00 annual investigation fee
508	Amusement Game Device	Amusement game device located within a store, office, public assembly business, etc.	\$37.00 per game device
509	Secondhand Dealer	Resale of used goods.	\$37.00
510	Public/Teen Dance	Any dance that is open to the public and which is conducted for a profit, either direct or indirect, or that requires a monetary payment or contribution from the persons admitted.	\$423.00
511	Pawnbroker	Receives goods, wares, or merchandise for repayment of security of any money loaned; or loans money on deposit of personal property; or publicly displays sign indicating money to loan on personal property on deposits or pledge.	\$141.00

Other Fees	
Change of Business Location	\$21.00
Change of Business Owner	\$21.00
Duplicate License	\$2.00

For assistance or more information, contact Community Development at (425) 486-8152

Source: City of Bothell



Technical Appendix

Exhibit 3 details the King County levy schedule used to calculate Kirkland property taxes.

Exhibit 3 City of Kirkland Levy Rates

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
City Total	2.41913	2.26151	2.15966	1.94718	1.84205	1.64180	1.43680	1.58850	1.55339	1.49085	1.49002	1.40116	1.27678
City Levy (Regular)				1.65779	1.59211	1.42558	1.30384	1.26923	1.35008	1.30528	1.32360	1.25175	1.14882
City Levy (Bond/Special)				0.28939	0.24994	0.21622	0.13296	0.22500	0.20331	0.18557	0.16642	0.14941	0.12796
City Levy (Voted)				-	-	-	-	0.09427	-	-	-	-	-
Road District (KC Onl)	-	-	-	-	-	-	-						
Consolidated Levy	6.00120	5.93933	5.62713	5.37155	5.20814	4.88749	4.62851	4.50523	4.44226	4.32501	4.05986	3.84649	3.56362
State School Fund	3.50000	3.52	3.51000	3.35872	3.30278	3.14502	2.98946	2.89680	2.75678	2.68951	2.49787	2.32535	2.13233
County				1.77385	1.68951	1.55218	1.44949	1.34948	1.43146	1.38229	1.32869	1.28956	1.20770
Port				0.23898	0.21585	0.19029	0.18956	0.25895	0.25402	0.25321	0.23330	0.23158	0.22359
Emergency Medical S	0.24987	0.25000	-	0.29000	0.27299	0.25624	0.25000	0.24143	0.23717	0.23182	0.21982	0.20621	0.30000
School Levy	3.98259	3.95077	3.52386	4.05682	4.01758	3.52918	3.17544	3.06974	2.96344	2.82925	2.64967	2.57101	2.32644
Water Levy	-	-	-	-	-	-	-	-	-	-	-	-	-
Fire Levy	-	-	-	-	-	-	-	-	-	-	-	-	-
Hospital Levy	0.44640	0.44360	0.43418	0.41416	0.40685	0.38784	0.35975	0.34082	0.34227	0.58794	0.53517	0.50320	0.45010
Library Levy	0.50000	0.50000	0.50000	0.50000	0.50000	0.48270	0.45652	-	0.49246	0.48288	0.48937	0.50027	0.41836
Flood Levy	-	-	-	-	-	-	-	-	-	-	-	-	0.10000
Ferry Levy	-	-	-	-	-	-	-	-	-	-	-	-	0.05500
Other Levy	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Levy	13.59919	13.34521	12.24483	12.57971	12.24761	11.18525	10.30682	9.74572	10.03099	9.94775	9.44391	9.02834	8.49030

Source: King County, 2008.

Technical Appendix

Comparing Kirkland to Other Jurisdictions

While understanding how Kirkland's tax burden has changed since the original study was commissioned it is also important to understand how Kirkland's tax burden compares to other regional cities. To compare the Kirkland household and business profiles we calculated the tax burden these profiles would pay if they were placed in the following Jurisdictions. **Exhibit 4** details the levy rate schedule used to calculate the jurisdictional tax burden comparisons.

Exhibit 4 Jurisdictional Levy Rates

2008 LEVY RATES (KC Rate Book Report)

	Kirkland	Bellevue	Bothell	Kent	Redmond	Renton	Unincorp. KC (Finn Hill)
City Total	1.27678	0.92056	1.35586	2.36421	1.46929	2.62382	1.61081
City Levy (Regular)	1.14882	0.92056	1.23508	2.31188	1.44559	2.57052	-
City Levy (Bond/Special)	0.12796	-	0.12078	0.05233	0.02370	0.05330	-
Road District (KC Only)	-	-	-	-	-	-	1.61081
Consolidated Levy	3.56362						
State School Fund	2.13233	2.13233	2.13233	2.13233	2.13233	2.13233	2.13233
County	1.20770	1.20770	1.20770	1.20770	1.20770	1.20770	1.20770
Port	0.22359	0.22359	0.22359	0.22359	0.22359	0.22359	0.22359
Emergency Medical Services	0.30000	0.30000	0.30000	0.30000	0.30000	0.30000	0.30000
School Levy	2.32644	1.95382	3.62038	4.39336	2.32644	2.62654	2.32644
Water Levy	-	-	-	-	-	-	-
Fire Levy	-	-	-	-	0.01912	-	0.99275
Hospital Levy	0.45010	-	0.45010	-	0.45010	0.50854	0.45010
Library Levy	0.41836	0.45336	0.45336	0.41836	0.45336	0.03500	0.45336
Flood Levy	0.10000	0.10000	0.10000	0.10000	0.10000	0.10000	0.10000
Ferry Levy	0.05500	0.05500	0.05500	0.05500	0.05500	0.05500	0.05500
Other Levy	-	-	0.02983	-	0.04485	-	0.05387
Regional Total Levy	2.75475	2.33965	2.81958	2.30465	2.85372	2.42983	3.83637

Source: King County, 2008.

**CITY OF KIRKLAND**

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

MEMORANDUM

To: David Ramsay, City Manager

From: Eric Shields, Planning Director
Angela Ruggeri, Senior Planner

Date: July 23, 2008

Subject: Status Report on Touchstone (Parkplace), Orni and Altom Private Amendment Requests (PARs): File ZON07-00016, ZON07-00012 and ZON07-00019

RECOMMENDATION

Receive and discuss status report on Touchstone (Parkplace), Orni and Altom PARs.

BACKGROUND DISCUSSION

- I. PRIVATE AMENDMENT REQUESTS** (see Attachment 1)
- A. Touchstone Corporation (Parkplace)** submitted a private amendment request for the redevelopment of the existing Kirkland Parkplace Center. The request included a building height increase from 3-5 stories to 4-8 stories as measured from the grade of 6th Street and Central Way and the allowance of taller buildings next to Central Way and 6th Street. It included a building setback reduction from 20 feet to 0 feet on Central Way and 6th Street, and potentially from 10 feet to 0 feet next to Peter Kirk Park. The request also included possible flexibility in other regulations such as lot coverage. The requested amendments would be reflected in changes to the Comprehensive Plan and Zoning for the site.
- B. Katherine Orni** submitted a private amendment request for the properties located at 825, 903 and 911 5th Avenue, east of the Post Office in the Moss Bay Neighborhood. The request is to change the zoning to PLA 5C which allows office use and has a maximum height of 60 feet above average building elevation or 6 stories whichever is less. The existing zoning is PLA5D which does not allow office and has a maximum height of 40' above average building elevation or 4 stories whichever is less. The site presently contains office uses and has for nearly 30 years. The three existing legally nonconforming office buildings were allowed to be built because of a legal action that was taken when the property was rezoned from office to residential.

- C. Rhoda Altom** submitted a private amendment request for the property located at 220 6th Street in the Moss Bay Neighborhood. She requested a change in zoning from PLA 5B to PLA 5C to allow additional height up to 60 feet above average building elevation or 6 stories whichever is less. The existing PLA 5B zoning has a maximum height allowance of 30 feet above average building elevation. She also asked that the minimum lot size requirement of one acre for this additional height in PLA 5C be removed. The study area for this PAR has been expanded to include the site to the north of the Altom property. This site is between the Altom property and PLA 5C. The property to the south of the Altom property contains a relatively new office building and is just north of a single family development. It has a topography change and so provides an appropriate transition piece between PLA5C and the single family development to the south. It is not included in the study area.

II. PROCESS

The Private Amendment Request (PAR) process has two steps: 1) the threshold determination by the City Council to decide whether to further consider the request; and 2) the study process when the requests that are selected are considered further. The study process involves public hearings by the Planning Commission, a recommendation from the Planning Commission to the City Council, and a final decision by the City Council.

The City Council made the Phase 1 decision to further consider these three private amendment requests in July of 2007. At that time, the Council also passed a resolution which directed the Design Review Board (DRB) to play a role in advising the Planning Commission on the Parkplace PAR.

The role of the DRB during the annual amendment process was to help staff and the Planning Commission develop appropriate Comprehensive Plan policies, development regulations and design guidelines for the portion of CBD 5 where Parkplace is located. The primary issues that the Board focused on were site layout and building massing. The DRB's recommendation has been used by the Planning Commission to help in the development of their preferred alternative that will be studied in the Final Environmental Impact Statement (FEIS).

III. ENVIRONMENTAL IMPACT STATEMENT (PLANNED ACTION)

The environmental review process for the Touchstone (Park Place), Orni and Altom proposals began last fall. This process has been different than the one used for other amendments to the Comprehensive Plan. The environmental review process for the 3 PARs includes a Planned Action Environmental Impact Statement (EIS) which considers the potential impacts associated with land use, aesthetics, transportation, public services and water and sewer utilities. An extensive traffic study and a massing analysis have also

been used to evaluate the largest potential impacts. The statute and rules for planned actions (RCW 43.32C.031 and WAC 197-11-164) establish a process to address site-specific environmental impacts of planned projects and mitigation measures early in the planning stage of the projects. This early review is intended to provide greater certainty and efficiency in project level environmental review. The Planned Action EIS process has occurred concurrently with the DRB and Planning Commission study process.

The Draft Planned Action EIS has evaluated two alternatives for each site: (1) a “no action” alternative that describes development of sites under the existing Comprehensive Plan, and (2) the applicants’ proposals. The existing conditions were also taken into account. The draft EIS was issued on April 4, 2008. The Planning Commission has used the draft EIS as a tool to analyze the alternatives studied for the Park Place, Orni and Altom proposals. The PC has now determined their preferred alternative to be studied in the Final Environmental Impact Statement (FEIS). The FEIS will be used by the Planning Commission to produce a recommended development level for each site that will ultimately be proposed to the City Council. This recommendation will include the Comprehensive Plan policies, development regulations, design guidelines and a Planned Action Ordinance that the City Council will consider adopting for the area.

The applicants’ proposals that were studied in the DEIS are as follows.

- A. Touchstone (Parkplace):** The proposal includes up to 1.8 million square feet of office, retail and hotel floor area and approximately 3,500 parking stalls. The 11.7 acre site currently contains 250,700 square feet of office and retail uses along with 742 parking stalls.
- B. Orni:** The proposal includes a 4 to 5 story office complex (up to 60 feet above average building elevation in height) with approximately 145,000 square feet of floor area and underground parking. The site currently contains three legally nonconforming office buildings.
- C. Altom:** The applicant is proposing an office up to 60 feet above average building elevation in height. A similar proposal will be analyzed for the adjacent parcel to the north. Both parcels contain office buildings at the present time.

IV. WHERE WE ARE IN THE PROCESS

Planning Commission study sessions to develop recommended Comprehensive Plan policies, Zoning regulations, Design Guidelines, and the Planned Action Ordinance will continue through September 2008. The Final Planned Action EIS is tentatively scheduled to be issued in early October. Three public hearings have already been held by the Planning Commission. Another public hearing will be held after the EIS is issued to take comment on the preferred alternative and the related Comprehensive Plan, the Zoning

regulations, Design Guidelines and Planned Action Ordinance developed by the Planning Commission. The Planning Commission's final recommendation will go to the City Council after the Planning Commission holds this hearing and completes their recommendation. The Council study session is tentatively scheduled for November 18 and the Planning Commission recommendation will be presented at the Council meeting on December 2.

V. PUBLIC COMMENTS

On April 24, the Planning Commission held its first public hearing to take comment on the PARs. The SEPA Responsible Official was also there to hear comments on the Planned Action DEIS. The Planning Commission then had a number of study sessions to develop the preferred alternative to be studied in the FEIS. On June 12 and June 26, public hearings were held to take more comment on the PARs and the Planning Commission's preferred alternative for the FEIS. The public has also been involved in the study sessions for both the DRB and the PC.

To date we have received approximately **255 letters and e-mails** on the PARs. The vast majority of comments received are related to the Parkplace proposal. Staff is in the process of putting together a spread sheet outlining the concerns and ideas expressed in this correspondence. Our present tally indicates approximately **86 in favor of the Parkplace PAR** and **169 against it**. If more than one letter or e-mail was received from the same person, it was only counted once.

There have also been 3 separate petitions signed relating to the proposal.

- The petition **supporting** the 8 story mixed use redevelopment of Parkplace includes **413 signatures** to date.
- The petition to **reject** the proposed PARs for Parkplace, Orni and Altom includes **227 signatures** to date.
- The petition to require any rezone or redevelopment of Parkplace to include maintenance and enhancement of the pedestrian corridor that runs from 2nd Avenue through the office projects at 550 and 520 Kirkland Way and through Park Place and Peter Kirk Park to Park Lane includes **164 signatures**. This petition expressed concern about the proposed plans that include a building placed on top of the existing pedestrian pathway.

Comments taken at the public hearings have also been tallied below. In many cases, these comments came from people who had already written letters and e-mails, or signed petitions. Some people also spoke at more than one of the hearings.

At the public hearing on April 24: **4 spoke in favor of the Parkplace PAR** and **17 spoke against it**.

At the public hearing on June 12: **28 spoke in favor of the Parkplace PAR and 14 spoke against it.**

At the public hearing on June 26: **20 spoke in favor of the Parkplace PAR and 14 spoke against it.**

VI. ALTERNATE TOUCHSTONE PROPOSALS

In addition to their original PAR, Touchstone Corporation has been refining their 8 story mixed use proposal. Their latest site plan submittal including proposed building heights is included as Attachment 2, Plan B.

Touchstone has also submitted for design review a redevelopment proposal for Parkplace Center with the intention of meeting the current CBD-5 Zoning Code regulations and Comprehensive Plan policies. The current CBD-5 Zone provides for a range of heights from 3-5 stories above average building elevation.

The applicant has decided to pursue design review approval of this current zoning proposal while the City considers the request to amend Kirkland's Zoning Code regulations and Comprehensive Plan policies to achieve additional height and reduced building setbacks. The applicant wants to be sure that they vest under the current rules in case their PAR proposal is not approved.

This new proposal is to redevelop the existing Parkplace Center in two phases. Phase I consists of 6 or 7 office buildings at five-stories in height located in the north and northeast portion of the site (see Attachment 2, Plan A). All existing buildings, except those retained until Phase II, would be removed. The plans include between 895,000 and 935,000 square feet of office space.

The proposal would contain very little retail. The QFC store and the existing retail building directly east of the grocery store would be retained and redeveloped at a later date in Phase II. The building southeast of QFC that contains the two restaurants (Pancake House and prior Thai Restaurant) will also be retained and redeveloped in Phase II.

VII. PLANNING COMMISSION DIRECTION ON PREFERRED ALTERNATIVES FOR THREE PRIVATE AMENDMENT REQUESTS

The Planning Commission has defined the basic parameters of the preferred alternatives for the 3 PARs sufficiently to allow the final EIS to be prepared. Staff has also begun work on the amendments to the Comprehensive Plan, Municipal Code and zoning that will be developed over the summer. The following will be studied in the FEIS.

A. Touchstone (Parkplace) Preliminary Preferred Alternative

The Planning Commission has taken the following into account in the development of their preferred alternative for Parkplace. The developer seeks to build 1.2 million square feet of office which he believes he can accomplish under existing regulations. He would like to include retail, a hotel and an athletic club in the development, but has stated that this will be economically feasible only if it is in addition to the 1.2 million square feet of office. Touchstone has proposed a mixed use project with a total of 1.8 million square feet.

The Planning Commission has expressed a desire to provide a strong retail component within the project. They have also discussed maintaining a pedestrian oriented design along Central Way by lowering heights along the street. In response to their concerns about the applicant's alternative concept (Attachment 2, Plan A), the Planning Commission discussed increasing the height up to 11 stories in some areas of the site while reducing it in other areas to 3 to 7 stories. The Commission decided not to pursue this option, however, after receiving public comment at the hearings. The Planning Commission's preferred alternative is explained below and is shown as Plan C of Attachment 2.

1. Uses: The Planning Commission indicated that office and mixed use are appropriate for the site. The Commission also believes that retail is an essential component for redevelopment of the Parkplace site and that at least 300,000 square feet of retail should be required.
2. Square footage: The Planning Commission has decided to retain the overall square footage requested by Touchstone for the analysis of the preferred alternative in the FEIS.
3. Height Allowances: (see Attachment 2, Plan C). The Planning Commission's preferred alternative includes the following heights:

Low Height Areas

- 3 stories within 20 feet of Central Way before stepping up to the next height zone.
- 4 stories east of Peter Kirk Park before stepping up to the next height zone.
- The building(s) to the south of the central open space must be low enough to allow for sun to reach 50% of the open space plaza at 2:00 pm on March 21st and September 21st.

Medium Height Areas

- 7 stories stepped back 20 feet from Central Way.

- 6 stories stepped back 20 feet from the 4 story zone to the east of Peter Kirk Park.

Maximum Height Areas

- Up to 8 stores along 6th Street.
- Up to 8 stories in the southeast portion of the site

4. Setbacks/Step backs: The Planning Commission agreed with the Design Review Board's recommendation (see Attachment 3):

- Central Way: No setbacks along Central Way and 6th Street if there is a relationship between the building and the pedestrian (retail uses for example), otherwise some setback from the property line should be required. Buildings along Central are limited to three stories and then are to be stepped back 20 feet to 7 stories.
- Park: A medium setback was recommended adjacent to the park. The buildings adjacent to the park are to be 4 stories with 20 foot step backs to 6 stories and then 8 stories.
- South/Southeast boundary: The widest setback (25' to 40') is recommended along the south portion of the site adjacent to the existing office and residential uses.

5. Open Space Requirements: The Planning Commission agreed with the Design Review Board's recommendation that a large central open space should be required in exchange for the additional height proposed. It was also decided that the site should be designed so that there is ample sunlight in the plaza. As a benchmark, the Planning Commission directed that the FEIS model a scenario in which not more than half of the open space should be in shade at 2:00 pm on March 21st and September 21st. The result is that buildings to the south of the open space must be kept at a height that will prevent this from happening.

6. Gateway Feature: The Planning Commission concluded that there should be some flexibility to allow for creative treatment of the entry way corner at 6th Street and Central Way. A 7 story building would be allowed on that corner with a building step back from Central Way equal to an 80% incline plane above the 3rd story of the building. The building step back line will be measured from the top of the 3rd story at the face of the building. This step back will be used to protect the view corridor down Central Way.

7. Lot Coverage: The Planning Commission is suggesting 100% lot coverage (impervious surface) as is allowed in many areas of the downtown. This will allow for the underground parking proposed throughout the site.

B. Orni Preliminary Preferred Alternative

1. Uses: The Planning Commission's allowed uses for the preferred alternative are: residential and mixed use (office 50% and residential 50%). An office only development as proposed by the applicant would not be allowed.
2. Height Allowances: The existing office buildings on the site are two stories high. The code presently allows multifamily buildings up to 4 stories or 40 feet above average building elevation, whichever is less. The Planning Commission is proposing that the maximum 40' height limit currently allowed be maintained.
3. Setback Requirements: The existing code requires an additional setback from single family uses in PLA5A for buildings over 30' above average building elevation (ABE). This regulation was originally put in place to protect the single family homes in the area as the area transitioned to office and multifamily uses. Since that time, most have been rebuilt into multifamily developments. There is only one remaining single family home to the south of the project that would require this additional setback. This home is presently for sale and so it is assumed that the site will be redeveloped with multifamily residential. The Planning Commission is proposing that this requirement be removed.
4. Design review: The Planning Commission is proposing that administrative design review be a requirement of mixed use development, but not for residential only development.

C. Altom Preliminary Preferred Alternative

1. Uses: Both the existing Comprehensive Plan designation and the proposed designation are for office/multifamily uses and so a change in use is not being considered.
2. Height Allowances: The Planning Commission is proposing up to 52' above average building elevation (ABE) for this area.
3. Lot size requirements: The Planning Commission expressed concern about allowing the additional height on lots smaller than 1 acre. The proposed zoning presently allows up to 6 stories or 60' above ABE if the site is at least 1 acre, otherwise, 30' above ABE. The Commission has suggested that if only the site at 220 6th Street (approximately .4 acres) is developed, 40' above ABE or 3 stories whichever is less should be allowed. If both sites

(approximately .83 acres) are developed together then 52' above ABE or 4 stories whichever is less should be allowed.

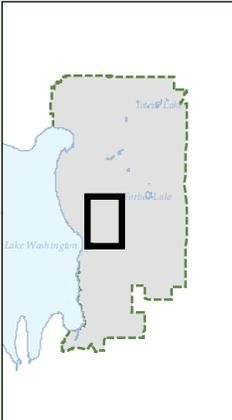
4. Design review: The Planning Commission proposes that administrative design review will be a requirement for buildings over 30'. The Planning Commission also stated that if design review is required for the site, it should be a requirement for the entire PLA5C zone (not just the specific PAR location).

ATTACHMENTS:

1. Location map for three PARs
2. Comparison of Park Place Proposals
3. DRB Recommendation on Park Place proposal setbacks.

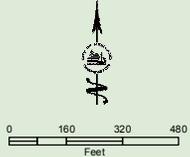
Cc: Douglas Howe, 2025 1st Avenue, Suite 790, Seattle, WA 98121
Katherine Orni, 825 5th Avenue, Suite 202, Kirkland, WA 98033
Rhoda Altom, P.O. Box 22926, Seattle, WA 98122
File ZON07-00012
File ZON07-00016
File ZON07-00019

Vicinity Map

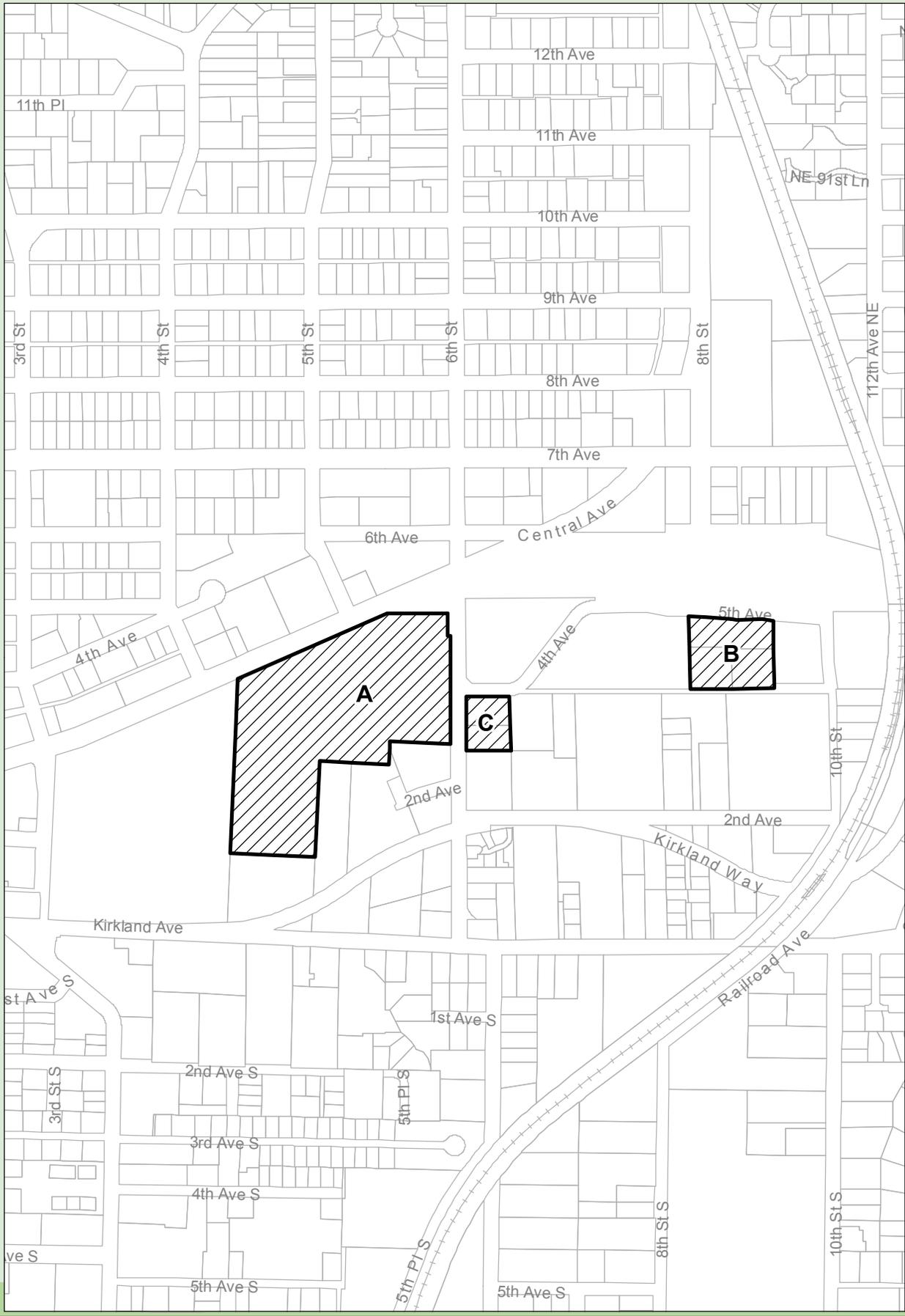


Map Legend

-  Planned Action Areas
- A = Touchstone (Park Place)
- B = Orni
- C = Altom



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CURRENT KIRKLAND PARKPLACE

E-Page # 295

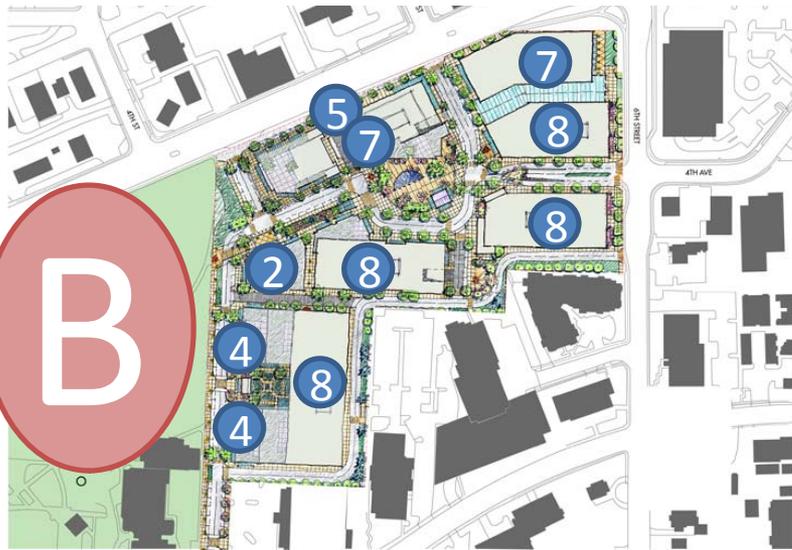
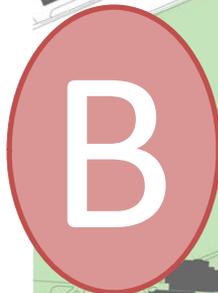


TOUCHSTONE OFFICE ALTERNATIVE

(5-STORIES, SUBMITTED TO CONFORM TO CURRENT ZONING)



TOUCHSTONE MIXED-USE ALTERNATIVE (8-STORIES, PAR AND GUIDELINES REQUIRED)



PLANNING COMMISSION MIXED-USE ALTERN. (8-STORIES, PAR AND GUIDELINES REQUIRED)



*height depends on less than 50% of open space in shade at 2pm Sept 21st and March 21st





CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3225
www.ci.kirkland.wa.us

MEMORANDUM

Date: July 23, 2008

To: Dave Ramsay, City Manager

From: Janice Soloff, AICP, Senior Planner
Eric R. Shields, AICP, Planning Director

Subject: COSTCO PRIVATE AMENDMENT REQUEST FOR GAS FACILITY,
FILE ZON07-00017

RECOMMENDATION

Staff recommends that City Council direct the Planning Commission to study the Costco Wholesale private amendment request (PAR) to amend the Comprehensive Plan and Zoning Code for the RH 1B zone as part of the 2008 work program. The amendments are necessary to allow Costco to locate a member's only gas pumping facility on the existing parking lot at the store at 8625 120th Avenue NE (see Attachment 1).

BACKGROUND

Based on direction from City Council in 2007, Costco and City staff held a series of community meetings to discuss the PAR proposal which is summarized below and the final report enclosed. Now with the community meeting process complete Costco is requesting the City allow further study of their PAR by the end of 2008 (see Attachment 2). The Economic Development Committee of the City Council supports moving forward for further study of the proposal. If City Council gives the go ahead to study the PAR proposal in more detail, staff has provided a suggested process and schedule on page 5.

The following materials are enclosed for City Council consideration:

1. Letter from Costco Wholesale dated July 23, 2008 requesting further study of the PAR proposal by the end of 2008 (Attachment 2). Letter from Costco from 2007 describing the original PAR submittal (Attachment 3).
2. A final report from Ann McBroom summarizing the results of a series of meetings she facilitated with Costco and community representatives to address concerns regarding the proposal (Attachment 4). Staff will be available at the August 5th meeting to brief the Council on the process.

3. A summary of Costco's PAR proposal along with Costco's response to the concerns raised by the participants at the meetings (Attachment 5). See also Attachment 3, 2007 PAR request proposal).
4. A letter from Jeff Trager representing the North Rose Hill Neighborhood Association Board expressing the Board's concerns about the proposal (see Attachment 8)

Costco Proposal

In 2007, Costco submitted a private amendment request (PAR) to amend the Comprehensive Plan and Zoning Code in the RH 1B zone to allow the sale of gas as an accessory use at the Rose Hill store (see Attachment 3). Costco would like to locate the member-only gas facility on the north side of NE 90th Street in the existing parking lot which is zoned RH 1B (see Attachments 1, 3 and 4).

Retail sales of gas is not a permitted use in the RH 1B zone but is permitted in the RH 1A zone where the main store is located on the south side of NE 90th Street (see Attachment 6 Comprehensive Plan policies and Attachment 7 Zoning Code Use Zone Charts for RH1A, RH 1B). Costco indicates they would prefer to locate the gas facility on the existing parking lot north of NE 90th Street rather than the south side of NE 90th Street because it would provide better traffic flow and retain more parking stalls closest to the store entrance.

2007 Planning Commission Recommendation

As part of its Threshold Determination process for private amendment requests (PAR) in 2007, the Planning Commission recommended to City Council that the request not go forward for further study because of concerns related to additional traffic to the site, increase in cut-through traffic in the neighborhood, potential water quality impacts to nearby sensitive areas, potential impacts from noise, fumes and glare impacts to adjacent neighbors and lack of sidewalks along NE 90th ST from the store to 124th Avenue NE.

As discussed above, City Council decided to defer the decision to allow time for Costco to meet with neighborhood representatives and surrounding property owners to listen to their concerns. Council asked City staff to help facilitate this discussion and return to them with the results of the process before making a final decision on whether or not to proceed on the PAR.

Community meetings

Conflict resolution consultant Ann McBroom, was hired by the City to facilitate the meetings with the goal of identifying the concerns, exploring options to address their concerns and determining the level of support for the potential gas station facility. Her report, along with notes from each meeting, is contained in Attachment 4.

Three meetings were held (November 19, 2007, February 16th and May 6, 2008). Participants included community representatives from both North and South Rose Hill Neighborhood Associations, adjacent property owners and city staff. At these meetings Costco presented its proposal, listened to questions raised by participants and provided consultants experienced in transportation, wetlands and surface water to answer key questions.

The key issues raised can be grouped into the following categories of possible impacts: economic, traffic, drainage basin, and environmental. Costco responded by making suggestions for design changes and offered possible improvements that could be incorporated into its proposal to benefit the surrounding neighborhood. In preparation for the last meeting, Costco put together a matrix describing its response to each of the key questions or concerns raised by the participants (Attachment 6).

Summary of key questions raised by the participants:

○ ***What are the economic impacts to the City and Costco of the new gas facility?***

Kirkland receives very little sales tax revenue from the sale of gas because in Washington State gas tax is distributed on a per capita basis rather than at the point of sale. Kirkland Costco stores themselves contribute a high amount of sales tax revenue to the City. With Costco opening up stores in other cities, sales tax revenue from the Kirkland store is expected to decline by an estimated 48%. Adding the gas facility provides the added services to customers while they are already at the store. With the addition of the gas facility, sales at the existing store are estimated to increase by 5%. The cost of gas will be competitive with other gas stations in the area. Costco is exploring the sale of alternative fuels. As with other high sales tax revenue businesses, it is in the best economic interest of the City to ensure that Costco has the opportunity to grow and succeed in Kirkland.

○ ***Will the increase in traffic associated with the gas facility be significant so that there will be an increase in cut through traffic on neighborhood streets?***

Increased traffic as a result of the gas facility will generally not increase cut through traffic on neighborhood streets. Traffic studies estimate that the gas facility would generate 970 net new daily trips with 150 new PM peak hour (75 entering and 75 exiting) and 140 net new trips in the AM peak hour (70 entering and 70 exiting). Costco states that most trips to Costco's gas facilities are from members who also shop at the warehouse resulting in shared trips that do not increase traffic on the roads. The new trips associated with the gas facility may be offset by the reduction in store trips as a result of other stores opening up in Redmond and Bellevue. More detailed traffic impact analysis will be necessary. If needed, traffic mitigation measures will be required. The proposal has passed concurrency. Costco would be required to pay the City's road impact fee. To respond to these community concerns Costco has offered to incorporate pedestrian and traffic improvements into the proposal should the private amendment request be approved (see Attachment 4 and discussion below).

○ ***Would a new gas facility exacerbate existing storm drainage issues in the area or adversely impact the Forbes Lake drainage basin?***

Costco indicates the gas facility would be constructed to current storm water standards, and would not increase the amount of impervious surface (constructed on existing paved parking areas) or increase the amount of runoff. Any replaced impervious surface would need to meet current storm water standards. The area under the canopy would drain to the sanitary

sewer. Because of the low elevation of the Forbes Creek drainage basin near Costco, drainage and siltation issues are existing problems surrounding the store and Forbes Lake Basin. City staff is currently conducting separate meetings with neighboring property owners to discuss their drainage concerns (see below). In order to improve water quality in the area, Costco has offered to retrofit the existing parking lot around the main store with an oil/water separator or other water quality treatment facility.

o ***What about other potential environmental impacts related to noise associated with hours of operation, truck delivery, light, glare, or air quality?***

Strict federal and local regulations for gas facilities are already in place to address potential impacts on the environment regarding noise, light, and air. The project would need to meet the Puget Sound Clean Air Agency requirements to minimize impacts of idling cars and dispensers. Trucks are already required to limit deliveries to morning hours during non-peak business hours. It is expected that the existing noise from the freeway will drown out any added noise from the fueling facility. Recessed lighting fixtures on the canopy would reduce glare. The Rose Hill Business District zoning regulations would require that a lighting and noise study be submitted and evaluated.

Also attending the meetings were property owners surrounding the Costco property who believe the Costco store and other development over the years have caused drainage and wetland problems limiting the redevelopment opportunities on their property. The property owners do not support the Costco rezone unless it is linked to a solution to their drainage problems. However, the issues seem unrelated because the proposed gas facility would be located in the existing paved parking lot and would have no increase in impervious surface. In a separate process City staff from Public Works and Planning Departments and property owners began meeting with a mediator to explore options to their concerns. These meetings are ongoing.

Outside of the above meetings, Costco continued to attend North and South Rose Hill Neighborhood Association meetings to keep them informed. See Attachment 8, letter from the North Rose Hill Association Board.

Conclusions and Possible Solutions to Community Concerns

At the February 16th meeting, the facilitator conducted a survey to gauge the level of support for the proposal (Attachment 4). Survey comments were generally supportive of the proposal. While no consensus or unanimous support for the proposal was reached, participants felt the process was worthwhile and were glad Costco is willing to work with the neighbors to identify mutually beneficial results. As part of the Comprehensive Plan and Zoning Code amendment process, Costco will need to provide more detailed analysis for many of the issues discussed above such as traffic and environmental issues. Specific text changes can be incorporated into the Comprehensive Plan and Zoning Code as well to address many of the participants concerns such as limiting hours of operation, limiting truck delivery times, limiting lighting etc. Development of the gas facility would need to meet all federal and local environmental and transportation requirements. It also became evident that the development proposal would create the same potential impacts whether constructed under current zoning in the RH 1A zone or if the PAR is approved in the RH 1B zone.

Public Improvements Proposed By Costco

In response to the concerns expressed in the meetings, in a letter dated July 23, 2008 Costco indicated a willingness to install the following public improvements if the private amendment request is approved (see Attachment 2). City staff from the various departments met to discuss the list and is in support of the improvements. Several are already listed in the Capital Improvement Plan (CIP) as unfunded projects:

1. Installation of sidewalks on the south side of NE 90th Street along Costco owned property at the corner of NE 90th Street and 120th Avenue NE and between 122nd Avenue NE and 124th Avenue NE (*Installation of the sidewalks will likely impact adjacent wetlands and depending on the classification of the wetland may trigger a potential zoning permit review process, review by other public agencies and compensatory mitigation*).
2. A painted crosswalk in front of the Church at the intersection of NE 90th Street and 122nd Avenue.
3. Improvements to a trail head at NE 90th Street and 120th Avenue NE.
4. Installation of an oil/water separator (possibly on the existing Costco parking lot).

Next steps for private amendment request

If City Council gives the go ahead for the Planning Commission and staff to study the Costco private amendment request in more detail, below are the suggested next steps:

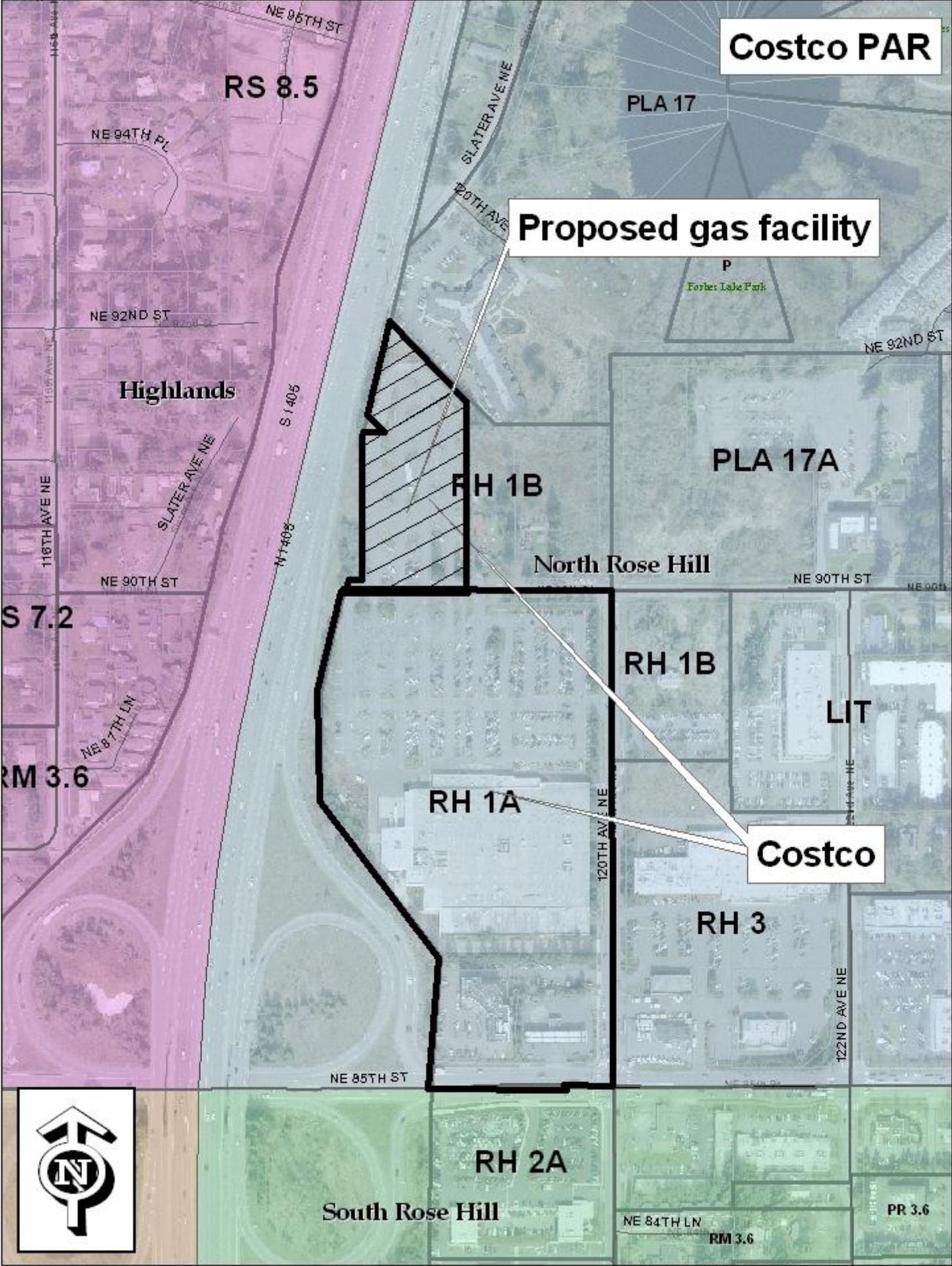
- August 28 Planning Commission study session
- November 13 Planning Commission public hearing and recommendation
- December City Council final decision

Completion by December will enable this PAR to be part of the other 2008 annual plan amendments that the City Council has already acted on with "intent to adopt" resolutions.

Attachments:

1. Vicinity map/zoning overlay
2. July 23, 2008 letter from Costco requesting study of PAR
3. February 21, 2007 letter from Costco describing original PAR request proposal
4. Final report Ann McBroom on community meeting process
5. Costco gas facility overview, site plan, Costco matrix responding to citizen concerns
6. NE 85th Street Subarea Plan policies (RH1A, 1B, Economic Element)
7. RH 1A- 1B Use Zone Charts
8. Email from North Rose Hill Neighborhood Association Board from Jeff Trager dated 6-26-2008

Cc: Costco
Community Meeting participants
North Rose Hill Neighborhood Association Board
Ann McBroom
File





July 23, 2008

The Honorable James L. Lauinger, Mayor
And Members of the Kirkland City Council
Kirkland City Hall
123 5th Avenue
Kirkland WA 98033

RE: Phase I Comprehensive Plan Amendment Request
N.E. 85th Street Subarea Plan
RH-1b Zone Policies
Our Job No. 6222

Dear Mayor Lauinger and Members of the City Council:

Thank you for your continued consideration of Costco's request to amend the Comprehensive Plan to support the addition of a fueling facility on the north side of our warehouse property at 120th Avenue NE. Since Costco's last appearance before the City Council, we have discussed Costco's proposal with the community at three neighborhood meetings and have met with the North Rose Hill and South Rose Hill Neighborhood Associations.

We invite you to review our original request described in the attached letter from July 2007. The letter outlines the nature and reasons for our request, and describes the importance of Costco Gasoline to Costco Wholesale. Also attached is a summary of the questions, and ideas that were collected at the neighborhood meetings, together with our responses.

Based on the input from the community, Costco would be willing to amend its proposal to include the following improvements as part of our Comprehensive Plan Amendment and Rezone request:

1. New sidewalk and crossing improvements as shown on the attached aerial, which would include:
 - a. East side of 120th Avenue NE from Costco's auxiliary parking lot to the intersection with NE 90th Street
 - b. South side of NE 90th Street from 120th Avenue NE to the existing sidewalk at Digeo, Inc.
 - c. South side of NE 90th Street between 122nd Avenue NE and 123rd Lane NE
 - d. A north/south painted crosswalk at NE 90th Street and 122nd Avenue NE (at the church property);
2. New oil/water separator installed on the Costco warehouse property to improve water quality; and.
3. A \$10,000 contribution to the future Forbes Lake trailhead at the intersection of 120th Avenue NE and NE 90th Street.

The Honorable James L. Lauinger, Mayor
And Members of the Kirkland City Council

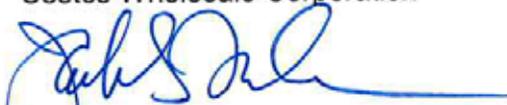
-2-

July 23, 2008

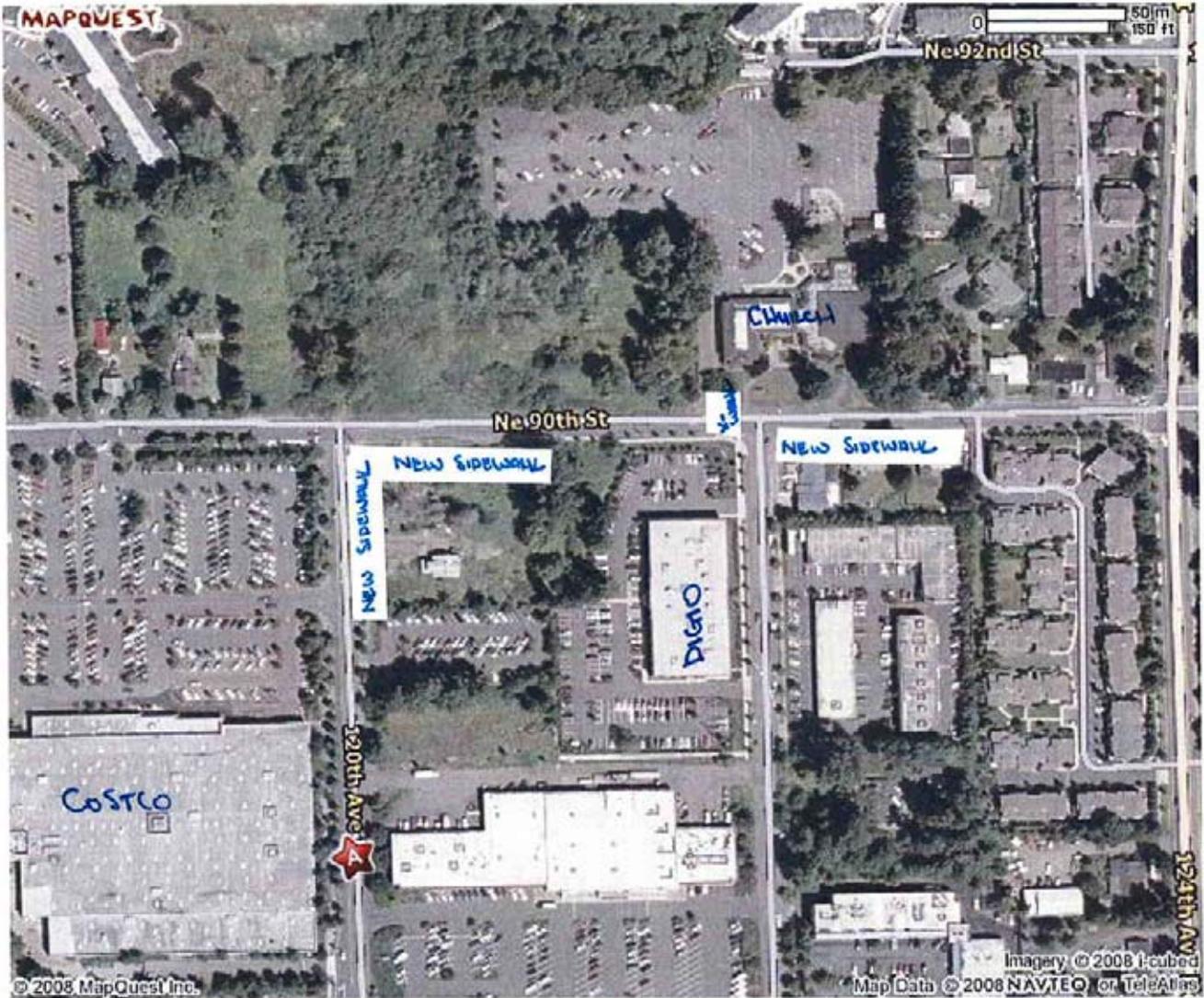
We understand that in addition to the above, the project could be subject to additional conditions, mitigations, and/or impact fees required pursuant to the City's development review process.

Once again, thank you for your consideration of our proposal. Costco is available at your convenience to answer any questions and/or provide additional information.

Respectfully,
Costco Wholesale Corporation



Jack S. Frank
Vice President of Real Estate





RECEIVED
Attachment 3

FEB 21 2007
2:10

CITY OF KIRKLAND
A. B. [Signature]

directed to Planning
Department by
JG in City Manager's
Office.

February 21, 2007

The Honorable James L. Lauinger, Mayor
and Members of the Kirkland City Council
Kirkland City Hall
123 5th Avenue
Kirkland WA 98033

RE: Request for Council Consideration of Comprehensive Plan Amendment
NE 85th Street Subarea Plan
RH-1b Zone Policies

Dear Mayor Lauinger and Members of the City Council:

Costco Wholesale respectfully requests the City Council's consideration of a Comprehensive Plan Amendment that would support the construction of a new fueling facility in the north parking lot of our warehouse on 120th Avenue NE. The Amendment would add text to the Comprehensive Plan supporting the construction of vehicle service stations in the RH-1b zone as an accessory use to the primary retail use in the RH-1a zone. The Amendment would be accompanied by a Zoning Code Text Amendment allowing vehicle service station as an accessory use in the RH-1b zone. We are requesting the City Council's review of the amendment as part of the 2007 Comprehensive Plan update.

Gasoline sales are part of the integrated goods and services that define Costco Wholesale, such as pharmacy, optical services, photo lab, bakery, and tire center. We currently offer gasoline for sale at more than 269 of our warehouses across the U.S. and Canada. Our gasoline facilities nearest Kirkland are in Woodinville, Issaquah, Seattle, Lynwood and Tukwila. Costco Gasoline facilities are always constructed using the latest state-of-the-art equipment and technology that are at the forefront of today's rapidly changing environmental regulations.

Costco could construct a fueling facility in the parking area nearest the warehouse. Vehicle service stations are listed as a permitted use on the main Costco warehouse property zoned RH-1a. However, we have found that placing the facility in a location farther from the warehouse works better because it preserves primary parking spaces and keeps vehicles away from primary pedestrian areas. Thus, we believe it would be better to construct the facility in the north parking lot, zoned RH-1b. Unfortunately, vehicle service stations are not allowed in the RH-1b zone, hence a Comprehensive Plan Amendment and Zoning Code Text Amendment are required.

February 21, 2007

The Honorable James L. Lauinger, Mayor
and Members of the Kirkland City Council

Of significant mention, Costco has conducted numerous studies of its existing gasoline facilities to determine the amount of traffic they generate. We've found that while the gasoline facility will increase trips to the site, the actual impact is far less than expected. Specifically, the facility is open only to Costco members. Also, more than half of the trips to the gas station are shared with trips already going to the warehouse. The remaining trips are largely composed of cars already in the traffic stream on the way to another destination. In short, Costco Gasoline is a low traffic generator because is not the primary destination for most users.

For your reference, attached is a site plan that demonstrates our vision for the site. If our Amendment applications were approved, the project would be subject to the City's Design Review process. We understand that the City is committed to quality design in the Rose Hill Business District, and we will do our very best to meet or exceed this expectation. This would include meetings with Rose Hill neighborhood organizations to seek input on our design.

The Comprehensive Plan supports this amendment as outlined by the following Framework and Economic Development Goals:

- Framework Goal FG-4: Promote a strong and diverse economy
- Economic Development Goal ED-1: Foster a strong and diverse economy consistent with community values, goals, and policies.
 - Policy ED-1.1: Work to retain existing businesses and attract new businesses.
 - Policy ED-1.3: Encourage a broad range of businesses that provide goods and services to the community.
 - Policy ED-1.4: Strengthen Kirkland's tax base.
 - Policy ED-1.5: Encourage clusters of complementary businesses.
- Economic Development Goal ED-3: Strengthen the unique role and economic success of Kirkland's commercial areas.
 - Policy ED-3.3: Encourage infill and redevelopment of existing commercial areas consistent with the role of each commercial area.
- Economic Development Goal ED-4: Development and implement economic development strategies that reflect the role of Kirkland businesses in the regional economy.
 - Policy ED-4.1: Enhance the competitive advantage of Kirkland businesses.

We also believe the proposal is consistent with the Design Vision contained in the Rose Hill Business District Design Guidelines. Specifically, the Vision supports auto-oriented businesses in the area west of 124th Avenue NE called the "Regional Center." The Vision acknowledges that the district will continue to be automobile-oriented and supports larger regional-oriented uses. The Vision also acknowledges the need to buffer existing residential uses to the north and south of the district. Costco would strive through the design process to provide a dense buffer between the fueling facility and the senior residences north of the site.

Our Kirkland warehouse is the eighth Costco Wholesale location that we opened. We now operate over 500 Costco Wholesale warehouses globally. Kirkland is one of our flagship warehouses. The City of Kirkland is where we have tested many of our operating ideas that have added to the success of our company. Kirkland Signature is our high quality, private label brand.

February 21, 2007
The Honorable James L. Lauinger, Mayor
and Members of the Kirkland City Council

We opened our first Costco Home furniture location in Kirkland. Costco has been a part of the Kirkland community for more than twenty-one years. Our continuing mission is to provide the very best goods and services to our members in the City of Kirkland and in every community where we do business.

In conclusion, we believe the addition of a members-only gasoline facility will be a welcomed addition to the community because it is consistent with Kirkland's community goals and policies, will be constructed in an environmentally friendly manner, and will provide a new alternative to purchase fuel at a fair and reasonable price.

Thank you for your consideration of our request. We are available at your convenience to answer any questions and/or provide additional information.

Respectfully,
Costco Wholesale

A handwritten signature in blue ink, appearing to read "Jack S. Frank", with a long horizontal flourish extending to the right.

Jack S. Frank
Vice President of Real Estate

To: City of Kirkland

From: Ann McBroom, Facilitator

Date: May 8, 2008

RE: Final report on meetings between Costco and citizens regarding proposed gas station at the Kirkland Costco

Attachments: Meeting notes from November 10, 2007, February 16, 2008, May 6, 2008; survey results from February 16 meeting

Initial telephone interviews: Prior to the November 10, 2007 meeting, the facilitator spoke with several citizens who had expressed concerns about the Costco proposal to install a gas station at the Kirkland Costco. These interviews were intended to help with planning an effective process for the citizens.

November 10, 2007 meeting: At the November 10 meeting, citizens met with Costco representatives and representatives of the City of Kirkland. At this meeting, the City of Kirkland presented the history of the proposal, and Costco presented information regarding the proposal, and general information about Costco gas station facilities. The citizens had an opportunity to raise concerns, ask questions, and provide suggested alternatives. (see attached notes). Concerns and questions fell into several categories: traffic, environmental (including noise, air quality, run off, lighting, etc), drainage and wetland impacts on adjacent properties, and economic issues.

February 16, 2008 meeting: A second meeting was held on February 16. At this meeting, Costco and the City of Kirkland brought staff and consultants to address the issues raised at the previous meeting. (see Costco document). Citizens had an opportunity to ask questions and raise additional concerns and suggestions. (see attached notes.) Adjacent property owners voiced less concern for environmental impacts such as lighting and noise, but continue to be concerned about drainage. Acknowledging that the drainage and wetland designation are beyond the scope of this process, property owners hope to address these issues with the City of Kirkland in a future meeting. The survey results indicate that citizens find the process useful, and expressed a desire to continue interacting with Costco (see attached survey results).

Interim Processes: Costco continues to meet with neighborhood associations. The City meets with adjacent property owners to discuss drainage issues.

May 6, 2008: A third community forum was held on May 6, 2008. At this meeting Costco presented a series of potential design options and sought community input regarding the communities priorities. (see attached notes). The community

indicated a priority for sidewalks on 90th, a trail head at 90th and 120th, and an oil/water separator on the Costco parking lot as highest priorities.

The community also expressed a desire for the City to develop a long-range plan for the area. They would like to see the roads widened, sidewalks installed, increased traffic control, and storm water and drainage issues addressed, and the south end of Forbes Lake developed with trail systems. Traffic, pedestrian safety, storm water issues, and future development are priority concerns for the community, and require the City's involvement to solve.

**Costco and Community Leadership Meeting
Chart Notes
11/10/2007**

Unanswered Questions – Sheet 1

- What did the Planning Commission say about Costco's amendment request? (Janice will check her notes).
- What are the specific requirements for parking?
- How much does the City of Kirkland stand to gain in takes?
- How much revenue does Costco stand to gain?
- Would the City of Kirkland be willing to invest in improvements to mitigate?
- Would Costco be willing to invest in improvements to mitigate?
- What are the potential impacts to the other 5 gas stations on 85th?
- What is the average number of cars at other Costco gas stations?
- Parking – where do the other 200 stalls come in?

Concerns – Sheet 1

- Who is paying for the consultant? Should City of Kirkland pay? If City pays – perception of bias.
- “Auto-oriented” use is intended to relate to car dealerships (and other auto-type traffic like drive-ins, etc). Intended to force the auto-related businesses towards 85th and the freeway. Not intended to encourage businesses into the neighborhoods.
- Concern about increased traffic in the neighborhood.
- Amount of time and energy community members put into the sub-area plan – honoring the citizens' work.
- Original promise when C Costco came in (from the traffic engineers) was no traffic.

Concerns – Sheet 2

- People go out of their way to go to Costco to get gas.
- No one goes down 90th “passing by.” People will rear off of 85th.
- People exit off 405 to cut through on 124th – a gas station in the vicinity will increase people using this cut through.
- People may make gas station a destination trip just for low cost gas.
- Internet shopping for inexpensive gas often points to Costco.

**Costco and Community Leadership Meeting
Chart Notes
11/10/2007**

Concerns – Sheet 3

- Lack of sidewalks on NE 90th.
- 2% gas fumes
- Gas and oil spill off on the road and parking lot (cars waiting in line before the “dip point.”)
- Parking needs
- Size of vehicles that would come (trucks, etc.).
- Lighting, especially regard to senior housing.
- Noise from delivery trucks (fuel trucks)
- Decrease in property values because of environmental concerns.

Concerns – Sheet 4

- Storm water system is inadequate – property values are influenced by City drainage.
- Inability to build or sell because of wetland issue.
- No compensation for landowners re: drainage.
- Inability for adjacent property owners to sell property to Costco.
- Drainage problems have increased because of Costco.
- Lack of trust that current proposal will not become a problem.

Concerns – Sheet 5

- Fumes from waiting cars.
- Impact on Forbes lake from gas and oil run off.
- Noise
- Impact on Senior Housing.
- Impact on other 5 gas stations.
- Change in water table since 1989.

Suggestions – Sheet 1

- Costco gets it's own exit/entrance on 405.
- 2 left turn lanes on 120th.
- Costco buys corner gas station on 85th and 120th.
- When counting cars for traffic, do it with eyes because it is easy to see where the traffic comes from.
- Signal on NE 90th.
- Other sites.
- Site at the Home Store location at Totem Lake.

- Nienaber property.
- Totally other locations.
- Use low ground lights that shine away.
- Restricted times for delivery and garbage.

Suggestions – Sheet 2

- Study drainage issues – fix drainage problem.
- Compensate adjacent property owners for decrease in property value.

Next Steps – Sheet 1

- Another meeting to address drainage issues.
- Bring City expert on water and drainage, technical and regarding responsibility.
- A real way to address drainage that includes multiple agencies – bigger than just the Costco gas station effort.
- Study Kirkland goal to develop revenue generation here.
- Environmental concerns – people invited to a meeting with City of Kirkland.
- Revisit other suggestions.

Next steps – Sheet 2

- Bring answers to questions to another meeting.
- Bring back answers to questions and ideas for addressing concerns, expertise from the City, thoughts about community suggestions to a continued dialog.
- Hold meeting, in January, on a Saturday, longer meeting, with more advanced notice.

**Chart Notes February 16, 2008
Costco and Community Meeting**

Concerns

Page 1:

- Times of opening. Want clear agreement of hours.
- Clear commitment to only change zoning on Costco property.
- It's hard to find a gas station on Costco property (testimonial on behalf of Costco regarding potential lighting and signage impact).
- The entire lot is more likely to be used than at the Home Store.
- Use profits to help the community.
- Anticipated 30% drop in sales at this location will only be temporary.

Page 2:

- Back up traffic when exit and entrance are closed.
- Increased pollution if site is changed to currently zoned area.
- On 90th as it approaches 124th, at 5 pm, is totally backed up. How will that increase?
- If adjacent properties decide to develop, will there be enough traffic capacity to accommodate those needs?
- Cut through traffic on 126th/128th (avoiding traffic lights on 124th and on 85th) and the lack of sidewalks.
- Traffic predictions may be optimistic.

Page 3:

- Traffic studies underestimate increased traffic demands.
- Flooding in area of potential sidewalks
- Trucks on 90th – the road is not wide enough to handle.
- Dispute over wetland designation of adjacent properties.
- City planning has caused the increased water saturation in that area.
- Send flyers to residents of retirement home to be sure they have been contacted.
- Silted ditch.
- Centrifuge silt removal system?

Concerns #4:

- Fumes to retirement home.
- Night time truck traffic.
- Minimize fumes beyond requirements.
- Litter control. Dead and drowned trees on adjacent property.

Questions #1:

- How is this information going to be used? Is this format intended to get information to take back to Council to get OK from Council to move forward?
- Can gas stations be placed next to residential zoning?
- Why not buy the gas station on 85th?
- Has Costco applied for zoning change only on their property?
- Are there numbers that suggest that people will to a more distant store in order to purchase gas?
- Accidents on straight in stalls?
- Population growth in the last 10 years and projected growth for Costco?

Questions # 2:

- Is the zoning change only for Costco property?
- What about increase of traffic to handle increased traffic from other development (e.g.: from adjacent property owners if they choose to develop?)
- Why has there been massive drainage on one end of the lake and it is prohibited on the other area?
- Provide documentation that the Shell gas station is unwilling to sell. What would they consider?
- What impact has I405 had on Forbes Lake drainage?

Question #3:

- How are sub-divided lots regulated re: drainage?
- How does the water storage on Costco property disperse once it is silted up?

Community Ideas:

- Circulatory bus system.
- Traffic study re: cut through traffic
- Set up separate meeting for storm drainage/wetland issue with City of Kirkland, Costco, consultants and wetland neighbors.
- Costco petition City of Kirkland from adjacent neighbors.
- Street lighting for pedestrian safety on 90th.
- System to remove sediment load on Forbes ditch.
- Air quality study.

Costco Ideas:

- Sidewalk on 90th.
- Sidewalk on 120th
- Improvements to remove pollutants from Costco parking lot.

**Survey Results
February 16, 2008
Costco/Citizen Meeting**

9 respondents

My primary concern is:

Traffic **3** Environmental **1** Drainage **4** Any changes to sub-area plan **2**

Other: Property devaluation **1**

This statement reflects my impressions 1) not at all 2) somewhat 3) completely:

- | | | | | |
|---|---|----------|----------|----------|
| 1. The Facilitator conducted the meeting in a fair and impartial manner. | 1 | 2 | 3 | |
| | | 4 | 5 | |
| 2. A real and reasonable effort is being made to involve the community in the decision-making process | 1 | 2 | 3 | 4 |
| comment: if real | | 2 | 5 | 1 |
| 3. The community has been able to voice it's concerns at these | 1 | 2 | 3 | 4 |
| comment: more time | | 2 | 6 | 1 |
| 4. Costco has demonstrated a willingness to address the community community concerns. | 1 | 2 | 3 | |
| comment: if meaningful | | 2 | 6 | |
| 5. These meetings have been useful. | 1 | 2 | 3 | |
| comment: if meaningful | | 6 | 2 | |
| 6. There should be additional meetings between Costco and the | 1 | 2 | 3 | |
| comment: between the neighbors
And the City of Kirkland (3) | | 2 | 6 | |

Comments:

1. Costco has clearly been willing to work with the neighbors in an attempt to identify a mutual beneficial result. I appreciate the efforts and I believe that a reasonable solution is not far away.
2. Excellent control of the meeting.

Attachment 4

3. I'm uneasy about the "real" impact the community input/concerns will have on the ultimate decisions.
4. I think that people are behind Costco but want Costco's help in dealing with the City!
5. Drainage problem (lack of flow) and the level of ground water have increased since 405 was constructed. Wetlands were expanded after the state construction created a damming effect for the outflow of water.
6. I am encouraged to hear the expressed concerns and I am hopeful that the City will do more than listen and take action.
7. The City needs to have Department Head representation at these meetings.

Chart Notes May 6
Costco/City of Kirkland/Community Forum

Concerns

- Increase in Costco membership just for the gas
- Past project has not helped
- Traffic routing on 120th or 90th? Concern about ingress/egress from neighborhood properties and church
- Don't want more traffic on 90th street as a result
- Scope creep at the station: will there be additional services offered in the future?
- No membership marketing at the station
- 1000 additional cars a day is a lot.
- Need for increased capacity on the roads: reclassified
- *Impact on the abilities for other properties to develop due to the traffic.
- *****Capacity on the roads is a real issue for neighbors and the church
- Cars in the ditch
- Sidewalks east of 124th NE and cut through traffic
- *Intersection of 120th and 90th is a dangerous intersection, people run the stop sign
- Routing trucks to 124th is not a great idea!
- Water quality from increased usage and traffic on the roads – run off
- *****Resolving drainage issues is larger than just the adjacent neighbors
- Would like set hours of operation at the gas station
- ***Property values decrease because of increased traffic
- *What will happen to the parking at Costco?
- *****Traffic at 90th and 122nd

*Indicates priority concerns for the neighbors. Each neighbor checked their most pressing concerns. The more * the higher the level of concern.

Lingering Questions

- Does the 16% reduction in sales that would route to Redmond and Woodinville take into account projected growth in Kirkland?
- Where will traffic be routed – 90th or 120th?
- Why doesn't Costco consider building a station on the south side of the property? (no land)
- How will the loss of parking impact parking at the warehouse?

Potential Design Features

- ***Trail head at 90th and 120th
- Improve pathway between retirement community and Costco
- *****Improving public sidewalks on 120th and 90th. (**south side of 90th. North side of 90th. ***both sides of 90th)

- No additional sales or services offered at the gas station. Gas only
- **Truck routing plan
- *****Oil/water separator on Costco parking lot (in addition to the requirement at the gas station.

- *Indicates the level of interest in this particular design feature.

City Issues

- Storm water quantity
- Traffic revisions to increase capacity and signaling to accommodate not only Costco but potential development, pedestrian safety and sidewalks.
- Study on population increase both for people coming to live and people coming to work.
- Ditch on 90th
- Future planning for the area

Participants in community meetings

Mike Nienaber
Paul "
Mark "
David "
Matt "
Phil "
Mr and Mrs Odd Hauge
Carol Neilson
Steve Tindall
Betty Lou Crampton
Jeanette Simecek
Jim McElwee
Scott Foot
Cary Pritzkan
Margaret Carnegie
Milton Olson
Andy Held
Linda Jones
Karen Whittle
Ernest Anderson
Ray Hansen
Kim Sanford (Costco)
Chris Ferko* (Barhausen Engineering)
Jenny Gaus*
Janice Soloff*
Thang T Nguyen*
Dan Mckinney* (The Transpo Group)
Jim Kelley* (A.C. Kindig & Co.)

* Consultants or City Staff

Costco Gasoline Overview

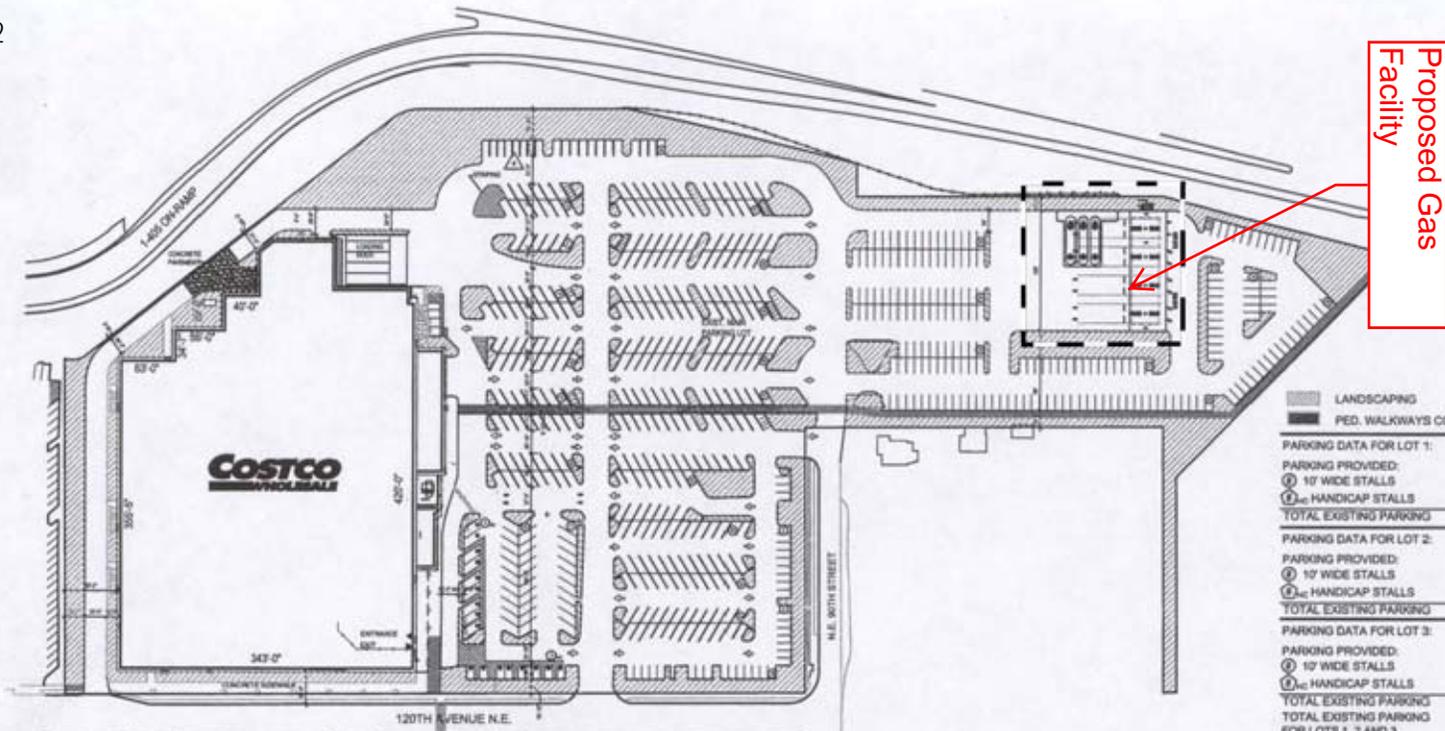


ABOUT COSTCO GASOLINE

- The first Costco Gasoline facility opened in 1996 in North Scottsdale, Arizona. Today, Costco operates over 290 gasoline facilities across the United States and Canada.
- Costco's goal is to include a gas station at every warehouse that it builds, and to add them to as many existing stores as the law permits and real-estate space allows.
- Costco views gasoline as one of the many integrated services that define the company, such as groceries, hardware, clothing, tires, rotisserie chicken, and Kirkland Signature brands.
- Costco Gasoline is self-serve and open to members only. All payments are made at the pump with a debit, American Express, or Costco Cash card accompanied by a Costco membership card. Cash is not accepted, and convenience goods are not offered for sale.
- Costco Gasoline does not display large signs, loud colors, and bright lights typical to stand-alone gas stations.
- Costco Gasoline facilities are typically located off the main street on a remote portion of the warehouse property. Costco Gasoline is not open at night.
- Costco Gasoline is state-of-the-art, fully automated, and meets or exceeds all regulatory standards. State-of-the-art examples include:
 - Non-corrosive fiberglass double-walled underground storage tanks and piping
 - Advanced leak detection systems
 - Modern vapour recover systems (95% of all vapors are captured, condensed, and returned to the system)
 - Oil/water separators for stormwater pre-treatment prior to downstream discharge
 - Detachable "poppeted" hoses in case of an accidental drive-off
 - Fire extinguishers inside each dispenser
 - Employee supervision of the site during all operating hours

BENEFITS TO THE COMMUNITY

- Commitment to the Community
 - Costco is committed to working with the Rose Hill Community to make sure the facility meets the high design standards of the district.
 - Costco has been actively involved in a number of Kirkland community programs since the warehouse opened in 1985.
- Improved Services and Tax Base Benefit
 - Costco's ongoing improvement to its services directly benefits Kirkland citizens and improves the City's tax base.
 - Gasoline sold at the facility will be competitively priced as an added benefit to Costco members.
- Best Location
 - Locating the facility at the north end of the site instead of near the warehouse is best for parking and circulation
- Plan Consistency
 - The Rose Hill Business District Design Vision supports auto-oriented businesses in the area west of 124th Avenue N.E. called the "Regional Center."
 - The Design Vision acknowledges that the district will continue to be automobile-oriented and supports larger regional-oriented uses.
- Green Leadership
 - Costco is currently exploring the sale of alternative fuels, such as biodiesel, ethanol, and compressed natural gas at its gasoline facilities.
 - Costco is continually examining eco-friendly improvements to its warehouses, including solar panels, energy efficient equipment and building materials, recycled building materials, reclaimed water systems, skylights and dark-responsive light fixtures, and cool roofing systems.
 - Costco has volunteered its gasoline facilities to the California Air Resources Board (CARB) as testing sites for new air quality control technology. CARB is the nation's leader in progressive air quality regulations.



Proposed Gas Facility

LANDSCAPING
 PED. WALKWAYS CONSIDERED PERVIOUS

PARKING DATA FOR LOT 1:

PARKING PROVIDED:	
① 10' WIDE STALLS	395 STALLS
② H-C HANDICAP STALLS	17 STALLS
TOTAL EXISTING PARKING	412 STALLS

PARKING DATA FOR LOT 2:

PARKING PROVIDED:	
① 10' WIDE STALLS	234 STALLS
② H-C HANDICAP STALLS	0 STALLS
TOTAL EXISTING PARKING	234 STALLS

PARKING DATA FOR LOT 3:

PARKING PROVIDED:	
① 10' WIDE STALLS	70 STALLS
② H-C HANDICAP STALLS	0 STALLS
TOTAL EXISTING PARKING	70 STALLS
TOTAL EXISTING PARKING FOR LOTS 1, 2 AND 3	716 STALLS

PROPOSED PARKING DATA FOR LOT 1:

PARKING PROVIDED:	
① 10' WIDE STALLS	395 STALLS
② H-C HANDICAP STALLS	17 STALLS
TOTAL PROPOSED PARKING	412 STALLS

PROPOSED PARKING DATA FOR LOT 2:

PARKING PROVIDED:	
① 10' WIDE STALLS	200 STALLS
② H-C HANDICAP STALLS	0 STALLS
TOTAL PROPOSED PARKING	200 STALLS

PROPOSED PARKING DATA FOR LOT 3:

PARKING PROVIDED:	
① 10' WIDE STALLS	70 STALLS
② H-C HANDICAP STALLS	0 STALLS
TOTAL PROPOSED PARKING	70 STALLS
TOTAL PROPOSED PARKING FOR LOTS 1, 2 AND 3	682 STALLS

PROPOSED PARKING:

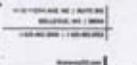
TOTAL PARKING DELETED - LOT 2	234 STALLS
TOTAL PARKING ADDED - LOT 2	200 STALLS
NET LOSS	34 STALLS

NO. OF STALLS PER 1000 S.F. OF BUILDING AREA:

EXISTING	4.9 STALLS
PROPOSED	4.86 STALLS
	4.83 STALLS



KIRKLAND
 9900 120TH AVE. N.E.
 KIRKLAND, WA 98033



92-1300-19
 JANUARY 09, 2009
 PRELIMINARY
 SITE
 PLAN

P1.1-03

PROJECT DATA

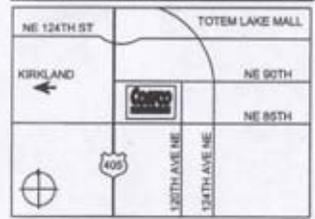
CLIENT: COSTCO WHOLESALE
 999 LAKE DRIVE
 ISSAQUAH, WA 98027

PROJECT ADDRESS: 8629 120TH AVE. N.E.
 KIRKLAND, WA 98033

ZONING REQUIREMENTS:
 ZONE/USE: RH5A, RH8
 MINIMUM LOT SIZE: NONE
 ACTUAL LOT SIZE: 15.009 ACRES (853,831 S.F.)
 EMPLOYEE PARKING: .71 ACRES (31,010 S.F.)
 EXISTING WETLANDS: .71 ACRES (31,010 S.F.)
 TOTAL AREA: 16.429 ACRES (715,851 S.F.)

REQUIRED YARDS:
 FRONT: 10'
 SIDE: 0'
 REAR: 0'

VICINITY MAP



COSTCO WHOLESALE
 KIRKLAND WASHINGTON

PRELIMINARY SITE PLAN
 JANUARY 09, 2009

Costco Gasoline Overview – Community Comments

PLAN AMENDMENT COMMENTS	
Comment	Response
<ul style="list-style-type: none"> NE 85th Street Subarea Plan Policies encourage larger retail and auto-related businesses such as auto dealerships, auto repair, and servicing gas stations, etc. What did the Planning Commission say about Costco’s amendment request? 	<ul style="list-style-type: none"> As a result of the Subarea Plan process, zoning for RH1A allows a fueling facility use on the south side of NE 90th Street near the warehouse. The Costco property located north of NE 90th Street is zoned RH1B, which does not currently allow a gas facility use. Costco is pursuing a Comprehensive Plan and Zoning Code amendment to allow a gas facility use on the RH1A site. The proposed location on the north side of the site is better because it does not conflict with primary pedestrian/parking areas. Also, the facility is proposed adjacent to the freeway. The Rose Hill Business District Design Vision supports larger retail and auto-oriented businesses in the area west of 124th Avenue N.E. called the “Regional Center.” The nearest single family residences to the east are located on properties zoned for commercial development. The retirement community to the north is buffered from the site by a stand of dense trees. The management of this community does not oppose the proposal. Two out of three members present at the Planning Commission meeting recommended the City Council forego considering Costco’s amendment request. The recommendation was not a quorum of the entire seven-member Commission, and was made before Costco started the neighborhood meeting process. The City Council deferred its determination until after the neighborhood meeting process is concluded.

Costco Gasoline Overview – Community Comments

ECONOMIC COMMENTS

Comment	Response
<ul style="list-style-type: none"> How much revenue does Costco stand to gain? How much does the City of Kirkland stand to gain in taxes? How much does the City stand to lose if Costco leaves Kirkland if they are not able to expand? 	<ul style="list-style-type: none"> Costco Wholesale is the City of Kirkland's largest sales tax generator. Sales at the Kirkland warehouse dropped approximately 18% after the Costco warehouse in Woodinville opened in 2004. Sales at the Kirkland warehouse are expected to drop an additional 32% when the proposed warehouses in Redmond and Bellevue open. The Costco Gasoline facility in Kirkland is expected to increase sales in the Kirkland warehouse by approximately 5%. The City receives very little gas tax from gas sales.
<ul style="list-style-type: none"> What are the potential impacts to the other gas stations on 85th? 	<ul style="list-style-type: none"> Costco will sell gasoline at a fair and reasonable price as an added benefit to Costco members. The price will be competitive with other gas stations in the area. Prior studies have found that other gas stations have not closed due to the opening of a Costco Gasoline facility in the same vicinity.
<ul style="list-style-type: none"> Would surrounding property owners see a decrease in property values as a result of the expansion of Costco? 	<ul style="list-style-type: none"> The project is not expected to negatively impact property values. Generally, property improvements result in increased property values.
<ul style="list-style-type: none"> Would the City of Kirkland be willing to invest in improvements to mitigate impacts? Would Costco be willing to invest in improvements to mitigate? 	<ul style="list-style-type: none"> Costco will be required to mitigate impacts of development through the SEPA process. Costco is also willing to explore voluntary site improvements based on the community's recommendations and priorities.
<ul style="list-style-type: none"> Locate on other sites: Site at the Home Store location at Totem Lake, corner gas station on 85th and 120th, or the Nienaber property on 120th. 	<ul style="list-style-type: none"> The Home Store site is a leased property and the store is a trial facility for Costco. It is premature to invest in a gas station on this site given that the long term prospects of the Home Store remain to be determined. Costco approached the gas station owner at the northwest corner of 85th and 120th, but the owner was unwilling to sell. The AM/PM facility at the southeast corner is too small for a Costco Gasoline facility. The Nienaber property is also too small for a Costco Gasoline facility.
<ul style="list-style-type: none"> Alternative fuels market 	<ul style="list-style-type: none"> Costco is currently exploring the sale of alternative fuels, such as biodiesel, ethanol, and compressed natural gas at its gasoline facilities.
<ul style="list-style-type: none"> Contribution to support Forbes Lake park project. 	<ul style="list-style-type: none"> Costco is willing to consider a voluntary contribution to the Forbes Lake Park project, particularly at the planned trailhead at the intersection of 90th and 120th. Costco's allocation of resources would be based on the community's recommendations and priorities.

Costco Gasoline Overview – Community Comments

TRAFFIC COMMENTS

Comment	Response
<ul style="list-style-type: none"> What is the level of increase in traffic that will result from the gas facility? What is the average number of cars visiting other Costco gas stations? Concerns regarding volume of traffic given proximity to freeway and daily volume on 85th. 	<ul style="list-style-type: none"> The project is anticipated to generate 970 net new daily trips, with 150 net new trips occurring during the PM peak hour (75 entering trips and 75 exiting trips) and 140 net new trips in the AM peak hour (70 entering and 70 exiting trips). This is approximately one vehicle per minute during the peak hour. This is based on counts collected at more than 25 existing Costco Gasoline facilities. Most trips to the Costco Gasoline facility are from members who also shop at the warehouse, resulting in shared trips that do not increase traffic on the roads. The existing Woodinville warehouse (18%) and the new warehouses planned in Redmond (16%) and Bellevue (16%) are expected to decrease sales at the Kirkland warehouse facility by approximately 48%, and are expected to decrease current traffic levels.
<ul style="list-style-type: none"> Will there be an increase in traffic on side streets in the neighborhood? 	<ul style="list-style-type: none"> The project has passed the City's transportation concurrency test. The level of service at the study area intersections is expected to operate at acceptable levels (LOS D or better). The project would be required to pay the City's traffic impact fee.
<ul style="list-style-type: none"> Could Costco have its own exit/entrance on 405? 	<ul style="list-style-type: none"> A separate entrance off of 405 is a long term project that is not currently being pursued by the City or WSDOT.
<ul style="list-style-type: none"> Trucks using 122nd when they should be using 124th to get to Costco – avoid homes on 122nd. Trucks delivering during odd hours of the night – noise. 	<ul style="list-style-type: none"> If recommended by the City, Costco is willing to adopt a program instructing trucks to use 124th instead of 122nd when making deliveries. Hours of delivery to Costco are strictly limited to morning hours.
<ul style="list-style-type: none"> One-way flow on 120th in the southbound direction 	<ul style="list-style-type: none"> Traffic volumes on 120th are currently not large enough to necessitate changing it to a one-way street.
<ul style="list-style-type: none"> One-way flow at Costco driveways – outbound on 120th, inbound on 90th 	<ul style="list-style-type: none"> Changing driveways to one-way is not recommended because it would constrain flow and increase congestion at ingress/egress points.
<ul style="list-style-type: none"> What are the specific requirements for parking? 	<ul style="list-style-type: none"> There are currently 716 parking spaces. The development of the fuel station would reduce the overall supply by 34 spaces. Peak parking demand occurs between noon and 5 PM on Saturdays. The removal of 34 spaces will increase the overall utilization to between 85 and 98 percent full during the Saturday peak (noon – 5PM). The project will meet the City's zoning code for the required parking stalls after it is constructed.
<ul style="list-style-type: none"> Upgrade the existing painted pathway between the retirement community and the warehouse. 	<ul style="list-style-type: none"> Costco is willing to consider sidewalk improvements between the retirement community and the warehouse, such as improving safety at crossings, adding benches, etc.

Costco Gasoline Overview – Community Comments

STORM DRAINAGE COMMENTS

Comment	Response
<ul style="list-style-type: none"> • Would a new gas facility make existing storm drainage issues in area worse? Would there be any impacts on Forbes Lake from gas and oil run off? Gas and oil spill off on the road and parking lot (cars waiting in line before the “dip point.”) • People have perceptions that there are storm drainage problems in the area. What are the existing problems? What can be done to improve existing conditions? Have drainage problems increased because of Costco? Upsize existing detention to help Forbes Lake? Increased water table greater than 5 foot rise b/c of silt. • F & W / ecology / dam downstream / multiple agencies / Costco should not take blame. Another meeting to address drainage issues. Bring City expert on water and drainage, technical and regarding responsibility. Should City compensate property owners for having wetlands on property? • Water quality improvements. Add a bioswale behind Costco in the planter strip? Turn the Costco warehouse roof into a green roof? Pervious surface in Costco’s parking lot? 	<ul style="list-style-type: none"> • The gas station would be constructed to current stormwater standards with an oil water separator for the replaced asphalt areas and the under canopy drainage will be directed to the sanitary sewer. The project will not increase the amount of impervious surface and thus will not increase the amount of runoff. • The area around 90th Street and 120th Avenue is not much higher than the elevation of Forbes Lake. The areas that are experiencing high groundwater levels are at the bottom of a much larger regional drainage basin that originates in the South Rose Hill neighborhood. • The storm drainage system in 120th Avenue NE and in 90th Street outlets to Forbes Creek via a ditch that is heavily silted due to sediment in the runoff and overgrown vegetation. During rainfall events, Forbes Creek backs up along the ditch and causes the groundwater levels to rise. However, regardless of the condition of the ditch, these areas have always had a very high groundwater level. • The development of the basin over the last 100 years has caused the amount of stormwater runoff to increase in the ditch. This makes flooding problems worse during heavy rainfall events. • A possible solution to the problem of siltation would be to install a stormwater quality treatment facility upstream of the outlet. This facility would likely be placed in the Costco parking lot. This facility would not solve the high groundwater problem but it would likely stop it from getting any worse. Costco is willing to explore the construction of this facility with the City based on recommendations and priorities of the community. • The City of Kirkland is currently working with neighboring property owners separately from Costco’s amendment proposal to discuss potential solutions to the regional drainage and wetland issue. • The Costco Parking lot could possibly be retrofitted with an oil water separator. This would help water quality in Forbes Lake. Costco is willing to explore the construction of this facility with the City based on recommendations and priorities of the community. Also, Costco is willing to explore the use of pervious concrete and asphalt with City staff for new sidewalks and/or other areas of the site, should the community view this as a benefit.

Costco Gasoline Overview – Community Comments

ENVIRONMENTAL COMMENTS

Comment	Response
<ul style="list-style-type: none"> Noise- Hours of operation and truck delivery times 	<ul style="list-style-type: none"> The Costco Gasoline facility will open approximately one hour before the warehouse and close approximately one hour after the warehouse. Truck deliveries to the warehouse are limited to morning hours. Truck deliveries to the fueling facility are typically during non-peak business hours. The ambient noise from the freeway is expected to drown out any added noise from the fueling facility.
<ul style="list-style-type: none"> Light and glare- Exterior lighting (near senior housing). RHBD zoning requires the applicant to submit a lighting study to minimize light spillage onto adjacent residential properties (requires use of shielded light fixtures and low ground lights that shine away from residential uses). Ground lighting at night? 	<ul style="list-style-type: none"> Costco's lighting program is specially designed to cut off all glare. The lights are recessed in the canopy and shrouded. Light spillage is kept within approximately 20 feet of the canopy.
<ul style="list-style-type: none"> Air- Gas fumes from idling cars and dispensers. Will diesel be sold? 	<ul style="list-style-type: none"> The Puget Sound Clean Air Agency reported that idling cars at a Costco Gasoline facility do not come close to exceeding air quality standards due to the efficiency of modern day vehicles to control emissions. Costco Wholesale does not sell diesel at its fueling facilities. Gasoline dispenser nozzles capture and condense approximately 95% of gasoline vapors and return them to the underground tanks and piping system. The efficiency of this system places the facility well within public health standards for air quality.

XV.F/G. NE 85TH STREET SUBAREA PLAN

viability, consistent with the other goals and policies of this Subarea Plan.

Policy NE85-3.2:

Prohibit individual retail or wholesale uses that occupy more than 65,000 gross square feet in the NE 85th Street Subarea. Note, however, exceptions for Area RH-1a and Area RH-2a as described in Policies NE85-4.1a and NE85-4.2a.

Policy NE85-3.3:

Limit commercial development to the NE 85th Street commercial area as defined by the land use designations in Figure NE85-2, NE 85th Subarea Land Use. Except as provided in Policy NE85-3.7, do not allow such development to spread into the adjoining residential neighborhoods.

Policy NE85-3.4:

Require that all new and remodeled commercial development be subject to appropriate architectural and site design standards, in order to improve the appearance of the commercial area, and to assure appropriate transition and buffering between the commercial area and the adjacent residential areas.

Policy NE85-3.5:

Utilize zoning incentives or other techniques to encourage commercial redevelopment in the Subarea.

Policy NE85-3.6:

Upgrade public infrastructure to support commercial redevelopment in the Subarea.

Policy NE85-3.7:

The parcel fronting on 124th Avenue NE and located immediately north of the existing automobile dealership on the northeast corner of NE 85th Street and 124th Avenue NE is appropriate for conversion from low-density residential use to commercial use due to the following factors:

- (1) The parcel fronts on a principal arterial; and
- (2) The parcel abuts and would functionally serve an established commercial use fronting on NE 85th Street; and
- (3) The size of the parcel is less than 25 percent of the size of the established commercial uses it would serve; and
- (4) The site lies within close proximity (less than 1/2 mile) of the I-405 interchange; and
- (5) Development standards contained in Policy NE85-4.5 will ensure that the potential impacts on surrounding uses resulting from commercial use of this parcel will be minimized.

Goal NE85-4: Using the RH (Rose Hill) prefix, designate areas within the Subarea that need site-specific development standards.

Policy NE85-4.1a:

Area RH-1a:

This area contains a well-established, large regional retailer. Allow this use to continue.

Policy NE85-4.1b:

Area RH-1b:

Limit new development to accessory parking for the commercial development in Area RH-1a, or alternatively to light industrial uses that generate minimal traffic. Do not allow uses that have high traffic generation, such as most retail uses. Observe wetland constraints and observe all applicable wetland and sensitive area regulations.

Policy NE85-4.2a:

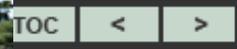
Area RH-2a:

- **Land use:**

Require retail uses (including car dealer), and permit office and/or residential uses. Require retail use to be the predominant ground level use. However, discourage large, singular retail



city of
kirkland
w a s h i n g t o n



CHAPTER 53 – ROSE HILL BUSINESS DISTRICT (RHBD) ZONES

53.02 User Guide.

The charts in KZC [53.06](#) contain the basic zoning regulations that apply in the RH 1A zone of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

<p>Section 53.04</p>	<p>Section 53.04 – GENERAL REGULATIONS</p> <p>The following regulations apply to all uses in this zone unless otherwise noted:</p> <p>1. Refer to Chapter 1 KZC to determine what other provisions of this code may apply to the subject property.</p>
	<p>2. The ground floor of all structures on the subject property shall be a minimum of 15 feet in height. This requirement does not apply to:</p> <p>a. The following uses: vehicle service stations, automotive service centers, private lodges or clubs, attached or stacked dwelling units, churches, schools, day-care centers, mini-schools or mini-day-care centers, assisted living facilities, convalescent centers or nursing homes, public utilities, government facilities or community facilities.</p> <p>b. Parking garages.</p> <p>c. Additions to existing nonconforming development where the Planning Official determines it is not feasible.</p>
	<p>3. At least 50 percent of the total gross floor area located on the ground floor of all structures on the subject property must contain retail establishments, restaurants, taverns, hotels or motels. These uses shall be oriented to NE 85th Street, a major pedestrian sidewalk, a through block pedestrian pathway or an internal pathway (see also Chapter 92 KZC).</p>
	<p>4. Within required front yards, canopies and similar entry features may encroach; provided, that the total horizontal dimension of such elements may not exceed 25 percent of the length of the structure.</p>
	<p>5. Some development standards or design regulations may be modified as part of the design review process. See Chapters 92 and 142 KZC for requirements.</p>
	<p>6. The Public Works Official shall approve the number, location and characteristics of driveways on NE 85th Street in accordance with the driveway and sight distance policies contained in the Public Works Pre-approved Plans manual. Taking into consideration the characteristics of this corridor, the Public Works Official may:</p> <p>a. Require access from side streets; and/or</p> <p>b. Encourage properties to share driveways, circulation and parking areas; and/or</p> <p>c. Restrict access to right turn in and out; or</p> <p>d. Prohibit access altogether along NE 85th Street.</p>
	<p>7. Access for drive-through facilities must be approved by the Public Works Official. See KZC 105.96 for requirements.</p>
	<p>8. For lighting requirements associated with development, see KZC 115.85(2).</p>

[link to Section 53.06 table](#)



Code Publishing Company

[Code Publishing's website](#)

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Fax: (206) 527-8411

[E-mail Code Publishing](#)



USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS												
Section 53.06	USE ↓ REGULATIONS ↑	Required Review Process	MINIMUMS				MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage	Height of Structure				
				Front	Side	Rear						
.010	Vehicle Service Station	D.R., Chapter 142 KZC.	22,500 sq. ft.	20' See Spec. Reg. 1.	15' on each side.	15'	80%	67' above average building elevation.	A	E	See KZC 105.25.	<ol style="list-style-type: none"> Gas pump islands must be set back at least 20 feet from all property lines. Canopies or covers over gas pump islands may not be closer than 10 feet to any property line. Outdoor parking and service areas may not be closer than 10 feet to any property line. See KZC 95.40(6) and (7), required landscaping, for further regulations.
.020	Automotive Service Center See Spec. Reg. 1.		None	10'	0'	0'					1 per each 250 sq. ft. of gross floor area. See Spec. Reg. 1.	<ol style="list-style-type: none"> Ten (10) percent of the required parking spaces on site must have a minimum dimension of 10 feet wide by 30 feet long for motor home/travel trailer use. Parts and tires must be stored entirely within an enclosed structure. See KZC 95.40(6) and (7), required landscaping, for further regulations.
.030	Restaurant or Tavern		B	1 per each 100 sq. ft. of gross floor area.	<ol style="list-style-type: none"> For restaurants with drive-in or drive-through facilities: <ol style="list-style-type: none"> One outdoor waste receptacle shall be provided for every eight parking stalls. Access for drive-through facilities shall be approved by the Public Works Department. Drive-through facilities shall be designed so that vehicles will not block traffic in the right-of-way while waiting in line to be served. 							
.040	Any Retail Establishment other than those specifically listed, limited or prohibited in this zone, selling goods or providing services, including banking and related financial services		1 per each 300 sq. ft. of gross floor area.	<ol style="list-style-type: none"> Ancillary assembly and manufacture of goods on the premises of this use are permitted only if: <ol style="list-style-type: none"> The assembled or manufactured goods are directly related to and are dependent upon this use, and are available for purchase and removal from the premises. The outward appearance and impacts of this use with ancillary assembly or manufacturing activities must be no different from other retail uses. A delicatessen, bakery, or other similar use may include, as part of the use, accessory seating if: <ol style="list-style-type: none"> The seating and associated circulation area does not exceed more than 10 percent of the gross floor area of the use; and It can be demonstrated to the City that the floor plan is designed to preclude the seating area from being expanded. For a retail establishment involving the sale, lease, repair or service of automobiles, trucks, boats, motorcycles, recreational vehicles, heavy equipment, and similar vehicles, the following shall apply: <ol style="list-style-type: none"> For the number of required parking stalls see KZC 105.25. Parts must be stored entirely within an enclosed structure. See KZC 95.40(6) and (7), required landscaping, for further regulations. 								

Section 53.06



USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 53.06	USE ↓ REGULATIONS ↑	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.050	Office Use	D.R., Chapter 142 KZC.	None	10'	0'	0'	80%	67' above average building elevation.	C	D	If a medical, dental or veterinary office, then 1 per each 200 sq. ft. of gross floor area. Otherwise, 1 per each 300 sq. ft. of gross floor area.	<ol style="list-style-type: none"> The following regulations apply to veterinary offices only: <ol style="list-style-type: none"> May only treat small animals on the subject property. Outside runs and other outside facilities for the animals are not permitted. Ancillary assembly and manufacture of goods on the premises of this use are permitted only if: <ol style="list-style-type: none"> The ancillary assembled or manufactured goods are subordinate to and dependent on this use. The outward appearance and impacts of this use with ancillary assembly or manufacturing activities must be no different from other office uses.
.060	Hotel or Motel								B	E	1 per each room. See also Spec. Reg. 2.	<ol style="list-style-type: none"> May include ancillary meeting and convention facilities. Excludes parking requirements for ancillary meeting and convention facilities. Additional parking requirements for these ancillary uses shall be determined on a case-by-case basis.
.070	A retail establishment providing entertainment, recreational or cultural activities										See KZC 105.25.	
.080	Attached or Stacked Dwelling Unit							35' – 67' above average building elevation. See Spec. Reg. 2.	D	A	1.7 per unit.	<ol style="list-style-type: none"> Chapter 115 KZC contains regulations regarding home occupations and other accessory uses, facilities and activities associated with this use. Building height may be increased above 35 feet to a maximum of 67 feet above average building elevation if the following is provided. At least 10 percent of the units in new residential developments of 10 units or greater shall be affordable housing units as defined in Chapter 5 KZC. The number of affordable housing units is determined by rounding up to the next whole number (unit) if the fraction of the whole number is at least 0.66. An agreement in a form approved by the City must be recorded with the King County Department of Records and Elections to stipulate conditions under which required affordable housing units will remain as affordable housing units for the life of the project for rental units, and at least 30 years from the date of initial owner occupancy for ownership units. Additional affordable housing incentives may be applicable to residential development (see Chapter 112 KZC).



USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS												
Section 53.06	USE ↓ REGULATIONS ↑	Required Review Process	MINIMUMS				MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage	Height of Structure				
				Front	Side	Rear						
.090	Private Lodge or Club	D.R., Chapter 142 KZC.	None	10'	0'	0'	80%	67' above average building elevation.	C	B	1 per each 300 sq. ft. of gross floor area.	
.100	Church										1 per every 4 people based on maximum occupancy load of any area of worship. See Spec. Reg. 2.	
.110	School, Day-Care Center, Mini-School or Mini-Day-Care Center								D	See KZC 105.25.	<ol style="list-style-type: none"> A six-foot-high fence is required only along the property lines adjacent to the outside play areas. Structured play areas must be set back from all property lines as follows: <ol style="list-style-type: none"> Twenty feet if this use can accommodate 50 or more students or children. Ten feet if this use can accommodate 13 to 49 students or children. Five feet for Mini-School or Mini-Day-Care Center. An on-site passenger loading area must be provided. The City shall determine the appropriate size of the loading areas on a case-by-case basis, depending on the number of attendees and the extent of the abutting right-of-way improvements. Carpooling, staggered loading/unloading time, right-of-way improvements or other means may be required to reduce traffic impacts on nearby residential uses. May include accessory living facilities for staff persons. Hours of operation of the use may be limited and parking and passenger loading areas shall be located to reduce impacts on nearby residential uses. These uses are subject to the requirements established by the Department of Social and Health Services (WAC Title 388). 	
.120	Assisted Living Facility, Convalescent Center or Nursing Home								C	Assisted living unit: 1.7 per unit. Convalescent Center or Nursing Home: 1 per each bed.	<ol style="list-style-type: none"> Chapter 115 KZC contains regulations regarding home occupations and other accessory uses, facilities and activities associated with this use. 	

Section 53.06

Zone
RH 1A

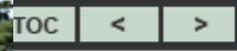
USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS												
Section 53.06	USE ↓ REGULATIONS ↑	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.130	Public Utility	D.R., Chapter 142 KZC.	None	10'	0'	0'	80%	67' above average building elevation.	A	B	See KZC 105.25.	1. Landscape Category A or B may be required depending on the type of use on the subject property and the impacts associated with the use on the nearby uses.
.140	Government Facility Community Facility								C See Spec. Reg. 1.			
.150	Public Park	Development standards will be determined on a case-by-case basis. See Chapter 49 KZC for required review process.										

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city of
kirkland
washington



53.08 User Guide.

The charts in KZC [53.12](#) contain the basic zoning regulations that apply in the RH 1B zone of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

<p>Section 53.10</p> 	<p>Section 53.10 – GENERAL REGULATIONS</p>
	<p>The following regulations apply to all uses in this zone unless otherwise noted:</p>
	<p>1. Refer to Chapter 1 KZC to determine what other provisions of this code may apply to the subject property.</p>
	<p>2. All vehicular access must be from NE 90th Street or 120th Avenue NE south of NE 90th Street.</p>
	<p>3. Development with frontage on 120th Avenue NE north of NE 90th Street shall provide for the continuation of a pedestrian path that generally follows the alignment of 120th Avenue NE and connects to NE 90th Street.</p>
	<p>4. For lighting requirements associated with development, see KZC 115.85(2).</p>
	<p>5. Prior to any of the following uses occupying a structure on a property adjoining a residential zone, the applicant shall submit a noise study prepared by a qualified acoustical consultant for approval by the Planning Official:</p> <ul style="list-style-type: none"> Establishments expected to operate past 9:00 p.m. Veterinary offices. Any establishment where animals are kept on site. An establishment providing a large truck loading dock for deliveries. <p>The study shall verify that the noise that will emanate from the site adjoining to any residential zoned property complies with the standards specified in KZC 115.95(1) and (2) and WAC 173-60-040(1) for a Class B source property and a Class A receiving property.</p>
	<p>6. Some development standards or design regulations may be modified as part of the design review process. See Chapters 92 and 142 KZC for requirements.</p>

[link to Section 53.12 table](#)



Code Publishing Company

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USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS												
Section 53.12	USE ↓ REGULATIONS ↑	Required Review Process	MINIMUMS			MAXIMUMS		Landscaping Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.010	Accessory parking for retail uses located in the RH 1A zone	D.R., Chapter 142 KZC.	None	10' Otherwise 20' adjoining a residential zone	10' on each side	10'	80%	35' above average building elevation.	B	D	N/A	1. No retail floor area shall be permitted for this use.
.020	Business Park See Spec. Reg. 1.				0'	0'			A	C	See KZC 105.25.	1. The following business park uses are permitted: wholesale trade, wholesale printing or publishing, light assembly, manufacturing of small-scale articles such as electrical equipment, manufacturing of scientific or photographic equipment; packaging of prepared materials, manufacturing of textile, leather products, paper products or plastic products from pre-prepared materials. 2. Outdoor storage is prohibited. 3. The discharge of any substance which creates any impact detrimental to the environment or adjacent residents is not permitted.
.030	Any Retail Establishment other than those specifically listed, limited or prohibited in this zone, selling goods or providing services, including banking and related financial services									E	1 per each 300 sq. ft. of gross floor area.	1. This use is only permitted south of NE 90th Street if the vehicle trip generation will not exceed the traffic generated by a general office use; provided, that the following retail uses are not permitted: a. Restaurants or taverns. b. A retail establishment involving repair or service of automobiles, trucks, boats, motorcycles, recreational vehicles, heavy equipment, and similar vehicles. c. Vehicle service stations. d. Automotive service centers. e. Uses with drive-in or drive-through facilities. 2. Ancillary assembly and manufacture of goods on the premises of this use are permitted only if: a. The assembled or manufactured goods are directly related to and are dependent upon this use, and are available for purchase and removal from the premises. b. The outward appearance and impacts of this use with ancillary assembly or manufacturing activities must be no different from other retail uses.

Section 53.12



USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 53.12	USE ↓ REGULATIONS ↓	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.040	Office Use	D.R., Chapter 142 KZC.	None	10' Otherwise 20' adjoining a residential zone	0'	0'	80%	35' above average building elevation.	C	D	If a medical, dental or veterinary office, then 1 per each 200 sq. ft. of gross floor area. Otherwise, 1 per each 300 sq. ft. of gross floor area.	<ol style="list-style-type: none"> Ancillary assembly and manufacture of goods on the premises of this use are permitted only if: <ol style="list-style-type: none"> The ancillary assembled or manufactured goods are subordinate to and dependent upon this use. The outward appearance and impacts of this use with ancillary assembly or manufacturing activities must be no different from other retail uses. The following regulations apply to veterinary offices only: <ol style="list-style-type: none"> May only treat small animals on the subject property. Outside runs and other outside facilities for the animals are not permitted.
.050	School, Day-Care Center, Mini-School or Mini-Day-Care Center								D	B	See KZC 105.25.	<ol style="list-style-type: none"> A six-foot-high fence is required only along the property lines adjacent to the outside play areas. Structured play areas must be set back from all property lines as follows: <ol style="list-style-type: none"> Twenty feet if this use can accommodate 50 or more students or children. Ten feet if this use can accommodate 13 to 49 students or children. Five feet for Mini-School and Mini-Day-Care Centers. An on-site passenger loading area must be provided. The City shall determine the appropriate size of the loading areas on a case-by-case basis, depending on the number of attendees and the extent of the abutting right-of-way improvements. Carpooling, staggered loading/unloading time, right-of-way improvements or other means may be required to reduce traffic impacts on nearby residential uses. May include accessory living facilities for staff persons. Hours of operation of the use may be limited and parking and passenger loading areas shall be located to reduce impacts on nearby residential uses. These uses are subject to the requirements established by the Department of Social and Health Services (WAC Title 388).
.060	Church								C			<ol style="list-style-type: none"> May include accessory living facilities for staff persons. No parking is required for day-care or school ancillary to the use.



USE ZONE CHART

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Section 53.12	USE ↓ REGULATIONS ↑	Required Review Process	MINIMUMS				MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage	Height of Structure				
				Front	Side	Rear						
.070	Assisted Living Facility, Convalescent Center or Nursing Home	D.R., Chapter 142 KZC.	None	10' Otherwise 20' adjoining a residential zone.	0'	0'	80%	35' above average building elevation.	C	B	Assisted living unit: 1 per unit. Convalescent Center or Nursing Home: 1 for each bed.	1. Chapter 115 KZC contains regulations regarding home occupations and other accessory uses, facilities and activities associated with this use. 1. Landscape Category A or B may be required depending on the type of use on the subject property and the impacts associated with the use on the nearby uses.
.080	Public Utility							A		See KZC 105.25.		
.090	Government Facility or Community Facility							C See Spec. Reg. 1.				
.100	Public Park	Development standards will be determined on a case-by-case basis. See Chapter 49 KZC for required review process.										

From: Jeff Trager [mailto:jtrager@comcast.net]
Sent: Thursday, June 26, 2008 10:15 AM
To: KirklandCouncil
Subject: Costco Gas Station

To: Kirkland City Council
From: North Rose Hill Neighborhood Association Board
Subject: Costco Amendment request

We have listened to the presentations from Costco about their proposal to site a gas station in the north parking lot of their North Rose Hill store.

As neighbors, pedestrians, and customers, we have grave concerns about the increase in traffic that this will unquestionably create on NE 90th. This street has severe problems with storm drainage, lack of sidewalks or even shoulders, and a poorly designed and dangerous intersection at 122 Avenue NE.

We are opposed to Costco's amendment request unless these problems are resolved:

- The drainage problems which plague the intersection of 120 Avenue NE and NE 90th and the surrounding properties
- Sidewalks on both sides of NE 90th from 124th Ave NE to 120th Ave NE
- Reconfiguring the intersection at 122 Avenue NE and NE 90th to work safely with the church located there whose driveway is offset from the Intersection
- Manage traffic flow to keep the gas lines within the parking lot and not on 90th and not blocking neighboring driveways

Costco is an important and valuable member of the community and their economic benefit to the city is tremendous. We understand Costco's need to add this station to this facility. However, the problems on NE 90th between 124th and 120th are severe and will only be exacerbated by the presence of a Costco gas station at this location.

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

MEMORANDUM

To: David Ramsay, City Manager

From: Janice Soloff, AICP, Senior Planner
Eric R. Shields, AICP, Planning Director

Date: July 23, 2008

Subject: CONTINUATION OF BANK OF AMERICA/MERRILL GARDENS APPEAL OF DRB DECISION, CASE NO. APL08-00001, FILE DRC07-00006

RECOMMENDATION

Staff recommends that City Council continue deliberation on the appeal of the Design Review Board's decision on the Bank of America/Merrill Gardens mixed use project at 101 Kirkland Avenue. At the July 1, 2008 meeting City Council continued the appeal proceedings to August 5, 2008 in order to allow time for the appellant CiViK to ask questions of the applicant SRM Development's modified design for the project.

Enclosed for City Council consideration is correspondence received since the July 1, 2008 meeting including questions from the appellant CiViK related to the modified design and responses to those questions from SRM Development.

Additionally, staff has enclosed Findings and Conclusions with minor revisions to: 1) reflect the additional open record proceedings which have been held since the original Findings were drafted; and 2) correct Zoning Code citations.

BACKGROUND DISCUSSION

On June 30, 2008, SRM Development submitted modifications to the project design aimed at responding to concerns expressed by the Council regarding the original disapproved design. The modified plans were distributed to City Council and all parties via email. On behalf of CiViK, Mr. Aramburu in his letter of June 27, 2008 objected to SRM's plan to submit revisions to the design of the project.

SRM Development presented the modified project design to City Council at the July 1, 2008 meeting. CiViK requested additional time to review the proposed modifications and to ask SRM Development questions. City Council requested the applicant provide information about how the modified proposal complies with parking requirements, to show comparison of setbacks and step

backs between the previous and new proposal, and expected traffic impacts of relocating the drive thru.

As directed by City Council, Economic Development Manager Ellen Miller Wolfe facilitated a process and timeline for the exchange of information between CiViK and SRM Development (see Attachment 1). Both CiViK and SRM had some clarifying questions regarding the process and timeline (see Attachments 2, 3, 4). On July 11, 2008, CiViK submitted questions to SRM Development related to the modified proposal (see Attachment 5). SRM responded to the questions on July 18, 2008 (see Attachment6).

Summary of appeal meetings to date:

- January 31, 2008 CiViK filed an appeal of the Design Review Board's decision on the Bank of America/Merrill Gardens project.
- On April 15 the City Council heard the open record appeal of the Design Review Board's decision granting design review approval to the Bank of America/Merrill Gardens mixed use project. The appeal hearing was continued to May 6, 2008.
- On May 6, 2008, the City Council passed a motion to reverse the Design Review Board decision and directed staff to return to the May 20th meeting with a resolution setting forth findings and conclusions that supported the motion that 1) the development is not designed for superior retail and therefore does not warrant the additional height for a fifth story; and 2) the project does not meet the requirements of a two story building along Lake Street So.
- At the May 20, 2008 meeting the Council decided to consider alternative designs that were consistent with the above conclusions before making a final decision on the appeal and moved to table the resolution along with the findings and conclusions until June 3.
- On June 3, 2008, City Council discussed a draft of R-4707 and made edits to staff's proposed Exhibit A, Findings and Conclusions. The Applicant requested direction from the Council on what is required to satisfy the Lake Street So. height restriction and superior retail space criteria so that the applicant could modify its proposal to meet the Council's intent. City Council agreed to continue the meeting until July 1, 2008, in order for the applicant and appellant to meet to discuss possible modifications to the development. The City received notice from SRM Development and CiViK that the two parties met but were unable to reach agreement on proposed revisions.

For background information from the last meeting please refer to the Council packet materials available on the City's website at:

http://www.ci.kirkland.wa.us/_shared/assets/9a_PublicHearings9072.pdf

Attachments:

1. Ellen Miller Wolfe letter of July 3, 2008 to appellant's and applicant's attorneys regarding process for exchanging questions/responses on modified development proposal
2. Bea Nahon of CiViK email of July 7, 2008 with questions on process
3. Molly Lawrence for SRM, letter of July 9, 2008 discussing above process
4. Bea Nahon of CiViK email of July 11, 2008 discussing process
5. Bea Nahon of CiViK email of July 11, 2008 with list of questions for SRM
6. Molly Lawrence for SRM letter of July 18, 2008 responding to CiViK questions
7. Bea Nahon of CiViK email of July 23, 2008 with additional questions for SRM
8. Bea Nahon of CiViK attachment to July 23, 2008 (questions regarding rooftop appurtenances)
9. Molly Lawrence for SRM letter of July 25, 2008 responding to CiViK questions
10. Bea Nahon of CiViK email of July 25, 2008 responding to SRM response
11. Robin Jenkinson letter of July 2, 2008 to Richard Aramburu
12. Richard Aramburu for CiViK letter of July 7, 2008 to Robin Jenkinson
13. Robin Jenkinson letter of July 8, 2008 to Richard Aramburu
14. Molly Lawrence for SRM letter of July 25, 2008 with objections

Additional Attachments:

The following documents have previously been provided to the Council as part of the Bank of America/Merrill Gardens appeal, but due to time constraints were either placed on the dais and/or provided electronically:

- A. May 16, 2008 letter from Richard Aramburu to City Council
- B. May 19, 2008 letter from Richard Aramburu to Mayor and City Council, with enclosure
- C. May 28, 2008 letter from Molly Lawrence to City Council, with enclosures
- D. May 29, 2008 letter from Richard Aramburu to Robin Jenkinson
- E. June 3, 2008 letter from Molly Lawrence to Robin Jenkinson
- F. June 10, 2008 letter from Richard Aramburu to Robin Jenkinson
- G. June 16, 2008 letter from Robin Jenkinson to Richard Aramburu, with enclosure
- H. June 24, 2008 letter from Richard Aramburu to Robin Jenkinson
- I. June 27, 2008 letter from Richard Aramburu to Robin Jenkinson
- J. June 30, 2008 letter from Robin Jenkinson to Richard Aramburu
- K. June 30, 2008 letter from Molly Lawrence to City Council, with enclosures

cc: Applicant: Andy Loos, SRM Development
Molly Lawrence, legal counsel for SRM Development
Appellant: J. Richard Aramburu, legal counsel for CiViK
Bea Nahon, CiViK
File DRC07-00006 (APL08-00001)



July 3, 2008

J. Richard Aramburu
Aramburu & Eustis, LLP
720 Third Avenue, Suite 2112
Seattle, WA 98104-1860

Molly A. Lawrence
GordonDerr
2025 First Avenue, Suite 500
Seattle, WA 98121-3140

Re: Bank of America/Merrill Gardens
Appeal of Design Review Board
File No. APL08-00001

Dear Counsel:

At the July 1, 2008 meeting, City Council continued the public hearing on the appeal of the Bank of America/Merrill Gardens project to the August 5, 2008 City Council meeting in order to allow the appellant additional time to review the applicant's modified proposal and to ask questions of the applicant. The recommended schedule that follows provides a timeframe for this information exchange and also allows sufficient time for the City distribution of City Council packets. I recommend that the parties follow the following process and schedule outlined below:

July 11	CiViK submits questions in writing to the applicant; or to City staff to provide to the applicant if that is preferable
July 18	SRM Development responds back in writing to CiViK's questions
July 23	CiViK responds in writing to SRM Development information if there are outstanding issues or further clarifications needed
July 25	Deadline for responses by SRM and CiViK in order to be included in City Council packet for August 5 th meeting

To insure that all parties and the City Council are informed about the progress of this exchange, please submit questions and responses in writing to all parties and copy them to City staff.

In addition to the questions CiViK may have, City staff is requesting that the applicant also provide responses to questions and requests for additional information from the July 1, 2008 City Council meeting, and also from preliminary staff review of the modified proposal. They are as follows:



1. Submit an updated parking study that explains how the modified proposal of adding retail space and eliminating at-grade parking stalls will comply with the City's parking requirements and/or the approved parking modification.
2. Update the traffic impact analysis to address the traffic circulation and design of the relocated drive-through.
 - a. What is the best circulation route for the drive-thru? Westbound or eastbound?
 - b. Will there be changes to turns onto Lake Street?
 - c. Verify if there is adequate queuing for cars.
 - d. Evaluate if there is adequate existing radius without encroaching into the eastbound lane or if there will be a conflict with left turn out of the parking garage.
3. Respond to the City Council concern regarding the elimination of the second retail space along Lake Street (shown as the café space). This additional retail space on Lake Street was a strong point with the Design Review Board (DRB) as well.
4. Show pedestrian crossings of the drive-through exits and entrances in the alley as having textured or color surface materials.

As a reminder, all items for the Council packet must be in electronic formats including PowerPoint or other presentations. Please let me know if the proposed process and timeline works for both parties.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ellen Miller-Wolfe".

Ellen Miller-Wolfe
Economic Development Manager

cc: Kirkland City Council
Dave Ramsay, City Manager
Bea Nahon, CiViK
Andy Loos, SRM Development
Robin Jenkinson, City Attorney
Eric Shields, Planning Director
Janice Soloff, Senior Planner
Cheri Aldred, Deputy City Clerk

Janice Soloff

From: Bea L. Nahon CPA [Bea.Nahon@nahoncpa.com]
Sent: Monday, July 07, 2008 11:08 AM
To: Ellen Miller-Wolfe; rick@aramburu-eustis.com; mlawrence@GordonDerr.com
Cc: andy@srmdevelopment.com; David Ramsay; Eric Shields; Janice Soloff; Cheri Aldred; Robin Jenkinson
Subject: RE: Follow up to July 1 Kirkland City Council Meeting

Ellen,

Thank you for your memo of July 3 regarding your recommendations for the process and schedule. In general, this appears to be a workable arrangement, however, some concerns and/or questions have been identified.

1. The proposed time between July 23 (Step 3) and July 25 (Step 4) is not adequate for either party to respond or prepare. Since the Council packet is typically prepared on the preceding Wednesday, it seems as though Tuesday July 28 is a more workable date for the 4th step.
2. As noted in our telephone discussion on Thursday, it will be very useful to have the applicant's responses to the City's questions (as listed in your memo). We are requesting that those responses be provided by July 18 as well, so that if there are follow-up questions, those can be identified.
3. Noting that the City itself may have follow-up questions and analysis once the City's four questions are responded to, we ask that a copy of any City correspondence (e.g. Traffic, Public Works, etc.) be provided to us immediately (i.e. upon generation)
4. As noted in our telephone conversation on Thursday, we are assuming that each set of correspondences (questions, answers, followup, response thereto) will be in the City Council's packet so that the Council can see and consider the materials.
5. While the deadline for submitting data for the packet may be July 28, CiViK still has the right as appellant, to ask questions of the applicant's witnesses at the August 5 City Council meeting, and to comment and present rebuttal before the hearing is concluded and the Council returns to deliberations. The memo is silent in this regard, and so we are stating this for the record as part of this process.
6. The documents that are exchanged in each of these correspondences are to be limited to questions and answers relating to the proposal (which may include supporting documents as appropriate to answer the questions.) However, none of these submissions should include legal arguments, as that is not what the Council has asked for.

Please note that Mr. Aramburu will be on vacation for part of this coming month and will not have access to e-mail during that time. Therefore, it is important that any documents (from the City or from the applicant) be transmitted with copies to me so that they can be addressed on a timely basis.

Also, please note that I have copied this to all of the parties on the initial e-mail other than the City Council. It would not be appropriate for me to send a copy of this e-mail to them, so I ask that you or Robin provide this information to them.

Thank you for your assistance. Please advise as soon as possible if there are any other modifications or clarifications to the schedule or process.

Sincerely,

Bea Nahon

7/22/2008

From: Ellen Miller-Wolfe [mailto:emwolfe@ci.kirkland.wa.us]
Sent: Thursday, July 03, 2008 4:04 PM
To: rick@aramburu-eustis.com; mlawrence@GordonDerr.com
Cc: Bea L. Nahon CPA; andy@srmdevelopment.com; City Council; David Ramsay; Eric Shields; Janice Soloff; Cheri Aldred; Robin Jenkinson
Subject: Follow up to July 1 Kirkland City Council Meeting

As promised, please find attached a recommended process for preparing for the August 5, 2008 City Council meeting and continuation of the Bank of America appeal hearing. Enclosed are suggested steps and a timeline. Please let me know if the process suits or whether there are any remaining questions or concerns. Happy holiday, e



July 9, 2008

Ellen Miller-Wolfe
Economic Development Manager
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

Re: Merrill Gardens/BOA
Appeal of Design Review Board Decision
File No. APL08-00001

Dear Ellen:

Thank you for your letter of July 3, 2008. As SRM Development has explained throughout the design review and appeal processes for its Merrill Gardens/BOA Project at 101 Kirkland Avenue, SRM is eager to have the City identify a design that it will approve for this site consistent with the City's adopted standards. Toward that end, SRM is willing to answer questions from the Appellant CiViK, as well as City Staff and Council members, regarding any design modifications offered as part of the effort to identify an approvable design.

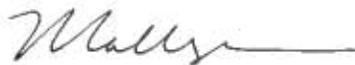
SRM representatives have reviewed your proposed schedule for exchanging questions and answers. In general, we agree that it looks workable. We do, however, share CiViK's concern that a July 25th deadline for materials in advance of the August 5th hearing is unnecessarily condensed. Instead, we would support CiViK's request that the deadline for submitting materials for the August 5th hearing be extended to July 29th or 30th.

With regard to CiViK's other comments contained in Bea Nahon's email dated July 7, 2008, we will attempt to provide responses to City Staff's questions contained in your letter by July 18th, subject to the caveat that we cannot control our transportation/parking consultant's schedule/availability. Further, we do not object to comments 3 and 4 provided that all materials are provided concurrently to both parties. With regard to comment 5, we anticipate that CiViK will present rebuttal at the August 5, 2008 hearing, but would strongly advocate that because the Council has provided CiViK an unprecedented opportunity to submit written questions outside of the standard hearing process, any further questions of SRM at the hearing be brief and limited only to topics/issues identified in advance through their written questions. Our purpose is not to limit CiViK's ability to ask questions, but rather to ensure that the August 5th hearing is as efficient as possible with the goal of reaching a final decision on an approvable design. Finally, we cannot agree with Ms. Nahon's request in comment 6 that SRM's answers to CiViK's questions contain no legal arguments. Because the Council made no request for the parties to exchange written questions/answers, but instead assented to CiViK's request that it be permitted

to submit written questions to SRM, it is a mischaracterization to assert that the Council requested only facts. In any case, because the key questions at issue have been and remain how the Project design conforms to the adopted criteria for approval, we anticipate that it will be necessary to some degree to include legal analysis in our responses.

Finally, it is worth stating that this letter is not intended as SRM's response to the events at the July 1, 2008 hearing or the subsequent correspondence between counsel for CiViK, Richard Aramburu, and the City Attorney, Robin Jenkinson. We intend to respond separately to those events.

Very truly yours,



Molly A. Lawrence

MAL:mal

cc: Andy Loos
Rick Aramburu, CiViK

From: Bea L. Nahon CPA [mailto:Bea.Nahon@nahoncpa.com]
Sent: Friday, July 11, 2008 9:11 AM
To: mlawrence@GordonDerr.com
Cc: Rick Aramburu; andy@srmdevelopment.com; Ellen Miller-Wolfe
Subject: Merrill Gardens/BOA - Letter faxed from Molly Lawrence this morning

[Ellen - Please be aware that this is being sent to a limited distribution list, consistent with the list that the referenced fax was sent to. I will rely on you to forward to others in the broader distribution list, including the City Council, if and as appropriate. Thank you!]

Dear Molly,

We've received a copy of your letter of July 9 and it is good to note that there are many points of process which we agree on. The questions, due from CiViK today, are in the final stage of subcommittee review and should be transmitted by mid-day today.

Some points of clarification to respond to your July 9 letter:

First, we do hope that further questions of SRM that will take place at the hearing on August 5 will be brief. We appreciate that the City has provided us with the opportunity to pose questions and receive answers in advance of that date. This interim process will be helpful, we think, for the parties and will also enable the Council to see the information in their packet prior to August 5. However, we cannot be limited "only to topics/issues identified in advance through their written questions." It is reasonable to expect that when the last set of materials is provided by SRM, there will likely be follow-up questions which emanate from those materials. In addition, there may be additional questions which are prompted by information, if any, which is presented that evening.

Also, with regard to whether or not legal arguments would be included in the interim materials, I asked Ellen to look into this, and the direction that I've received is that until the Council meets, we can't know what their preference is (i.e. as to what it wants to see or not see in this regard.) Of course, by that time, the interim period will have elapsed and so we must use our best judgment in making the determination. We think that it will simplify and enhance the process for the Council if the interim materials are focused on fact-finding. If you believe that is not reasonable to limit the materials in that fashion, and if you anticipate that it will be necessary to include legal analysis in your responses, then please advise and our materials will be presented similarly. We are prepared to keep this interim part of the process limited to fact-finding. Please advise at your earliest opportunity and not later than July 18 when the responses to the 1st set of questions are transmitted to us.

One other procedural question that has come up, is the issue of whether Council members and staff may be posing questions during the interim period. This was alluded to in a reply from Councilmember Greenway and possibly in the first paragraph of your July 9 letter (although you may have been referring solely to the August 5 meeting). If the Council and staff wish to pose questions between now and August 5, that is fine with us, provided that all correspondence to and from Council and to and from Staff are sent simultaneously to all parties. Please let us know your thoughts. Also please note that as of this writing, we have not received a copy of any questions from Councilmembers or Staff, so if you have received any, please let us know and please forward a copy to me.

As a closing item, we received your fax of July 9, which was forwarded to us by Rick Aramburu. However, please take note that he will be traveling and away from e-mail or fax connections and so it is essential that all correspondence includes me, on behalf of CiViK, as a copied recipient. My e-mail address is bea.nahon@nahoncpa.com, my work number is (425) 828-4747 and my direct fax number is (425) 696-0032.

Thank you,
Bea

Questionnaire re: Bank of America/Merrill Gardens
Appeal of Design Review Board
File No. APL08-00001

Submitted by: Citizens for a Vibrant Kirkland (CiViK)
Submitted to: SRM Development LLC
Copies to: J. Richard Aramburu (Counsel for CiViK)
Molly Lawrence (Counsel for SRM)
City of Kirkland staff: Robin Jenkinson, Ellen Miller Wolfe, David
Ramsay, Eric Shields, Janice Soloff; Cheri Aldred, Kathi Anderson

Date submitted: July 11, 2008
Response date: July 18, 2008

Note: As appellant, we are not sending this directly to the City Council. It needs to be provided to them, however, as part of the total package for the continued hearing on August 5, 2008. Thank you for your assistance.

As indicated to the City Council prior to the July 1 meeting, our recommendation was that the revised proposal should have been evaluated by the Design Review Board (DRB). Among the reasons for that request, was so that public input would be included as part of the process. Accordingly, we have invited the public to contribute questions, which have been incorporated along with ours.

Also, as noted in recent correspondence, Mr. Aramburu will be on vacation for part of this month and not able to access his e-mail. Accordingly, please include Bea Nahon (for CiViK) in the cc list of all replies and followup so that your information is received promptly. Her contact information is at the end of this memo. Thank you!

Thank you in advance for your attention to the attached, and we look forward to your responses.

The questions are on the attached pages, as follows:

1. Bank of America
2. Drive-Thru
3. Parking and traffic
4. Plans and documents
5. Setbacks and stepbacks
6. Retail spaces
7. Residential units
8. Exterior design
9. Questions posed by the City of Kirkland

July 11, 2008, CiViK to SRM

1. Bank of America

- a. How many square feet (gross floor area) will the bank occupy?
- b. Please indicate specifically which space the bank will occupy and which space the Café will occupy.
- c. Please provide a copy of the Purchase and Sale Agreement between Bank of America and SRM Development LLC (or RDMSRMK 101 LLC) or their affiliates, as well as any addendums, amendments, etc.
- d. How many lineal feet of frontage will the Bank have (i) on Lake Street and (ii) on Kirkland Avenue?
 - i. For item d, please provide (A) the amounts based on plans with the Café on Lake Street and (B) without the Café on Lake Street.
 - ii. Please also indicate the number of lineal feet of frontage the Bank would have had on Lake Street and on Kirkland Avenue in the proposal as initially approved by the DRB
- e. Please describe the Bank's signage (design and locations)

July 11, 2008, CiViK to SRM

2. Drive-Thru

- a. Will the drive-thru be designed to be staffed by a bank employee or will it be a drive-up ATM?

- b. Please provide line-of-sight information which considers visual ability for a vehicle entering and exiting the drive-through as it relates to other vehicles which are simultaneously entering and exiting:
 - i. The garage for this property
 - ii. The McLeod garage
 - iii. Loading docks of both properties

- c. As vehicles (A) enter the drive-thru from the alley and (B) return to the alley from the drive-thru, will right-turns and left-turns be permitted, or will turns be restricted?

- d. If an eastbound drive-through is being considered (as suggested by the City as a possible alternative) please provide answers to items b & c with that configuration

July 11, 2008, CiViK to SRM

3. Parking and traffic

- a. Indicate the total number of parking spaces and the supporting calculation as required to comply with the Kirkland Zoning Code (such as was provided previously by the report from Thang Nguyen).

- b. Of the total number of spaces, indicate the number of spaces which will be reserved at any point of the day for the use by the following (if the reserved parking spaces will be available to the general public during part of the day, indicate which spaces and which hours):
 - i. Bank of America
 - ii. The other spaces indicated as Retail or Café
 - iii. Residents of Merrill Gardens
 - iv. Guests of Merrill Gardens
 - v. Merrill Gardens operations

- c. On July 1, you indicated that the Bank will have 40 restricted parking spaces. Previous documents indicated that the Bank needed 16 spaces, which was consistent with 1 space for every 350 square feet. Please explain why the Bank has this increased requirement (i.e. 40 spaces instead of 16 spaces).

- d. Will any of the parking spaces be owned by the Bank or by any other user? If so, please indicate the number of spaces and which spaces will be directly owned and by whom.

- e. When traffic exits the alley onto Lake Street, will vehicles be restricted to a right-turn only, or will left-turns be permitted?

July 11, 2008, CiViK to SRM

4. Plans and documents

- a. Please provide the following documents that would be comparable to those submitted to the Design Review Board:
 - i. "Project data" – a grid, comparable to Page 24 of Attachment 4 from your presentation at the January 3, 2008 DRB meeting, which shows the square footage for each floor, by type of use, unit distribution, parking calculations, etc. For reference, please see CiViK Exhibit 132, or Page 24 of http://www.ci.kirkland.wa.us/_shared/assets/Bank_of_America_DRB_Attachment_47609.pdf
 - ii. Similarly, plans for each floor such as were included as Pages 25 through 31, inclusive, of the same document from the January 3, 2008 meeting, including the same type of information as was included there (e.g. square footage, unit type, etc.) This was also presented, from the original submittal, as CiViK exhibit 131.

July 11, 2008, CiViK to SRM

5. Setbacks and setbacks

- a. Please provide the amounts of setbacks from the property line for each floor:
 - i. On the Lake Street side of the property

 - ii. On the Kirkland Avenue side of the property

- b. Similarly as to item (a), please provide the amounts of setbacks from floor to floor on the Lake Street and Kirkland Avenue sides of the property.

July 11, 2008, CiViK to SRM

6. Retail spaces

- a. Please provide the square footage, not including any load, of each retail space.

- b. Please indicate which of the retail spaces you would be willing to record with a binding covenant for retail and/or café use (i.e. that could not be otherwise converted to Bank, Merrill Gardens' operations or common area, or non-retail). For any spaces that you are willing to covenant for retail and/or café use, indicate the number of years that you would be willing to have the binding covenant(s) run.

July 11, 2008, CiViK to SRM

7. Residential Units

- a. How many residential units are included in the revised plan and how many total bedrooms?

- b. Will these units be rental apartments or condominiums?

- c. We note that the impact fees were paid to the City based on the rate for "Senior Housing"
 - i. What is the minimum age requirement for residency in this project?

 - ii. Will there be a covenant for the Senior Housing use?

July 11, 2008, CiViK to SRM

8. Exterior design

- a. In the plan as initially approved, the Café space on Lake Street was an elevated one-story structure to improve the visual appeal of the building on Lake Street. As submitted now, the space (either as café or bank at the street level) is two stories. Can the one-story Café' feature be reinstated?

- b. Please provide the plans for the rooftop appurtenances, including location and height. If any variances will be required, please describe in detail as to the amount and nature of the variance, the reason for the variance, the placement, and the additional height.

July 11, 2008, CiVIK to SRM

9. Questions posed by the City of Kirkland

Please respond to the questions which have been posed thus far by the City's staff (see correspondence from Ellen Miller Wolfe or other City staff), which are incorporated herein by reference.

Thank you in advance for your responses to these requests. If you need clarification of any of these questions, please contact Bea Nahon at bea.nahon@nahoncpa.com. Also, please note her direct fax number at 425-696-0032.



July 18, 2008

Ms. Ellen Miller-Wolfe
Economic Development Manager
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

Re: Response to Questions from CiViK
Merrill Gardens/BOA
Appeal of Design Review Board Decision
File No. APL08-00001

Dear Ms. Wolfe:

Enclosed please find SRM Development's responses to the questions submitted by the Appellants' CiViK on July 11, 2008. As context and background for our responses, we are including this cover letter summarizing our proposed modifications to the Merrill Gardens/BOA Project design. Since the July 1, 2008 Council meeting, and in response to comments from Council members during that meeting, SRM has further revised its modified design as follows:

- SRM has restored the Café to the south corner of Lake Street. The Café is the same size and configuration as originally approved by the DRB.
- SRM has restored the drive through to its original location. The drive-through is the same size and configuration as originally approved by the DRB.
- By restoring these two design elements, the ground floor of the Project remains the same as the ground floor design originally approved by the DRB. The amount of parking provided remain unchanged from the original DRB approval.
- As explained during the July 1, 2008, Council meeting, SRM has revised the Project to increase the step backs between the 2nd and 3rd, 3rd and 4th, and 4th and 5th stories.
- In response to the comments during the July 1, 2008 Council meeting, SRM has further increased the setbacks and step backs for the 5th story. Under the proposed modified design, the 5th story setback ranges from a minimum of 99'7" to a maximum of 119'1"

measured from the property line (or 107'4" to 126'8" from the curb), and 5th story step back from the 4th story ranges from a minimum of 70'11" to a maximum of 74'2".

As modified, SRM has conceptualized the Project as two independent buildings. As the Council has discussed, the subject property is approximately 300 feet deep and consequently, it should be considered as multiple separate buildings. (This is the case on the north side of Kirkland Avenue.) SRM is proposing to construct only a total of 4 stories over the western building, which contains the bank, drive through and café on the ground floor; and to construct 5 stories over only the eastern building, which contains all superior retail spaces on the ground floor. See attached Exhibit 4. As a result, no 5th story will be located over any portion of the building containing spaces that the Council has indicated may not qualify as superior retail spaces (i.e., the bank use and the drive through).

As part of this concept, SRM has maintained the public plaza and all of the superior retail space design elements on the western building. In other words, we have continued to provide the necessary design elements to qualify for a 5th story over the western building, but have eliminated the 5th story over that building. Further, SRM has also maintained all superior retail design elements within the eastern building.

We are hopeful that this letter will help both CiViK and the Council understand the modified Project design as currently proposed. Please let us know if you, any other member of City Staff, or the City Council have questions about the modified Project design or any other related matter.

Very truly yours,



Molly A. Lawrence

MAL:mal

Enclosure

cc: Bea Nahon, CiViK
Rick Aramburu, Counsel for CiViK
Andy Loos, SRM
Jim Rivard, SRM
Robin Jenkinson, City Attorney

Questionnaire re: Bank of America/Merrill Gardens
Appeal of Design Review Board
File No. APL08-00001

Submitted by: Citizens for a Vibrant Kirkland (CiViK)
Submitted to: SRM Development LLC
Copies to: J. Richard Aramburu (Counsel for CiViK)
Molly Lawrence (Counsel for SRM)
City of Kirkland staff: Robin Jenkinson, Ellen Miller Wolfe, David
Ramsay, Eric Shields, Janice Soloff; Cheri Aldred, Kathi Anderson

Date submitted: July 11, 2008

Responses from SRM submitted: July 18, 2008

The questions are on the attached pages, as follows:

1. Bank of America
2. Drive-Thru
3. Parking and traffic
4. Plans and documents
5. Setbacks and stepbacks
6. Retail spaces
7. Residential units
8. Exterior design
9. Questions posed by the City of Kirkland

July 11, 2008, CiViK to SRM

July 18, 2008 Responses from SRM to CiViK

1. Bank of America

- a. How many square feet (gross floor area) will the bank occupy?

5,700 SF

- b. Please indicate specifically which space the bank will occupy and which space the Café will occupy.

Café – Retail Space 1

Bank – Retail Space 2

- c. Please provide a copy of the Purchase and Sale Agreement between Bank of America and SRM Development LLC (or RDMSRMK 101 LLC) or their affiliates, as well as any addendums, amendments, etc.

The contract between Bank of America (BOA) and SRM is proprietary and not subject to discovery through this appeal process. In any case, all components of the Purchase and Sale Agreement relevant to the design of the proposed Merrill Gardens/BOA Project have been integrated into the Project design.

- d. How many lineal feet of frontage will the Bank have (i) on Lake Street and (ii) on Kirkland Avenue?

Following the July 1, 2008, Council meeting, and in response to comments from Council during that meeting, SRM has returned to the original ground floor design (as approved by the DRB). SRM is not proposing any modification to the lineal feet of frontage for any of the retail spaces on either Lake Street or Kirkland Avenue.

- i. For item d, please provide (A) the amounts based on plans with the Café on Lake Street and (B) without the Café on Lake Street.

Lake Street

Retail Space 1/Café – 44'-6"

Retail Space 2/Bank – 42'-6"

Kirkland Avenue

Retail Space 1/Café – none

Retail Space 2/Bank – 79'-0"

Retail Space 3 – 74'-0"

Retail Space 4 – 70'-2"

- ii. Please also indicate the number of lineal feet of frontage the Bank would have had on Lake Street and on Kirkland Avenue in the proposal as initially approved by the DRB

Following the July 1, 2008, Council meeting, and in response to comments from Council during that meeting, SRM has returned to the original ground floor design (as approved by the DRB).

- e. Please describe the Bank's signage (design and locations)

There is currently no design for the signage. SRM anticipates that BOA will apply for permits for signage as part of its tenant improvement permits. That application will be subject to applicable City codes in effect at that time.

July 11, 2008, CiViK to SRM
July 18, 2008 Responses from SRM to CiViK

2. Drive-Thru

- a. Will the drive-thru be designed to be staffed by a bank employee or will it be a drive-up ATM?

This question is not relevant to the City's review criteria. Nevertheless, SRM understands that the drive-through will be a drive-up ATM.

- b. Please provide line-of-sight information which considers visual ability for a vehicle entering and exiting the drive-through as it relates to other vehicles which are simultaneously entering and exiting:
- i. The garage for this property
 - ii. The McLeod garage
 - iii. Loading docks of both properties

Not applicable. Following the July 1, 2008, Council meeting, and in response to comments from Council during that meeting, SRM has returned to the original ground floor design (as approved by the DRB). Thus, SRM has restored the drive through to the original location/design. All information regarding line-of-site for the original design was previously provided as part of the design review process.

- c. As vehicles (A) enter the drive-thru from the alley and (B) return to the alley from the drive-thru, will right-turns and left-turns be permitted, or will turns be restricted?

Not applicable, see 2b above.

If an eastbound drive-through is being considered (as suggested by the City as a possible alternative) please provide answers to items b & c with that configuration

Not applicable, see 2b above.

July 11, 2008, CiViK to SRM
July 18, 2008 Responses from SRM to CiViK

3. Parking and traffic

- a. Indicate the total number of parking spaces and the supporting calculation as required to comply with the Kirkland Zoning Code (such as was provided previously by the report from Thang Nguyen).

Applying the formula from the previously approved Parking Modification, the Project as modified would be required to provide the following number of parking stalls:

Residential:

**One stall per bedroom plus 0.15 stalls per bedroom for guests is required. As modified, the Project includes 72 residential units with a total of 77 bedrooms, thus 89 stalls are required ($77 + (77 \times 0.15)$).
Total Residential Spaces: 89**

Retail:

**Bank of America: 5,700 SF; one stall per 350 SF equals 16 required stalls ($5,700 \div 350$);
**Café' Space: 872 SF; one stall per 125 SF equals 7 required stalls ($872 \div 125$);
**Other Retail Space: 5,387 SF; one stall per 350 SF equals 15 required stalls ($5,387 \div 350$);
Total Retail Spaces: 38 (consistent with February 11, 2008 memo from Thang Nguyen for the retail space)******

Subtotal: 127

**Less 3 spaces offset through a prior LID payment
Total Required Parking: 124**

In fact, the Project will provide 134 parking spaces per the approved Parking Modification. Thus, the Project will provide 10 more spaces than would be required if the City were to apply the standards used in the Parking Modification to the Project as modified.

- b. Of the total number of spaces, indicate the number of spaces which will be reserved at any point of the day for the use by the following (if the reserved parking spaces will be available to the general public during part of the day, indicate which spaces and which hours):
- i. Bank of America
 - ii. The other spaces indicated as Retail or Café
 - iii. Residents of Merrill Gardens

- iv. Guests of Merrill Gardens
- v. Merrill Gardens operations

This question is not relevant to the City's review criteria. As explained above, the Project meets the City's code criteria/requirements for number of parking stalls for the Project.

- c. On July 1, you indicated that the Bank will have 40 restricted parking spaces. Previous documents indicated that the Bank needed 16 spaces, which was consistent with 1 space for every 350 square feet. Please explain why the Bank has this increased requirement (i.e. 40 spaces instead of 16 spaces).

There has been no change. In any case, this question is not relevant to the City's review criteria. As explained above, the Project meets the City's code criteria/requirements for number of parking stalls for the Project.

- d. Will any of the parking spaces be owned by the Bank or by any other user? If so, please indicate the number of spaces and which spaces will be directly owned and by whom.

Following completion of the Project, the Bank will purchase the area identified as Retail Space 2 as a condominium unit. The remainder of the building, including all parking, will be owned by SRM.

- e. When traffic exits the alley onto Lake Street, will vehicles be restricted to a right-turn only, or will left-turns be permitted?

City of Kirkland department of Public Works has designated this as non-restricted turning.

July 11, 2008, CiViK to SRM
July 18, 2008 Responses from SRM to CiViK

4. Plans and documents

- a. Please provide the following documents that would be comparable to those submitted to the Design Review Board:
 - i. "Project data" – a grid, comparable to Page 24 of Attachment 4 from your presentation at the January 3, 2008 DRB meeting, which shows the square footage for each floor, by type of use, unit distribution, parking calculations, etc. For reference, please see CiViK Exhibit 132, or Page 24 of [http://www.ci.kirkland.wa.us/_shared/assets/Bank of America DRB Attachment 47609.pdf](http://www.ci.kirkland.wa.us/_shared/assets/Bank_of_America_DRB_Attachment_47609.pdf)
See Exhibit 1 (attached)
 - ii. Similarly, plans for each floor such as were included as Pages 25 through 31, inclusive, of the same document from the January 3, 2008 meeting, including the same type of information as was included there (e.g. square footage, unit type, etc.) This was also presented, from the original submittal, as CiViK exhibit 131.
See Exhibit 2 (attached)

July 11, 2008, CiViK to SRM

July 18, 2008 Responses from SRM to CiViK

5. Setbacks and stepbacks

- a. Please provide the amounts of setbacks from the property line for each floor:
- i. On the Lake Street side of the property

See Exhibit 3 (attached)

- ii. On the Kirkland Avenue side of the property

See Exhibit 3 (attached)

- b. Similarly as to item (a), please provide the amounts of stepbacks from floor to floor on the Lake Street and Kirkland Avenue sides of the property.

See Exhibit 3 (attached)

July 11, 2008, CiViK to SRM
July 18, 2008 Responses from SRM to CiViK

6. Retail spaces

- a. Please provide the square footage, not including any load, of each retail space.

Retail 1 – 872 SF

Retail 2 – 5,700 SF

Retail 3 – 2,205 SF

Retail 4 – 3,182 SF

- b. Please indicate which of the retail spaces you would be willing to record with a binding covenant for retail and/or café use (i.e. that could not be otherwise converted to Bank, Merrill Gardens' operations or common area, or non-retail). For any spaces that you are willing to covenant for retail and/or café use, indicate the number of years that you would be willing to have the binding covenant(s) run.

SRM does not believe that it necessary or appropriate to impose covenants on the property as part of this project approval. Please see Section 8 of SRM's April 3, 2008 letter to Council regarding the subject appeal.

July 11, 2008, CiViK to SRM
July 18, 2008 Responses from SRM to CiViK

7. Residential Units

- a. How many residential units are included in the revised plan and how many total bedrooms?

72 Units, 77 Bedrooms

- b. Will these units be rental apartments or condominiums?

They will be permitted as rental units.

- c. We note that the impact fees were paid to the City based on the rate for "Senior Housing"

- i. What is the minimum age requirement for residency in this project?

62 years of age.

- ii. Will there be a covenant for the Senior Housing use?

No, the Project has been reviewed as a "multi-family" project not subject to any particular age restrictions. If in the future SRM were to change the Project to a different use category, SRM would be responsible for paying any additional fees due at that time.

July 11, 2008, CiViK to SRM

July 18, 2008 Responses from SRM to CiViK

8. Exterior design

- a. In the plan as initially approved, the Café space on Lake Street was an elevated one-story structure to improve the visual appeal of the building on Lake Street. As submitted now, the space (either as café or bank at the street level) is two stories. Can the one-story Café feature be reinstated?

No. The current two-story façade along Lake Street is consistent with the City Code, the approved McLeod proposal and direction from the Council. Additionally, it replaces area lost on the 3rd and 4th floors as part of providing greater 3rd and 4th floor step backs, as well as area lost to the dedicated plaza area at the corner of Kirkland Avenue and Lake Street.

- b. Please provide the plans for the rooftop appurtenances, including location and height. If any variances will be required, please describe in detail as to the amount and nature of the variance, the reason for the variance, the placement, and the additional height.

No change to the rooftop appurtenance plan. Please refer to the materials submitted to the DRB.

July 11, 2008, CiViK to SRM
July 18, 2008 Responses from SRM to CiViK

9. Questions posed by the City of Kirkland

Please respond to the questions which have been posed thus far by the City's staff (see correspondence from Ellen Miller Wolfe or other City staff), which are incorporated herein by reference.

Not applicable. Questions from City staff related to the modified drive-through location and its impact. Following the July 1, 2008, Council meeting, and in response to comments from Council during that meeting, SRM has returned to the original ground floor design (as approved by the DRB).

Thank you in advance for your responses to these requests. If you need clarification of any of these questions, please contact Bea Nahon at bea.nahon@nahoncpa.com. Also, please note her direct fax number at 425-696-0032.

EXHIBIT #1

REVISED PROJECT DATA

DATE: 7/18/2008

- 1.1 Location: 101 Kirkland Ave
- 1.2 Site Area: 28,390 SF
- 1.3 Zone: CBD 1B
- 1.5 Proposed Use: Mixed-Use
- 1.6 Type of Construction per IBC:

Residential Bldg: Type 5
 Parking/ Comm: Type 1

1.7 Occupancy Classification per IBC:

Business B
 Residential R-2
 Parking Garage S-2

1.8 Apt. Building Floor Areas (gross):

APT.s	PARKING	RETAIL	RESIDENTIAL	LOBBY/ COMMON/	M & E	CIRCULATION	TOTAL
P2	8,820					466	9,286
P1	23,843			157	417	775	25,192
C1	10,607	8,687		157	956	1100	21,507
C2		3,182		1,094	779	851	5,906
L2			13,490	800		2460	16,750
L3			15,300		50	1970	17,320
L4			14,805		50	1965	16,820
L5			8,535			1695	10,230
Subtotal	43,270	11,869	52,130	2,208	2,252	11,282	123,011*

	Studio +	1BR	2BR	total
L2	3	16	0	19
L3	4	16	1	21
L4	4	14	2	20
L5		10	2	12
	11	56	5	72

*difference in square footage from 1/3/08 data reflects increased square footage for additional parking on new level P2, and decreased square footage from lost residential area on levels L2-L5

2.0 Parking Requirements: (calculated consistent with standards of approved parking modification; see Memo from Thang Nguyen, City of Kirkland Transportation Engineer dated December 26, 2007)

Residential Parking:

1 per bedroom 77 stalls
 15% for guest stalls 12 stalls
89 residential stalls required

Commercial Parking:

restaurant - 1/125 7 stalls required
 retail - 1/350 31 stalls required
 total comm. 38

Total Required Parking:

89 + 38 127 stalls required, however the Applicant paid \$15,077.53 into the LID for parking mitigation giving the property a credit of 3 stalls

127 - 3 = **124 stalls**

Actual Total Parking Provided (per approved parking modification):

level	Large	Comp	BF	Total
P2		28		28
P1	22	52	0	74
C1	12	17	3	32
Totals	34	97	3	134

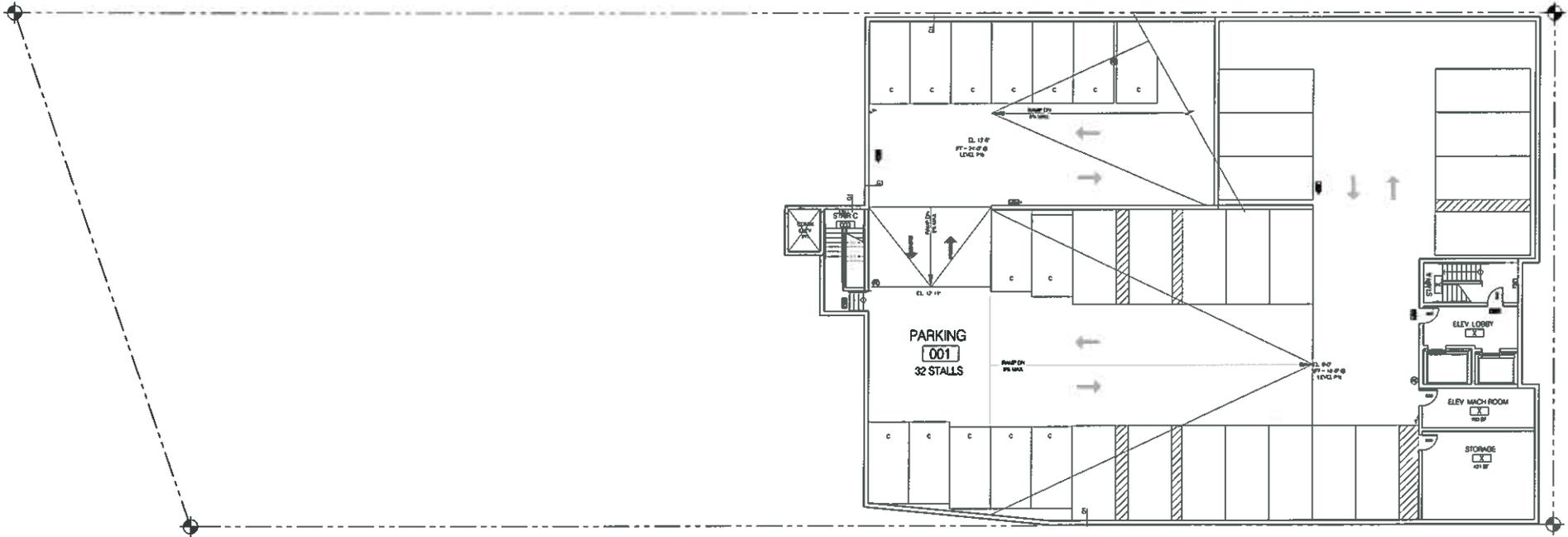
Unit Distribution

Unit Type	%	GSF	# of Units
St.+	15%		11
1/1	78%		56
2/2	7%		5
Total Res. Units			72

Average Unit Size

Res	# of Units	Avg. GSF
52,130	72	724

Allowable height: 55'



***PARKING LEVEL ADDED TO PROVIDE 134 STALLS PER APPROVED PARKING MODIFICATION (ORIGINAL 1/3/08 PLAN ONLY PROVIDED 109 STALLS)**

EXHIBIT #2
101 KIRKLAND AVENUE
7/18/08

PLAN: LEVEL P2*

SCALE: 1/20" = 1'-0"



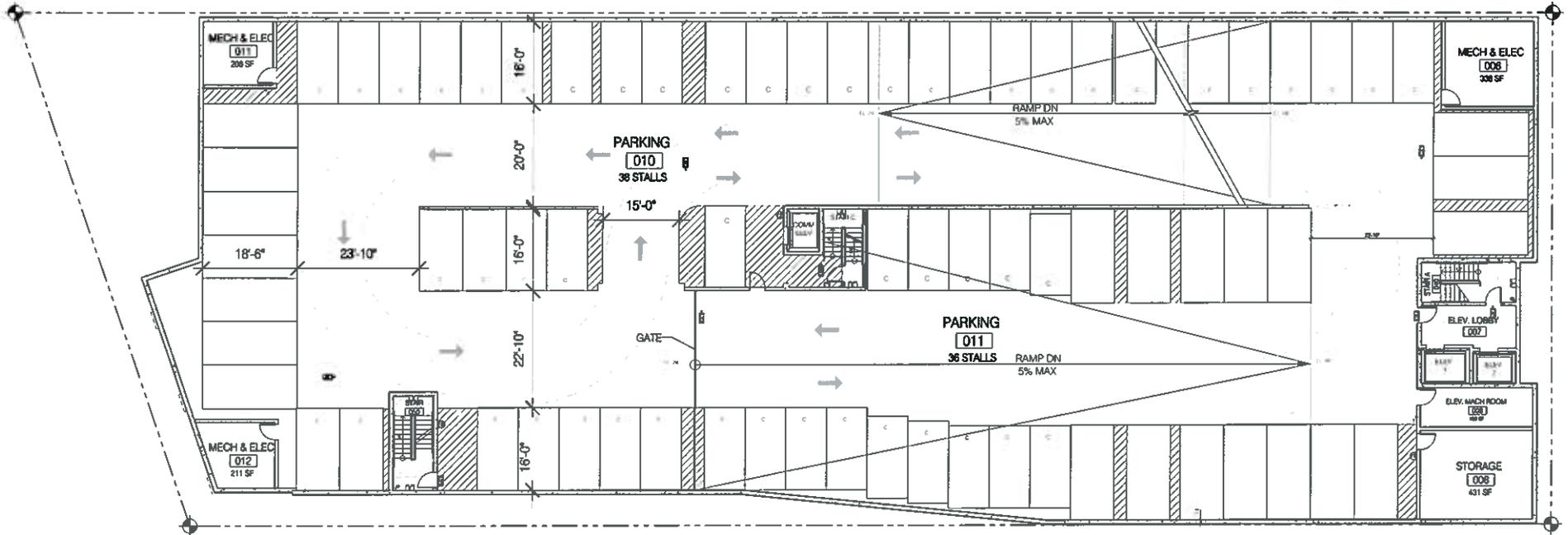


EXHIBIT #2
101 KIRKLAND AVENUE
7/18/08

PLAN: LEVEL P1

SCALE: 1/20" = 1'-0"



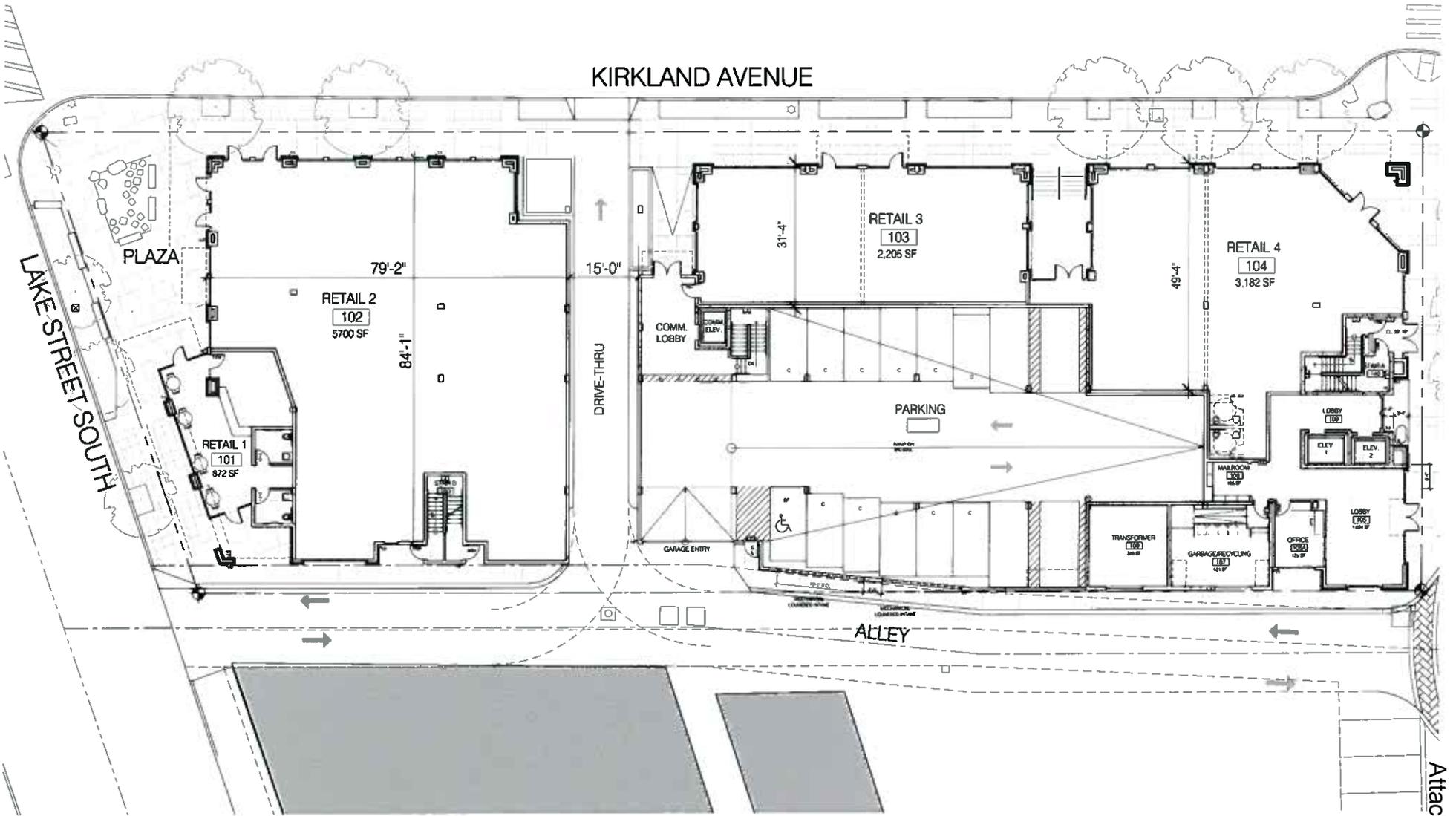


EXHIBIT #2

101 KIRKLAND AVENUE

7/18/08

PLAN: LEVEL C1 & C2

SCALE: 1/20" = 1'-0"



KIRKLAND AVENUE

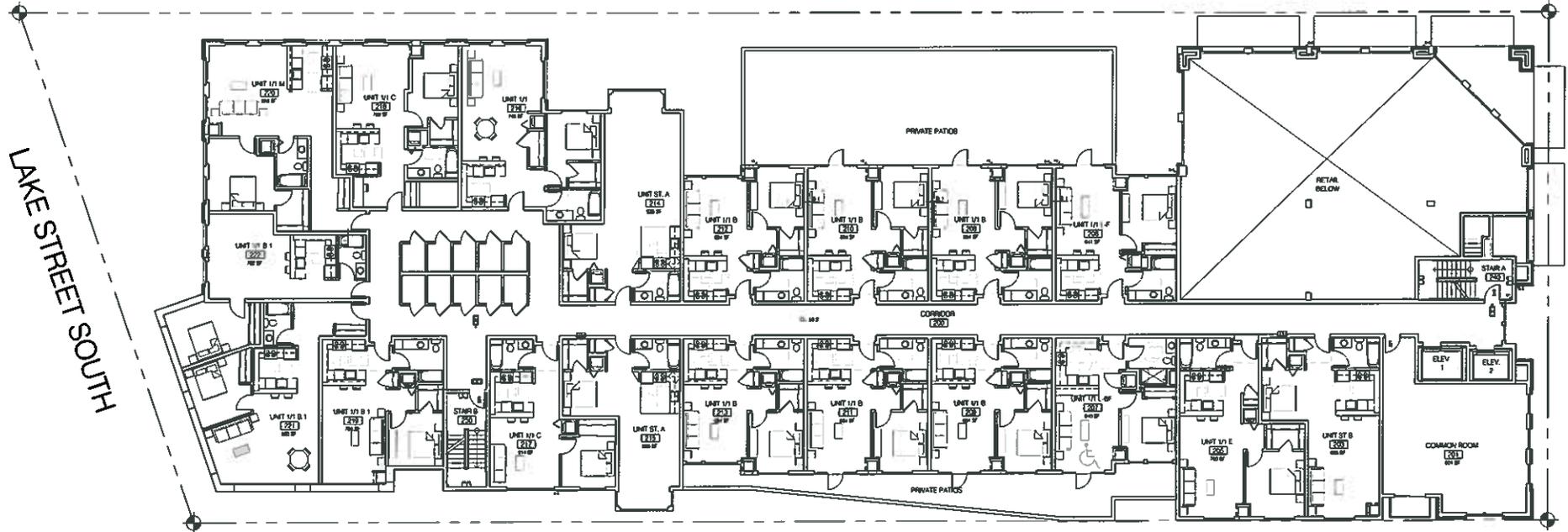


EXHIBIT #2
101 KIRKLAND AVENUE
7/18/08

PLAN: LEVEL L2

SCALE: 1/20" = 1'-0"



KIRKLAND AVENUE

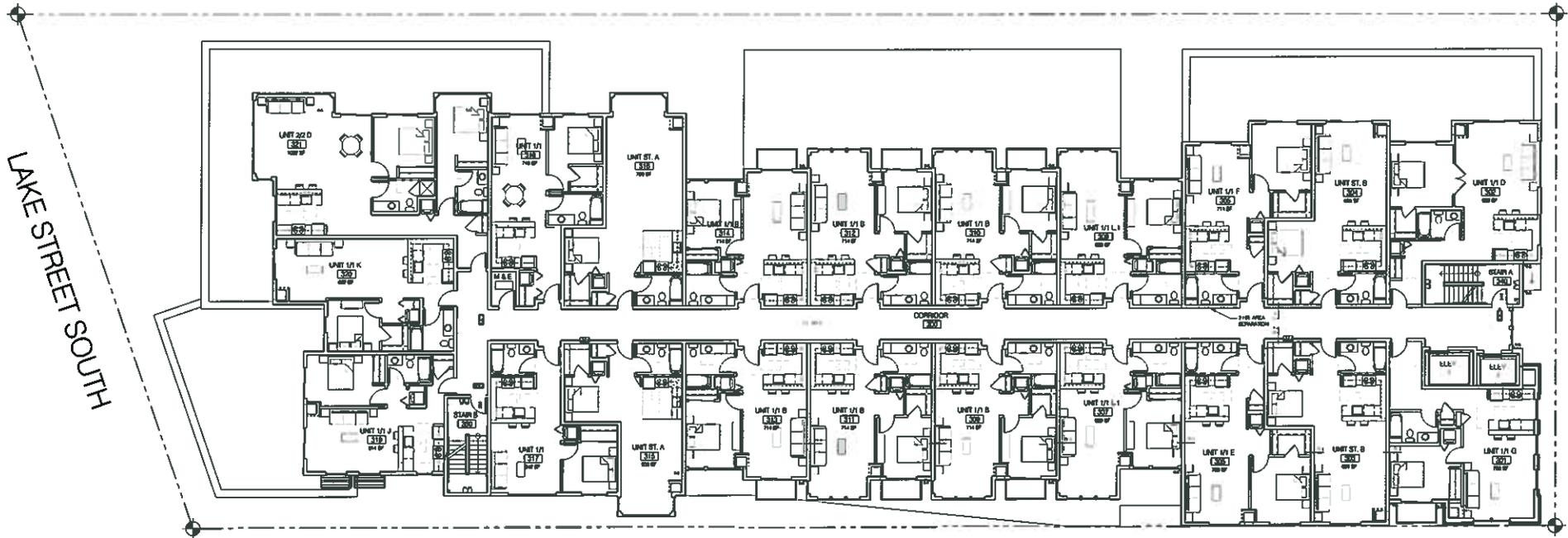


EXHIBIT #2
101 KIRKLAND AVENUE
7/18/08

PLAN: LEVEL L3

SCALE: 1/20" = 1'-0"



KIRKLAND AVENUE

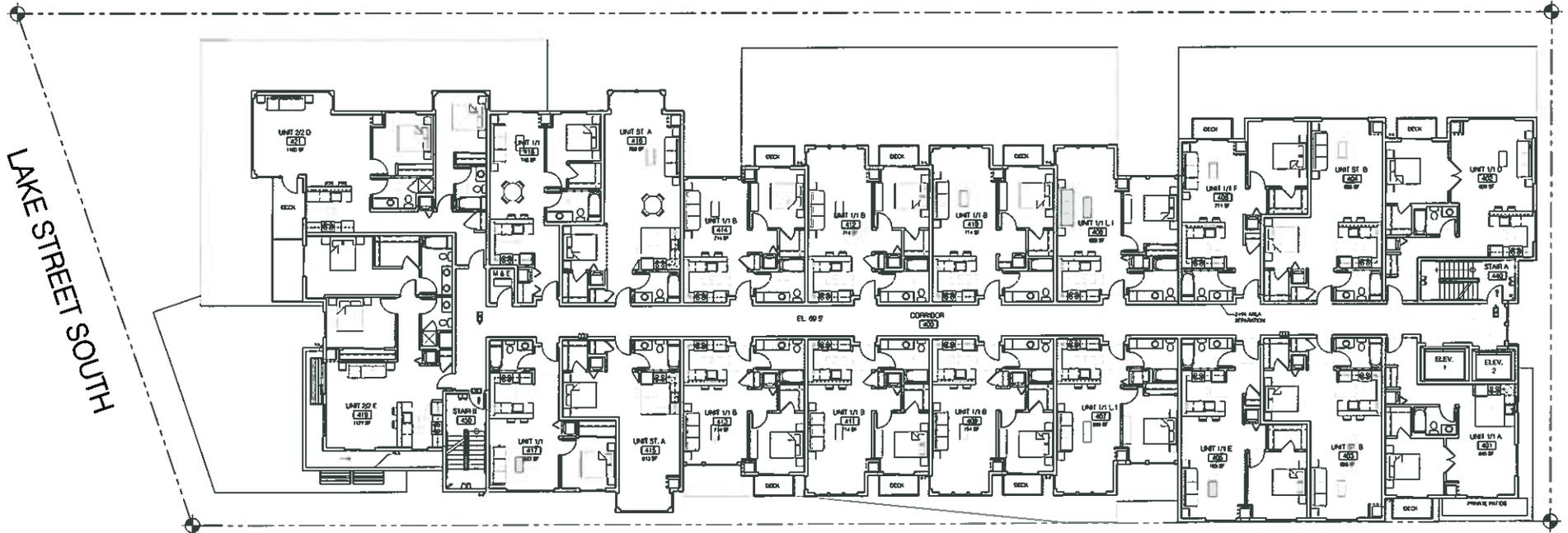


EXHIBIT #2

101 KIRKLAND AVENUE

7/18/08

PLAN: LEVEL L4

SCALE: 1/20" = 1'-0"



KIRKLAND AVENUE

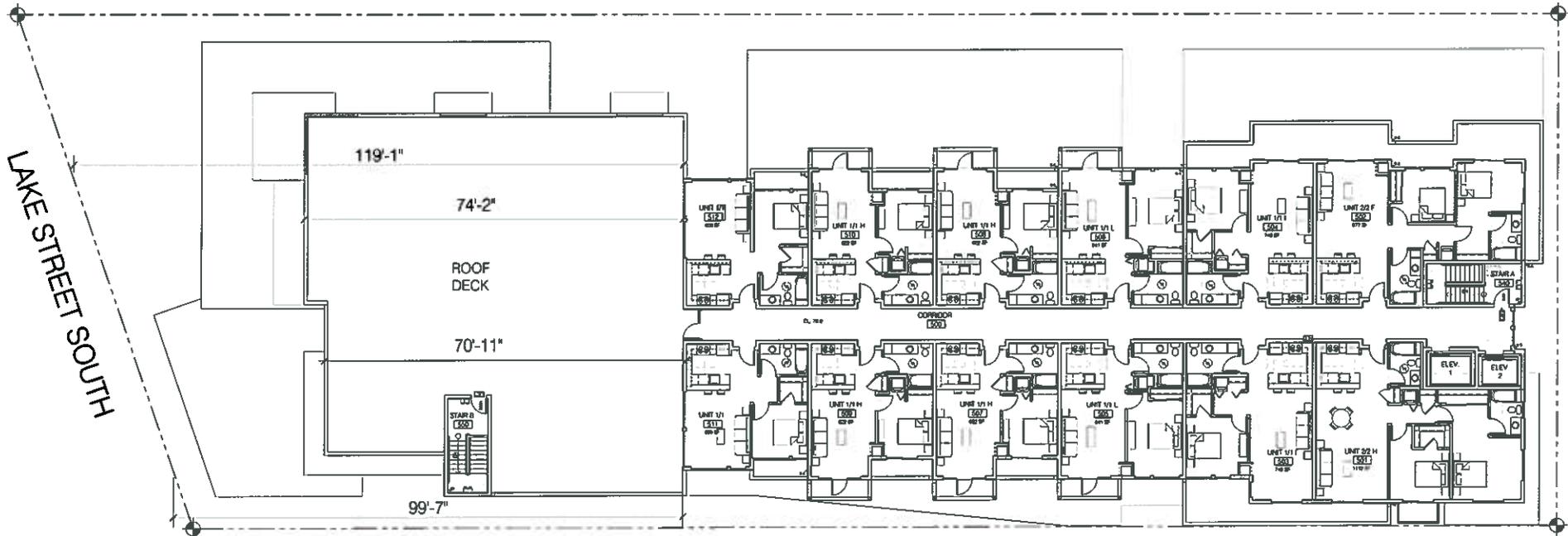


EXHIBIT #2
101 KIRKLAND AVENUE
7/18/08

PLAN: LEVEL L5

SCALE: 1/20" = 1'-0"



EXHIBIT #3

7/18/2008

101 Kirkland Ave.
Setback/Step Back Chart

SETBACKS : the distance from the property line or the curb edge to the face of the building at any given level

STEP BACKS : the distance between the building edge below to the face of a wall above

LAKE STREET FAÇADE

Distance from curb edge to property line: 7'-9"

	Minimum setback from prop line	Maximum setback from prop line	Minimum setback from curb edge	Maximum setback from curb edge	Minimum step back	Maximum stepback
Level 1 & 2	6'-6"	34'-1"	14'-3"	41'-10"	N/A	N/A
Level 3	25'-11"	40'-8"	33'-8"	48'-5"	10'-0"	26'-10"
Level 4	30'-5"	40'-8"	38'-2"	48'-5"	4'-0"	6'-0"
Level 5	99'-7"	119'-1"	107'-4"	126'-10"	70'-11"	74'-2"

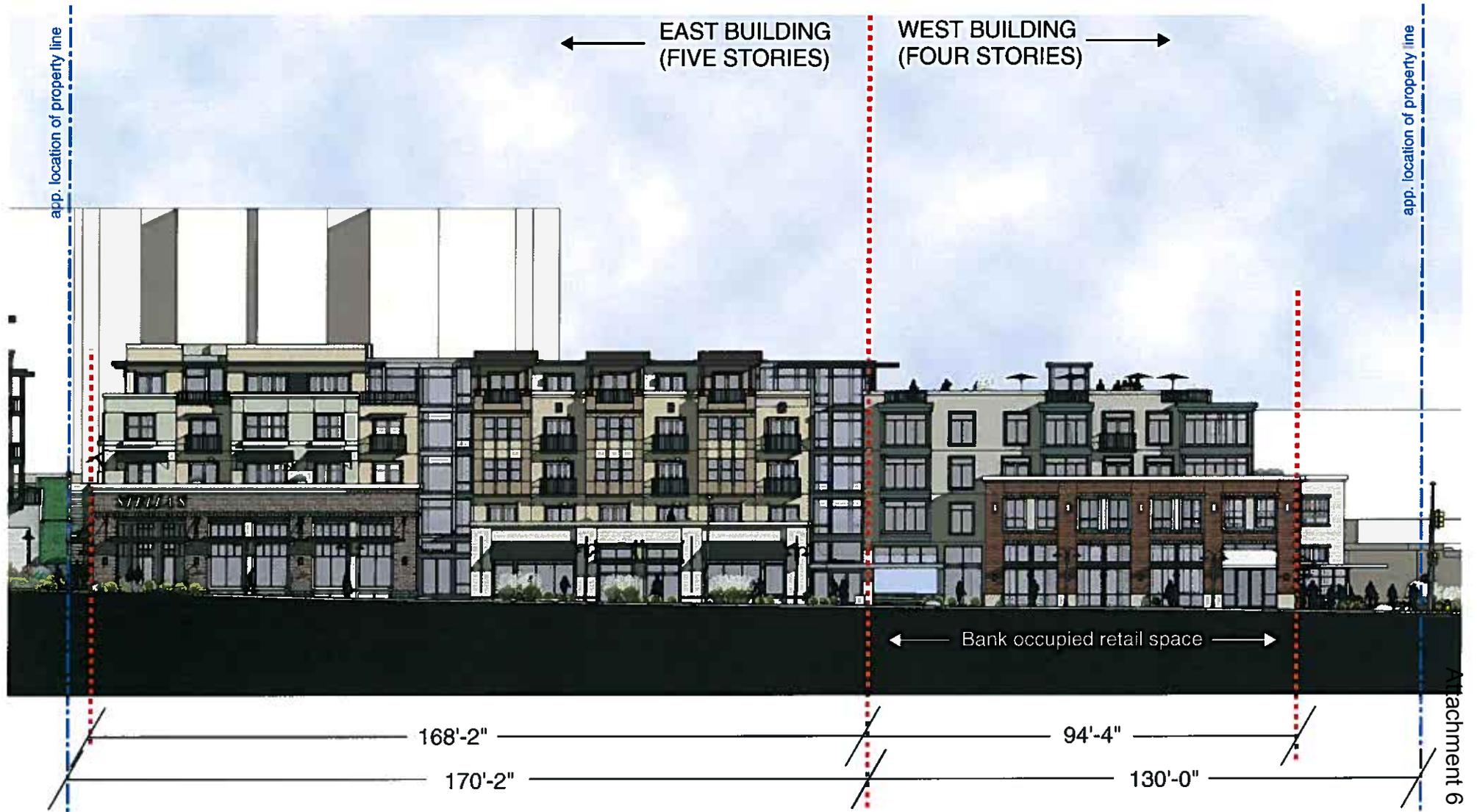
KIRKLAND AVENUE FAÇADE

Distance from curb edge to property line: 7'-9"

	Minimum setback from prop line	Maximum setback from prop line	Minimum setback from curb edge	Maximum setback from curb edge	Minimum step back	Maximum stepback
Level 1	5'-3"	6'-10"	13'-0"	14'-7"	N/A	N/A
Level 2	5'-3"	30'-0"	13'-0"	37'-9"	0	23'-2" center bldg
Level 3	15'-1"	30'-0"	22'-10"	37'-9"	10'-0" west bldg	18'-0" east bldg
Level 4	15'-1"	30'-0"	22'-10"	37'-9"	0	0
Level 5	28'-6"	34'-0"	36'-3"	41'-9"	4'-0" center bldg	7'-8" east bldg

EXHIBIT #4

7.18.08



Attachment 6

Follow-up questions

Questionnaire re: Bank of America/Merrill Gardens
Appeal of Design Review Board
File No. APL08-00001

Submitted by: Citizens for a Vibrant Kirkland (CiViK)
Submitted to: SRM Development LLC
Copies to: J. Richard Aramburu (Counsel for CiViK)
Molly Lawrence (Counsel for SRM)
City of Kirkland staff: Robin Jenkinson, Ellen Miller Wolfe, David
Ramsay, Eric Shields, Janice Soloff; Cheri Aldred, Kathi Anderson

Date submitted: July 23, 2008
Response date: See below

Note: As appellant, we are not sending this directly to the City Council. It needs to be provided to them, however, as part of the total package for the continued hearing on August 5, 2008. Thank you for your assistance.

The attached follow-up questions are being submitted in accordance with the procedures recommended by the City for this interim period between the July 1 and August 5 Council meetings.

As with the initial set of questions submitted on July 11, we have invited the public to contribute questions so that the public could be included as part of the process. Their questions have been incorporated along with ours.

With regard to the response date, our understanding is that the response will be submitted so that it arrives in time to be included in the City Council's packet and that we will receive a copy at the same time as transmitted to the City.

Finally, note that Mr. Aramburu is on vacation and is not able to access his e-mail. Accordingly, please include Bea Nahon (for CiViK) in the cc list of all replies and followup so that your information is received promptly. Her contact information has been provided previously.

Thank you in advance for your attention to the attached and we look forward to your responses.

The questions are on the attached pages, as follows:

1. Parking
2. Rooftop appurtenances
3. Roof deck

July 23, 2008, CiViK to SRM

1. Parking and traffic

These 2 questions were posed in our July 11 submission, but the applicant did not respond. We are asking for the courtesy of complete responses to these questions so as to better understand the functionality of the parking for the project as it relates to the various occupants and uses.

- a. Of the total number of spaces (134, as per the July 18 response), indicate the number of spaces which will be reserved or restricted at any point of the day for the use by the following (if the reserved parking spaces will be available to the general public during part of the day, indicate which spaces and which hours):
 - i. Bank of America
 - ii. The other spaces indicated as Retail or Café
 - iii. Residents of Merrill Gardens
 - iv. Guests of Merrill Gardens
 - v. Merrill Gardens operations

- b. On July 1, you indicated that the Bank will have 40 restricted parking spaces. Previous documents indicated that the Bank needed 16 spaces, which was consistent with 1 space for every 350 square feet. Please explain why the Bank has this increased requirement (i.e. 40 spaces instead of 16 spaces).

July 23, 2008, CiViK to SRM

2. Rooftop Appurtenances

- a. Please provide the plans for the rooftop appurtenances, including location and height. If any variances will be required, please describe in detail as to the amount and nature of the variance, the reason for the variance, the placement, and the additional height.

This question was included in the July 11 submission. The response was that there was no change to the rooftop appurtenance plan and we were asked to refer to the materials submitted to the DRB.

We contacted Planning and we were referred to Slide 28 of the November 2007 DRB packet. We also located information in Slide 10 of the January 2008 DRB packet. However, these slides have a limited amount of summarized data and are not responsive to the question as posed.

Due to the variances which were allowed by the Planning Department and installed by the developer on the adjoining Merrill Gardens property without required notice to the adjacent property owners, there is concern about this current proposal. Please refer to attached correspondence dated June 12, 2008. To prevent this from re-occurring and to provide assurance that appurtenances will be at or below the 4-foot and 10% limitations, the courtesy of responding to this question will be appreciated. If a full plan is not feasible at this time, at least please advise if variances to the height and percentages will be requested.

July 23, 2008, CiViK to SRM

3. Rooftop Deck

Referring to the responses provided on July 18:

- a. The plans for the fifth story (Exhibit 3, L5) and the drawing in Exhibit 4, indicate a stairway structure on the south side of the fifth-story rooftop deck, in the section of the project over the bank's space. Please provide the dimensions for this structure (height, depth, width).

- b. The rooftop deck will require a secure perimeter for the safety of its users. Referring to the drawing in Exhibit 4, as well as to prior drawings submitted to the DRB, it appears that this will be accomplished with a partial wall on the 5th story on the west, south and north sides of the project. Please confirm, or advise if some other design is intended.

Please also indicate the height of the partial wall (or guard rail, etc.)



June 12, 2008

Mr. Al Wilson
108 Second Ave So #301
Kirkland WA 98033

Dear Mr. Wilson,

Re: Merrill Gardens Rooftop Appurtenances at 201 Kirkland Avenue, BLD07-00152

This letter is in response to your email of June 3, 2008 regarding your concerns about the height and massiveness of the rooftop appurtenance screening for the Merrill Gardens project under construction at 201 Kirkland Avenue. I hope this clarifies the decision making process that went into the review and approval of the rooftop screening.

Kirkland Zoning Code Section 115.120 establishes that rooftop appurtenances may exceed the applicable height limitation by a maximum of four feet if the area of all appurtenances and screening does not exceed 10% of the total area of the building footprint. Modifications to allow taller screening or size of area may be approved by the Planning Official if certain criteria are met and noticing to adjacent property owners is given to allow for comment before making a decision.

During the Design Review process the Design Review Board (DRB) reviewed proposed plans for 4' tall screening surrounding the rooftop mechanical units. As a result of public comments expressed to the DRB, concerning the close proximity of the Merrill Gardens building to the Kirkland Central and Portsmouth buildings, a condition of approval of the DRB decision required an acoustical study of the noise levels of the proposed air conditioning vents and other exhaust ventilation systems.

During building permit review an acoustical study (SSA report dated 2/16/07) was submitted and noted that a few of the units would exceed the City of Kirkland nighttime noise limit. The study recommended that the noise mitigation measures be incorporated into the units such as noise barriers installed 2 feet above the top of the particular units, additional thickness in the materials, 2 inch thick duct liner and a silencer.

Based on the recommendations of the acoustical study I approved a modification to allow the additional 2 foot high screening above the applicable units. I acknowledge that I missed a step in the process by not first noticing the property owners and allowing for comment before making my decision. I don't think this would have changed the results; however, I apologize for the oversight.

In response to your email, I contacted the architects to see if there was anything that could be done to lower or reduce the amount of screening and still meet the recommendations of the acoustical study. The architect responded that no there wasn't and that they had made considerable expense in installing the screening as approved.

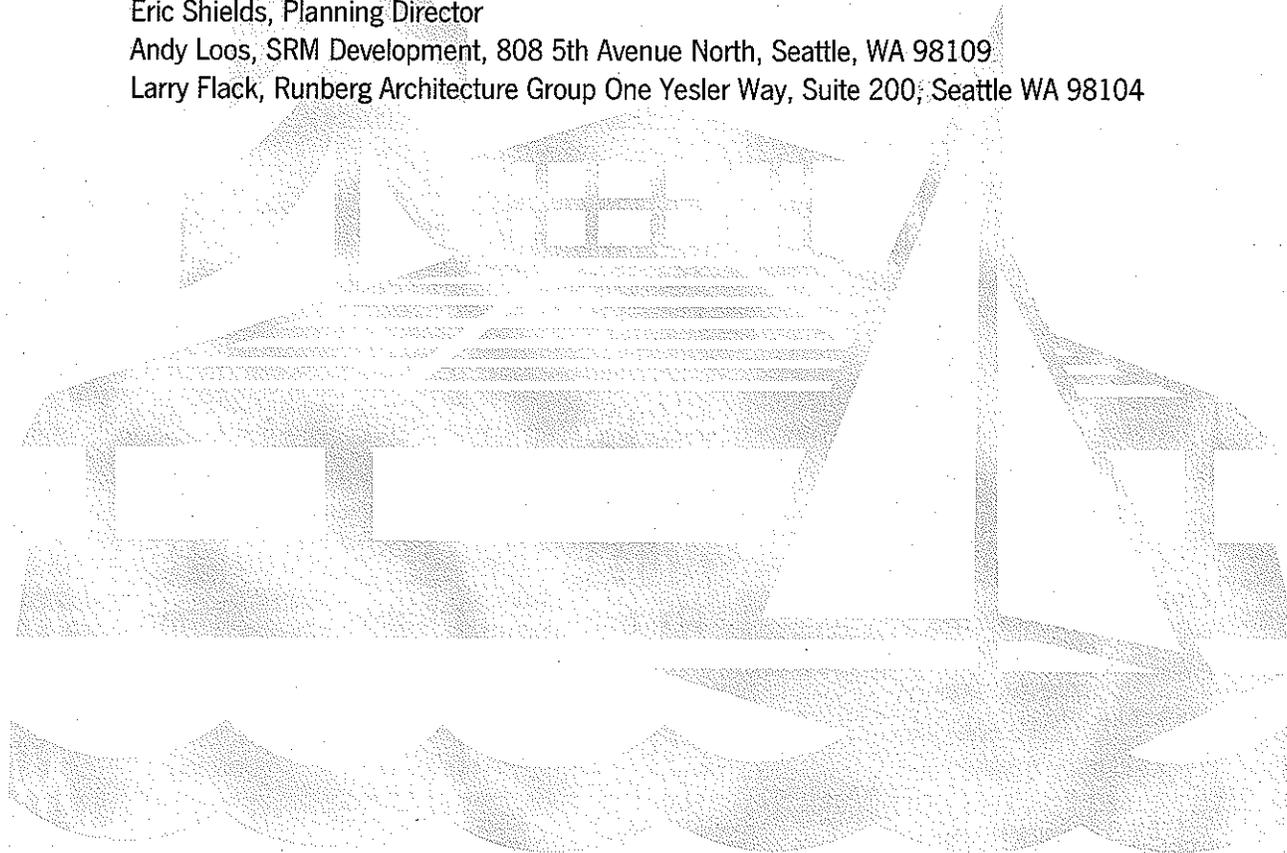
Thank you for bringing this to our attention. In the future, the department will make an extra effort to advise architects to anticipate the size and quantity of mechanical units early on in the design of their projects. We will also assure that proper notice is given when increased height for mechanical units is requested. If you have additional questions about this matter, please feel free to contact me at 425-587-3257 or jsoloff@ci.kirkland.wa.us.

Sincerely,
PLANNING AND COMMUNITY DEVELOPMENT



Janice Soloff, AICP
Senior Planner

Cc: Mayor Jim Lauinger
Dave Ramsay, City Manager
Eric Shields, Planning Director
Andy Loos, SRM Development, 808 5th Avenue North, Seattle, WA 98109
Larry Flack, Runberg Architecture Group One Yesler Way, Suite 200, Seattle WA 98104





July 25, 2008

Ms. Ellen Miller-Wolfe
Economic Development Manager
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

Re: Response to Additional Questions from CiViK
Merrill Gardens/BOA
Appeal of Design Review Board Decision
File No. APL08-00001

Dear Ms. Wolfe:

Enclosed please find SRM Development's response to the supplemental questions submitted by CiViK on July 23, 2008. In addition to these responses, SRM is enclosing additional renderings of the final *modified* design for the Merrill Gardens/BOA Project at 101 Kirkland Avenue. To reiterate, the final *modified* design includes the following components:

- SRM restored the Café to the south corner of Lake Street. The Café is the same size and configuration as originally approved by the DRB.
- SRM restored the drive through to its original location. The drive-through is the same size and configuration as originally approved by the DRB, and includes all of the safety related features required by the DRB.
- By restoring these two design elements, the ground floor of the Project remains the same as the ground floor design originally approved by the DRB. The amount of parking provided remains unchanged from the original DRB approval.
- As explained during the July 1, 2008, Council meeting, SRM revised the Project to increase the step backs between the 2nd and 3rd, 3rd and 4th, and 4th and 5th stories. *See Exhibit 3 for a complete listing of the setbacks and step backs from Lake Street and Kirkland Avenue.*
- In response to the comments during the July 1, 2008 Council meeting, SRM further increased the setbacks and step backs for the 5th story. Under the proposed modified design, the 5th story setback ranges from a minimum of 99'7" to a maximum of 119'1"

measured from the property line (or 107'4" to 126'8" from the curb), and 5th story step back from the 4th story ranges from a minimum of 70'11" to a maximum of 74'2". See *Exhibit 3 for a complete listing of the setbacks and step backs from Lake Street and Kirkland Avenue.*

As we explained in our July 18, 2008, letter, SRM has conceptualized the final modified Project as two independent buildings. As the Council has discussed, the subject property is approximately 300 feet deep and consequently, it should be considered as multiple separate buildings. (This is the case on the north side of Kirkland Avenue.) SRM is proposing to construct only a total of 4 stories over the western building, which contains the bank, drive through and café on the ground floor; and to construct 5 stories over only the eastern building, which contains all superior retail spaces on the ground floor. See *Corrected Exhibit 4*. As a result, no 5th story will be located over any portion of the building containing spaces that the Council has indicated may not qualify as superior retail spaces (i.e., the bank use and the drive through).

As part of this concept, SRM has maintained the public plaza and all of the superior retail space design elements on the western building. In other words, we have continued to provide the necessary design elements to qualify for a 5th story over the western building, but have eliminated the 5th story over that building. Further, SRM has also maintained all superior retail design elements within the eastern building. As depicted by the enclosed renderings, the final Project design as modified will have significantly less visual impact than the neighboring McLeod project, which the Council approved July 15, 2008. See *Exhibit 5*.

We are hopeful that these materials, together with the plan view drawings submitted July 18, 2008, make clear SRM's final proposed modified Project design. Please let us know if anyone at the City has clarifying questions before the August 5, 2008, Council Meeting.

Finally, as we have stated before, SRM is eager to have the Council identify a project design that it will approve for the subject site. During the July 1, 2008, Council Meeting, a motion was made to remand this Project to the Design Review Board (DRB). That motion failed. SRM objects to any further proposal to remand the Project back to the DRB. There is no question under the Kirkland Zoning Code that the Council has the authority to consider and approve a modified Project design. By comparison, the Code does not provide the Council the option to remand this matter to the DRB. KZC 142.40(11)(b). Equally important, absent complete direction from the Council, a remand would be inefficient and unfair. At this point, neither SRM, nor the DRB, yet knows what the Council believes is an approvable design for this site. Thus, SRM reiterates its request that the Council render a final decision regarding the proposed Project as modified. We believe that the proposed Project as modified meets all applicable criteria and, therefore, request that the Council approve this final design.

Thank you very much for your consideration. We look forward to the August 5, 2008, Council Meeting.

Very truly yours,



Molly A. Lawrence

MAL:mal

Enclosures

cc: Bea Nahon, CiViK
Rick Aramburu, Counsel for CiViK
Andy Loos, SRM
Jim Rivard, SRM
Robin Jenkinson, City Attorney

Follow-up questions

Questionnaire re: Bank of America/Merrill Gardens
Appeal of Design Review Board
File No. APL08-00001

Submitted by: Citizens for a Vibrant Kirkland (CiViK)
Submitted to: SRM Development LLC
Copies to: J. Richard Aramburu (Counsel for CiViK)
Molly Lawrence (Counsel for SRM)
City of Kirkland staff: Robin Jenkinson, Ellen Miller Wolfe, David
Ramsay, Eric Shields, Janice Soloff, Cheri Aldred, Kathi Anderson

Date submitted: July 23, 2008
Response date: **July 25, 2008**

Note: As appellant, we are not sending this directly to the City Council. It needs to be provided to them, however, as part of the total package for the continued hearing on August 5, 2008. Thank you for your assistance.

The attached follow-up questions are being submitted in accordance with the procedures recommended by the City for this interim period between the July 1 and August 5 Council meetings.

As with the initial set of questions submitted on July 11, we have invited the public to contribute questions so that the public could be included as part of the process. Their questions have been incorporated along with ours.

With regard to the response date, our understanding is that the response will be submitted so that it arrives in time to be included in the City Council's packet and that we will receive a copy at the same time as transmitted to the City.

Finally, note that Mr. Aramburu is on vacation and is not able to access his e-mail. Accordingly, please include Bea Nahon (for CiViK) in the cc list of all replies and followup so that your information is received promptly. Her contact information has been provided previously.

Thank you in advance for your attention to the attached and we look forward to your responses.

The questions are on the attached pages, as follows:

1. Parking
2. Rooftop appurtenances
3. Roof deck

July 23, 2008, CiViK to SRM
July 25, 2008, SRM's Responses

1. Parking and traffic

These 2 questions were posed in our July 11 submission, but the applicant did not respond. We are asking for the courtesy of complete responses to these questions so as to better understand the functionality of the parking for the project as it relates to the various occupants and uses.

- a. Of the total number of spaces (134, as per the July 18 response), indicate the number of spaces which will be reserved or restricted at any point of the day for the use by the following (if the reserved parking spaces will be available to the general public during part of the day, indicate which spaces and which hours):
 - i. Bank of America
 - ii. The other spaces indicated as Retail or Café
 - iii. Residents of Merrill Gardens
 - iv. Guests of Merrill Gardens
 - v. Merrill Gardens operations

SRM repeats its objection to this question. This question is not relevant to the City's review of SRM's design and consequently we decline to respond. Our intent is not to be evasive. Rather, throughout this process CiViK has attempted to create and apply new, unadopted review criteria. The Kirkland Zoning Code does not include any criteria related to reserved or restricted parking. As a result, this question is not relevant to the City's review.

In any case, as noted in SRM's July 18, 2008, responses to CiViK's questions, the number of parking spaces provided as part of the modified Project exceeds the number of parking spaces required applying the standards used in the parking modification. Specifically, SRM is providing 134 spaces for the Project. Applying the standards used in the parking modification, the modified Project would be required to provide only 124 spaces.

- b. On July 1, you indicated that the Bank will have 40 restricted parking spaces. Previous documents indicated that the Bank needed 16 spaces, which was consistent with 1 space for every 350 square feet. Please explain why the Bank has this increased requirement (i.e. 40 spaces instead of 16 spaces).

SRM repeats its prior answer. There has been no change. In any case, this question is not relevant to the City's review criteria. As explained in SRM's July 18, 2008, responses, the Project complies the City's parking requirements for the Project.

July 23, 2008, CiViK to SRM
July 25, 2008, SRM's Responses

2. Rooftop Appurtenances

- a. Please provide the plans for the rooftop appurtenances, including location and height. If any variances will be required, please describe in detail as to the amount and nature of the variance, the reason for the variance, the placement, and the additional height.

This question was included in the July 11 submission. The response was that there was no change to the rooftop appurtenance plan and we were asked to refer to the materials submitted to the DRB.

We contacted Planning and we were referred to Slide 28 of the November 2007 DRB packet. We also located information in Slide 10 of the January 2008 DRB packet. However, these slides have a limited amount of summarized data and are not responsive to the question as posed.

Due to the variances which were allowed by the Planning Department and installed by the developer on the adjoining Merrill Gardens property without required notice to the adjacent property owners, there is concern about this current proposal. Please refer to attached correspondence dated June 12, 2008. To prevent this from re-occurring and to provide assurance that appurtenances will be at or below the 4-foot and 10% limitations, the courtesy of responding to this question will be appreciated. If a full plan is not feasible at this time, at least please advise if variances to the height and percentages will be requested.

SRM was required to show the general location and screening of rooftop mechanical equipment as part of the DRB process. The final design for the mechanical systems, however, has not yet been determined. (The design of the mechanical equipment is usually completed 3-4 months from now in the process.) No variances have been requested or are anticipated at this time.

Further, SRM requests that the June 12, 2008, letter from the City, referenced above and attached to CiViK's July 23, 2008 submittal, be excluded from the Council packet and record for this proceeding. The City's June 12, 2008, letter concerns a different project and raises a new issue that has never before been raised by the Appellants in this appeal. Per KZC 142.40(7), the scope of this appeal is limited to the issues raised in CiViK's January 31, 2008, appeal letter. That appeal letter contains no references or comments regarding rooftop appurtenances. Consequently, the Appellants are barred from attempting to raise this issue at this late date. The City's June 12, 2008, letter appears to be submitted at this time solely to confuse the Council and further delay this proceeding.

In any case, as explained in the City's June 12, 2008, letter, the modification request for the rooftop appurtenances on the 201 Kirkland Avenue project resulted from a requirement imposed through the design review process for that project. Furthermore, the developer followed the required procedures in requesting approval for that modification.

July 23, 2008, CiViK to SRM
July 25, 2008, SRM's Responses

3. Rooftop Deck

Referring to the responses provided on July 18:

- a. The plans for the fifth story (Exhibit 3, L5) and the drawing in Exhibit 4, indicate a stairway structure on the south side of the fifth-story rooftop deck, in the section of the project over the bank's space. Please provide the dimensions for this structure (height, depth, width).

This has been designed as an open stair. The walls around the stairs are 3' above the roof and the stairs are 9'-2" wide and 16'-2" long. We have enclosed a corrected Exhibit 4 to clarify this.

- b. The rooftop deck will require a secure perimeter for the safety of its users. Referring to the drawing in Exhibit 4, as well as to prior drawings submitted to the DRB, it appears that this will be accomplished with a partial wall on the 5th story on the west, south and north sides of the project. Please confirm, or advise if some other design is intended.

Please also indicate the height of the partial wall (or guard rail, etc.)

That is correct. The average parapet height permitted by the Kirkland Zoning Code is 24", and the building code requires a secure perimeter of 42". The rooftop deck will be surrounded by a combination of open rail and parapet walls as allowed per Code. Open guardrails with no parapet are 42", and the parapets are 36" with a single 6" top rail mounted to the top to meet the code required 42". Overall, the average height of the parapet walls are 2' consistent with the Kirkland Zoning Code.

EXHIBIT #3

7/18/2008

101 Kirkland Ave.
Setback/Step Back Chart

SETBACKS : the distance from the property line or the curb edge to the face of the building at any given level

STEP BACKS : the distance between the building edge below to the face of a wall above

LAKE STREET FAÇADE

Distance from curb edge to property line: 7'-9"

	Minimum setback from prop line	Maximum setback from prop line	Minimum setback from curb edge	Maximum setback from curb edge	Minimum step back	Maximum stepback
Level 1 & 2	6'-6"	34'-1"	14'-3"	41'-10"	N/A	N/A
Level 3	25'-11"	40'-8"	33'-8"	48'-5"	10'-0"	26'-10"
Level 4	30'-5"	40'-8"	38'-2"	48'-5"	4'-0"	6'-0"
Level 5	99'-7"	119'-1"	107'-4"	126'-10"	70'-11"	74'-2"

KIRKLAND AVENUE FAÇADE

Distance from curb edge to property line: 7'-9"

	Minimum setback from prop line	Maximum setback from prop line	Minimum setback from curb edge	Maximum setback from curb edge	Minimum step back	Maximum stepback
Level 1	5'-3"	6'-10"	13'-0"	14'-7"	N/A	N/A
Level 2	5'-3"	30'-0"	13'-0"	37'-9"	0	23'-2" center bldg
Level 3	15'-1"	30'-0"	22'-10"	37'-9"	10'-0" west bldg	18'-0" east bldg
Level 4	15'-1"	30'-0"	22'-10"	37'-9"	0	0
Level 5	28'-6"	34'-0"	36'-3"	41'-9"	4'-0" center bldg	7'-8" east bldg

corrected EXHIBIT #4

7.25.08





NORTH ELEVATION

EXHIBIT #5
101 KIRKLAND AVENUE
FINAL RENDITION OF MODIFIED DESIGN
7.25.08



WEST ELEVATION

EXHIBIT #5
101 KIRKLAND AVENUE
FINAL RENDITION OF MODIFIED DESIGN
7.25.08



SOUTH ELEVATION

EXHIBIT #5
101 KIRKLAND AVENUE
FINAL RENDITION OF MODIFIED DESIGN
7.25.08



EXHIBIT #5
101 KIRKLAND AVENUE
FINAL RENDITION OF MODIFIED DESIGN
7.25.08

AERIAL VIEW
LOOKING SOUTHEAST



EXHIBIT #5
101 KIRKLAND AVENUE
FINAL RENDITION OF MODIFIED DESIGN
7.25.08

AERIAL VIEW
LOOKING SOUTHWEST



EXHIBIT #5
101 KIRKLAND AVENUE
FINAL RENDITION OF MODIFIED DESIGN
7.25.08

AERIAL VIEW
LOOKING NORTHEAST



EXHIBIT #5
101 KIRKLAND AVENUE
FINAL RENDITION OF MODIFIED DESIGN
7.25.08

AERIAL VIEW
WEST ELEVATION

From: Citizens Vibrant Kirkland [mailto:civik_org@hotmail.com]
Sent: Friday, July 25, 2008 5:25 PM
To: Robin Jenkinson; Ellen Miller-Wolfe; Kathi Anderson
Subject: For the Council Packet for the August 5, 2008 City Council Meeting

Following on to a conversation held moments ago with Ellen Miller Wolfe, I have been advised that today is the cutoff for including anything in the packet. While that is not wholly consistent with recent conversations, we are satisfied that with respect to the Q&A pertaining to the potential modified proposal, today's cutoff is acceptable to us.

However, Ms. Lawrence sent in an additional document relating to the events of the July 1 meeting, and my understanding after conversation with Ellen, is that the City will be enforcing a deadline of today with respect to any response to that, as well.

Our attorney is out of town and will not return until after the more customary packet deadline of Wednesday AM. And my office e-mail is unable to connect to the City's for the time being, because of a recent virus which our office computer system experienced. Accordingly, I am using the CiViK e-mail address to send this.

My most immediate concern is to address the "anonymous memo" which Ms. Lawrence has chosen to attach. It is irrelevant and inflammatory, and as a result of first, the City's mis-handling of the memo itself, and now, Ms. Lawrence's attachment of it to her letter, it will now reside forever on the City's website, as part of the online Council agenda packet. Ellen has told me that there is nothing which that can be done about this, which I respectfully disagree with.

My request is one of the following:

- Exclude the letter from Molly Lawrence regarding the July 1 meeting, from the August 5 online Council agenda packet
- Include the letter from Molly Lawrence, but redact the attached anonymous letter
- Include both items, but also include this letter and the item below as well, in the online Council agenda packet for August 5. The letter below was sent out to our supporters on June 9, shortly before the Kirkland Reporter article regarding the anonymous memo. I have removed just one paragraph, which related to fundraising.

I would take more time for a more complete response, but based on what I've heard from Ellen, there is no other choice in order to accomplish the immediate curing of this particular issue.

This should be about a zoning issue, not about mudslinging and potential defamation. Please remember that what goes into the online packet will live forever on Google.

Thank you.

Respectfully submitted,

Bea Nahon for CiViK

Begin pasted material - remember, this was originally written on June 9.

From: civik_org@hotmail.com
To: civik_org@hotmail.com
Subject: Recent News Regarding B of A Appeal
Date: Mon, 9 Jun 2008 21:13:48 -0700

The purpose of this e-mail is to make you aware of events which have taken place over the past week. These events are of great concern to us, and we trust they will be to you, as well. These events include a threat made to a City Council member, and an anonymous letter received by the City containing false allegations and threats to the City.

The matter remains quasi-judicial until the findings are finalized and entered by the City Council. Please do not contact any member of the City Council regarding this matter.

On May 6, the Kirkland City Council voted in support of our appeal of the Bank of America proposal on the corner of Lake Street & Kirkland Avenue. The majority of the Council indicated their agreement with our two greatest concerns, as follows (as quoted from the minutes of the May 6 meeting):

"Motion to direct staff to return to the next regular City Council meeting with a resolution setting forth the findings and conclusions that the development does not contain superior retail that warrants additional height, bulk, mass of the development, nor does it present/meet the requirements of a two story building along Lake Street; to deny the decision of the Kirkland Design Review Board Decision in the matter of the Bank of America/Merrill Gardens Mixed Use Project."

Since May 6, the Council has had two meetings, during which they have discussed the content and text of the findings and conclusions. At their most recent meeting (June 3) they reviewed a staff-prepared draft of the findings, and then continued the matter until their July 1 meeting so as to allow time for the applicant to potentially modify their design and to allow time for possible discussions between the parties.

That is the status of the appeal itself. However, it is the other events that have brought us to send this e-mail message to you.

Threat to a Council member – As this is a quasi-judicial matter, the Council members are asked at the beginning of each session to disclose any communications that they may have had with the parties or others supporting or opposing the appeal. At that point of the June 3 City Council meeting, Council member Tom Hodgson (who had voted in favor of the appeal) stated that he was disappointed to report that a "prominent member of the Kirkland business community" threatened him to change his vote.

We are startled and appalled by this. For anyone to threaten a Council member or any other party to this matter is a chilling reflection of just how much is at stake for some with respect to downtown development.

Anonymous letter – the next evening, late on June 4, a reporter from the Kirkland Reporter told us that he had a copy of an anonymous letter that the City Attorney had received (on May 21) regarding city council campaign involvement by Board members of CiViK and challenging the participation of some Council members in the appeal. We requested and obtained a copy of the letter from the City on the following day.

This letter is yet another indication of how desperate someone is with respect to the appeal outcome. As this letter is anonymous, we cannot determine what the motivation is. However, this much we do know:

- The letter is grossly inaccurate. Nearly all of the statements made in the letter are false, which is particularly infuriating because most of the statements could have – and should have – been fact-checked against the data on the Public Disclosure Commission (PDC) website.
- The letter is incomplete. The letter alleges campaign involvement with regard to the Council members that voted to support the appeal. However, the letter omits any mention of the campaign support that was sought by and provided to Council members who voted against the appeal.
- The letter is irrelevant. Even if 100% of the statements were correct, they would still not be relevant to this matter. The laws of the State of Washington provide rules as to what constitutes violations of the law in these matters, and campaign activities are among the list of items which are specifically exempt. The purpose of this exemption is so that quasi-judicial matters can be heard before elected councils – without this exemption, many aggrieved parties would find themselves without a council to appeal to, or would be reticent to participate in the political process for fear of not having a means of redress should a future concern arise. Additionally, campaign contributions and organizing committees are in no way secret as they are already a matter of public record through PDC filings and information distributed during the campaigns.
- The letter is anonymous. As an anonymous letter, this document should not be receiving attention. Ironically, part of the letter questions CiViK's transparency - a contradictory comment to be contained in an anonymous letter!

As you consider the last bullet point, you must then wonder why we are even alerting you to an anonymous letter. There are two reasons – one, because we suspect that it was this letter which led Councilmember Hodgson and Mayor Lauinger to include statements on June 3 identifying members of their campaign teams, but also, because the Kirkland Reporter has chosen to cover this letter in its reporting of the appeal. We have seen the online edition, and are awaiting the paper edition on Wednesday to see if they will run the same article or a variation thereof.

We are surprised by the Kirkland Reporter's decision to provide coverage of – and a quotation from – the anonymous letter. The newspaper's own policy requires Letters to the Editor to include a name, address and phone number for verification. Had this letter been submitted as a Letter to the Editor, it would have been rejected. Yet, the content of this letter has now been elevated from status as a letter, to status as part of an article.

It has been our experience that the Kirkland Reporter takes pride in reporting activities accurately, stating that "The Reporter values fairness and accuracy." However, by describing the letter as "outlining the relationships between CiViK and Council members" without doing any fact-checking as to the content of the letter, the Reporter has violated its own policy. Had they spent the requisite time to corroborate the letter, they would have learned that the letter did not outline the relationships, instead it fabricated and exaggerated them.

We should also point out that the same article, in describing the McLeod appeal, describes the 12 appellants in that matter as having "10 of whom live in the Portsmouth Condominiums" and "the two other appellants listed are CiViK volunteers." The phrasing and framing might lead one to believe that CiViK had appointed 2 volunteers to serve as part of the McLeod appeal group – however, that is untrue.

We will be following up with the Kirkland Reporter sometime over the coming weeks to discuss our disappointment with this coverage by our local newspaper and more important, in the hopes of establishing better communications going forward.

What can you do?

- Please plan to attend next 2 City Council meetings at 7:30PM on June 17 and on July 1. While the appeal by CiViK is not expected to be on the agenda again until July 1, it is possible that something could occur on June 17 as a result of these most recent events.

Thank you for your support, and thank you for caring about the future of Kirkland and its downtown. It is essential that our dedication to downtown and our determination to allow development to occur within the guidelines and vision of the City's Comprehensive Plan will be stronger than the desperation that is driving these most recent events.

On behalf of CiViK,

Bea Nahon and Jim McElwee

With Windows Live for mobile, your contacts travel with you. [Connect on the go.](#)



July 2, 2008

J. Richard Aramburu
Aramburu & Eustis LLP
Attorneys at Law
720 Third Avenue, Suite 2112
Seattle, WA 98104

Re: Bank of America Project

Dear Mr. Aramburu:

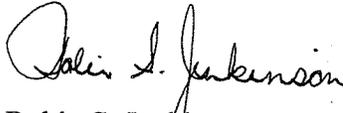
At the Council Meeting last night, the Kirkland City Council discussed whether the City should waive its attorney-client privilege with respect to the confidential memo ("Memo") prepared for the City Council by the City Attorney's Office. As you are aware, four of the seven Councilmembers at the meeting clearly stated that they oppose waiver of the attorney-client privilege. Nevertheless, Councilmember Hodgson provided you with a copy of the Memo, after indicating that he would individually waive the attorney-client privilege.

As you have previously acknowledged, the waiver of the attorney-client privilege is the decision of the client, not the attorney. In this case, the client is the City of Kirkland, a municipal corporation. With respect to corporate entities, the decision of whether to waive the attorney-client privilege must necessarily be taken by individuals empowered to act on its behalf. Commodity Futures Trading Commission v. Weintraub, 471 U.S. 343, 348-49, 105 S.Ct. 1986, 85 L.Ed.2d 372 (1985). At a minimum, an effective waiver of the attorney-client privilege would have required the assent of a majority of the Kirkland City Council. You yourself acknowledged this in your specific and direct request to the Council as a whole that it make the Memo available to you and your clients.

Mr. Hodgson's waiver of the City's attorney-client privilege was unilateral, unauthorized and not an effective waiver. It was clear at the time Mr. Hodgson provided you with the Memo that his attempted waiver was opposed by a majority of the Kirkland City Council. Accordingly, the City requests that you do the following: (1) return the Memo that Mr. Hodgson provided you last night to me; (2) destroy any electronic or paper copies of the Memo that you have made in the meantime; and (3) disclose the identity of anyone to whom

you have provided copies of the Memo. I would appreciate it if you can confirm that you have taken these steps by the end of day tomorrow.

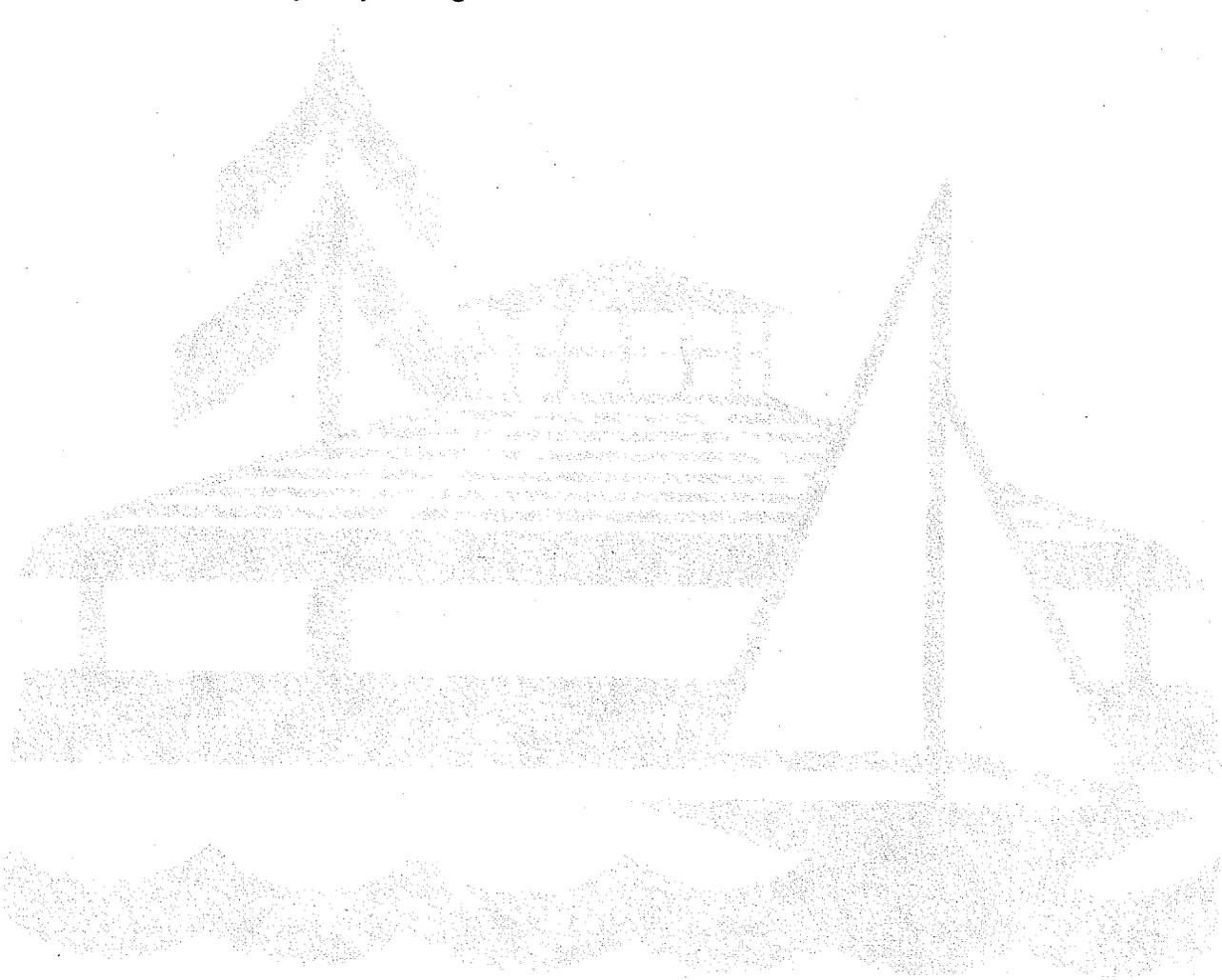
Sincerely,



Robin S. Jenkinson
City Attorney

Enclosure

cc: City Council
Dave Ramsay, City Manager



J. RICHARD ARAMBURU**JEFFREY M. EUSTIS****Attorneys at Law**

Suite 2112, Pacific Building

720 Third Avenue

Seattle Washington 98104

Telephone: (206) 625-9515

Fax: (206) 682-1376

FAX COVER SHEET***DO NOT "REPLY" TO THIS EMAIL ADDRESS!*****To: Robin Jenkinson, Kirkland City Attorney**

FAX NO.: (425) 587-3025

Email: Rjenkinson@ci.kirkland.wa.us

CC: Molly Lawrence

Fax No.: 206-626-0675

Email: mlawrence@gordonderr.com

From: J. Richard Aramburu

Date: July 7, 2008

Client/Matter: Appeal of SRM application

DOCUMENTS	NUMBER OF PAGES*
Letter re memo	2

COMMENTS:

Original will follow by messenger.

DO NOT REPLY TO THIS EMAIL ADDRESS!

If you received this message via email and wish to reply, please reply by fax to (206) 682-1376 or be certain your e-mail response is to one of the following addresses:

rick@aramburu-eustis.com | eustis@aramburu-eustis.com

pat@aramburu-eustis.com | kathy@aramburu-eustis.com | carol@aramburu-eustis.com

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* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT 206-625-9515.

ARAMBURU & EUSTIS LLP**Attorneys at Law**

720 Third Avenue, Suite 2112
Seattle, Washington 98104
(206) 625-9515
Fax: (206) 682-1376

July 7, 2008

Robin Jenkinson
City Attorney
City of Kirkland
123 Fifth Avenue
Kirkland WA 98033

Dear Robin:

I have received your letter dated July 2, 2008, which I did not see until the next day, July 3. As I communicated to you via e-mail on July 3, my schedule on that day did not permit me to respond and I committed to responding to you on Monday, as I am now doing.

I do not agree with the points that you have raised with respect to privileged communications. However, to focus this matter on the merits, CiViK responds to your three requests as follows:

1. My client has asked that we return the memo to Mr. Hodgson, as he was the one who provided it to us. It is being sent via legal messenger to his office address.

2. Regarding your request to destroy any electronic or paper copies of the memo, I have done so as has the one other recipient (see item 3).

3. You have asked me to disclose the identity of anyone to whom I have provided copies of the Memo. I requested the same of you in my letter of June 24 ("identification of all persons who received a copy of the items identified and the date such copy was provided") and in your response of June 30, you declined to provide this information. That stated, I will respond to your question and inform you that a copy of the memo was provided to my client on July 2. The recipient was only one person, Bea Nahon. Ms. Nahon affirms that she has not provided a copy of the memo to anyone by any means, and further, Ms. Nahon affirms that she has also destroyed any electronic or paper copies of the memo.

We now ask that you also provide the same courtesy and respond to my inquiry of June 24 and identify all persons who have been provided with a copy of this memo or information regarding its substance. This request also extends to David Ramsay or

July 7, 2008

Page 2

other staff members as well as any other recipients who have been provided with the memo via electronic or paper means or have been made privy to the contents of the memo. Please also inform us whether the substance of the memo was discussed in executive session and if so when.

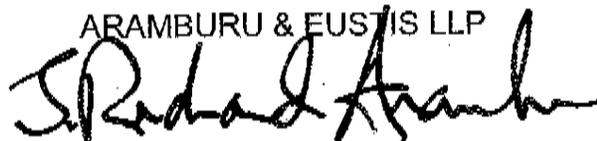
We repeat our objections to your submission of this memo to the Council. We should have been informed that the memo was given to the Council, provided with the opportunity to review and comment upon it and to rebut it at the time it was presented to the Council. As also noted to you previously, there is no reason for secrecy. This memo constituted a private ex parte communication between you and the Council, which is contrary to the City ordinance (KZC 142.40) and the rules for this appeal hearing. You, Molly Lawrence and I discussed the process for the appeal, and we all agreed as to the submissions that would be delivered to the Council and there was no mention of ex parte communications from you. This agreed process was appropriate in the context of the Ordinance and its rules for Appeals of Design Review Board Decisions.

Any memo regarding "litigation risks" is inappropriate when prepared and submitted to the Council before any testimony or evidence is presented and without opportunity for parties to rebut its content. CiViK still has not had an opportunity to rebut the contents of your memo. This goes to the heart of the matter, namely for the parties to have a fair and unbiased hearing, decided on the merits of the case and the evidence presented, and not diverted or influenced by unfounded fears or one-sided argument. Further, all of the Council's deliberations must be conducted in open air with testimony and evidence that is available for all to see, in accordance with the rules for a quasi-judicial, open-record hearing. Under Washington law, there is no claim for damages where an applicant buys property, as here, in the middle of an ongoing, highly contested legal matter; any risk is reflected in the purchase price and the city is not the guarantor of land speculation. Further, there is no Washington caselaw that assesses damages where an applicant voluntarily seeks to gain bonus development rights through a discretionary procedure such as here (request for a fifth floor).

While I have returned the documents to Mr. Hodgson and all copies have been destroyed, I am not waiving the right to re-request this document and my objections to its use continue as stated above.

Sincerely yours,

ARAMBURU & EUSTIS LLP



J. Richard Aramburu

JRA:cc

cc: Molly Lawrence
CIVIK



July 8, 2008

J. Richard Aramburu
Aramburu & Eustis LLP
Attorneys at Law
720 Third Avenue, Suite 2112
Seattle, WA 98104

Re: Bank of America Project

Dear Rick:

I write in reply to your letter to me dated July 8, 2008. Thank you for agreeing to return the attorney-client privileged memo prepared for the City Council by the City Attorney's Office.

You have asked that I provide you with information about the executive session discussion which I declined to do in my letters of June 16 and June 30, because the discussion was subject to the attorney-client privilege. You also asked who was provided with the attorney-client privileged memo. The memo was provided to the City Council, City Manager, Planning Director, and recently, outside counsel for the City.

Contrary to your assertion that all of the Council's deliberations must be conducted in public, the Open Public Meetings Act, Chapter 42.30 RCW, does not apply to: "[t]hat portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group;" RCW 42.30.140(2). While the City Council has not chosen to do so, it could legally deliberate outside of public view.

Sincerely,

A handwritten signature in black ink that reads "Robin S. Jenkinson". The signature is written in a cursive style.

Robin S. Jenkinson
City Attorney

cc: City Council
Dave Ramsay, City Manager
Molly A. Lawrence



July 25, 2008

Ms. Robin Jenkinson
City Attorney
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

Re: Merrill Gardens/BOA
Appeal of Design Review Board Decision
File No. APL08-00001

Dear Ms. Jenkinson:

I am writing to register SRM Development's concerns and objections regarding the events at the July 1, 2008, Council Meeting. The events of that meeting were unusual and indeed unprecedented in my ten years as a land use attorney in the region. As SRM has stated throughout this appeal, we remain committed to identifying an approvable design for the subject property through the current process. Prior to proceeding to the August 5, 2008, Council Meeting, however, we believe that it is appropriate to document our objection to the events of July 1, 2008.

1. *Disqualification and Recusal of Councilmember Hodgson.*

SRM requests that Councilmember Hodgson be disqualified and abstain from any further participation in the City's consideration of the Merrill Gardens/BOA Project or this appeal. During the June 3, 2008, Council meeting, Councilmember Hodgson disclosed for the first time his prior relationship with key members of CiViK. At that time, SRM accepted Councilmember Hodgson's assertion that he could remain impartial and unbiased in his consideration of this appeal. His behavior during the July 1, 2008, Council meeting, however, demonstrated that he is not operating in an objective and unbiased manner.

During the July 1, 2008, hearing, Councilmember Hodgson repeatedly stated that he believed this appeal process had been unfair to the Appellants. He first stated: "My problem here is that I think the process here has been unfair to the appellant throughout." A few minutes later, he again reiterated that he believed the entire process had been "extremely unfair" to CiViK. He did not, however, explain in what way he believed the process had been unfair. Despite objections from four other Council Members, Councilmember Hodgson thereafter

handed to Richard Aramburu, legal counsel for CiViK, one or more attorney-client privileged City memorandum regarding the subject appeal.

Based on his remarks and actions, SRM believes that Councilmember Hodgson has not been impartial or objective in this proceeding. *See e.g., Chrobuck v. Snohomish Cty*, 78 Wn.2d 858, 870, 480 P.2d 489 (1971) (“the unfortunate combination of circumstances . . . and the cumulative impact thereof inescapably cast an aura of improper influences, partiality and prejudgment over the proceedings thereby creating and erecting the appearance of unfairness. . . .”). His relationship with CiViK and his apparent belief that the proceeding has been biased has unquestionably colored his judgment with regard to this matter. Consequently, he should be prohibited from participating further in this appeal *in any manner*; he should be prohibited both from voting and from participating in any further discussions or deliberations regarding this matter. *See e.g., Buell v. City of Bremerton*, 80 Wn.2d 518, 525, 495 P.2d 1358 (1972) (participation by a potentially affected planning commissioner tainted the entire proceeding); *Hayden v. City of Port Townsend*, 28 Wn.App. 192, 197, 622 P.2d 1291 (1981).

Moreover, we do not believe that this is an appearance of fairness objection that can be cured through a disclosure pursuant to RCW 42.36.060. Not only does Councilmember Hodgson *appear* to be biased and partial, but it seems that his opinions regarding this proceeding have actually colored his ability to treat the two parties equally and objectively. RCW 42.36.110; *see e.g., Smith v. Behr Process Corp.*, 113 Wn.App. 306, 340, 54 P.3d 665 (2002), (due process requires disqualification of a decision maker whose impartiality may reasonably be questioned). As noted above, SRM would very much like to this proceeding to result in a final decision not subject to challenge on procedural grounds. Further participation by Councilmember Hodgson in any manner risks rendering any resulting decision void.

2. Due Process Violation.

SRM would also like to object on the record to the City providing materials to CiViK regarding this appeal that it has refused to provide to SRM. As noted above, immediately after declaring this appeal process unfair to CiViK, Councilmember Hodgson handed to CiViK’s legal counsel copies of one or more memorandum related to the City’s legal analysis of the subject appeal without also providing copies to SRM. SRM acknowledges that these memoranda may be subject to the attorney-client privilege, and that Councilmember Hodgson’s unilateral actions to disclose those attorney-client communications may not have been an effective waiver of the privilege. But the fact remains that CiViK has been provided access to materials relevant to this appeal proceeding that have been denied to SRM. This is a due process violation.

The City’s request that CiViK return the memoranda does not cure this due process problem. CiViK’s legal counsel and at least one member of CiViK reviewed the memoranda before returning them to Councilmember Hodgson. SRM does not wish to belabor the point, but it is the unavoidable conclusion that CiViK has been provided an unfair advantage in these proceedings. The only way to fully remedy this unfairness is to provide SRM with an equal opportunity to review the memoranda provided to CiViK.

3. Disclosure of "Anonymous Memo."

We have enclosed with this letter a copy of the anonymous memorandum that sparked Councilmember Hodgson's behavior during the July 1, 2008, Council meeting. SRM Representative, Andy Loos, received a copy of this anonymous memorandum in an unmarked envelope on May 22, 2008. SRM had absolutely no part in the creation or dissemination of this memorandum. We did not give it much weight, and now, as then, SRM chooses not to object to the participation of Mayor Lauinger, Councilmember Hodgson or Councilmember Greenway on its basis. Further, we fundamentally disagree with CiViK's objections to the City's handling of this memorandum. Nevertheless, we believe that it should be included in the record for these proceedings to address any perceived appearance of fairness concerns.

Please contact me if you have any questions or comments regarding this letter. Also, to the extent possible, please let both parties know in advance of August 5, 2008, whether Councilmember Hodgson intends to participate regarding this matter at the August 5, 2008, Council meeting.

Very truly yours,



Molly A. Lawrence

MAL:mal

cc: Andy Loos, SRM
Rick Aramburu, Counsel for CiViK
Bea Nahon, CiViK

Staff note: Anonymous letter enclosure is not included in Council packet

ARAMBURU & EUSTIS, LLP**Attorneys at Law**

720 Third Avenue, Suite 2112
Seattle, Washington 98104
(206) 625-9515 Fax: (206) 682-1376

May 16, 2008

Kirkland City Council
123 Fifth Avenue
Kirkland, WA 98033

Re: 101 Kirkland Avenue SRM Proposal

Dear Council Members:

As you are aware, this office represents CiViK in this appeal of the Design Review Board decision regarding the SRM/101 Kirkland Avenue proposal.

We have received by mail a letter from the lawyer for SRM regarding this project and requesting Council action. This letter should not be considered or reviewed by the Council for the reasons set forth below.

As councilmembers will recall, the Council closed the hearing portion of this appeal in the late evening of May 6, 2008. The Council then began deliberations leading to the introduction and adoption of motions which resolved this appeal. The Council requested staff to prepare findings and conclusions for presentation at the next (May 20) council meeting.

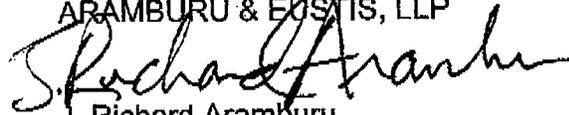
As the Council has closed the hearing, there is no further opportunity for additional presentations. Further, the hearing rules as agreed by the parties do not allow further submission after the close of the hearing, especially following council motions. Indeed, at the earlier hearing the submissions of materials by the parties was specifically restricted by the Mayor as presiding officer. Accordingly, the Council should disregard this letter and strike it from the record.

This letter is clearly an attempt to delay or prevent the Council's entry of its decision. Further, it asks the Council to review an alternative design proposal without the benefit of public input, as this matter remains quasi-judicial. This is not in the best interests of the City, the Council and the citizens. If the applicant has an alternate proposal, the City of Kirkland has process to accommodate this. The decision should be entered as decided by the City Council on May 6, 2008, and the applicant can, if it chooses, promptly submit an alternate proposal to the City.

Though the letter is clearly out of order, if the Council does decide to accept and review this letter, then CiViK requests an opportunity to respond to the positions taken by SRM.

Thank you in advance for your consideration of our position.

Sincerely yours,
ARAMBURU & EUSTIS, LLP



J. Richard Aramburu

JRA/km

cc: Client
Robin S. Jenkinson
Molly A. Lawrence

ARAMBURU & EUSTIS LLP
ATTORNEYS AT LAW
720 THIRD AVENUE, SUITE 2112
SEATTLE, WASHINGTON 98104
(206) 625-9515 • FAX (206) 682-1376

May 19, 2008

The Honorable James Lauinger, Mayor
The Honorable Joan McBride, Deputy Mayor
Ms. Robin Jenkinson, Kirkland City Attorney
Members of the Kirkland City Council
123 Fifth Avenue
Kirkland, WA 98033

Re: May 20, 2008 Agenda Item 9a, Continuation of Public Hearing re
Appeal Case APL08-0001, Resolution R-4707, Bank of America
Appeal

Dear Mayor Lauinger, Deputy Mayor McBride, Ms. Jenkinson and
Members of the Kirkland City Council:

This office represents Citizens for a Vibrant Kirkland ("CIVIK"). On Thursday May 15, 2008, we received the Memorandum of Robin Jenkinson, City Attorney, together with the proposed language for Resolution R-4707, the proposed Findings, Conclusions and Decision in the above-referenced matter.

We recognize that the record is now officially closed and that further arguments or submissions would not be appropriate from either party. Honoring that direction, the sole purpose of this letter is to bring to the Council's attention significant errors in the Resolution and attached Exhibit A as proposed for their approval and signature. We ask for the Council's due consideration and correction of each of these errors prior to executing the resolution and we thank the Council for their attention to these matters.

To assist the Council in its review, CIVIK has prepared a transcript of the deliberation portion of the Council meeting on May 6, commencing when the Mayor closed the hearing and ending at adjournment. That transcript is attached hereto.

May 19, 2008

Page 2

If the errors were limited to scriveners' errors, a simple memo or an e-mail to City Attorney might have sufficed. However, we are alarmed to find that this document includes findings which were neither introduced nor deliberated by the Council, along with omissions of findings and deliberations which are material to the motion that was passed by the Council on May 6.

The two items of most serious concern in the draft findings are the following:

1) **"Superior Retail."** As drafted, the implication of Resolution R-4707, Exhibit A, Section IV is that the mere removal of the drive-through, and that alone, would allow the project to achieve the criteria for superior retail. Section IV has completely ignored the Council's discussion about the design of the total space as a bank, which was also essential to its decision.

2) **"Two Stories on Lake Street."** As drafted, Exhibit A, Section 5.6 and related following sections, provide that a total setback of just 20 feet on the 3rd story and on the 4th story, would create a two-story building on Lake Street. Moreover, the staff memo presents a new criteria (two times the height of the second story) which was never mentioned by the Council (or in the DRB's Notice of Decision) during its deliberations. This is not consistent with the Council's deliberations nor with the motion that was passed by the Council.

As noted in the City Attorney's memo of May 14, the staff were tasked to "faithfully capture the rationale for the Council's decision based upon its review of the Council's deliberation." This is an appropriate charge to the staff. It is imperative that this document reflect the Council's deliberations completely and accurately. The findings need to thoroughly cite to the evidence that supports the Council's decision. We are extremely concerned about the content of the draft resolution and supporting exhibit and ask that the Council consider each of these points and correct the findings accordingly.

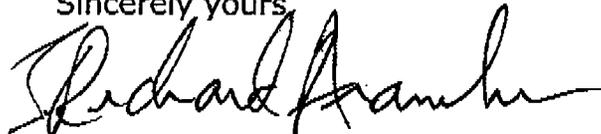
May 19, 2008
Page 3

We apologize for not having this letter and related documents delivered to you sooner, however, the timetable was not within our control. On May 7, 2008, this office sent an e-mail to the City Attorney indicating that we would appreciate receiving a copy of the draft findings in advance of the upcoming May 20 Council meeting. On May 8, we were notified that we would receive the findings when they were provided to the City Council on Thursday, May 15. Upon receiving the documents on May 15 and noting various errors, we proceeded to prepare the attached verbatim transcript of the Council's deliberations to provide certainty not only as to our recollection of the hearing, but also to provide supporting documentation for the City Council's reference. That transcript was completed today.

Please further note that this letter is in addition to our letter dated May 15, 2008, which was transmitted to the City Council in response to the letter from Molly Lawrence of Gordon Derr dated May 13, 2008 and received by our office on May 14. We assume that the Council has received our May 15 letter and is aware of the objections that we have raised to the applicant's submittal of supplemental materials subsequent to the close of the hearing.

Thank you in advance for your consideration of these matters.

Sincerely yours



J. Richard Aramburu

JRA/py

cc: Molly Lawrence
Robin Jenkinson
CIVIK

Enclosure: Verbatim Transcript of Council's Deliberations, May 6, 2008

**Resolution R-4707 and Exhibit A
May 20, 2008**

Errors in Resolution Draft

Resolution R-4707

The second "whereas" includes a reference to December 17, 2007 which is an incorrect month and year. The correct date should be January 17, 2008. Please also see item 2 under Procedural Findings, below.

I. PROCEDURAL FINDINGS

1. The Findings should recite the actual motion that was passed by the Council.

This could be done as an insertion in Section I, Procedural Findings, as the next to last item. *Please see Verbatim Transcript, Page 52, top of page, motion by Councilmember Asher.*

Suggested insertion as follows:

1.8 The City Council's motion reversed the Design Review Board's decision, denying the application, and directed staff to return to the next regular City Council meeting with a resolution setting forth findings and conclusions that: 1) the development does not contain superior retail that warrants the additional height, bulk, and mass of the project; and 2) the project does not present/meet the requirements of a two-story building along Lake Street South. *May 6 proceedings.*

The existing Section 1.8 would be renumbered as Section 1.9.

2. Incorrect date.

As currently drafted, item 1.2 reads:

1.2 On December 17, 2007, the Kirkland Design Review Board issued its decision granting design review approval to the Bank of America project. *Design Review Board Decision.*

The DRB's final meeting and approval occurred on January 7, 2008 and the Notice of Decision was dated January 17, 2008.

Suggested correction as follows:

1.2 On January 7, 2008 the Kirkland Design Review Board voted to approve the project subject to conditions and issued its decision dated January 17, 2008 granting design review approval to the Bank of America project. *Design Review Board Decision.*

II. APPEAL FINDINGS

1. Reference to KZC 50.12.030 in Section 3.1 should be deleted.

As currently drafted, the provision reads:

3.1 The Central Business District (CBD) 1 zone permits two to five stories for attached or stacked dwelling units. *CBD 1 Use Zone Chart; KZC 50.12.030; KZC 50.12.080.*

KZC 50.12.030 is the provision for hotels and motels, which is not relevant to this case.

Suggested correction as follows:

3.1 The Central Business District (CBD) 1 zone permits a maximum height of structure of two to five stories above each abutting right of way for attached or stacked dwelling units. <i>CBD 1 Use Zone Chart KZC 50.12.080.</i>

2. As drafted, Exhibit A properly notes in Section 3.5 that “Buildings should be limited to two stories along all of Lake Street South to reflect the scale of development in Design District 2.” However, in 3.6 the reference to the scale of development in Design District 2 is not entirely correct.

As currently drafted, the provision reads:

3.6 The scale of development in Design District 2 is buildings of two to three stories or lower. *Downtown Plan, page XV.D-12, Design District 2.*

However, the height limit in Design District 2 ranges from a maximum of one to three stories with the three-story potential permitted only south of 2nd Avenue South, which is a full block south of the subject property. That is, the scale of development in Design District 2 is buildings of two stories or lower from Central Way to Second Avenue South .

Suggested correction as follows:

3.6 The scale of development of buildings in Design District 2 is a maximum height of one to three stories. The scale of development in Design District 2 across from the subject property is a maximum height of two stories. <i>Downtown Plan, page XV.D-12, Design District 2.</i>

3. As drafted, Section 3.8 omits the Downtown Plan from the list of documents which include requirements for the design of retail space. The Downtown Plan should be added to this list.

As currently drafted, the provision reads:

3.8 The requirements for the design of retail space are established in the Zoning Code regulations for CBD 1, Design Regulations of KZC Chapter 92, and the Design Guidelines for Pedestrian Oriented District Standards.

Suggested correction as follows:

3.8 The requirements for the design of retail space are established in the Zoning Code regulations for CBD 1, Design Regulations of KZC Chapter 92, the Downtown Plan, and the Design Guidelines for Pedestrian Oriented District Standards.

4. As drafted, Section 3.11 only provides partial information about the proposed setbacks in the proposal. It provides information about the setback from the street, but not about the setback from the 2nd story itself.

As currently drafted, the provision reads:

3.11 Along Lake Street South stories above the second story are proposed to be set back between 14'3" and 34'8" feet from the street. *Exhibit 201, Final Setbacks Levels 3-4.*

This section should be expanded to provide the measurements of the setbacks from the 2nd to the 3rd story, and should also note that there is no additional setback from the 3rd to the 4th story.

Suggested correction as follows:

3.11 Along Lake Street South stories above the second story are proposed to be set back between 15'4" and 32'3" feet from the street. The amount of setback along Lake Street South from the 2nd to the 3rd story is proposed to be between 14'3", 25'1" and 34'8". There is no setback proposed from the 3rd to the 4th story. *Exhibit 201, Final Setbacks Levels 2 and Levels 3-4.*

5. Section 3.13 has added text which was not a part of the DRB Decision document.

The words which were added are "making the bank the largest retail tenant in the building." Those additional words serve to bestow unearned retail status to the bank.

This section should be changed to reflect the actual text of the DRB Decision document – which also sets forth the sizes of the other proposed retail spaces.

As currently drafted, the provision reads:

3.13 The four proposed retail spaces range in size from approximately 880 square feet for a café to approximately 5,720 square feet for the bank, making the bank the largest retail tenant in the building. *Design Review board Decision, 111.A, Retail Size, page 2.*

Suggested correction as follows:

3.13 The four proposed retail spaces range in size from approximately 880 square feet for a café to 2,365 SF and 2,450 SF for spaces along Kirkland Avenue and approximately 5,720 square feet for the bank. *Design Review board Decision, 111.A, Retail Size, page 2.*

6. The document should include a reference to the desired mix of retail establishments that is elaborated in the Downtown Plan.

Suggested insertion of new section, possibly between what is currently items 3.20 and 3.21:

Restaurants, delicatessens, and specialty shops, including fine apparel, gift shops, art galleries, import shops, and the like constitute the use mix and image contemplated in the Vision for Downtown. These uses provide visual interest and stimulate foot traffic and thereby provide opportunities for leisure time strolling along Downtown walkways for Kirklanders and visitors alike. *Downtown Plan, Page XV, D-4.*

7. One criteria of the Downtown Plan discussed by the Council, specific to Design District 1B, is not mentioned.

The following provision should be added (possibly between items 3.4 and 3.5), and the section renumbered accordingly.

Suggested addition as follows:

South of Kirkland Avenue, building forms should step up from the north and west with the tallest portions at the base of the hillside to help moderate the mass of large buildings on top of the bluff. *Downtown Plan, Page XV.D-10*

III. CONCLUSIONS AS TO SUPERIOR RETAIL SPACE

As drafted, this section properly includes references to the drive-through and those provisions should remain.

However, the section has omitted most of the Council's expressed reasons for denying the additional height for the "superior retail" bonus. The Council considered the entire body of evidence (e.g. the testimony by retail expert Stephen Stephanou along with his letter of rebuttal, the various exhibits presented by CiViK, as well as the testimony of CiViK's representatives) in reaching its decision.

The omission of this part of the deliberation implies that solely by removing the drive-through, the proposal would meet the superior retail criteria, which is not consistent with the deliberations of the City Council as expressed in the transcript.

In reaching its decision, the Council deliberated and considered that the space was designed to be a bank. These factors were part and parcel of their decision. By example, please refer to the following comments:

Jessica Greenway Pages 24-25, Page 32, Pages 44-45
Mayor Lauinger Pages 28-29
Tom Hodgson Page 22, Page 29, Page 46

In order to effect these changes, the following revisions and additions are suggested:

1. Change existing Section 4.4 to delete the concluding phrase "and the proposed building does not warrant the additional height, bulk and mass of a fifth story." This phrase denotes a conclusion to the entire section, and so this phrase needs to be moved to what will become the conclusion of the section.
2. Add new Sections 4.5, 4.6, 4.7 and 4.8 as follows:

4.5 The guidelines for superior retail provide expectations for "superior" retail space which include consideration of the physical features as well as how the retail space will fit into/contribute to the downtown. The latter requirements include supporting other retail by virtue of its tenants, pedestrian connections/linkages, etc. and that the space attracts desired tenant types (local serving retail, anchor tenant space, etc.) A bank does not satisfy this criteria. *Planning Department Guidelines, CiViK Exhibit 109, Testimony of Stephen Stephanou.*

4.6 The architect was instructed to design the bank's space to function as a bank, including its size, its drive-through, and other design configuration. Moreover, this space occupies the prominent corner and the largest portion of the ground floor of the proposed building. Moreover, whereas the bank sold the property in December 2007, it has also entered into a binding contract to repurchase its unit. The terms of the agreement support the conclusion that the space will be used as a bank for the indefinite future. *SRM Exhibit 201; Testimony of Chad Lorentz; Short Form Purchase Agreement; Special Warranty Deed*

4.7 While a bank is an approved use in CBD1, a bank is not a preferred retail use, consistent with the use mix and image contemplated in the Vision for Downtown Kirkland, nor does it strengthen the retail fabric in the core area.

4.8 For each of the reasons noted in this section, and with consideration of the exhibits and expert testimony provided, the Council determined that the space, which is designed for a bank, fails to achieve the objectives and requirements of superior retail space. Accordingly, the proposed building does not warrant the additional height, bulk and mass of a fifth story.

IV. CONCLUSIONS AS TO HEIGHT ON LAKE STREET SOUTH

1. Section 5.2 contains a typographical error, with the last sentence referring to Design District 2 rather than 1. The reference to Design District 2 in the first sentence is correct.

As drafted, the provision reads:

5.2 The Downtown Plan states that “buildings *should* be limited to two stories along all of Lake Street South to reflect the scale of development in Design District 2.” The term “should” is directive and not mandatory, but the Board failed to give meaning and effect to the fact that the Downtown Plan uses different and stronger language in describing height along Lake Street than it does when describing height in other locations. For example, the next sentence of the Plan, which refers to buildings on other streets in Design District 2, says that the height of these buildings should only be limited “along street frontages”.

This section should be corrected so that the last sentence states Design District 1 rather than Design District 2.

2. Section 5.3 should not contain reference to “Exceptional Circumstances.” This section, as drafted, is specific to Lake Street South and states that if an applicant proves “exceptional circumstances” then additional height above 2 stories is permissible. The concept of “exceptional circumstances” is not in the zoning code or the Downtown Plan. Further, “exceptional circumstances” were not discussed in the transcript.

As drafted, this section reads:

5.3 The Downtown Plan thus says that “buildings” that are “along” Lake Street South should be limited to two stories, and by using the word “should” the Plan requires an applicant who wishes to include a third or fourth floor to demonstrate that exceptional circumstances justify such additional height. No such demonstration has been made in the record before the Council.

This section needs to be deleted entirely.

2. Section 5.5 and 5.7 incorrectly quote the Downtown Plan and should be deleted.

As drafted, these sections read:

5.5 The reference in the Downtown Plan to breaking “large buildings into the appearance of multiple smaller buildings” also demonstrates that a limitation on the number of stories along the street does not have to apply to the entire building. *Downtown Plan, page XV.D-10, page.*

5.7 Two-story portions of buildings should be treated as distinct building elements to reflect the scale of Design District 2 consistent with the Downtown Plan reference to breaking “large buildings into the appearance of multiple smaller buildings.”

The quoted text begins in the middle of a sentence. The entire sentence, as stated in the Downtown Plan, reads:

East of Main Street, development should combine modulations in building heights with modulations of facade widths to break large buildings into the appearance of multiple smaller buildings.

(Emphasis supplied.) Since the SRM proposal is west, not east, of Main Street this section does not apply.

Sections 5.5 and 5.7 should be deleted in their entirety.

3. Section 5.6 creates a measuring stick for setbacks not found in the Downtown Plan nor in any of the Council's deliberations. It should be deleted entirely from this document.

As drafted, the section reads:

5.6 Upper stories must be sufficiently set back from Lake Street South to minimize their visibility from the west side of Lake Street South. In general, for each story above the second story, the setback should be twice the height of the story that is being set back. Thusly, a pedestrian on the east side of Lake Street South will perceive a two-story scale of buildings in Design District 2. Similarly, a pedestrian on the west side of Lake Street South would perceive a two-story scale of buildings on the east side of Lake Street South within Design District 1B.

(Emphasis supplied.) We have absolutely no idea where this formula ("twice the height of the story that is being set back") came from. The verbatim transcript does not mention such a criterion. If the staff is trying to propose a solution to the two-story building question – which, by the way, will impact not only this proposal but others in the future – this is neither the time nor the venue to accomplish this.

This section is inappropriate and without source from these proceedings and must be deleted in its entirety.

4. The conclusion of this section needs to include reference to the setbacks not only from Lake Street, but also from the 2nd story to the 3rd story. The text should reflect the Downtown Plan and the overall sense of the majority of the Council in stating the conclusion.

As drafted, the section reads:

5.8 The Bank of America project does not present as or meet the requirements of a two-story building along Lake Street South because the third floor, and the fourth floor in particular, are not set back from Lake Street South far enough to comply with the Downtown Plan.

Suggested correction as follows:

5.8 The Bank of America project does not present as or meet the requirements of a two-story building limitation along Lake Street South because the third and fourth floors are not set back from the second floor, nor from Lake Street South, far enough to comply with the Downtown Plan. Further, the proposal has not demonstrated compliance with all of the provisions of the Downtown Plan so as to mitigate the scale and mass of the proposed third and fourth floors.



CITY OF KIRKLAND

Planning and Community Development Department

123 Fifth Avenue, Kirkland, WA 98033 425.587.3225

www.ci.kirkland.wa.us

MEMORANDUM

Date: May 12, 2008

To: Interested Parties Who Have Submitted Oral or Written Comments on the Nakhjiri Private Amendment Request

From: Joan Lieberman-Brill, AICP, Senior Planner

Subject: Nakhjiri Private Amendment Request – Outcome of City Council Reconsideration (File ZON07-00010)

Kirkland City Council adopted Resolution 4699 on May 6, 2008 stating their intent to adopt the Nakhjiri private amendment request to amend the Comprehensive Plan and Zoning Map later this year. The change to the property located at 138 5th Avenue, containing the American Legion Hall building, will be from low density residential single family RS 5.0 zoning to high density residential Planned Area 7A zoning. Council directed the effective date to implement the request be delayed until 2009 to provide at least two years from the adoption date of the Norkirk Neighborhood Plan update, which was on December 12, 2006, and to provide time for the Heritage Society or another interested party to work on saving the American Legion building. The final ordinance will set the effective date as May 6, 2009, one year from the date of the adopted resolution.

The City Council will take final action on the proposal as part of the entire package of 2007 - 2008 comprehensive plan amendments later this year. .

Please feel free to contact me at 425-587-3254 or email me at jbrill@ci.kirkland.wa.us with questions or comments.

Thank you.

DECLARATION

I am over the age of eighteen years and competent to testify.

The preceding transcript of the council deliberations portion of the Kirkland City Council hearing conducted on May 6, 2008, was prepared by me from a recording downloaded from the city website. Assistance with proofreading and speaker identification was provided by Rachel Nahon.

DATED this 19th day of May, 2008.

Carol Cohoe
Carol Cohoe

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BEFORE THE CITY COUNCIL
FOR THE
CITY OF KIRKLAND

In re appeal of a Decision of the Design
Review Board of a proposed development at
101 Kirkland Avenue

Permit No. DRC07-00006

VERBATIM TRANSCRIPT OF COUNCIL
DELIBERATIONS, MAY 6, 2008

Citizens for a Vibrant Kirkland ("CiViK")

Appellant,

SRM Development,

Project Applicant.

The following transcript contains only the portion of the hearing during which the Council deliberations occurred. The time period covered is May 6, 2008 from approximately 10:53 p.m. to approximately 12:40 a.m. (May 7, 2008). In a .wmv file of 7 Hours 9 Minutes 54 Seconds, this portion begins during Hour 5, Minute 23.

MAYOR: I am now going to close this portion of the hearing and council will begin its deliberations. I might add to that that we're here to discuss the issues, if any, where they believe the Design Review Board erred - made a mistake - so I don't know if we need to discuss each issue or just the issues where you feel that there was an error. Anybody want to lead off? Or I can still continue to ramble while you think.

1 GREENWAY: Well, I'd like to ask a question, I guess of the city attorney. I'm confused about
2 how we are or if we are supposed to consider the comments that have been received about the
3 project because both the applicant and the appellant referenced public comment. There was
4 some talk about public support or public dissatisfaction and, and then there was also some
5 statements in the material but we're not supposed to consider that, so, so do we consider it and if
6 so, how?
7

8 ROBIN JENKINSON: I guess starting where the Mayor left off, the review standard that
9 you apply – and I'll just reiterate it because I think it's helpful – is that unless substantial relevant
10 information is presented which was not considered by the Design Review Board, the decision of
11 the Design Review Board shall be accorded substantial weight. The decision of the Design
12 Review Board may be reversed or modified if after considering all of the evidence in light of the
13 design regulations, design guidelines and comprehensive plan, the Council determines that a
14 mistake has been made.
15

16 So to your question, you do have evidence before you about people's opinions of this
17 project, people who support it and people who don't. I don't think that helps you evaluate
18 whether the design guidelines, comprehensive plans and regulations have been met. But you can,
19 you have that evidence before you, there's nothing that says you cannot consider it. I think
20 community sentiment - and I think you have briefing from both of the parties about this - in a
21 case such as this I don't think it does get that much weight. We're not talking about a rezone
22 here; we're talking about analyzing a project against Design Review standards.
23

24 ARAMBURU: May I?

25 MAYOR: I don't know. City attorney, we have Mr. Aramburu with a hand up and I think I've
26 closed the hearing. I don't know process-wise where to go with this.

1 ARAMBURU: I want to address Ms. Greenway's question.

2 MAYOR: But city attorney.

3 UNIDENTIFIED: Let him talk to the city attorney.

4 JENKINSON: I think for the Mayor at this juncture you can conduct the hearing and you - I was
5 asked a question by the councilmember, I responded to the best of my ability. I don't think you
6 need to have countervailing arguments or responses.
7

8 MAYOR: Right, and I don't know where to stop that once it starts, that's the only problem.
9 I'm not legally trained as a lawyer or as a judge and it's uncomfortable so I would seek not to
10 allow continued comment from either the applicant or the appellant.

11 ARAMBURU: My purpose was only to try to answer Ms. Greenway's question.

12 MAYOR: I understand that and that's much appreciated, thank you. All right, Tom, and then
13 I have Dave.

14
15 TOM HODGSON: Okay, I've got a short list of questions that will help me decide whether or
16 not the Design Review Board has made any errors along the way here, and I'd like to take them
17 one at a time. I don't know if -

18 MAYOR: And these are questions that are in your mind, right? That you're asking -

19 HODGSON: Yeah, I mean, the answer to these questions will help me decide whether or not a
20 mistake was made and I think that's what we're here to do, right? That's only way we're going
21 to change the outcome. I'd like to start with the question of whether or not this project meets the
22 requirement for two stories on Lake Street. Is that all right?
23

24 UNIDENTIFIED FEMALE: Mm-hmm [affirmative].

25 MAYOR: Yes.
26

1 HODGSON: Okay. The key words for me are "should be"; should be two stories on Lake
2 Street, which means that anything else should not be, with the exception I suppose of - well, with
3 some exception but my understanding of that is that that should, that's the understanding, that it
4 should be two stories and that the building form should be two stories, not a façade. That's my
5 understanding so I'm just going to kick it off right there.

6
7 MAYOR: Thank you. David?

8 DAVID ASHER: I've asked everyone that I thought could contribute that same question and
9 I, I have a, my - I was here when this was adopted, my understanding of when I voted for it was
10 that we would have two stories along Lake Street and that was a requirement, a two story
11 building along Lake Street. I still can't find the two story building along Lake Street. To be able
12 to put this together, we have to have a two story building along Lake Street as I see in the
13 comprehensive plan that it says, "and we can go up to five stories if we've got superior retail."
14 Whether that has to be in the two story building along Lake Street, I don't know. Whether it can
15 be in some of the other retail space, that's - I haven't figured that piece of it. But whether it could
16 be only one piece of retail, superior retail, and superior retail as I think I've come to see how we
17 are interpreting it is we are interpreting it as size from the way we have historically, the
18 precedents that we have set, rather than use, and I still can't figure out where the two story
19 building along Lake Street that is required in the comprehensive plan. I don't know where that
20 exists.
21

22
23 MAYOR: Thank you. Mary Alyce.

24 MARY-ALYCE BURLEIGH: Thank you. Yeah, I think it's instructive always to, when
25 you're looking at definitions, and I know I remember in earlier life talking about shall, should
26 and what they mean and all that

1 MAYOR: (Inaudible).

2 BURLEIGH: And I'm interested in two cases, actually, the Garrett case and the *State versus*
3 *Reier* where it talks about should is permissible and expresses desire or request whereas shall is
4 clearly unambiguous and creates imperative. In other words, should is a directive term that is a,
5 perhaps a desire, but shall is a mandatory term, and let - pardon?

6 ASHER: (Inaudible).

7 BURLEIGH: I found this, this is in -

8 MAYOR: In their, their, the staff...

9 BURLEIGH: Document from staff.

10 UNIDENTIFIED: Okay.

11
12 BURLEIGH: And I think, so to me, if you're talking about shall or should, should is not a
13 directive term by legal interpretation. I think beside the point, however, it's persuasive to me at
14 least and I can obviously - but that along the east side of Lake Street - I think there's no question
15 that the west side of Lake Street is two stories. I think that on the other side of the street there is a
16 given exceptions to that and I think that if you are - it even talks about stories above the second
17 floor should be stepped back from the street and towards the hillside, again should, and it's got
18 all kinds of comments about how you (inaudible) exceptions to the two stories and it would seem
19 to me if the intent was only to have two stories on both sides, why didn't they include that side of
20 the street in the same as the west side? They didn't. They separated that so the west side is in a
21 different zone from the east side, right? And to me that indicates a difference in treatment. If
22 you'd wanted it to be two stories you would have put the whole shooting match in the same zone.
23 They're put in different zones because it was intended to deal with them differently and I think
24 deal with them differently because it was identified as a prime opportunity site, was to say we
25
26

1 want to take this underutilized site and we want to develop it into something significant and if
2 people meet the requirements that are set forward with the setbacks and all that that you could in
3 fact go above the two stories. In fact, you could go to four and a fifth if you had residential. So it
4 seems persuasive to me that this idea of this two stories on the east side is in fact, it would not be
5 consistent with the downtown plan as it was intended.

6
7 MAYOR: Thank you. Joan.

8 JOAN McBRIDE: Mr. Mayor, I'm actually ready to just render my decision. The reason why
9 perhaps these are instructive debates but given the sheer amount of material, the huge amount of
10 testimony, I'm feeling very ready to go forward. I feel odd about having a debate. Maybe that's of
11 interest to everyone but um...and maybe there's an interest to go point by point by point but
12 having reviewed all of the information I think I'm getting ready to go forward with -

13
14 MAYOR: Do you want to continue this, with this or do you want to wait until you hear
15 more?

16 McBRIDE: Well, I'm...it doesn't matter. I'm just wondering if the Council wants to go
17 through each particular issue.

18 UNIDENTIFIED MALE: I do.

19 MAYOR: I think that's probably going to be the case.

20 McBRIDE: Okay.

21
22 MAYOR: And there's not a lot of issues here.

23 McBRIDE: Okay. Well, if we're then starting with the two to four stories then let me just
24 weigh in on the issue. You know what I, I have to come at this about what would I do if I
25 wanted, well, when we come together and we put together policies and a comprehensive plan
26 and our guidelines, what we're really striving for is for people to have predictability. We want

1 neighbors to have predictability and we want the people who are going to purchase and develop
2 or whatever to have predictability and so for me it's hard for me to get past the map on page
3 15.D-11 that shows 1B that clearly says that two to four stories are allowed given discretionary
4 approval for those over two stories so I don't know what to do about that kind of information
5 because that's the kind of information folks would see.

6
7 MAYOR: Why don't you just hold there then.

8 McBRIDE: Well, it - one other thing.

9 MAYOR: Yeah?

10 McBRIDE: Because on the previous page it also talks about 1B and it talks about this being a
11 site that we want to have incentives for for redevelopment because these larger sites have more
12 flexibility to accommodate additional site, and that's directly about those 1B areas. So that causes
13 me pause.

14
15 MAYOR: Tom and then Bob and then Jessica.

16 HODGSON: I just want to address Mary-Alyce's point about should versus shall, which is very
17 good because if something should be done that leaves an opening for the alternative but is the
18 alternative in the spirit of the downtown plan? If we're directing that something should be done,
19 if you don't do that are you acting in the spirit and intent of the downtown plan?

20
21 MAYOR: And is the word discretionary usable here? Should is discretionary? I'd add that
22 because that - yes?

23 ASHER: That's for another situation where you have other provisions to provide height
24 when you have (inaudible).

25 MAYOR: But this, I believe this does. With discretion.

26 ASHER: Yes, in the 1B zone, yeah.

1 MAYOR: Right.

2 ASHER: Or pieces of it.

3 MAYOR: Bob.

4 BOB STERNOFF: I think this is the perfect time after what Tom just said and it's the spirit.
5 There's about, as I count there's four of us in the room who were in those meetings back in those
6 days that can talk about intent. Only four of us, I looked throughout the whole room here: Mr.
7 Ramsay, Eric Shields, Jeremy McMahan, myself - oh, Mr. Vadino I think was there too back
8 then. The intent, and I'll come right out and say I was one of the people when the heights came
9 out that voted against the heights at that time because I was concerned much about what's been
10 talked about tonight. But I was also convinced at the time that the intent was to do a couple
11 things. One was to encourage the redevelopment in our downtown that hadn't happened. To have
12 things come here that wouldn't come here without some type of incentive. I think it's unfortunate
13 there isn't a definition of superior retail and we can argue all day long whether a bank is or isn't,
14 whether it brings people, doesn't bring people, you can line people up on either side, I don't care.
15 I know when I go down there there's people in and out of that bank and I'm going to propose that
16 they're probably spending money. Yeah, they're driving on our streets but you know, they're also
17 spending money because they're taking cash in, putting cash out.

18
19
20 But the intent, what was really there at the time was how do you maintain the feel, how
21 do you, how do you incentivize that. So when we looked at setbacks, yeah, we can be critical and
22 we can say gee, you know, it's one-and-a-half percent or whatever it is and I'll buy that but the
23 key component for me is what do you see from the street? What do you really see? When you
24 walk down there my concern at the time was is it going to be pedestrian friendly? Are you going
25 to feel like you're next to a three story, four story building or are you going to feel like you're
26

1 next to a two story building? And that was the intent of what, of what was, what came out of, of
2 this whole process, plus the invent of the Design Review Board to go deal with issues like this
3 and you know, frankly, you know, that's what the intent was, was to try and modulate, to try and
4 not have up and down buildings and all of my, people in this room, I built the first building in the
5 city that tiered back. At that time you couldn't do it, you had to go straight up and down and I
6 fought very hard with the previous council what, 24 years ago to go do it. So we've come a long
7 way and I think that to, that yes should to me implies yeah, you should if you can, but in this case
8 where you've got a property that is so deep that in order to go do it, you know, I think that the
9 design review board was tasked with you know, can you do it, if not how do you moderate it,
10 how do you modulate the buildings and does it end up giving you really what you want which is
11 again the intent and the intent was a feel, so.

13 MAYOR: Thank you, Bob. Jessica.

15 GREENWAY: The requirement for two stories on Lake Street is a very important
16 requirement in my mind and in reading the comprehensive plan and like Bob I have a long
17 history of downtown issues, a 20 year history, and building heights have been the main area of
18 discussion, contention and the comprehensive plan is the result of that. It is definitely not the
19 result of the work of four or five people in this room, it's the result of the work of an entire
20 community. It was approved by the Council. The community has a right to rely on it. For me the
21 key is chapter 50.10 of the Kirkland Zoning Code states that building exceeding two stories on
22 Lake Street in the CBD1 zone must demonstrate compliance with the design regulation of
23 chapter 92 and this, these are the key words, and all provisions contained in the downtown plan.
24 To me that is the essence, that is the core of the appeal and what I will be making my decision
25
26

1 on, is does the evidence show that this application has complied with all provisions contained in
2 the downtown plan and should be awarded three, four or five stories.

3 MAYOR: Thank you. When we talk about the building being only at two floors the
4 discretionary part that I understood that I feel that is important on it is the setbacks and I believe
5 we've used the word significant setbacks from the street, and that would be incentive to go
6 beyond two floors, correct?
7

8 UNIDENTIFIED MALE: Mm-hmm [affirmative].

9 MAYOR: And that kind of relieves the word should because you can or you can't, that's
10 going to be the determination and so I would think what we need to be also putting into our
11 equation to think about is what do we mean by significant setbacks? Did we see significant
12 setbacks this evening on Lake Street? To be able to first, without even talking about the fifth
13 floor, does this building warrant, does this design warrant the third and the fourth floor? David.
14

15 ASHER: I think clearly it's been demonstrated that it's set back because in the
16 comprehensive plan on page 15.D-10 it says that stories above the second story are set back, set
17 back significantly from the street. Now here's where I, the issue that I have that I think I'm
18 climbing aboard with you. It says, it goes on to say, and the building form is stepped back at the
19 third and fourth stories to mitigate the additional building mass and the project provides superior
20 retail space at the street level. So I think setback we have because the setbacks from the street -
21

22 MAYOR: Right.

23 ASHER: Are in fact material. It's the step back. The step back does not say that it has to be
24 significant, however, it says that the purpose of the step back is to mitigate the additional
25 building mass.

26 MAYOR: Right.

1 ASHER: And that becomes a judgmental factor.

2 MAYOR: Yeah.

3 ASHER: To what is material to be able to mitigate.

4 MAYOR: And that's why I was asking about the incremental amount.

5 ASHER: Yeah.

6 MAYOR: From the second to the third floor because I think that's the important thing. I

7 understand from the street and looking at it from the street can sound significant.

8

9 ASHER: Right.

10 MAYOR: But when you look at the building will you see the four story building or will you

11 see two stories and there, there's an equation on this, decide by the width of your streets as far as

12 looking across, what you should see and this one you see the four stories, you don't see just the

13 two stories. Mary-Alyce.

14

15 BURLEIGH: Well, I think it also depends on where you are. I think, for example, if we can use

16 Marina Heights as an example.

17 UNIDENTIFIED MALE: Please.

18 BURLEIGH: Well, it's there.

19 UNIDENTIFIED MALE: Yeah.

20 BURLEIGH: As is Portsmouth. What we find is when you're walking along the street, along Lake

21 Street on the east side, as you're walking -

22

23 UNIDENTIFIED: Yeah.

24 BURLEIGH: - Past the building and to me that's where you get the impression of is it a two or

25 three story building. Now if you're looking across the street you could have - unless you had just

26 a tiny little bit you would always see the second or third story because I mean, that's just by the

1 nature of perspective. So it seems to me that where you get the impression of whether it's two
2 stories or whatever is was you walk down the street past that building. For example, one thing I
3 notice when you go to Bellevue is most of their buildings have zero setback. It's just straight up
4 from the sidewalk edge and so as you're walking along that you get this idea of this one straight
5 wall and I would suggest to you that it doesn't take much in the way of setbacks, particularly fro
6 the street to give you the impression that it is a two story building and to me when you're talking
7 about the fact that, you know, on a building like this I, you know, evidently when we, in our
8 areas - correct me if I'm wrong - we're allowed 100 percent coverage of the lot. That's not the
9 case in this particular one and as I remember the testimony level two would only cover 68
10 percent and the total building is 75 percent and when you get to the fifth story you're down to 46
11 percent. Seems to me that that reflects a significant in my mind setbacks. I mean, if we don't, we
12 don't put down exactly what we mean by significant and that is in the eye of the beholder and we
13 selected a Design Review Board with expertise in design and to, with the expertise to be able to
14 determine these things. Did they, can we point out that they made an error in their consideration
15 of what significant setbacks is? I'm not prepared to do that because again, I think it's a
16 perspective as you walk past the building and the setback is sufficient so you're not looking at
17 just a straight wall and I think that's the case here. You're not.

20 McBRIDE: (Inaudible).

22 MAYOR: Joan.

23 McBRIDE: I'd have to agree with Mary-Alyce on those setbacks. Lacking a definition of what
24 is significant setback, at least by using the percentage we've got something that is measurable but
25 if we don't have a definition of what is significant setbacks then we do have to, you know, punt
26 to the design professionals.

1 MAYOR: Thank you. You could still measure the footage, the incremental footage is
2 measurable. There's nothing that's not measurable.

3 McBRIDE: I know, but we haven't decided what is significant or not so lacking is two feet
4 equals moderate, four feet equals significant, we haven't determined that so it's, it's a judgment
5 call but what we do have is the percentage of coverage of those stories and that is mathematically
6 significant.
7

8 MAYOR: All right. I have Jessica and then Dave.

9 GREENWAY:I just want to mention, we're talking a lot about setbacks and step backs and I
10 think it is a judgment call as to if the setbacks and the step backs are significant enough to
11 accomplish the intent of the comprehensive plan but I would also point out that the downtown
12 plan requires modulation of building heights, modulation of façade widths to break large
13 buildings into the appearance of multiple smaller buildings and that buildings over two story in
14 height should generally reduce the building mass above the second story. So there is a reason for
15 the, these rules, including the setbacks, and it is to break up the mass so that a large building, the
16 mass, the bulk, the mass and height of a large building is mitigated.
17

18 McBRIDE: Question to Jessica, would you say that the proposal has done that?

19 GREENWAY:I would say -

20 McBRIDE: In other words, the three -

21 GREENWAY:I would say that it has not done that. I think a valiant attempt was made but I, in
22 my opinion the applicant's own renderings prove to me that this is, this is a large, massive
23 building. It looks like a large, massive building and that the modulation, the setbacks and the step
24 backs don't go far enough to accomplish what I believe the goal of the downtown plan is.
25

26 MAYOR: Thank you. Dave and then Tom.

1 UNIDENTIFIED FEMALE: Jim.

2 ASHER: My issues are with the west end of this I think exclusively. I think the rest of the
3 building to me is a gee whiz, thank you all the people that have contributed to it, really great job
4 and I, I don't have, I don't think I have anything to say and one of these days I'll look at that
5 board that came by but that doesn't have anything to do with the appeal. The west end of this
6 building is where I have the issue. The west end of this building, I'm still looking for the two
7 story building on the west end. I'm still, I'm questioning, given the presentations this evening,
8 whether the step backs are sufficient to mitigate. However, if we get a two story building along
9 Lake Street I think the set or the step backs will be enough to do that. I just need to see a two
10 story building along Lake Street.
11

12 MAYOR: Tom?

13 HODGSON: So question for you, Dave, how deep is a building on Lake Street in your mind?
14

15 ASHER: That's a wonderful question.

16 HODGSON: So is the retail space to have 39 feet, is that?

17 ASHER: I think the -

18 HODGSON: We've got that codified.

19 ASHER: - Question asked earlier was that retail space to be superior has to be more than 30
20 feet, is that what it was? I've got it somewhere.
21

22 MAYOR: We had dealt with that over the years. Eric, you can probably help us with that.

23 ASHER: Greater than 30 feet and greater than 13 feet (inaudible).

24 MAYOR: We had to have a depth of 30 feet or maybe it was 20 feet. We debated this to
25 great length in the city in terms of the, the intrusion of non-retailers.

26 SHIELDS: Yeah, the code establishes a minimum depth of 30 feet.

1 MAYOR: Thirty feet.

2 SHIELDS: So -

3 MAYOR: And selling a product I believe we called it.

4 SHIELDS: Retail use.

5 MAYOR: Yeah.

6

7 ASHER: So to me, and again, but this goes back to the other question, do all the retail

8 spaces have to be superior retail, and I think not, but how much of it needs to be superior retail? I

9 don't know, I haven't come to that conclusion, however I'm still looking for a two story building

10 along Lake Street that is 30 feet or if it's superior or more.

11 MAYOR: Okay, well you, you can't, you're coming down in a good place because you

12 excluded the superior retail. Why don't we just kind of set superior retail - we seem to have we've

13 done that, so we'll come back to that so then we'll try and wrap around one of these issues. Tom?

14

15 HODGSON: So my question for you then, Dave, was do you require a depth of 30 plus feet on

16 the ground floor to be defined as superior retail, and that would mean that the, that would

17 represent a building and all the height above that would also be two stories for the depth that

18 we're talking about.

19 ASHER: I think whatever retail is along, whatever the size of the building is along Lake

20 Street, it's two stories.

21

22 HODGSON: Okay.

23 ASHER: For the entire -

24 HODGSON: But then if we're talking about -

25 ASHER: For the entire depth -

26 HODGSON: Superior retail then (inaudible) 30 feet.

1 ASHER: Now, then whether - no, you're talking more than 30 feet.

2 HODGSON: There, oh -

3 ASHER: And that's ill defined, 30 feet one inch on.

4 HODGSON: Okay.

5 ASHER: Whether that particular space on the corner has to be greater than 30 feet I don't

6 know.

7

8 BURLEIGH: Excuse me, can you describe something for me, Dave? We're talking about the

9 interior of the building being 30 feet from a door to a back wall, correct?

10 ASHER: That's the depth of the -

11 BURLEIGH: Right.

12 ASHER: (Inaudible) so.

13 BURLEIGH: So are you suggesting that this is not the case on this retail space?

14

15 ASHER: Oh no, it is.

16 BURLEIGH: It is? So it is -

17 ASHER: It is on the retail space -

18 BURLEIGH: Right.

19 ASHER: However, that is not a building. That is part of right now a huge single mass that

20 is more than two stories when you go back that the, that (inaudible).

21

22 MAYOR: Let's go back to the person that had the floor. Tom.

23 HODGSON: So I'll try to wrap up this thought here. Okay, Dave, if the first floor was brought

24 out to the allowed maximum setback there would be roughly a 35 foot setback from the face of

25 the first floor to the face of the third, from second to the third.

26 ASHER: I would say greater than 30 feet.

1 HODGSON: Okay.

2 ASHER: Whatever that would be.

3 HODGSON: So, but they chose to hold back the corner of the property on the first floor which
4 gives the impression that there's less of a setback from the first to second so if we were to give
5 that back to them there's be much greater appearance of a building on Lake Street that is two
6 stories, am I right? Okay, so what I'm trying to do is quantify what qualifies for a building on
7 Lake Street because I tend to agree that it should feel like a two story building on Lake Street
8 and so how much of a step back do we need and you have to calculate in that corner that they
9 gave away too.

10

11 ASHER: That's setback, not step back.

12 HODGSON: Right, but they could have built, they could have built out to the, you know, a lot
13 closer to the street.

14

15 ASHER: You're right.

16 HODGSON: So that was a choice.

17 ASHER: Mm-hmm.

18 HODGSON: I think we have to give them that as part of -

19 BURLEIGH: As from the street.

20 HODGSON: Right, yeah.

21 ASHER: As counting that as building?

22 HODGSON: Well -

23 ASHER: Count the sidewalk as building?

24 HODGSON: I think that counts as superior pedestrian environment actually.

25

26 UNIDENTIFIED FEMALE: (Inaudible).

1 HODGSON: So I'm trying to get a little closure on this so that - does the, does what's been
2 done here qualify as the impression and living up to the spirit of the two story desire?

3 MAYOR: Good question. All right, then we have Joan, Mary-Alyce and Jessica.

4 McBRIDE: Just back to the setbacks and step backs, we have previously seen a couple of
5 buildings come through using the superior retail and I know that when the Heathman was built I
6 didn't see a lot of step backs and yet you know, that went through the process and it feels okay
7 but I don't see what I would call significant step backs but the Design Review did and we didn't
8 see a problem with that and they are far less than what we're seeing in this building so I'm a little
9 bit concerned about what our history is and then trying to kind of remake and I'm also concerned
10 about talking about, 'cause basically this is about design elements so I'm a little bit concerned. I
11 can really only judge this on our zoning code, our guidelines and our comprehensive plan. I can't
12 decide what significant means, I can't decide what is the proper step back. That's a design issue
13 and if that's not in our code, bad us, we're going to have to go back and do that at some point but
14 right now I can only deal with what's in front of us and our history of what we have approved.

17 MAYOR: Thank you. Mary-Alyce.

18 BURLEIGH: Yeah, I think Joan's hit on this in the sense that you know, our job here is to apply
19 the law to the facts and what we're seeing here is that if it says setbacks from the street we get
20 into Tom's point about, you know, you could have set back the upper story further if you, but you
21 gave up some because you wanted to create this good pedestrian feel and so it seems to me that
22 the intent of what we're trying to do here has been met because we've asked for a pedestrian feel
23 and, and keep in mind when we're talking about retail we're talking about the space and there's
24 been a lot of chat tonight about whether or not a bank is an appropriate one but I think we can
25 find from code that it does meet the definition of retail but I think -
26

1 MAYOR: We'll come back to that.

2 BURLEIGH: We'll come back to that but I think, but the point is that I'm trying to make is that
3 it seems to me that in the modulation and all the rest that we have in this building to reduce mass
4 and with the choices that were made with the encouragement of the, I think properly of the
5 Design Review Board to make sure that this building did appear as you walk beside it to be a two
6 story building. I think they've met that test.

7
8 MAYOR: All right, thank you. And Jessica.

9 GREENWAY: I end up having, again I agree with Joan. I'm going to make, render my decision
10 based on the comprehensive plan and the downtown plan and the evidence that was presented in
11 this hearing and I sound like a broken record but for me it really comes down to does the design
12 demonstrate compliance with all provisions contained in the downtown plan and I end up having
13 issue with first of all, a, in my, you know, a core requirement is that buildings along Lake Street
14 should be two stories. If they're going to be taller than two stories they have to demonstrate
15 compliance with all provisions contained in the downtown plan and I have two problems with
16 this application and one is should it have been granted a third and fourth story because were the
17 setbacks, step backs, modulation, was it enough to really mitigate the scale and the mass of the
18 building, and should it have been given a fifth story because of superior retail, and I intend to
19 use, as the comprehensive plan does, use as a criteria for saying whether or not it is superior
20 retail. The comprehensive plan clearly states that use is a criteria for judging superior retail.
21 Now, we don't always know the use but in this case we do know the use of almost half of the
22 retail space and I intend to use that in rendering my decision.

23
24
25 MAYOR: All right, thank you. You're kind of headed already to superior retail. Bob?
26

1 STERNOFF: I'm not going to touch superior retail yet but I'm am going to touch that I think
2 that the, that you could have a two story building that comes right to the curb and I don't want
3 that and I think Design Review doesn't want that and I think their task was to take a look at what
4 was there and to, and to really say okay, you know, within the guidelines - and Jessica's clearly
5 pointed these out and Dave's talked about you know, when is, what is two stories? At what point
6 do you go to two stories? I would argue that Design Review reviewed this with the intent that
7 what are you looking at. That's what they do, they look at modulations and they look at those
8 things and they make that determination, their determination based on what they see. What is the
9 perception? As I said earlier, I think what they perceived was pedestrian friendly, which is the
10 number one, you know really the number one thing, is it going to be pedestrian friendly, and I
11 think that they looked at it that way and I think that cutting the corner off as they did to create a
12 pedestrian friendly thing you know, definitely changed the way the building looks. Did it make
13 it, make it skinnier in a corner or two? Sure did. But when you walk by, when I walk by am I
14 going to see a two story building or am I going to see a three story building? When I'm walking
15 on that side of the street I'm going to propose I'm going to see a two story building, you know?
16 So.

17
18
19 MAYOR: Thank you, Bob. We're back to Tom. Who else had their hand up on this? Maybe
20 we ought to kind of then go to superior retail.

21 UNIDENTIFIED FEMALE: Uh-huh [affirmative].

22
23 MAYOR: I think we're getting kind of the feel of setbacks here.

24 UNIDENTIFIED FEMALE: Okay.

25 HODGSON: Yeah, okay, so after the discussion I think that this falls within the discretion of
26 the Design Review Board's authority and I would not be ready to say that they made an error on

1 the issue of whether or not this building qualifies as a two story building or façade on Lake Street
2 so I don't think, for me I don't think an error was made on this issue.

3 McBRIDE: I would concur with that.

4 BURLEIGH: So would I.

5 STERNOFF: Concur.

6 MAYOR: All right, now let's move along.

7 GREENWAY: We're not, we're not rendering our opinions yet, are we?

8 McBRIDE: Not yet, we're just agreeing.

9 STERNOFF: Well, we just did. We kinda did.

10 BURLEIGH: Well, on one issue not (inaudible).

11 GREENWAY: If we're rendering our opinion then I want to render my opinion.

12 MAYOR: You did.

13 UNIDENTIFIED FEMALE: You did.

14 MAYOR: Earlier. I've got it down. You know?

15 BURLEIGH: Are we ready to move onto retail space?

16 MAYOR: Okay, let's talk a little bit about superior retail. Who wants to start off talking
17 about superior retail?

18 BURLEIGH: Oh heck, I'll jump in.

19 MAYOR: Go ahead.

20 BURLEIGH: I think it's pretty obvious that we're really talking about space here, not use and I
21 mean, it says space and to do otherwise I think is a bit odd because space changes. I don't know
22 how many times I've been in a town where what previously had been a bank building was now a
23 thriving retail, whether it be selling women's clothes or whatever it might be. Uses change and
24
25
26

1 we've all talked about, we've heard a lot of talk in the previous meeting about how the banking
2 business is changing. I would suggest to you that retail is changing.

3 UNIDENTIFIED MALE: That's right.

4 BURLEIGH: We have a bookstore in town that's going to be moving to a smaller space, they're
5 going to build up their Internet business because more people are shopping on line and you
6 know, when we talk about one of the reasons we've gone to streamlined sales tax and all that
7 business is because of the incredible growth in online shopping and so I think all retail, banking,
8 whatever it could be, is all changing and we will see spaces' use changing consistently and so
9 what we need and what the problem we have in a large part of downtown is that we have
10 outdated, poorly designed spaces in a lot of the older buildings in town, which means that they're
11 not effective as good retail and so I think we have to look at space, not the use, because that's
12 ever-changing. I mean, good heavens, look at some of all the changes we've seen in the uses of
13 some of our buildings downtown and I don't think bank buildings are exempt from that. The uses
14 are continually changing so what, how can you determine whether or not a building should be
15 built on the basis of a current use? It's the space that they're going to be able to put to use over
16 the years because we would hope this building's going to be there for a good long time and
17 you're certainly not going to tear it down because you're going to change the use of the space
18 unless it were something dramatic like turning it into an auto dealer or something. So I think we
19 have to look at the space part of this as a way to evaluate it.

20 UNIDENTIFIED FEMALE: Yeah.

21 MAYOR: All right, Tom and then Joan.

22 HODGSON: Okay.

23 MAYOR: And then Jessica.

1 HODGSON: I'm going to restrict my comments to the issue of space, not use. I think it's clear
2 that that is the language that is in our comp plan but saying that, to me this space has been very
3 clearly and specifically designed to be a bank. It's got a drive-through, it's got doors and window
4 alignments that support that use, and we've got a tenant lined up. Maybe it's not going to actually
5 be that but I think we're pretty sure that it will be the same bank. After 2037 when this bank goes
6 away, maybe, will that space be used for something else? It's designed to be a bank. My guess is
7 that another bank would like to use that great corner space so I'm thinking here that yes, it could
8 be used for another retail use but in my mind it's not likely because everything I heard was that
9 the architect was instructed to build out to a certain size for a bank use for a drive through for a
10 bank use, doors and window configurations for security for a bank use, and I think that's the,
11 that's going to be the design of that space indefinitely.

12
13
14 MAYOR: Thank you, Tom. Joan and then Jessica.

15 STERNOFF: Jim.

16 MAYOR: And then Bob.

17 McBRIDE: Yeah, I believe also that this conversation should be about space as opposed to
18 use because I think if we were going, if we were thinking about use we wouldn't ask the Design
19 Review to review that. We might ask Ellen Miller Wolfe, someone who is knowledgeable about
20 retail uses. We didn't ask Ellen to review that, we asked Design Review to design beautiful
21 storefronts and beautiful retail spaces. I'm not so concerned about the bank. I agree with CiViK,
22 a bank is not typically a good use of beautiful retail space and I think this is going to be or if this
23 goes through I think it will be a beautiful retail space, and I'm not too worried about what the
24 future is because mainly the drive through that goes between the two buildings that would be
25 maybe an issue for the future but anything that resembles an alley to me, because I'm I believe in
26

1 a grid system that includes alleys at all times, I'm a big fan of alleys, I don't think that would ever
2 be a bad thing to have should a bank go away in use.

3 I'm also, believe that the other three retail spaces are well designed, they're deep, I
4 appreciate the eyes on the street, the giant window treatments, so I'm very comfortable with the
5 retail space that has been designed and I think that the Design Review Board used the authority
6 that we gave them to help the developer design space that would meet our needs for a pedestrian
7 friendly, eyes on the street, good retail space.
8

9 Do we need to revisit this? I think from some of the neighbors and citizens' concerns
10 we're going to have to come back to this because it, there's obviously a problem, but for this
11 issue, for what we have before us, because we have to go by the guidelines, by the precedent, this
12 is not your ordinary meeting. This is not legislative. We don't get to do what we most want
13 tonight. We have to only go by guidelines, by what is written, by what has been approved in the
14 past. Tonight is not the night we get to just do what we want.
15

16 MAYOR: Okay, Jessica, Bob and Tom.

17 GREENWAY: I believe that the Design Review Board did make a mistake in granting superior
18 retail designation to this application. I call your attention to the guidelines. The guidelines give
19 us "A," what is the basic expectation, the basic retail expectation without the height bonus? "B"
20 is, what is the expectation for superior retail space? It talks about two items, physical features
21 and how does the retail fit into or contribute to downtown, which says, does it support other
22 retail by virtue of its tenants, pedestrian connections, linkages, et cetera; is it space that attracts
23 desired tenant types, local serving retail anchor tenant space? Because we know that almost half
24 of this retail space is designed for a bank, going to be used by a bank because our guidelines, in
25 defining superior retail, not only allow us but in my opinion require us to consider use when we
26

1 know the use. I don't think that this qualifies as superior retail space. Retail, yes. Our code, I may
2 not agree with it but our code clearly says that banks fall into the category of retail. What we're
3 talking about here is should a fifth story be granted because it provides superior retail and in my
4 opinion the answer to that question is no.

5 MAYOR: Thank you. Bob, then Tom.

6
7 STERNOFF: Yeah, I agree with CiViK that banking is probably not my first choice and I agree
8 with their experts, the expert lady who said yeah, banks like this are going out. I agree, and I
9 expect that's going to happen because more and more of us are going to electronic banking so
10 what their needs going to be for X amount of years, for 5,000 plus feet, you know, 55, 5,700,
11 whatever the heck it is, I don't think is going to be very long lived. I think one could argue that it
12 does provide a service to our retailers. I see retailers in there all the time when I bank. I bank
13 there, I see people in there, I deposit my company's checks in there and so do other companies.
14 How much longer we're going to be dealing with those things who the heck knows, probably not
15 very much longer. I think it is a space issue and I think that was, that was - once again I get back
16 to the intent of when we were talking back in '99 and 2000 about this stuff at the, at the DAT in
17 those days, but it was about space that the argument really had to do with space and about what
18 spaces were not available, why weren't businesses successful here, and so I think it does come
19 down to that is really the question for the DRB and I can't fault them on this. I, you know, I don't
20 think we're into the business of picking uses and I think that's a very dangerous slippery slope.
21 Not my first choice but I can't fault the DRB on this one.

22
23
24 MAYOR: Thank you, Bob. Tom.

25 HODGSON: Good comments, Bob. I'm not ready to, to condemn the use because it actually
26 might change to another use someday. I mean, I think there's always that possibility and we're

1 not supposed to be discussing this based on use so I won't but the thing that I'm concerned about
2 now is that this project was evaluated based on this particular use even though we're not talking
3 about use and the part that disturbs me is that in order to satisfy the parking requirement, 16
4 stalls from the retail bank space use are to be used after hours to meet the parking requirement
5 for the upper floors, so if and when this space ever is converted to another retail space, a shoe
6 store or a clothing store, they will be deficient in parking requirement and I think that's an error
7 in the -
8

9 UNIDENTIFIED FEMALE: They'll have to make it up.

10 HODGSON: Well, I think then it's not superior retail space if you don't have adequate parking
11 and that's an error.

12 MAYOR: I'll weigh in here. When I, when you look at some of the original proposals in the
13 book here of what we were expecting, why are we considering the retail aspects of the downtown
14 plan? Office uses are prohibited unless they have intervening retail frontage, we know that. The
15 intent of the provision is to create a vibrant, active core by prohibiting non-retail uses. I'm not
16 saying that would be a bank but this is key, "that do not stimulate the same level of pedestrian
17 interest and activity." The proposal is to tighten the requirements for ground floor retail and I
18 think that's what we were seeking to do -
19

20 UNIDENTIFIED MALE: (Inaudible).

21 MAYOR: I was on the DAT too, Bob, I was just kind of quiet.

22 STERNOFF: Okay.

23 MAYOR: And I remember us talking about -

24 STERNOFF: We saw you there I guess, a couple times.
25
26

1 MAYOR: We talked about space because we don't have the footprints for attracting a lot of
2 different types of stores in downtown Kirkland. I probably said as a retailer there isn't anything
3 down there that I probably want to go occupy because I would be a new construction kind of a
4 guy but there's people who would want to provide themselves with some kind of a retail
5 opportunity in an older funky business and bring a different type of a retail activity to the street
6 so I think use, it's hard not to get use back into the conversation. If you want to provide activity
7 on the street the - Gibbs even said, in an earlier memo Gibbs even said that most retailers in his
8 assessment of our downtown were closed on Sundays and closed at night, six o'clock. Most of
9 the retail. And I don't know, they're still doing it. Well, what does a bank do? It's not open on
10 Sundays, limited on Saturdays and closed at night so you automatically limit, as he says, you
11 limit your sales potential and I think sales potential is all what it's all about in downtown
12 Kirkland.
13

14
15 One other thing. I don't think I remember what it was.

16 BURLEIGH: Jim, can I comment while you?

17 MAYOR: In a minute - well, go ahead while I'm thinking, that'd be fine.

18 BURLEIGH: Okay. Well, I think, it seems to me that when we're talking about this space in
19 time we make a point well, it's designed as a bank but you know, it would seem to me if as we
20 propose banking goes away, and I don't think it will because one of things I've heard people say
21 is you know, I'm really upset that services seem to be going. I moved downtown so I could have
22 services as well as retail and I find that I can't find a doctor downtown anymore because they're
23 all moved up to say, Evergreen, they can't find a space. And it seems to me that banks play an
24 essential role in any community, that's why you go into any downtown you find banks because
25 people go there because they need to. I go to the bank, need to deposit checks and things of that
26

1 sort and you may go to get a loan, all kinds of reasons to go to a bank and I think if a bank usage
2 went away and somebody would, you could come in and remodel the space, I mean, we've
3 certainly seen a vast amount of that go on where you could remodel the frontage and stick a door
4 in and you could divide the space up differently.

5 UNIDENTIFIED MALE: (Inaudible).

6
7 BURLEIGH: I think we just also need to remember that we also have three other, as Joan
8 pointed out, we have three other retail spaces there which I think are going to be a real benefit to
9 the community. Right now we have a bank, so that's what we got.

10 MAYOR: Okay.

11 BURLEIGH: And so I - and the bank has owned the property and so it seems to me that it's the
12 space and can the space be adapted to superior retail use, I think so and I think this is the basis on
13 which we need to judge it.

14
15 MAYOR: Well, you're right that the bank could come there, that's fine and that would be if
16 there was a mistake and an error in the process, it was right from the get go of the applicant and
17 to a degree staff saying this is going to be a bank and that's what it's going to be, it's not going to
18 be anything else, and they pushed for a straw vote and very, very early in the decision and I think
19 Mr. Loos went home thinking that this was kind of a done deal. He bought the property right
20 after that, after that meeting, so if there was a mistake it was, we kind of, rather than grow into
21 the decision making, we already made a decision, we're trying to push it and twist it like a square
22 peg into the round hole. This doesn't fit but we're going to figure out how to make it fit. Now
23 there's a whole hierarchy of different types of retail. How would be, you be feeling if this was
24 going to be a McDonald's on that corner? Well I don't think we would feel that this is really too
25 good. Is that superior or not? Well, we're saying that we can't determine if something is superior
26

1 or not. I would say a McDonald's probably wouldn't be, even though it's got a lot of energy and a
2 lot of people driving and probably far more people than you'll see in your bank will be seen in
3 McDonald's, they'll be eating there. Is that what we want? And the idea is no. I'm not saying you
4 can't have the bank there, the bank is fine. You can have a bank if that's the deal. But you can't
5 have a fifth floor as a result of it. That's all.

6 UNIDENTIFIED FEMALE: Jim.

7 MAYOR: That's the, that's the code.

8 UNIDENTIFIED: Yeah.

9 MAYOR: All right, now I'm going to stop there and go back to Tom and I know Joan's got
10 her hand up.

11 HODGSON: So I'll try to follow on to that. I think we all agree that a bank is not necessarily
12 our definition of superior retail. I don't think it's what we had in mind when we were talking
13 about the spirit of the downtown plan and revitalizing retail in the downtown. I think, you know,
14 I think we can get there.

15 UNIDENTIFIED: (Inaudible).

16 HODGSON: Well, we can talk about that but assuming that the space might be used in the
17 future for something other than a bank use, there's still a basic design problem, that it's not well
18 designed for superior retail use. It's designed to be a bank and when you do go to convert it you
19 have to deal with the drive-through, you have to deal with the doors that may or may not be
20 optimal for certain types of retail and you have to deal with the parking deficiency. That's not
21 superior.

22 MAYOR: Thank you. Joan.

23 ERIC SHIELDS: Excuse me, Mayor?

1 McBRIDE: Just um -

2 SHIELDS: I'm sorry, but I think we want to probably clarify a little bit on the parking. There
3 may be a misunderstanding about that.

4 McBRIDE: Okay, and then come back to me, sir?

5 MAYOR: Yes.

6 JANICE SOLOFF: So as part of the parking modification, the 16 parking stalls allocated for
7 the bank use, it states here that it should be for visitor parking between 7:00 p.m. and 6:00 a.m.,
8 so if the bank, if that tenant space changes to another use, those 16 stalls would still be allocated
9 for visitor parking, any type of visitor parking, in the evening hours.

10 MAYOR: Okay. Go ahead Tom. That wasn't code.

11 HODGSON: But wouldn't that -

12 UNIDENTIFIED: But that was not a -

13 HODGSON: Wouldn't that short change the residential parking requirement?

14 SOLOFF: No, that's in addition to the visitor parking for the residential.

15 SHIELDS: I think, Tom, it was just to make efficient use of those spaces when they're not
16 being used by the tenant.

17 MAYOR: You want me to come back to you?

18 HODGSON: Okay. Something's not right.

19 MAYOR: Joan, and then we're going to come back.

20 McBRIDE: I think what we're dealing with here, though, is that when some of these plans and
21 these guidelines were written they actually anticipated that there would be a bank there. In fact
22 there's a special provision for a drive-through use there.

23 UNIDENTIFIED FEMALE: Mm-hmm.

24

25

26

1 McBRIDE: And I think CiViK makes a great point, is a drive-through a pedestrian friendly?
2 Absolutely not. Drive-through is not pedestrian friendly but the plan not only, it anticipates that
3 there will be a bank there and it anticipates that there will be a drive-through. I mean it's, what
4 did it go back to, 1995 or something, 1990 when the plan was made for a, when there was an
5 anticipation of the drive-through, how old was that? Nineteen....
6

7 MAYOR: Well, let's not debate that. Can we move on?

8 McBRIDE: Well...well, we can debate everything else.

9 MAYOR: Well, memories.

10 McBRIDE: What I'm concerned about is when we start identifying tenants we get into a
11 dangerous, dangerous place, especially I think with these kind of opportunity sites. At some
12 point when this was written the Council thought that it was so important to have this as a
13 redevelopment site they actually made a provision for a drive-through there and that's what we
14 see today, so because it's in our guidelines, because it's allowed to have a bank there and because
15 it's allowed to have a drive-through, because it's in the guidelines I can't find fault. Do I like it?
16 No. But I can't find fault.
17

18 MAYOR: Okay. Bob?

19 STERNOFF: Yeah, when I said earlier bank is not my first choice I did not say it's not superior
20 retail, you know, whatever that is. What I did say was that it does provide the services and that it
21 does support retail. My first choice? No. McDonald's? No, you wouldn't see it there. Not on my
22 tenure hopefully but what is there is a bank today. It's an accepted use, it's already there, and I
23 think that, that I do believe and I'll say it again, that banks, as was mentioned by the expert
24 witness, yeah the banks are getting smaller and I think even at some point B of A will decide
25 they have too much space there and yes, you'll still have a place to go deposit checks but it's
26

1 going to be much smaller and your services, you know, will be on line and I think that the next
2 generation will be used to using cash machines and things and that we're not used to quite yet.

3 MAYOR: All right. Jessica and then we'll come back to Tom.

4 GREENWAY: So I find the discussion interesting because council members seem to be
5 arguing about whether or not a bank can be there. Clearly a bank can be there but what we're
6 trying to decide is does a bank, does this space and this use on the 100 percent corner in
7 downtown Kirkland qualify for superior retail. That is the decision. Not about whether it's
8 allowed, not about whether it's good or bad, but whether it qualifies as superior retail. Again, I
9 keep going back to the guidelines, the guidelines for superior retail say, how does the retail fit
10 into, contribute to downtown, does it support other retail by virtue of its tenants. The retail expert
11 told us, he answered the question that I asked, that what retail looks for is to cluster with other
12 retail so that it provides a draw. We know that a group of galleries means that each gallery will
13 be more successful. A group of restaurants means that each restaurant will be more successful
14 because the group will be a draw, so the bank is clearly allowed, that is not the issue. The issue
15 is, does it qualify? Does this application qualify for superior retail? In my opinion, based on the
16 guidelines, it does not.

17 MAYOR: Okay. I've got Tom, Dave and Mary-Alyce and then let's see if we get kind of an
18 indication here.

19 HODGSON: So I'd like to ask a question of Eric Shields, planning director. Was there any
20 accommodation for reduced parking because of the residential use? Any at all? What is the
21 residential use requirement in that zone?

22 SHIELDS: The answer is yes, there was reduced parking for residential, not for the senior
23 residential, though. The ratio that was used was the same ratio that has been used for other
24

1 residential projects in the downtown which I think is one per bedroom? One stall per bedroom.

2 So it is not the code required parking, it is through a modification provision in the code and that
3 has been used consistently by other retail, other mixed use projects with residential in the
4 downtown (inaudible).

5 HODGSON: Okay, so the parking that is provided is consistent with any multi-family project?

6 SHIELDS: Well, essentially, again to be real clear, it is not the code required parking in the
7 use listing in the plan. It is a modification but it's a modification which is consistent with other,
8 virtually all –

9 HODGSON: But is it a modification for less or more parking?

10 SHIELDS: Yes, for less.

11 HODGSON: Okay, so the parking requirement has been reduced and in order to – and I read
12 this in the packet someplace –

13 ASHER: Early on.

14 HODGSON: Yeah, that part of the mitigation for that reduced parking allowance, since there's
15 no covenant that will keep this in senior use forever, that 16 stalls would be made available after
16 hours. Is that correct?

17 UNIDENTIFIED MALE: He withdrew that.

18 SHIELDS: No, in the sense that -

19 HODGSON: You just said that from 7:00 p.m. to 7:00 a.m. that visitor parking would be taken
20 from –

21 SHIELDS: That is a requirement but it is not in compensation for the senior use.

22 Modification had nothing to do with the senior use, it was simply the usual residential
23 requirement that has been allowed through modifications in the downtown. The requirement for
24
25
26

1 the visitor use of the 16 stalls I'm understanding was intended to simply make use, shared use of
2 parking so that there is the availability that there's not that parking is not taken off the
3 availability when the bank or any other tenant that's in that space is not using it.

4 HODGSON: Okay, so you're telling me that there would be no parking shortage if another
5 retail use other than a bank were to use this space?

6 SHIELDS: That's correct.

7 ASHER: Well, not necessarily.

8 MAYOR: We'll come back to that.

9 HODGSON: Dave – okay.

10 MAYOR: If someone else wants to chew on that. Let me ask Eric a question. Eric, why did
11 we write on CBD1 to exclude banking and related financial services? Why'd we do that?
12

13 SHIELDS: Well, I'd have to go look at that.

14 MAYOR: Zoning code.

15 SHIELDS: Yeah, I think it was trying – yeah, do you have that handy? Hang on a second. Let
16 me take a look at that.
17

18 So I'm being told that that occurred at the time that the drive-through grandfathering was
19 put in for banks, which was sometime after the strategic plan was adopted.

20 ASHER: 2004.

21 SHIELDS: What?

22 ASHER: 2004 I think.

23 SHIELDS: That would make sense, 2004. And so I think that was intended to distinguish
24 banking from the use listing above, which is the retail establishment.
25
26

1 MAYOR: Well we seem to be overlooking that in our discussions, no one has come back to
2 that. I just kind of wanted to double check it and lay it back out on the table because if we're
3 talking about what the plan says, what the zoning says, that's what it says, okay? Excludes banks
4 and related financial services. All right, Dave and then Mary-Alyce.

5 BURLEIGH: I'm not quite sure what you meant by that.

6 MAYOR: Uh, you're not Dave!

7 BURLEIGH: Okay.

8 MAYOR: It was Dave and then Mary-Alyce.

9 ASHER: I'd like the planning director to respond to what you just said. I think, you've
10 made a point and what – how did we arrive at this inconsistency?

11 SHIELDS: The – well, I'm not sure I fully understand but if I understand the question is why
12 are banks listed separately from other retail uses? That's a common practice in the code that,
13 where there's a use that has a special regulation attached to it, in this case the drive-through for
14 example, it is separated out and listed separately. It still falls within the definition, if you look at
15 the definitions, of a retail use.

16 ASHER: Okay.

17 SHIELDS: But it is not – it is handled through a separate regulation. Car dealers are handled
18 that way in other zones and that sort of thing.

19 ASHER: All right.

20 McBRIDE: But it is allowed in 1B?

21 SHIELDS: Yes.

22 ASHER: The, you said a moment ago that the parking is not to code, is that the term you
23 used?

1 SHIELDS: The residential portion received a modification from the code-required parking.

2 ASHER: And they received a modification why? (Inaudible).

3 SHIELDS: Basically they - under the code a modification is allowed. They have to
4 demonstrate that they have adequate parking for the use. And so a parking study was performed.
5 It's reviewed by Thang over here in the Public Works department who does do an analysis of
6 whether or not the parking is adequate. If it's adequate then we allow a modification.
7

8 ASHER: So are we essentially changing our code or are we saying that the code is sort of
9 our baseline and then you do a parking study and the results from that becomes then the
10 definitive for that particular -

11 SHIELDS: Yeah, it's more the latter.

12 ASHER: Okay. All right. The basic question I had about the retail, if we don't talk about
13 the corner retail space, let's say we talk about the other two retail spaces.
14

15 McBRIDE: Three.

16 ASHER: The other two retail spaces along Kirkland Avenue. They are greater than 30 feet
17 in depth. I'm not sure about the height. Do they meet the height so - do those in and of
18 themselves qualify sufficiently for superior retail to provide the additional story? If those were
19 the only two retail spaces in this development, would they in and of themselves qualify for the,
20 providing the additional story with housing and superior retail?
21

22 SHIELDS: Are you asking me that question?

23 ASHER: Yeah.

24 SHIELDS: The code does not get into that level of detail. It provides a list of criteria and a
25 body -
26

1 ASHER: So any one space could be deeper than 30 feet and we've met the requirement of
2 superior retail?

3 SHIELDS: I don't think that the criteria are intended to say all you have to do is meet one of
4 these or another. It's taken as a whole and the Design Review Board makes a judgment as to
5 whether or not, on the whole, the project meets the criteria for superior retail. So this isn't a
6 checklist sort of things where you can just say if they do this, they got it, they don't do that they
7 don't have it. Otherwise I don't think we'd be here debating this issue. It was really a matter of
8 judgment as to what, whether or not overall it's superior retail.
9

10 ASHER: Okay.

11 MAYOR: Mary-Alyce.

12 BURLEIGH: Yeah, I just wanted to talk a little bit about the criteria that Jessica's referred to
13 and it seems to me that just as we wouldn't want downtown to have all restaurants or all retail
14 shops selling goods we provide for also services to be in our downtown and I think that's rightly
15 so. I don't think we'd want to -- and so when we talk about being compatible or being helpful to
16 the other businesses in the area certainly I think you could argue that having a bank there
17 certainly is helpful. You don't have to get in a car and drive someplace to go deposit your
18 receipts and so I think that there is a place in every downtown to have services available as a
19 compliment to retail and I think that's to me is persuasive.
20

21 MAYOR: Yeah, I can't disagree. So banks are allowed in downtown. They could be allowed
22 on this corner. Even though, although, I don't know, I think I heard two different opinions
23 floating around, Eric, on the dais here. It says CBD1 excludes banking and related financial
24 services, then I think I heard someone says the 1B allows them, and then you said yes. Is that
25 right?
26

1 SHIELDS: Yeah, if you look at the code, right below that retail listing that says “excluding
2 banks” is the listing of banks, so it’s really intended to say that that use listing is not the bank
3 listing, is not the use listing for banks.

4 MAYOR: It says banks, excluding banking and related financial services. I think that’s kind
5 of clear.

6 McBRIDE: But then –

7 SHIELDS: But then we go down to the next use listing and it has banks and financial
8 services.

9 MAYOR: Ah.

10 SHIELDS: In the code. And so ...

11 UNIDENTIFIED: Here you go.

12 SHIELDS: Well.

13 MAYOR: But anyway! (Laughter) Wow that’s, we’ve got it on one page, go back to the
14 next page, maybe I’ve got to go to the third page!

15 UNIDENTIFIED MALE: (Inaudible) all that he said.

16 MAYOR: You can have a bank there, that’s fine –

17 UNIDENTIFIED MALE: (Inaudible).

18 MAYOR: But the bank doesn’t qualify as performing superior to our retail.

19 STERNOFF: Sounds like another study session to me.

20 ASHER: It’s not defined.

21 MAYOR: Needs and defined so therefore the fifth floor doesn’t fly.

22 McBRIDE: Well, I disagree.

23 MAYOR: Tom. I know, we’re going to disagree on this.

1 HODGSON: So Eric, I have to go back to you on this parking issue. You said that the reduction
2 was based on the use and it was, there was a precedent in the area. I think you're talking about
3 Merrill Gardens as the reduction in parking in that, in that zone?

4 SHIELDS: I'm talking about every other residential project that I can think of in the last 15
5 years.

6 HODGSON: Okay, that were not designated as senior housing?

7 SHIELDS: Yes, correct.

8 HODGSON: Okay.

9 SHIELDS: (Inaudible).

10 HODGSON: Then why bother allocating 16 parking spaces from the retail space to visitor
11 parking? Why bother? What's the point?

12 SHIELDS: Simply to make more efficient use of those in an area where we know there is a
13 high parking demand.

14 HODGSON: Visiting parking for the residential use or visiting in general?

15 SHIELDS: Visiting in general I suppose.

16 UNIDENTIFIED FEMALE: (Inaudible).

17 SHIELDS: Right. Yeah.

18 HODGSON: So anybody can go in there and park for free?

19 SHIELDS: I don't think we specify the target of the parking, I don't think that's regulated.

20 HODGSON: But it would be generally available parking and not dedicated to any, any use of
21 the building, residential or retail?

22 ASHER: Not restricted from the public.

23 HODGSON: Okay. Okay.

1 MAYOR: Now, I'm out of names here. Where are we, folks? If I try to find the gut feel here
2 it sounds like for setbacks we are kind of a 4-to-3 split between yes and no and on superior retail
3 I'm seeing it the opposite, 3-to-4.

4 BURLEIGH: But I think the issue is where we come at the end of the day and what we're
5 voting on.

6 MAYOR: Yeah, that's, I'm trying to get us there.

7 BURLEIGH: Well we don't -

8 MAYOR: So that's kind of where we are. Do we want to recap that in an end of the day?

9 ASHER: I'd like to recap one piece of the setback-slash-stepback discussion that we had. It
10 sort of, Tom sort of brought it to a head when he indicated that the setback from the street could
11 be a surrogate for the façade, the front of the building to the back of the building, and in fact if
12 you look on - let's see, let's take something that we got recently - the handout where it showed
13 the setbacks and stepbacks from floor to floor. We received that here this evening. Yeah, just
14 hand that right here. If you took and said okay, superior retail has to be 30 feet one inch or
15 further, then at the corner that's achieved. If you go back to a distance further to the south, it's
16 not achieved in either the mid-point or the further south point at the southern corner.

17 UNIDENTIFIED: Right.

18 ASHER: So taking and saying a surrogate for a two story building can be achieved by
19 stepping back from or setting back from the property line I think should be consistent along the
20 façade of that end of the building, so I would say that you could do it and it's probably an
21 innovative approach to do that, but it needs to be 30 feet of the whole façade, the western façade
22 of the building along Lake Street.
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1 HODGSON: Yeah, except the point that I was making there is that they didn't use the full
2 footprint on the first floor so I'm sort of offering an offset on the second floor setback because
3 they didn't utilize the full –

4 UNIDENTIFIED FEMALE: (Inaudible) possible.

5 HODGSON: Footprint on the first floor. That's the, you know, allowance I'm thinking of there.
6 So if you were to put back the full floor plate on the first floor and then take off what you're
7 looking for, it'd be in the ballpark, I think.

8 ASHER: It wouldn't be on the southern half of the façade.

9 UNIDENTIFIED: (Inaudible)?

10 HODGSON: Well, no, I'm saying if you were to gain it back on the first but remove it on the
11 second floor, I'm sorry, on the third, then it'd be a wash more or less.

12 MAYOR: Okay.

13 HODGSON: And you'd get your depth is what I'm saying.

14 STERNOFF: Okay.

15 MAYOR: All right, Bob and Joan.

16 STERNOFF: All right, I agree with Tom, I'll yield.

17 MAYOR: That was it?

18 STERNOFF: Yeah.

19 MAYOR: Oh.

20 STERNOFF: I agree with Tom on that.

21 McBRIDE: Mr. Mayor, I'm concerned about the lateness of the evening. Now, I'm semi-
22 retired so I can be here for the long haul but you know, we are supposed to be using the
23 evidence, you know, in light of our regulations, design guidelines, comprehensive plan, et cetera,
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1 so while these debates I think are really helpful and might lead us to some legislative issues
2 down the line I -- do we have a notion of how we might come to?

3 MAYOR: We just have to have someone make a motion.

4 HODGSON: Well, can I just -- yeah, I think we're close. I mean, I'm getting near the end of my
5 short list here. I think we're at the point of deciding whether we think this designed use is --
6 meets the definition of superior retail - space rather, not use but space. I don't, I think I've got
7 my answers about parking cleared up so I don't think a mistake was made there but does the
8 space as it's designed qualify to be considered superior retail? That's the question.
9

10 McBRIDE: Okay, I have a few questions.

11 MAYOR: Let's see now, I had Jessica and then Joan, back to Joan.

12 BURLEIGH: Bob's up too.

13 MAYOR: And Bob.

14
15 GREENWAY: Well, I would just like to say that I think it's appropriate, it would be appropriate
16 for us to go through and each of us state our ruling or rendering of our opinion based on the
17 evidence.

18 MAYOR: Between the two as a combination?

19 McBRIDE: All of them.

20 MAYOR: Or individually.

21 GREENWAY: You know, I have an opinion.

22 MAYOR: Okay.

23 GREENWAY: That's based on some --

24 MAYOR: We could do that.

25
26 GREENWAY: Different factors of the hearings.

1 MAYOR: Well we may come back to start that.

2 GREENWAY: And I assume that everybody does, so I think that's, at some point, that, to me that

3 -

4 MAYOR Are you ready to render yours right now?

5 GREENWAY: I'm ready if the rest of the council is ready.

6

7 BURLEIGH: I want to make sure Tom's ready.

8 GREENWAY: I'm, I'm -

9 HODGSON: Well...

10 MAYOR: Well, we can still have the discussion -

11 HODGSON: I would like to finish the discussion on superior retail.

12

13 MAYOR: All right.

14 HODGSON: I'm, you know, I'd -

15 GREENWAY: Just at some point that's what I think should happen.

16 HODGSON: Yeah, and I've got one more that I wanted to toss out before we wrap up, if I

17 could.

18 MAYOR: Well, superior retail, what else do we need to talk about, Tom?

19 HODGSON: I, do we have -

20 ASHER: Twelve-oh-five.

21 HODGSON: Does it or doesn't it. Yeah, I think we're there. I mean, unless somebody else

22 wants to discuss a little bit more about (inaudible).

23

24 MAYOR: That's why I was taking kind of sort of a gut feel and it sounds like we're saying

25 it doesn't.

26

1 STERNOFF: Well, hold on a second. I haven't (inaudible) to say. I think short of something in
2 our code that says what it is, first of all, and second how much it has to be. I think that's a big
3 issue and I think that is a judgment call that we turned over to the DRB and I would argue.
4 That's, you know, you can't legislate that at this point.

5 McBRIDE: Mr. Mayor?

6 MAYOR: Yes, Joan?

7
8 McBRIDE: I believe that, that the code anticipated that there would be a bank on this site and
9 I believe that a project that was delivered to and worked with the DRB to come up with a
10 superior retail space for that bank. Much, much better that we see today, much smaller with a
11 more - better defined alley that may or may not be used that way in the future. I also think that
12 we're seeing superior retail space in three other areas of that development so altogether I see four
13 superior retail spaces and here I'm only talking about the design of the spaces, the superior
14 materials, the glazing, and that's where I'm at.

15
16 MAYOR: All right, Bob? You were done.

17 STERNOFF: Mm-hmm.

18 MAYOR: Okay.

19 GREENWAY: All right, I'll go next.

20 MAYOR: Jessica, go ahead.

21 GREENWAY: Or, is it my turn?

22 MAYOR: Yes.

23
24 GREENWAY: As an elected official it's my responsibility to make sure that applications comply
25 with the provisions of the comprehensive plan and the comprehensive plan clearly states that if
26 an application in this area is going to be allowed more than two stories one of the things it has to

1 provide is superior retail. I do not believe this application provides superior retail. I sound like a
2 broken record, but again, it must comply with all provisions of the downtown plan. These
3 guidelines clearly allow us to use use as a criteria for defining superior retail and a bank by no
4 stretch of the imagination can qualify as superior retail. We're allowed to, one of the guidelines
5 specifically says "tenants." Will it contribute to downtown, does it support other retail by virtue
6 of its tenant-pedestrian connections and linkages? A bank is clearly allowed. That is not the
7 issue. The issue is, does almost half of this new retail space qualify as superior retail and I don't
8 believe that it does, and the fact that a drive-through is going to be part of the retail use in my
9 opinion proves that it is not superior. Is it allowed? Yes, it's allowed. That's not the issue. The
10 issue is, does it qualify as superior retail and in my opinion based on the evidence, based on my
11 reading of the comprehensive plan, based on my interpretation of these guidelines - which I think
12 are very clear - this does not qualify as superior retail.
13

14
15 MAYOR: Mary-Alyce.

16 BURLEIGH: Well, that's, I'll say it again, I think that when we're talking about is it a use that
17 is helpful to other, the other retail in the area, I think yes it is if we're talking about this use. A
18 bank is important to retail. They have to have a bank to provide the services that they provide.
19 The fact that there's a drive-through I think is just inherent and, and what the code says and I
20 think the design review, to say that the Design Review Board erred in this point I think is a
21 stretch. I mean, I may not, it's a, I may not agree with them that, in their, I may not agree with
22 the code and how the language is stated but certainly in terms, in terms of what it says in terms
23 of requirements, that it complements and abets the retail environment, I think it does and I don't
24 believe that the Design Review Board erred in this area.
25

26 MAYOR: All right. Who's in queue here?

1 HODGSON: (Inaudible).

2 MAYOR: I don't have a queue.

3 HODGSON: Okay. Yeah, I think the space was designed for a specific function that is not
4 superior retail.

5 MAYOR: Okay. Where we going, folks?

6

7 McBRIDE: Mr. Mayor?

8 MAYOR: Yes? You want to venture a –

9 McBRIDE: Well, I'm just wondering if you have four votes that –

10 BURLEIGH: We need a motion.

11 McBRIDE: Say this is not superior retail, that may be enough, that may be what is needed to
12 stop this discussion.

13

14 MAYOR: Well, yes, I think we do - city attorney. I don't want to fracture this so we're just
15 voting on different specific things because we're supposed to be voting and coming around a
16 general topic or general consensus that we are denying or we are accepting or we are modifying.

17 ASHER: We have to come to findings and conclusions.

18 MAYOR: Yeah, findings and conclusions but then, but then staff will bring back as we
19 continue this, the findings and conclusions.

20

21 ASHER: Well, you've got to give them something -

22 MAYOR: But we need to have something that we are telling between the three areas of
23 accepting, denying or modifying. Is that correct?

24 ASHER: Mm-hmm.

25 JENKINSON: Yes.

26 ASHER: Mm-hmm.

1 MAYOR: Okay. So that's kind of where we are of the plan, not just a piece here and a piece
2 there. I thought our discussions, we did it by piece but I think we're at the point now of
3 accepting, denying or modifying.

4 ASHER: Question.

5 MAYOR: David and then Mary-Alyce.

6
7 ASHER: Question of the planning director. If superior retail is not determined to be in as
8 part of this development, what are the things that change from what the current proposal is?

9 SHIELDS: Janice maybe will help me. The thing that I recall being of great discussion as part
10 of the DRB decision was the additional space, public space in front of the retail space, that that
11 was an integral part of the retail, so the plaza, the wider sidewalks were a key element, I believe,
12 in the Design Review Board's –

13
14 ASHER: If the Council comes to a finding that superior retail is not inherent in the current
15 proposal and there are no provisions that are attached to superior retail, are there height changes,
16 are there bulk and mass changes, what changes are about what's allowable on this particular
17 piece of property?

18 SHIELDS: I think it –

19 ASHER: If it doesn't qualify as superior retail.

20 SHIELDS: Well, it depends on what basis you're making a judgment, I suppose, but in
21 general, and yeah one of the things that comes to my mind is a project that could come back that
22 was just like this project in every other way could go to within ten feet of the curblin so rather
23 than –
24

25 ASHER: Still five stories?

26 SHIELDS: No, still, five, no, that's, superior retail is a pre-requisite for the fifth story, so.

1 ASHER: That's what I was asking.

2 BURLEIGH: (Inaudible) before and what would be significant.

3 MAYOR: And we would look at the setbacks.

4 ASHER: Oh, I'd imagine the setbacks would change.

5 MAYOR: All right, so that is our, those are our options, affirm, reverse, modify.

6 BURLEIGH: Mothball.

7 MAYOR: Mary-Alyce?

9 BURLEIGH: I'd like to make a motion that we affirm the recommendation of the Design
10 Review Board.

11 MAYOR: All those –

12 STERNOFF: I'll second

13 ASHER: Well, you've got to get a second.

14 STERNOFF: I'll second.

15 MAYOR: Oh, I'm sorry.

17 STERNOFF: Get it on the floor, I'll second.

18 MAYOR: All right, so in second by Bob, motion is made by Councilmember Burleigh. So
19 all in favor say aye.

20 VARIOUS: Aye.

21 MAYOR: Opposed?

22 VARIOUS: No.

24 MAYOR: And that was a 4-to-3 denial of that motion. Do we have another motion?
25
26

1 McBRIDE: Mr. Mayor, thank you for trying to help this along but I - you know I didn't get a
2 chance to speak to the motion and I would have like to have had a chance. But maybe - I don't
3 think people under - I - this is such a difficult decision that we have before us tonight.

4 UNIDENTIFIED: (Inaudible). Pardon me.

5 McBRIDE: The only thing that we really have and the only thing that we honored to uphold
6 when we an oath of office is our guidelines, our comprehensive plan, our zoning code, so
7 whichever way we come down on this I just think it's really important that people know how
8 important we take this decision.

10 MAYOR: I -

11 McBRIDE: It's not a laughing matter, it's not something we do flippantly. But we really
12 believe that developers for private property have a right to come in and have a predictable set of
13 rules and we struggle with that tonight, so.

14 MAYOR: And might I say the Design Review Board struggled mightily with it also and I
15 don't think there's anybody sitting in the room that's not struggling with it or is not taking it
16 seriously. Tom?

17 HODGSON: And that's - I want to talk about that. I think that we didn't talk about my fourth
18 item on my short list and that is the discretion of the Design Review Board. During all of our
19 discussion here and testimony we were looking at facts in the comp plan, facts here, facts there
20 and trying to go back to what was written, and the discretion of the Design Review Board to
21 decide on things like what's right for the intent and spirit of the downtown was pretty much
22 pushed aside. If that's the way we want to do this then we don't need the Design Review Board.
23 We can have administrative approval of these things, which to me is what looks like what
24 happened. I'm hearing and through this whole process from the very start it looked like a five
25
26

1 story project that came in and we were going to find a way to make it fit, not from the ground up
2 but from the fifth floor down and that's what's bothering me about this and I think we have a
3 further discussion about the function of our Design Review Board.

4 MAYOR: Thank you, Tom well said. Jessica and then Joan.

5 GREENWAY: Other councilmembers have said it very well. This is very, very difficult to be up
6 here sitting in judgment of this. It's incredibly difficult for me to sit up here and vote to reverse a
7 recommendation of the Design Review Board because I respect and appreciate the work and the
8 commitment and the professionalism of the Design Review Board and in fact of all of our citizen
9 volunteers on all of our boards and commissions. It's also very difficult for me to change the
10 design, reverse the Design Review Board recommendation because I really, really like and
11 respect Mr. Loos, the developer. However, as an elected official I am charged with carrying out
12 and upholding the provisions of our comprehensive plan and that's what I had to base my
13 decision on and I believe that the Design Review Board erred in two ways. One was in granting
14 the third and fourth stories, because I do not believe the setbacks, the step backs, the modulation
15 did enough to change the appearance of the bulk and mass of the building. This is a very large
16 building and it looks like a very large building, and as you heard me say over and over tonight I
17 do not think that this application qualifies for superior retail.

18
19
20 One of the things that really got my attention was in the first part of this hearing on April
21 15th the testimony of the chair of the Design Review Board, Jeff Bates, said that the Design
22 Review Board interpreted the intent of the comprehensive plan to provide greater density by
23 allowing greater height. I don't think that is what the Design Review Board is charged with. The
24 Design Review Board is not charged with interpreting the comprehensive plan. The
25 comprehensive plan is not up for interpretation. It's very clear. There are a few details that are
26

1 not specific and do require some interpretation, so again, this was a very difficult decision but
2 one that I was compelled to make based on the evidence presented in this hearing.

3 DAVID RAMSAY: Mr. Mayor?

4 MAYOR: Yes.

5 RAMSAY: Staff's assignment now is to bring back to you findings from the council based on
6 your deliberations tonight. So, so far I've heard one finding, namely, not superior retail, so I need
7 to, we need to understand if there are other findings and conclusions the council's reached on
8 which to base this order.
9

10 MAYOR: And then do we need to have a vote to

11 UNIDENTIFIED: Yep.

12 MAYOR: Deny, 'cause we've basically turned down a vote to confirm.

13 ASHER: I'll give you a proposal in a minute if you'd like.

14 MAYOR: Okay. Mary-Alyce is next and then Dave.

15
16 BURLEIGH: Well, everybody's said about how difficult this is. We've had a lot of information
17 to go through and there's a lot of legal ramifications of any decision that we make and we take it
18 very seriously and I think it's been said that there are certain aspects of this that are open to
19 interpretation and good minds can agree to differ on what these interpretations are. We appoint a
20 Design Review Board made up of experts and it's unlike a lot of our boards and commissions
21 because we insist they be people with design expertise, landscape architects, architects, folks like
22 that so that they can best interpret our intent and we give them that charge because we know that
23 to do this sort of development is as much art as science and you know, what is considered to be a
24 piece of art in one person's eye is a piece of junk in another person's eye and we find that also in
25 building design so good minds can differ on this. That's why we hire, quote unquote, at zero pay
26

1 these people to work hard and come up with a design recommendation for us. This is not the
2 permit process, this is the design process, and it seems to me we have to give great credence to
3 the opinions of our Design Review Board and so I think this is going to be something we're
4 going to have to deal with in the future.

5 MAYOR: Thank you, Mary-Alyce. Dave and then Bob.

6 ASHER: I think the next stop for this development is superior court and given that I think
7 that the findings of the council need to be clear and include all of the misgivings that we have
8 and I would propose that we direct staff to return at the next regular city council meeting with a
9 resolution setting forth the findings and conclusions that the development does not contain
10 superior retail that warrants additional height, bulk, mass of the development nor does it present,
11 meet the requirements of a two story building along Lake Street, and I add that second provision
12 to make sure that we enjoin both aspects of that in any kind of a final appeal.
13

14 MAYOR: And what you might want to do is put that together in a motion of denial.
15

16 ASHER: That's, yeah, that was what I was doing.

17 MAYOR: Okay, so –

18 ASHER: That was what I was proposing.

19 MAYOR: Moved and seconded by councilmember Asher. All those -
20

21 ASHER: Councilmember Hodgson.

22 HODGSON: Hodgson.

23 MAYOR: Excuse me, Hodgson. Asher's over here. All those in favor?

24 VARIOUS: Aye.

25 MAYOR: Opposed.

26 VARIOUS: No.

1 MAYOR: Okay, 4-to-3 with Burleigh and McBride –

2 STERNOFF: Three. Gang of three. Gang of three.

3 STERNOFF: Mr. Mayor, if I may. I just want to, this is for our boards and commissions
4 mainly. I for one really rely on the expertise of our boards and commissions and I want to make
5 sure that those that are watching, those that hear about this understand that there are differing
6 opinions on the council. I for one appreciate everything that's done. Certainly on a volunteer
7 basis by these people. We select you by your qualifications and sometimes as I've known in my
8 past on boards and commissions you don't get listened to. I will also posit to the council, part of
9 the problem we have here is we have so many boards and commissions and about to maybe
10 create another one that we don't have time to even talk to and not on a regular basis and certainly
11 not on a frequent basis and I think maybe that's where some of the disconnect comes in and I
12 caution the council before we create any more that we take a look at what we've got and try and
13 get this cleaned up because this to me is not acceptable in any way.

14 MAYOR: I think that's a valid opinion, Bob, thank you. Any further council comments?
15 Well, to both the appellant, applicant, staff, to the citizens that showed up faithfully and stayed
16 with us until 12:37, I thank you for your patience with this council, for your interest and your
17 faith.

18 JENKINSON: Mayor?

19 MAYOR: (Inaudible).

20 JENKINSON: Could you continue the hearing until the 20th so that –

21 MAYOR: Yes, this hearing will be continued until the next meeting of May the 20th where
22 we will have the entry of the findings and conclusions. That concludes the matter of this agenda
23 this evening. Thank you.

1 ASHER: You going to adjourn?

2 MAYOR: We are adjourned.

3 [END RECORDING]

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May 28, 2008

Kirkland City Council
123 First Avenue
Kirkland, WA 98033

Re: Comments and Suggested Revision regarding Proposed
Findings and Conclusions
Appeal Case No. APL08-00001; DRC 07-00006

Dear Council Members:

Thank you for providing SRM Development with the opportunity to comment on the staff's proposed Findings and Conclusions prepared regarding the above-referenced appeal, and to respond to revisions proposed by the Appellants CiViK. The attached memorandum sets forth SRM's comments and suggested revisions in a format similar to that employed by CiViK. As you will see, SRM's comments include several questions aimed at illuminating and clarifying the Council's collective rationale with the goal of preparing and presenting a modified proposal acceptable to the majority of the Council. SRM very much appreciated the comments of several Council members during the May 20th meeting that we are close to an approvable building. SRM would like to reach that approvable design through the current process.

Consistent with staff's approach, SRM also concluded from the May 6th deliberations that the Council's preliminary decision was based on two primary issues: (1) whether the proposed BOA/Merrill Gardens project as approved by the DRB complies with the height restrictions applicable to Lake Street South; and (2) whether the proposed BOA/Merrill Gardens project satisfied the "superior retail spaces" criteria qualifying the project for a fifth story. Although a majority of the Council directed staff to prepare findings and conclusions on these two issues, SRM did not hear a consensus amongst the Council members regarding your reasoning on each issue. Absent clarification by the Council, SRM, and other owners of property in the CBD-1 zone, are left to guess at the Council's intent and the meaning, as interpreted by Council, of the provision of the Downtown Plan and Kirkland Zoning Code that dictate the development potential of their properties.

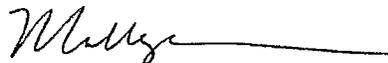
As part of its comments on the Findings and Conclusions, SRM has proposed modifying the Council's decision from a reversal of the DRB's approval of the BOA/Merrill Gardens project to an approval of the project as modified. As the Council acknowledged during its May 20th meeting, you have authority to consider modifications under the Kirkland Code. KZC 142.40(11)(b)(3). To facilitate this discussion, SRM has included revised renderings of the project showing increased setbacks between the second and third stories and between the fourth and fifth stories along Lake Street South. We believe that this revised design should resolve any

outstanding questions or concerns regarding the building's compliance with the Lake Street height restrictions. We offer this design as an alternative for your review and approval as a modified design.

With regard to the "superior retail space" criteria, SRM lacks adequate direction from the Council to prepare similar revised drawings for the project. However, we believe that we can address one of the key concerns and misconceptions regarding the corner space – that it was designed as a bank. We have prepared a drawing showing how the corner space as currently designed could also be utilized as a restaurant. As explained in greater detail in the attachment, the corner space was never "designed as a bank." Instead, it was designed as an approximately 5,700 square foot retail space consistent with the joint DRB/staff created criteria for evaluating "superior retail spaces." It could be utilized by any number of different types of retail uses. If the majority of the Council continues to believe that this space does not meet its interpretation of the "superior retail space" criteria, SRM requests clarification from the Council regarding what is necessary for this space to meet the criteria, and an opportunity to revise the project to better conform to that direction. Absent such clear direction, SRM is left to guess at the Council's meaning.

Thank you again for your consideration. We look forward to the Council's continuing discussion regarding this matter at the June 3, 2008, meeting. We will be available at that time to respond to any questions or comments from the Council and to discuss any modification to the proposal that might enable the Council to approve the project as modified.

Very truly yours,



Molly A. Lawrence

MAL:mal

cc: Robin Jenkinson, Kirkland City Attorney
Andy Loos, SRM Development
Richard Aramburu, CiViK

**SRM Development's Comments and Suggested Revisions regarding Draft Resolution R-4707, including responses to revisions proposed by CiViK.
May 28, 2008**

Text of Resolution R-4707:

Introductory paragraph: If the Council moves forward with its preliminary decision to reverse the DRB's approval of the BOA/Merrill Gardens project, no change. If, however, the Council reviews alternative designs and consequently approves a modified design for the BOA/Merrill Gardens project, the following revisions would be appropriate:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING FINDINGS AND CONCLUSIONS AND MODIFYING THE DECISION OF THE DESIGN REVIEW BOARD GRANTING DESIGN REVIEW APPROVAL TO THE BANK OF AMERICA/MERRILL GARDENS MIXED USE PROJECT AT 101 KIRKLAND AVENUE. (FILE NO.: DRC 07-0006; APPEAL CASE NO.: APL08-0001).

2nd "whereas" paragraph: Accept revision proposed by CiViK.

4th "whereas" paragraph: Modify to include reference to the May 20, 2008, and June 3, 2008, Council meetings.

WHEREAS, on April 15, 2008, May 6, 2008, May 20, 2008, and June 3, 2008, the City Council considered the appeal in an open record proceeding; and

5th "whereas" paragraph: If the Council moves forward with its preliminary decision to reverse the DRB's approval of the BOA/Merrill Gardens project, no change. If, however, the Council reviews alternative designs and consequently approves a modified design for the BOA/Merrill Gardens project, the following revisions would be appropriate:

WHEREAS, at the conclusion of the hearing on June 3, 2008, the City Council voted to approve the Bank of America project as modified; and

Section 1: If the Council moves forward with its preliminary decision to reverse the DRB's approval of the BOA/Merrill Gardens project, no change. If, however, the Council reviews alternative designs and consequently approves a modified design for the BOA/Merrill Gardens project, the following revisions would be appropriate:

In support of the decision modifying the Design Review Board's decision granting design review approval to the Bank of America project, the City Council hereby adopts the

Findings, Conclusions, and Decision attached hereto as Exhibit "A" and by this reference incorporated herein.

Revised Exhibit A to Draft Resolution R-4707

I. Procedural Findings

Paragraph 1.4: Modify to add reference to the May 20, 2008, and June 3, 2008, Council meetings.

On April 15, 2008, May 6, 2008, May 20, 2008, and June 3, 2008, the Kirkland City Council considered the appeal in an open record proceeding. *April 15, 2008, May 6, 2008, May 20, 2008, and June 3, 2008, Proceedings.*

Paragraph 1.7: With regard to the second sentence, modify to make clear that the entire record from the DRB proceedings is part of the record for this appeal. With regard to the fourth sentence, if the Council moves forward with its preliminary decision to reverse the DRB's approval of the BOA/Merrill Gardens project, no change. If, however, the Council reviews alternative designs and consequently approves a modified design for the BOA/Merrill Gardens project, the following revisions would be appropriate:

The City Council heard testimony from the Department of Planning and Community Development ("Planning") staff, the Chair of the Design Review Board, testimony and oral argument from members of the Appellant and representatives of the Applicant, and asked questions of the witnesses. The Council had before it the following documents: (a) the decision of the Design Review Board with attachments including Planning staff memoranda, applicant submittals and public comment letters to the Design Review Board; (b) the Planning staff report to the City Council with attachments including the entire record before the Design Review Board; and (c) the written submissions of the parties, including briefing and exhibits. After hearing the presentation and oral arguments of the parties, the City Council deliberated and reached a decision on the appeal. By a vote of ___ to ___, the City Council modified the Design Review Board's decision granting design review approval to the Bank of America project. *April 15, May 6, May 20, and June 3, 2008, Proceedings.*

Paragraph 1.8: Reject CiViK's proposed revision. Although CiViK accurately captures the language of Councilmember Asher's motion, CiViK inaccurately asserts that that motion "reversed the Design Review Board's decision." The City Council has not to date taken final action on this appeal. Councilmember Asher's motion directed staff to return with proposed findings and conclusions. Those findings and conclusions, and not the prior motion, will become the Council's final decision on this appeal. CiViK's proposed revision unnecessarily confuses the matter.

II. Standard of Review

No proposed changes to Section II, Standard of Review.

III. Findings Regarding Appeal

Paragraph 3.1: The language proposed by both staff and CiViK is flawed. Between the two, staff's proposed language is more accurate. CiViK's proposed language, by comparison, is confusing and appears to be missing one or more letters or words. If the Council wishes to modify the staff's proposed finding, SRM would recommend the following, which most accurately reflects the language in the KZC:

The Central Business District (CBD) 1 zone permits structures containing attached or stacked dwelling units to heights between two and five stories above each abutting right-of-way. *CBD 1 Use Zone Chart; KZC 50.12.030; KZC 50.12.080.*

Paragraph 3.4: Modify to more fully and accurately capture the criteria of the Downtown Plan.

The Downtown Plan provides that the maximum building height in Design District should be between two and five stories with no minimum setback from property lines and requires that stories above the second story should be setback from the street. *Downtown Plan, page XV.D-10.*

Paragraph 3.7: No objection to either staff's proposed language or CiViK's proposed revision.

Paragraph 3.9: Accept staff's language as proposed. Reject CiViK's proposed additional language. CiViK has failed to identify any provisions in the Downtown Plan that specify the design requirements for retail space. SRM is similarly unaware of any provisions of the Downtown Plan that specify the design requirements for retail spaces. Absent such provisions, the proposed addition is inappropriate and inaccurate.

Paragraph 3.11: Staff's proposed language could be misinterpreted as implying that the BOA/Merrill Gardens project is five stories over the entire site. It also overly simplifies the DRB's decision language regarding approval of the fifth story. SRM proposes the following revision to more accurately reflect the project design:

The Bank of America proposal ranges in height from one to five stories. *Exhibit 201.*

Paragraph 3.12: *No objection to the staff's proposed language. If the Council chooses to consider CiViK's proposed revisions, we would request clarifications as follows:*

Along Lake Street South, the first and second stories are setback from the street between 14'-0" and 40'-2", the third and fourth stories are setback from the street between 22'-0" and 42'-6", and the fifth story is setback from the street between 46'-9" and 74'-11". The stepbacks between the first and second stories and the third story range between 6'-0" and 22'-4", the stepbacks between the first and second stories and the fifth story range between 34'-4" and 46'-0", and the stepbacks between the fourth and fifth stories ranges between 23'-4" and 36'-0". *Exhibit 201.*

Notably, these dimensions would need to be revised if the Council considers and approves a modified design.

Paragraph 3.14: *No objection to CiViK's proposed modification.*

Paragraph 3.16: *Delete entire paragraph. This paragraph is not factually accurate. It further does not reflect the consensus of the Council members who support reversing the DRB's approval of the BOA/Merrill Gardens project.*

Testimony of SRM's architect, Chad Lorentz, indicated that the project was not "designed as a bank." We apologize if there was any confusion about this and would encourage the Council to review Mr. Lorentz's testimony and cross-examination.¹ As Mr. Lorentz testified, SRM gave him an approximate square footage for the corner "bank" space and further told him to design an adjoining drive through. Other than that, he received no direction to design the interior or exterior space as a bank or any other particular type of retail tenant. He also had no knowledge of the operations or functions that would be located in the space. Instead, he sought to design the space consistent with the DRB's and staff's "superior retail space" criteria. The design of the doors, windows, facades, etc., were all generated to meet the "superior retail space" criteria, and were not related in any way to the anticipated tenant. Moreover, the inclusion of a drive through does not indicate that the space was "designed for a bank." Any number of other retail uses, including drug stores, coffee shops and restaurants, regularly include drive throughs.

Further, the DRB proceedings regarding the project evidence that the space was not "designed for a bank." The configuration of the corner space changed repeatedly throughout the design review process. SRM made no effort during those proceedings to design the corner space to accommodate any particular functions or anticipated needs of a bank tenant.

¹ As the Council may recall, during the April 15, 2008, Council meeting, Mayor Lauinger instructed the parties that they could not question their own witnesses to clarify testimony given on cross-exam. This may explain the confusion. But an objective review of Mr. Lorentz's testimony evidences that he was not asked to design the corner space in any particular way in order to accommodate a bank tenant – or any other particular retail tenant.

Moreover, as was discussed extensively during the Council's deliberations on May 6, 2008, there is no question that the corner space could be used by any number of other tenant types in the future. See the attached drawing demonstrating how this space could easily be adapted to accommodate a restaurant.

Finally, the transcript from the Council's May 6, 2008, deliberation document that only one Councilmember asserted that the space was "designed as a bank." See Hodgson, Transcript pp. 23, 29, 46. Consequently, this paragraph does not reflect the consensus of the Council members who support reversing the DRB's approval of the BOA/Merrill Gardens project.

CiViK's proposed additional Paragraph 3.22: Reject proposed additional paragraph. None of the proposed additional language contains relevant review criteria for this appeal. Further, none of the Council members suggested including this language in their findings and conclusions. Inclusion of this language improperly elevates one sentence, which is not even a review criterion, from the Downtown Plan above other policy provisions in the Plan. If the Council proposes to accept CiViK's additional language, it would similarly be appropriate to include the following from the Downtown Plan:

The portions of Design District 1 designated as 1B in Figure C-5 provide the best opportunities for new development that could contribute to the pedestrian fabric of the Downtown. Much of the existing development in these areas consists of older auto-oriented uses defined by surface parking lots and poor pedestrian orientation. To provide incentive for redevelopment and because these larger sites have more flexibility to accommodate additional height, a mix of two to four stories in height is appropriate.

IV. Conclusions as to Superior Retail Space

SRM concurs with CiViK's concern that this section as proposed by staff does not accurately reflect the consensus of the Council Members who support reversing the DRB's decision approving the BOA/Merrill Gardens project. Based on the transcript of the Council's May 6, 2008, deliberations, four different positions were articulated by the Council members regarding the "superior retail space" criteria.

- Council Members Bride, Burleigh, and Sternoff all concluded that the corner "bank" space met the City's criteria for superior retail space.
- Mayor Lauinger and Councilmember Greenway concluded that a bank could not constitute "superior retail" and, therefore, the project did not meet the superior retail space criteria.
- Councilmember Hodgson concluded that the corner space was designed as a bank and therefore could not qualify as superior retail space.
- Councilmember Asher did not express a clear position regarding why the project did not meet the superior retail space criteria.

SRM requests clear direction from the Council regarding: (1) why the project as approved by the DRB does not meet the superior retail space criteria; and (2) what changes are needed to the corner space to meet the “superior retail space” criteria.

At this point in the deliberations, SRM is left guessing at the Council’s intent and interpretation of the Downtown Plan criteria. Once the Council has fully articulated its direction regarding what is needed to meet the “superior retail space” criteria, corresponding findings and conclusions should be drafted. SRM also requests the opportunity at that point to offer a modified proposal that conforms to the Council’s interpretation and direction before the Council enters its final decision regarding this appeal.

With regard to the specific language of the proposed conclusions paragraphs, SRM suggests the following:

Paragraph 4.1: As proposed, this paragraph does not accurately reflect the consensus of the Council members who support reversing the DRB’s approval of the BOA/Merrill Gardens project. This paragraph should be revised in response to clear direction from the Council regarding why the majority of the Council did not believe the project as designed met the superior retail space criteria.

Paragraphs 4.3 and 4.4: SRM objects to the inclusion of the portion of Paragraph 4.3 which begins “A drive-through facility, moreover, is not consistent with superior retail space in the CBD-1, as explained in the Downtown Plan, page XV.D-6 . . . “ through the end of the paragraph. SRM further objects to the inclusion of Paragraph 4.4. Based on the transcript of the Council’s May 6, 2008, deliberations, only one of seven Council members referred to the drive-through as an indication that the project did not meet the “superior retail space” criteria. Consequently, these conclusions do not reflect the consensus of the Council members who support reversing the DRB’s approval of the BOA/Merrill Gardens project.

CiViK’s proposed Paragraphs 4.5 through 4.8: SRM objects to the inclusion of any or all of these proposed paragraphs. These paragraphs restate CiViK’s positions, rather than the consensus of the Council Members who support reversing the DRB’s approval of the BOA/Merrill Gardens project.

With regard to proposed paragraph 4.5, again, this paragraph reflects the position of one or possibly two of the Council members, but does not reflect the consensus position of the Council members who support reversing the DRB’s approvals of the BOA/Merrill Gardens project.

Further, the DRB believes that the superior retail space criteria concerns the design of the space, and not to the use of the space. As Jeff Bates from the DRB explained, the DRB did not intend, and has not applied, any of the superior retail spaces criteria, which were created jointly by staff and the DRB, as referring to or considering use. Even the “does it support other retail by virtue of its tenants, pedestrian connections/linkages, etc.” criterion is a method for

evaluating space, not use. This is easily understood if one considers that different spaces may be designed for different tenant types, but without a specific tenant in mind. This is exemplified by the café space in the proposed building – it could be a coffee shop, a sandwich shop, or an ice cream parlor (to name a few). By comparison, a 5,700 square foot corner space could be utilized by any number of different retail tenant types, and is not limited in any way by its design to a bank use.

With regard to proposed paragraph 4.6, this paragraph does not accurately reflect the testimony of SRM's architect, Chad Lorentz, or other evidence presented. The first sentence is wholly inaccurate. As explained above, SRM gave Mr. Lorentz an approximate square footage and told him to design an adjoining drive through. He was not provided any other details regarding the bank, its functions, or design needs or preferences. Again, we would encourage the Council to review Mr. Lorentz's testimony to avoid any confusion about this.

Further, the second sentence mischaracterizes the project. Also, the fourth sentence involves speculation. Even if accurate, it is irrelevant if the Council's decision is based on the design of the space, and not the use. This proposed paragraph should be rejected in its entirety. Alternatively, if the Council intends to incorporate any portion of this paragraph into its findings and conclusions, SRM proposes the following:

The space at the corner of Lake Street and Kirkland Avenue occupies the most prominent corner and is the largest retail space in the project.

With regard to CiViK's proposed paragraph 4.7, this paragraph is a blatant attempt by CiViK to insert its position into the Council's findings and conclusions. It does not reflect the consensus of the Council members who support reversing the DRB's approval of the BOA/Merrill Gardens project. It should be rejected in its entirety.

For the reasons explained above, CiViK's proposed paragraph 4.8 should also be rejected in its entirety.

V. Conclusions as to the Height on Lake Street

In general, SRM shares CiViK's concern that the staff's original proposed conclusions (dated May 14, 2008) regarding the Lake Street height restrictions do not accurately reflect the consensus of the Council members who support reversing the DRB's approval of the BOA/Merrill Gardens project. SRM was similarly unable to discern from the Council's deliberations a precise mathematical formula regarding the setbacks required above the second story to satisfy the Lake Street height restrictions.

Indeed, SRM was confused by the Council's vote on the height restriction issue. Approximately half way through the Council's May 6, 2008, deliberations, Mayor Lauinger took a "straw vote." At that time four of the seven Council members expressed their positions that the BOA/Merrill Gardens project as approved by the DRB satisfied the Lake Street height restriction. Subsequently, during the final vote on Councilmember Asher's motion directing staff to prepare findings reversing the DRB's decision, one Council member, who had previously

in the deliberations expressly concluded that the project met the Lake Street height restrictions, reversed his vote on this issue without explanation. Consequently, while SRM agrees with staff's interpretation that the entire project need not be limited to 2 stories, SRM remains unsure of what degree of setback above the second story is necessary to satisfy the Lake Street height restrictions. SRM requests clear direction from the Council regarding exactly what is required to meet the Lake Street height restrictions. In an effort to advance the dialogue regarding this issue, SRM has enclosed proposed modified renderings of the project showing additional setbacks at the third and fifth stories. If acceptable, SRM requests that the Council approve this design as modified.

With regard to the specific language of the proposed conclusions paragraphs, we would suggest the following:

Paragraph 5.2: Approximately two-thirds of the paragraph should be deleted beginning on the third line at the words "but the Design Review Board..." through the end of the paragraph. Although this language reflects the arguments articulated by CiViK in this appeal, none of the Council members referred to the different phrasing in the Downtown Plan as the basis for their conclusion that the BOA/Merrill Gardens project did not meet the Lake Street height restrictions.

Paragraph 5.3: SRM appreciates the staff's effort to revise this paragraph since the original draft findings and conclusions (dated May 14, 2008). SRM believes that the current version more accurately reflects the consensus of the Council members who support reversing the DRB's approval of the BOA/Merrill Gardens project. SRM proposes the following additions/revisions to further clarify the Council's interpretation of the Lake Street height restrictions:

The Downtown Plan does not, however, require that an entire building located along Lake Street South be limited to two stories, regardless of the depth of the building, because the purpose of this limitation is to "reflect the scale of the development in Design District 2." Under the Downtown Plan, it is intended that buildings abutting Lake Street South should create the impression, from the perspective of a pedestrian walking next to these buildings, of being a maximum of two stories in height.

Paragraph 5.4: As proposed by CiViK, this paragraph perhaps partially captures the consensus of the Council members who support reversing the DRB's approval of the BOA/Merrill Gardens project, but it is ambiguous and subject to misinterpretation. SRM proposes the following revisions:

The Bank of America project as approved by the DRB is not consistent with the Council's interpretation of the height limitation on Lake Street South, as articulated in paragraph 5.3 above, because the third and fourth floors are not setback from the second floor, nor from Lake Street South, far enough. *[Delete the remainder of the paragraph and insert guidance regarding how large the setback must be to meet the Council's interpretation of the Lake Street height restriction.]*

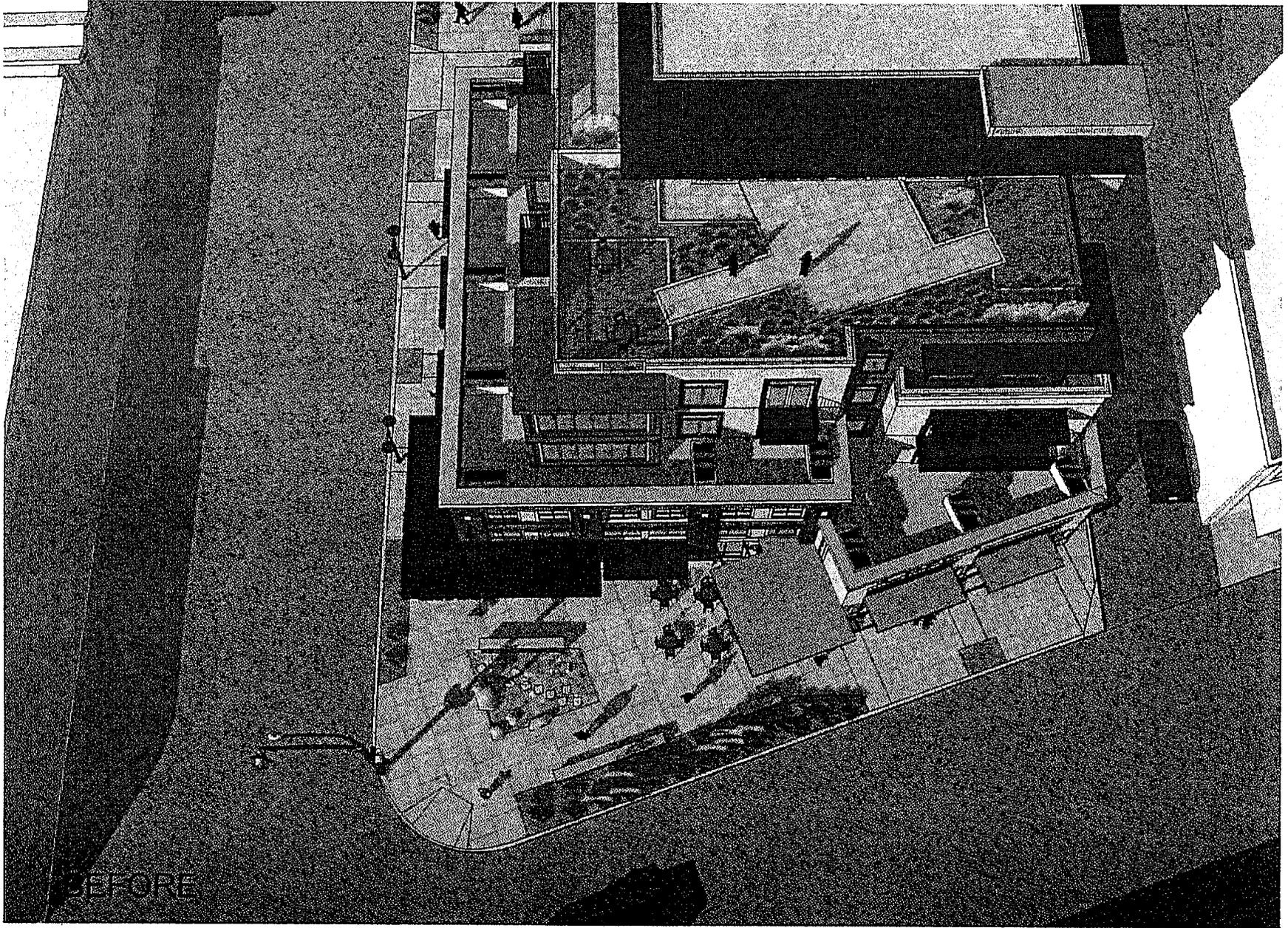
Further, if the Council reviews SRM's alternative project design and agrees that it conforms to the majority of the Council's interpretation of the Lake Street height restrictions, SRM would propose appending the following at the end of the paragraph or adding a new Paragraph 5.5 as follows:

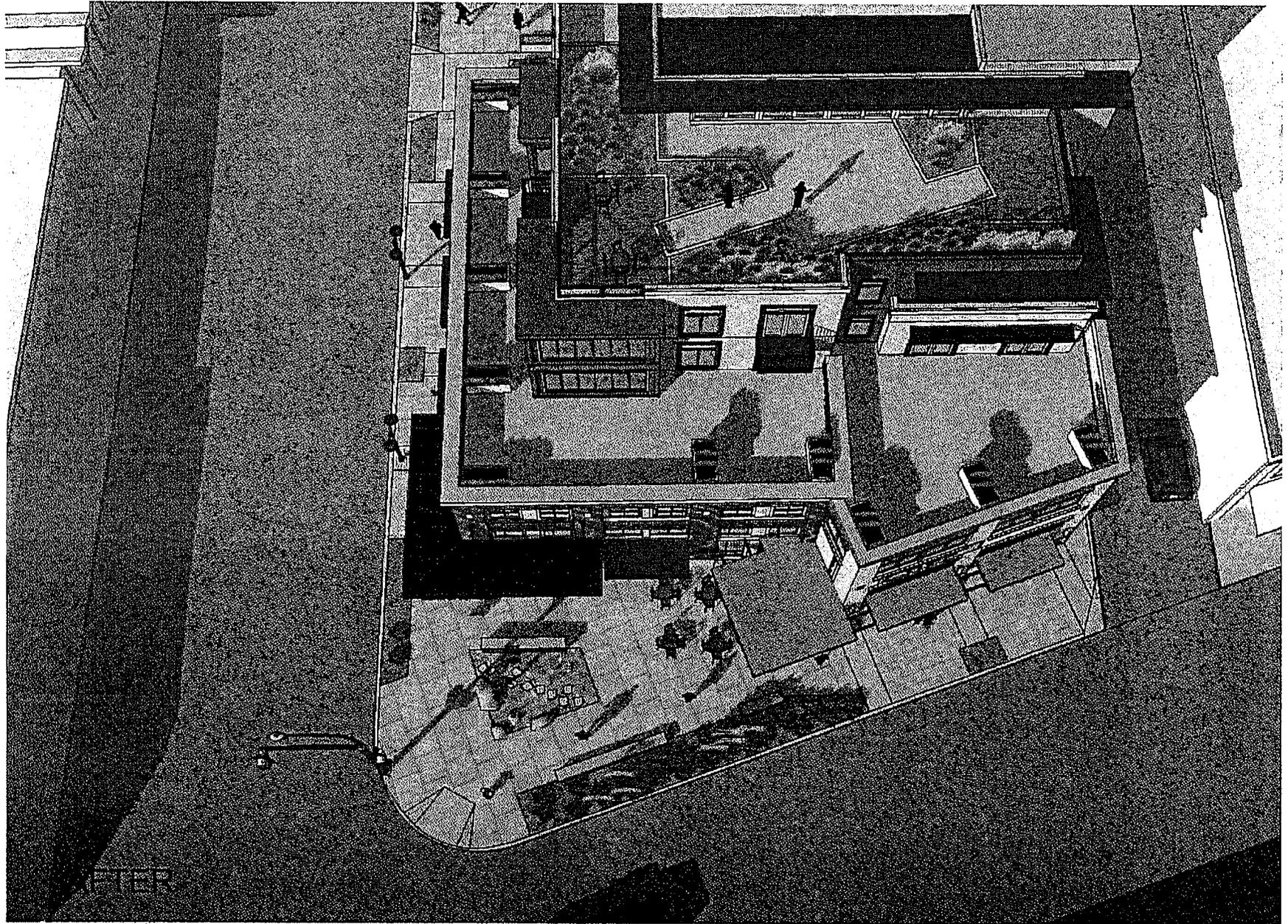
During the appeal process, however, SRM offered an alternative design that the majority of the Council members agree conforms to the Council's interpretation of the height restrictions on Lake Street South.

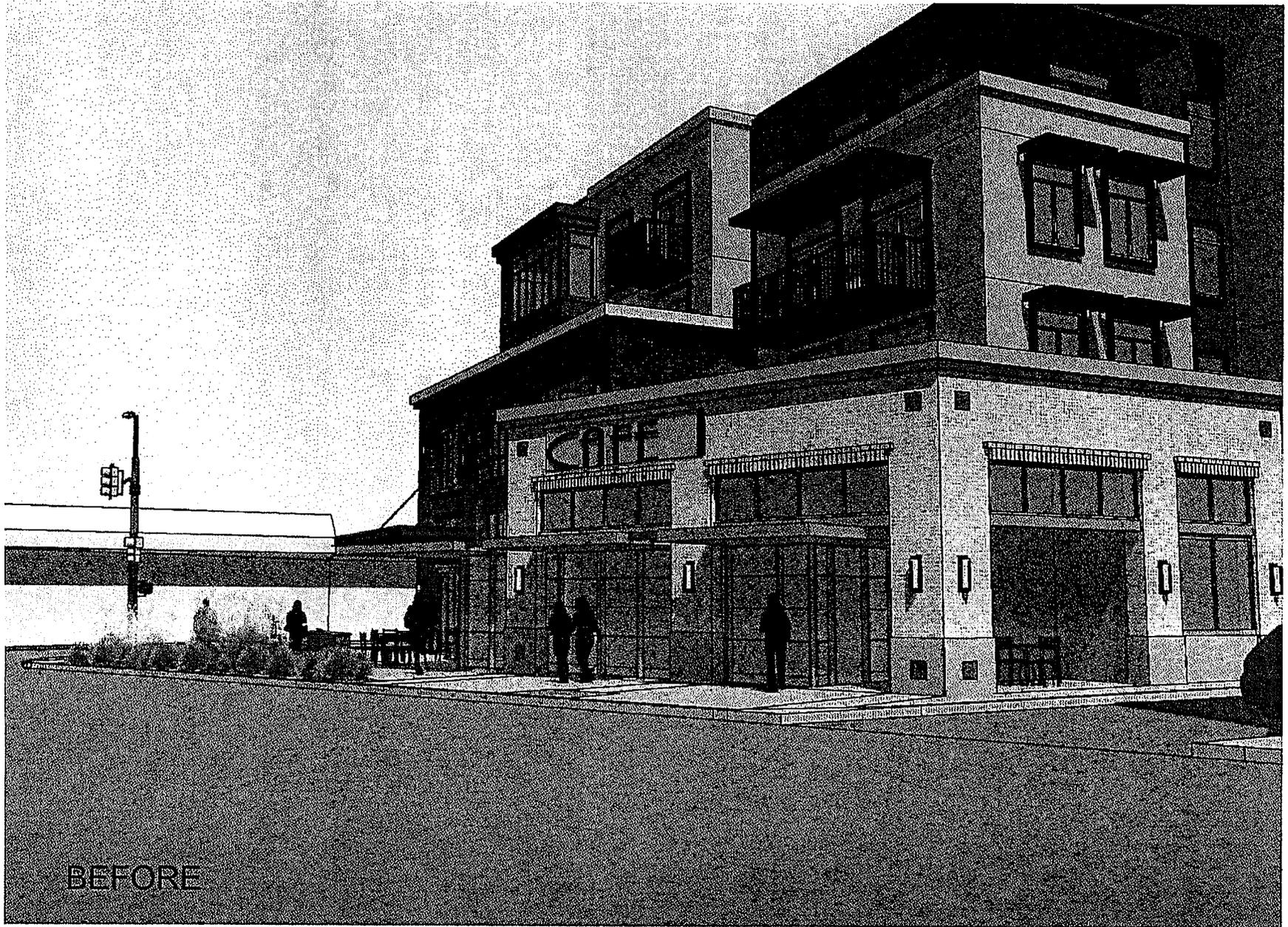
VI. Decision

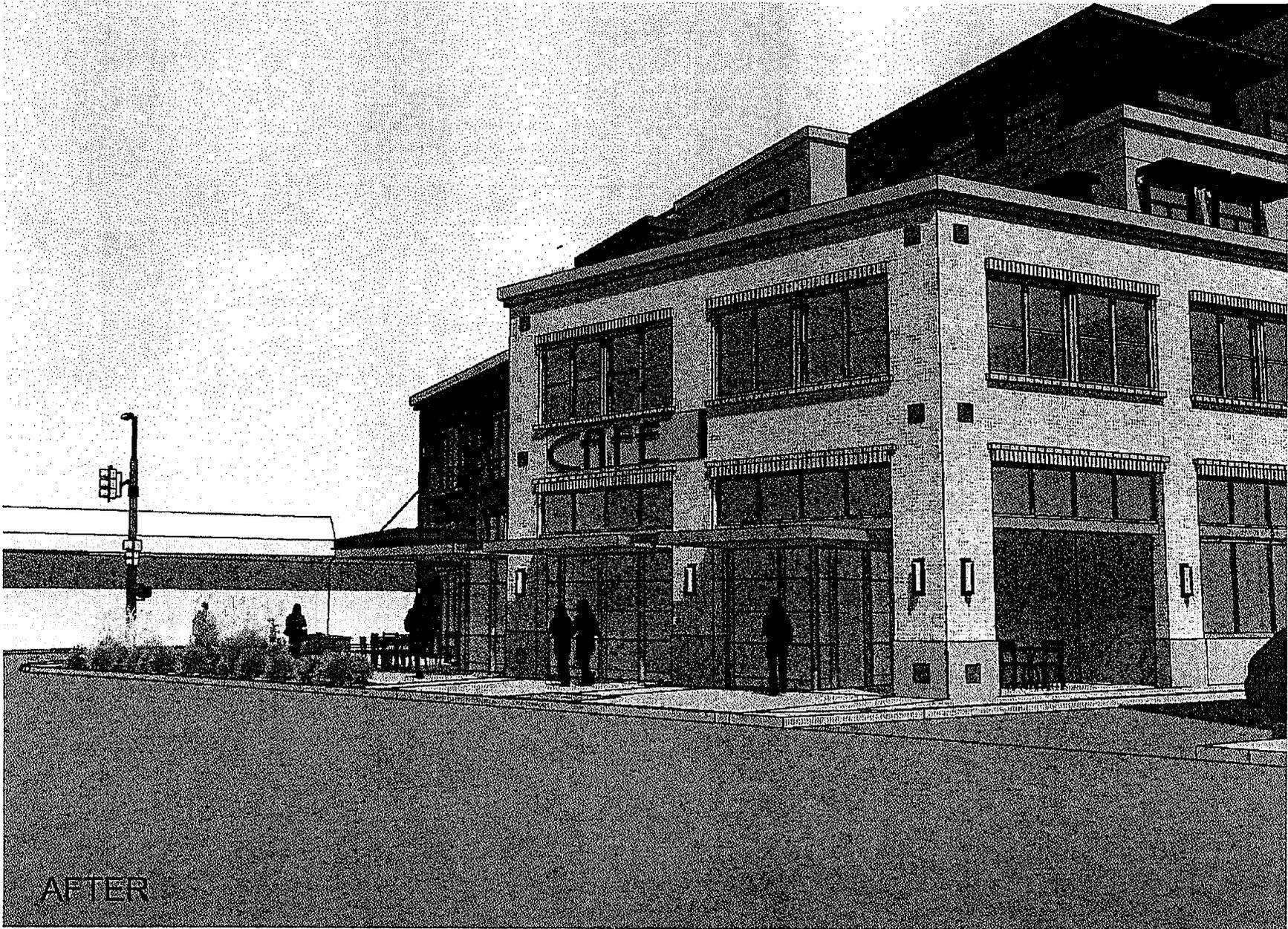
If the Council moves forward with its preliminary decision to reverse the DRB's approval of the BOA/Merrill Gardens project, no change. If, however, the Council reviews alternative designs and consequently approves a modified design for the BOA/Merrill Gardens project, the following revisions would be appropriate:

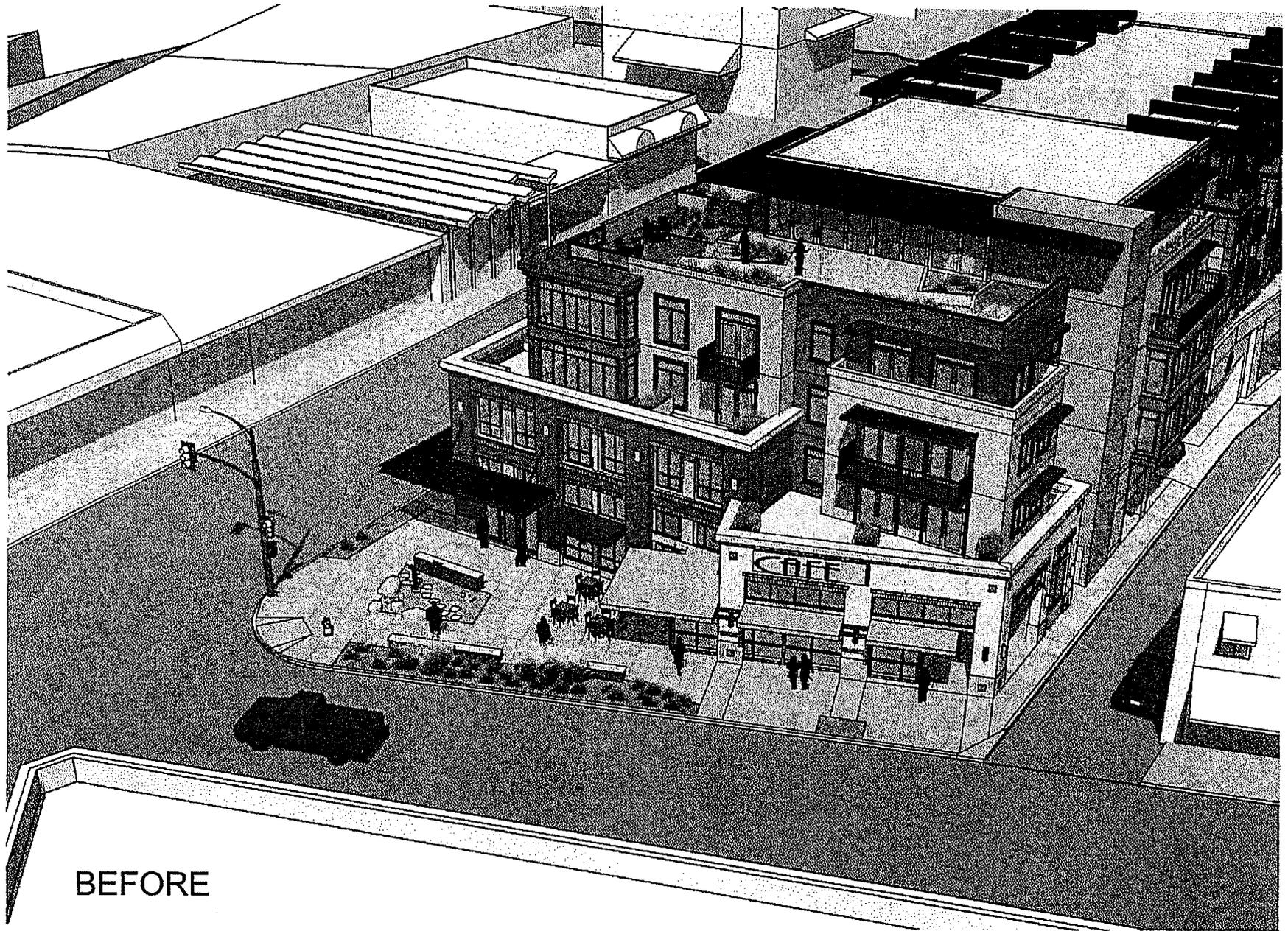
For the reasons set forth in the foregoing Findings and Conclusions, the decision of the Design Review Board is hereby MODIFIED. The approved design for the Bank of America project, as modified by the City Council, is attached hereto as Exhibit A.I.



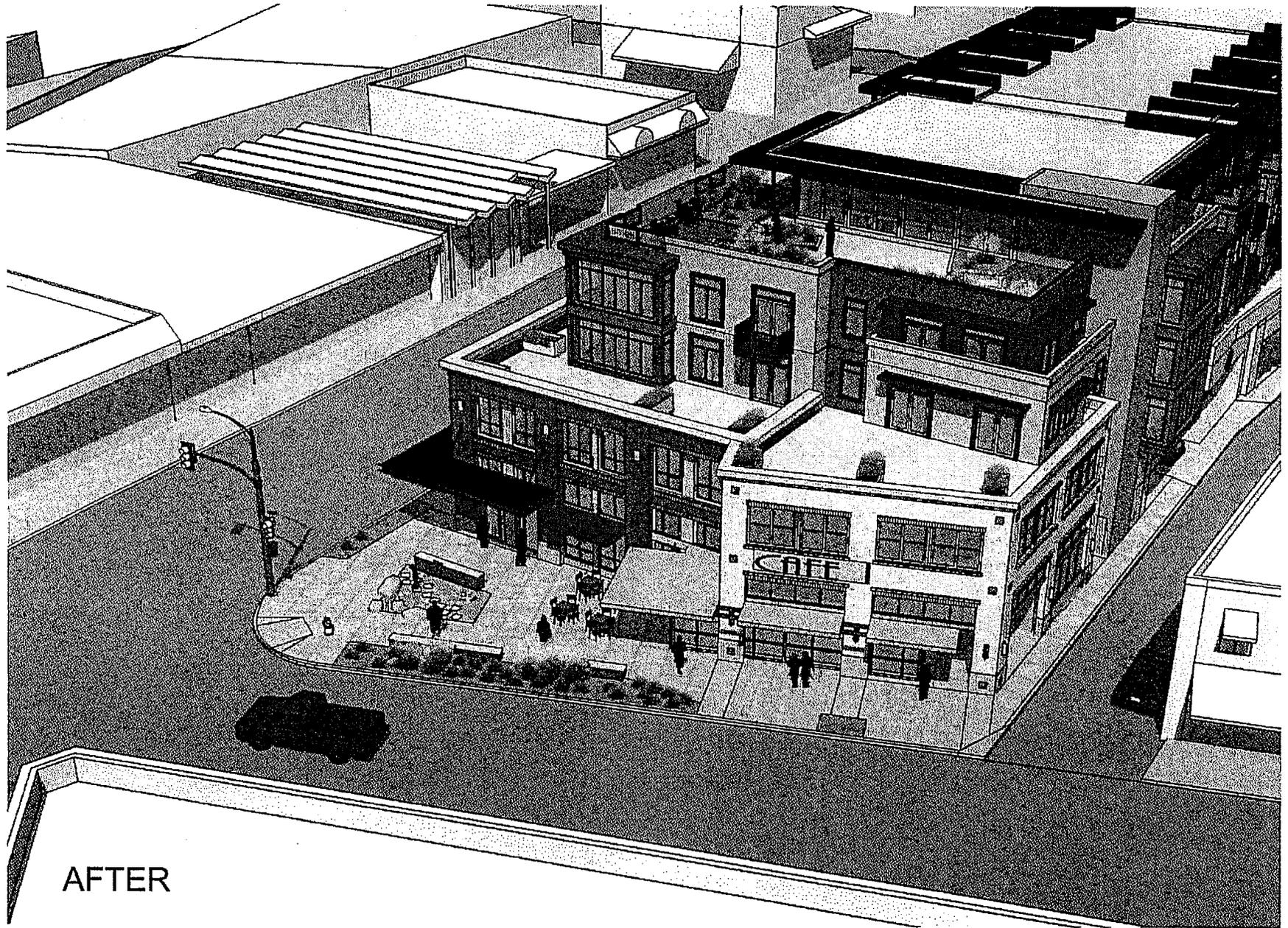




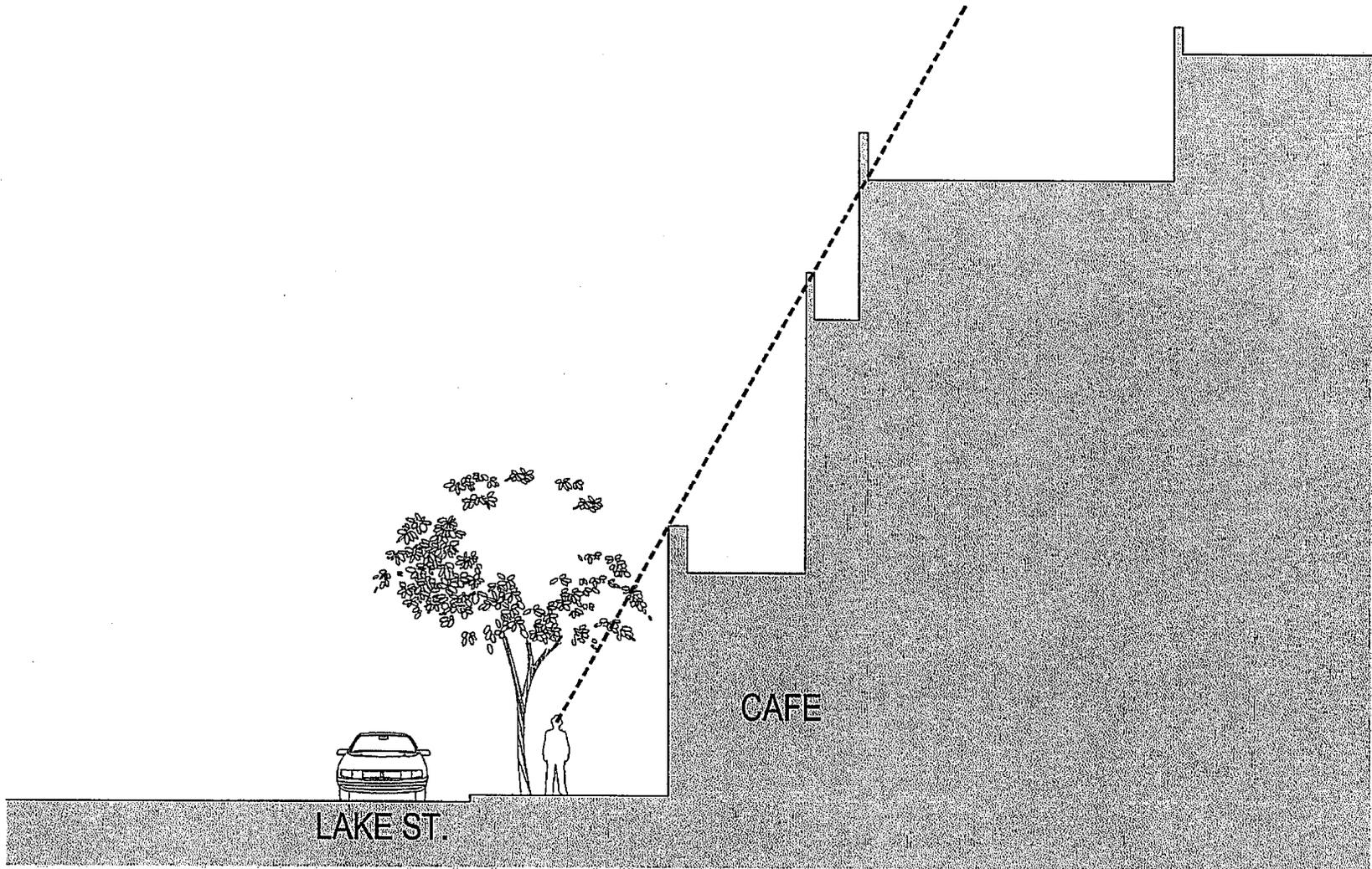




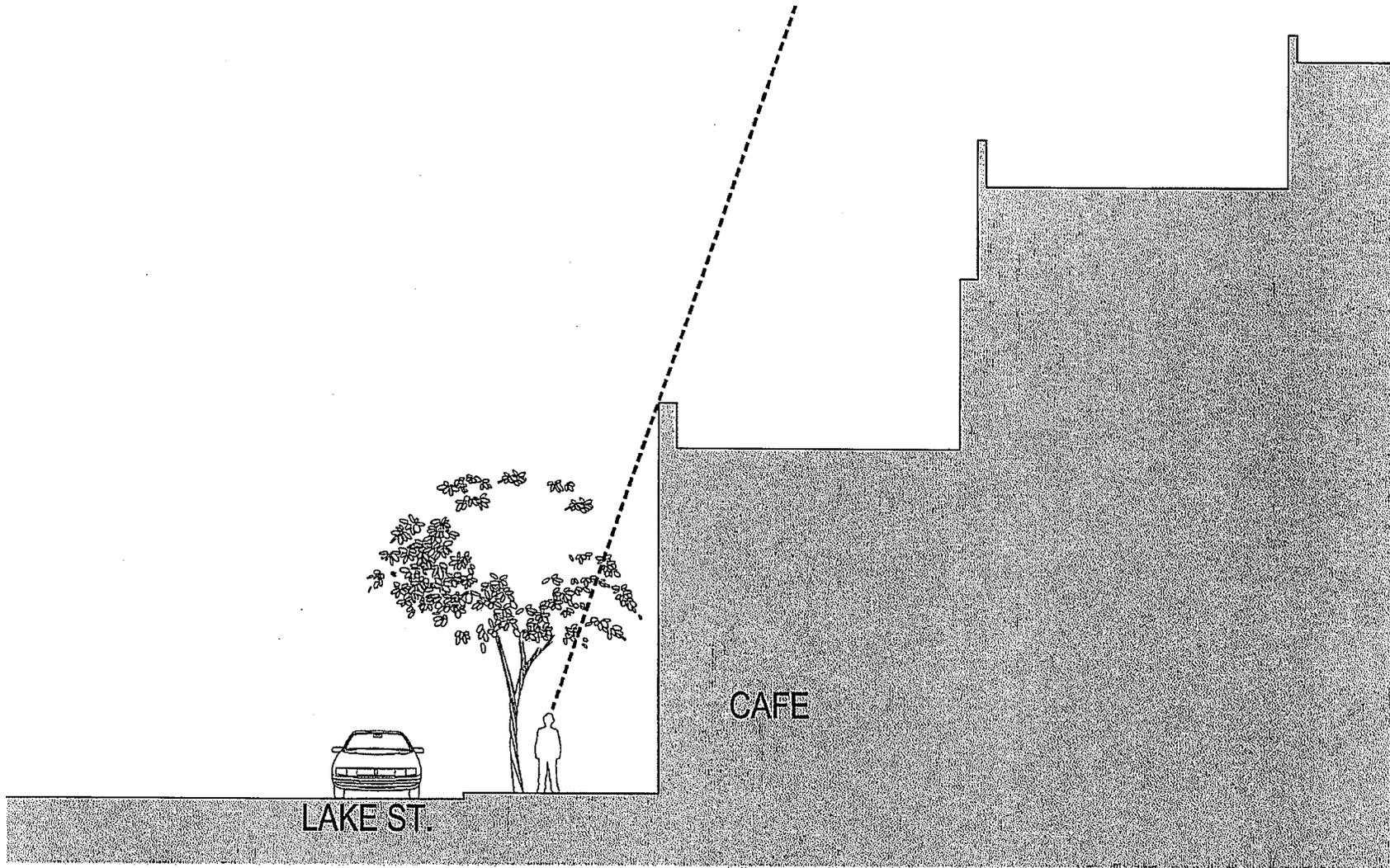
BEFORE



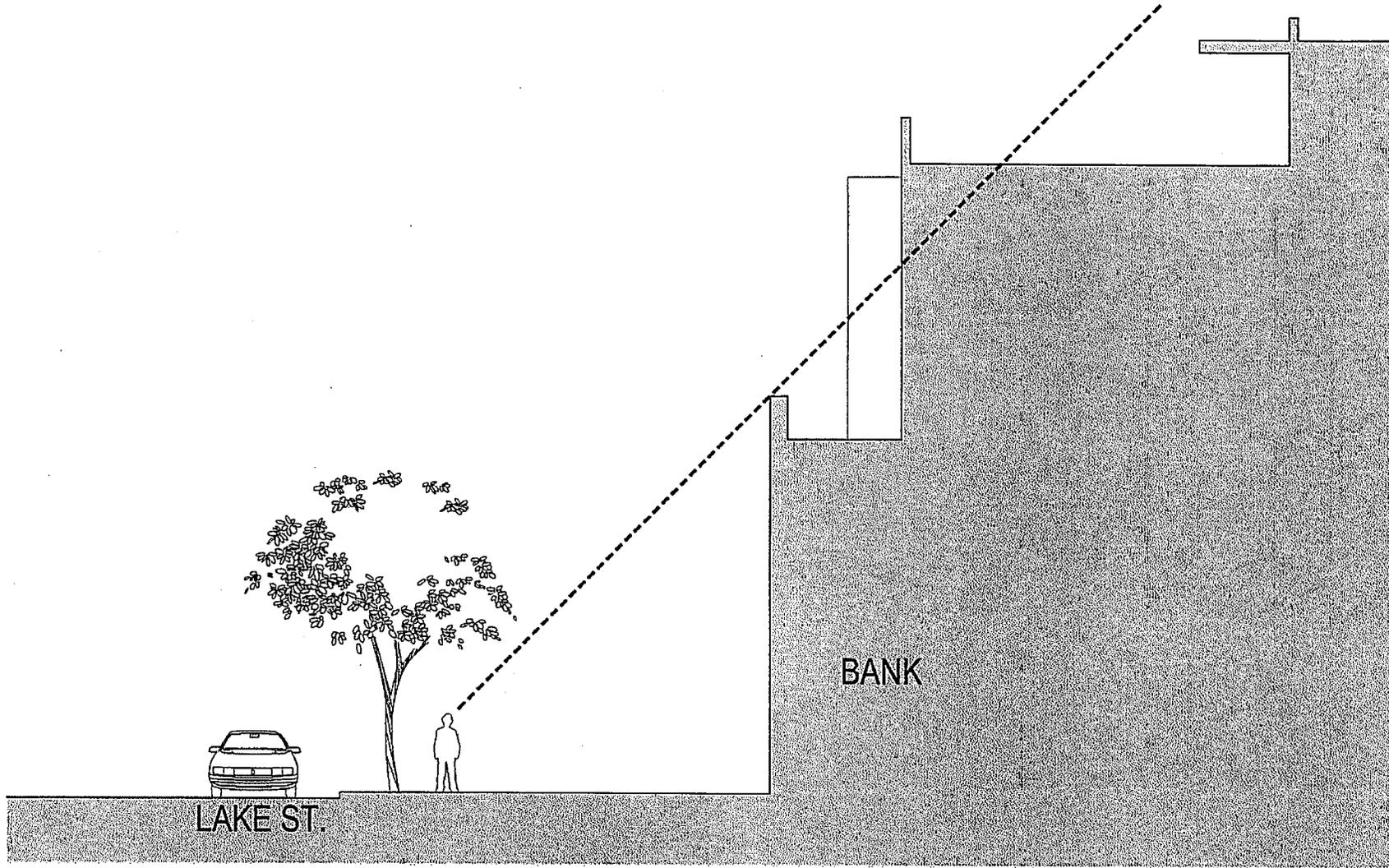
AFTER



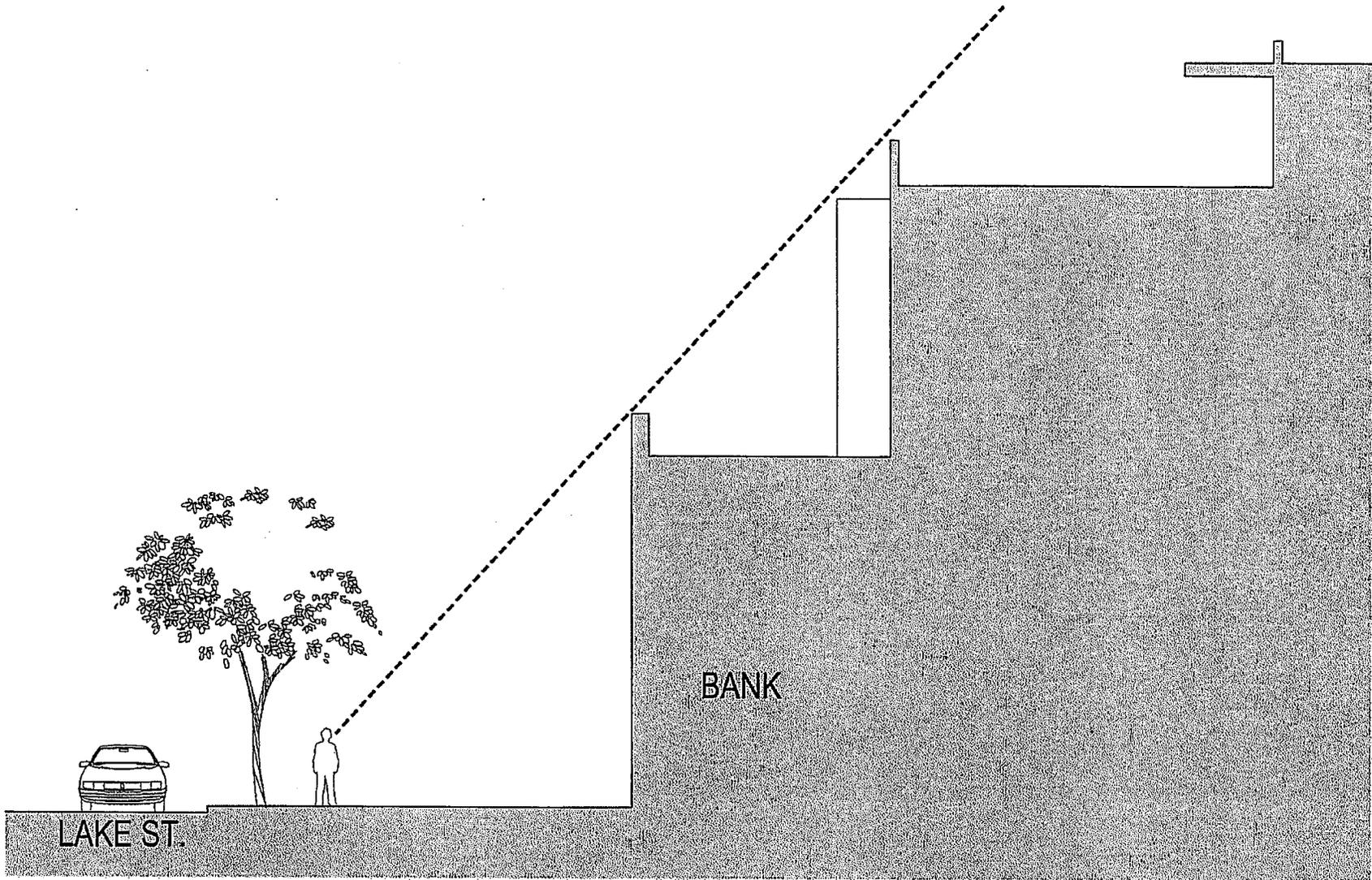
CAFE - PREVIOUS



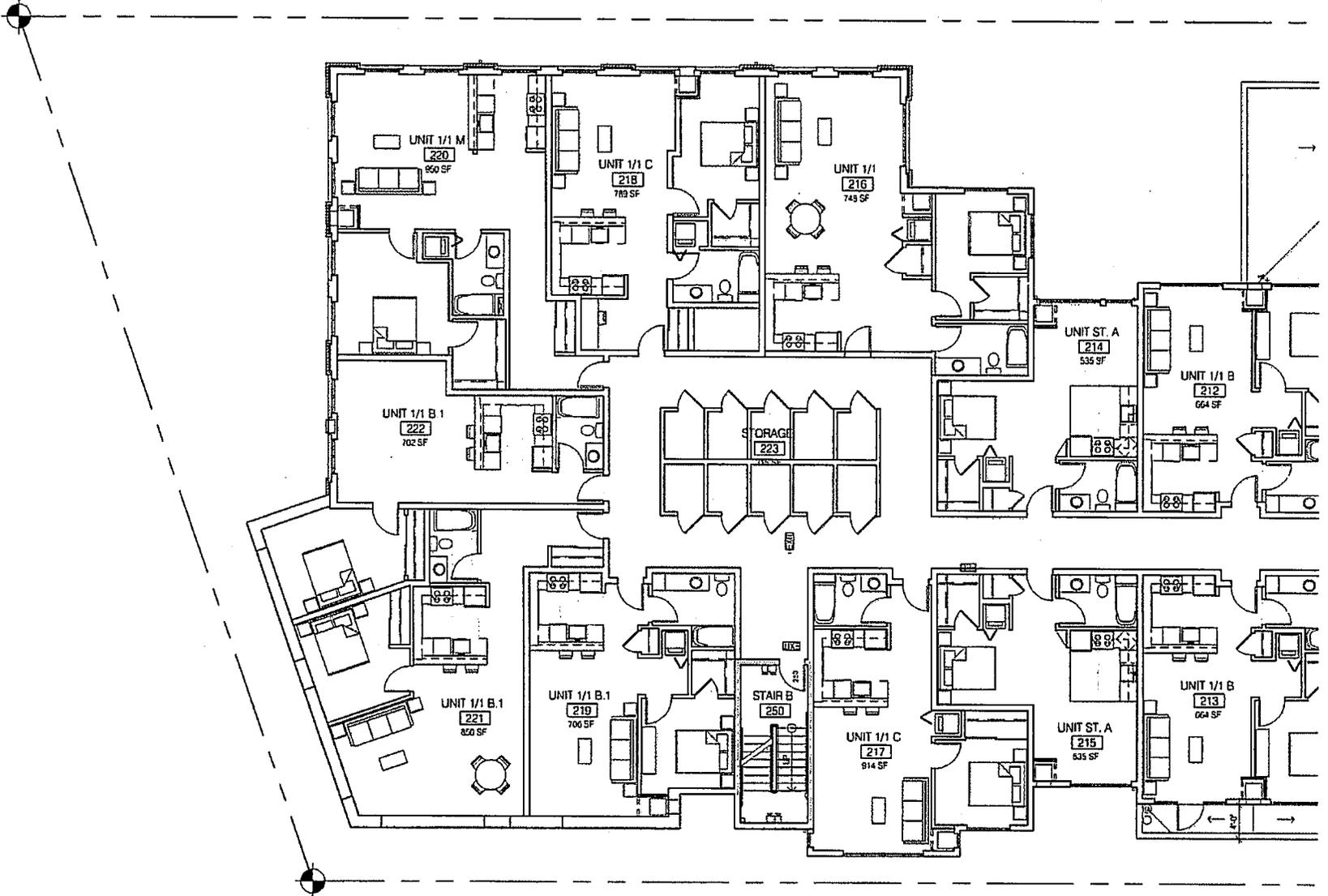
CAFE - REVISED



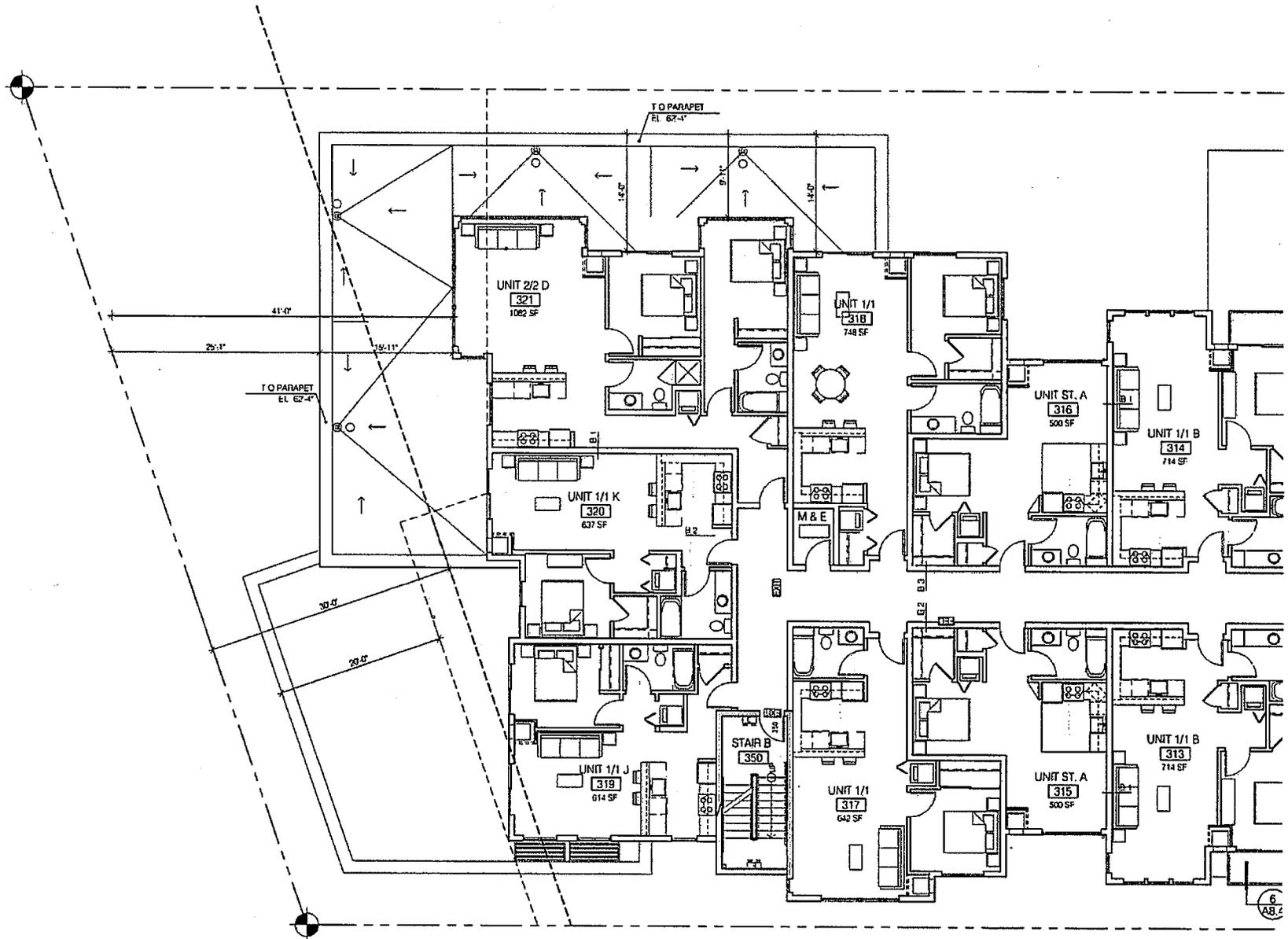
BANK - PREVIOUS



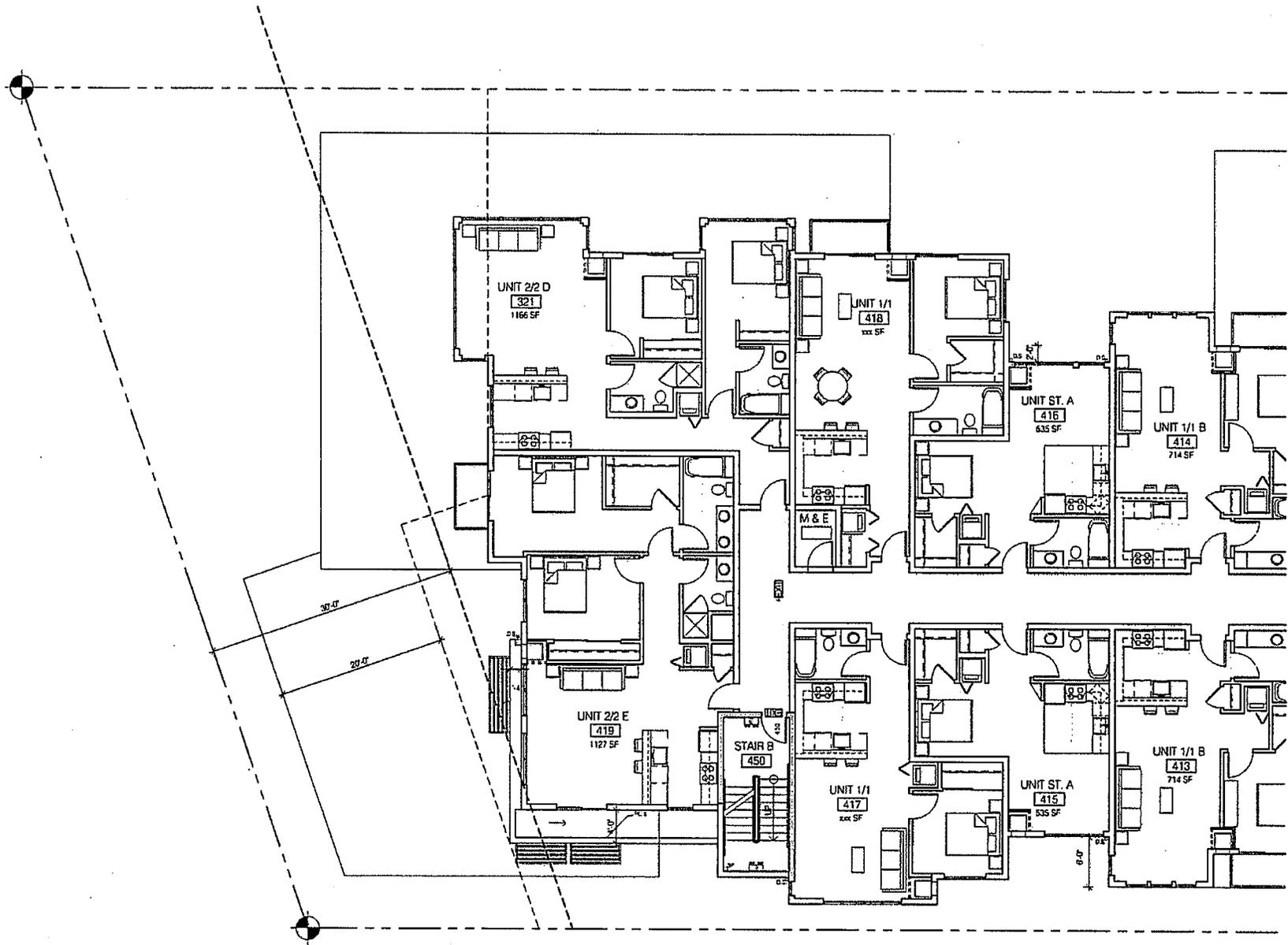
BANK - REVISED



LEVEL L2 - REVISED



LEVEL L3 - REVISED

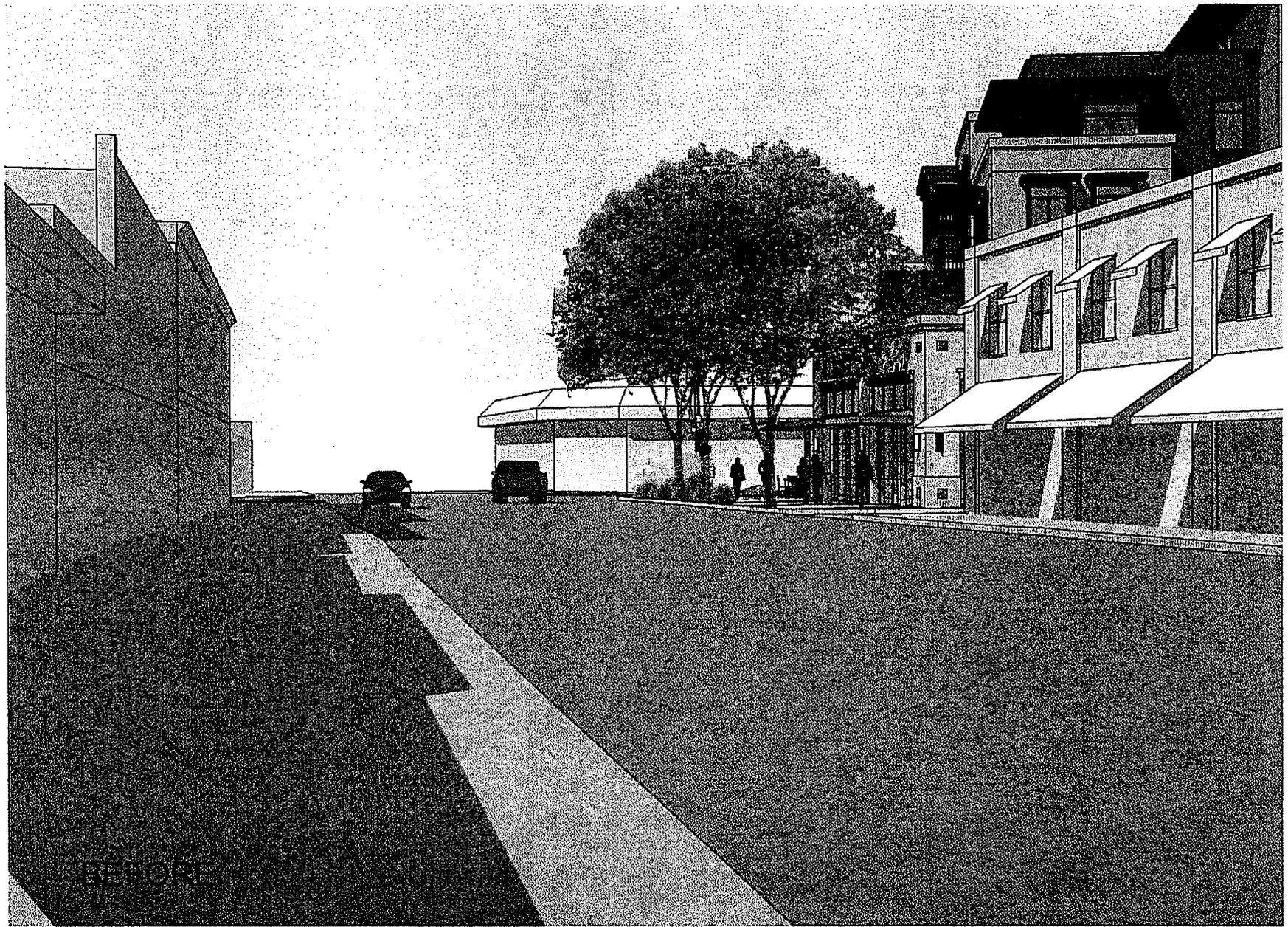


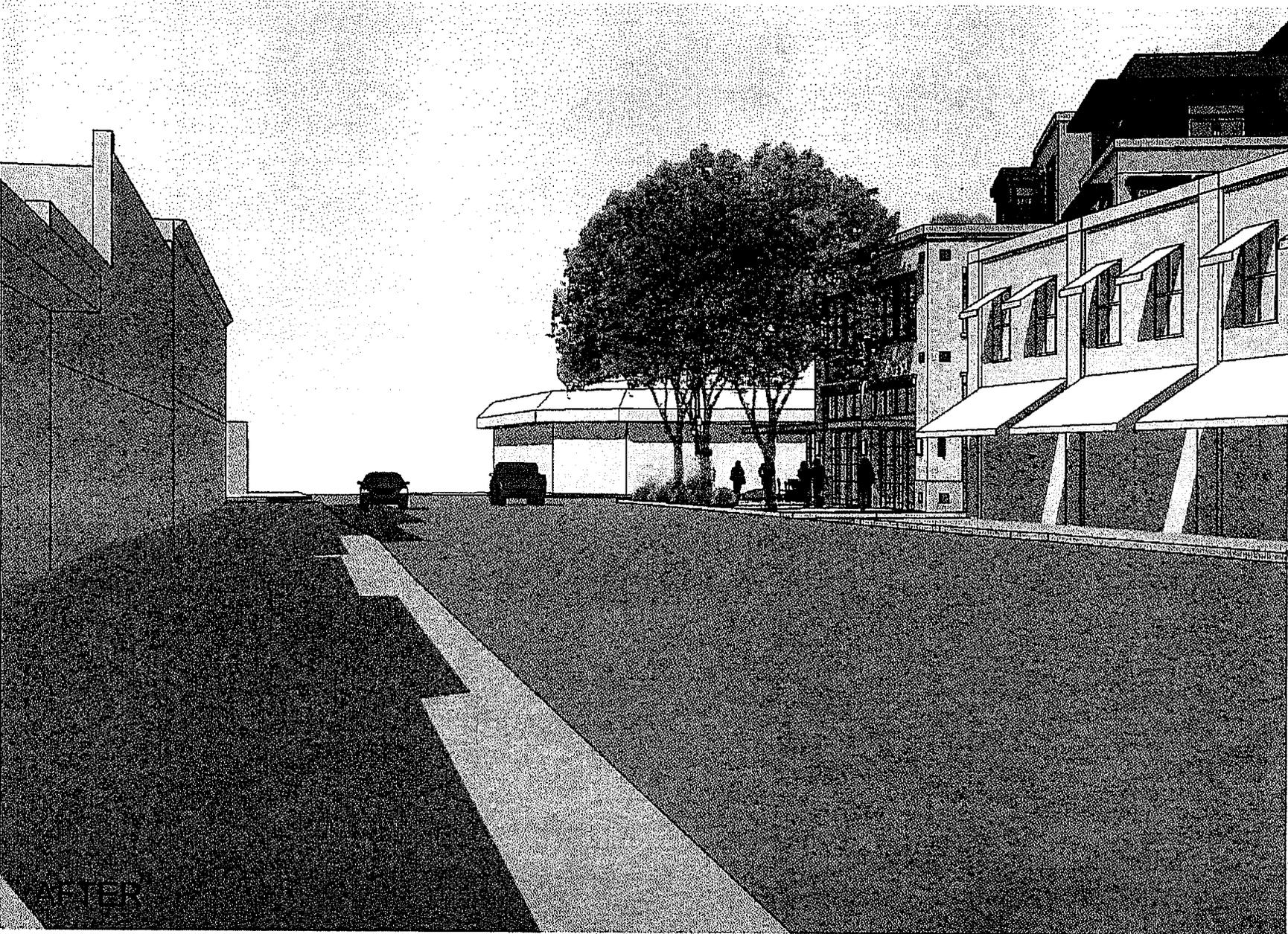
LEVEL L4 - REVISED



BEFORE







AFTER

ARAMBURU & EUSTIS LLP**Attorneys at Law**

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May 29, 2008

Robin Jenkinson
City Attorney
City of Kirkland
123 Fifth Avenue
Kirkland WA 98033

VIA Email: rjenkinson@ci.kirkland.wa.us

Re: Appeal of SRM Proposal by CiViK,
Appeal Case No. APL08-000011 DRC 07-00006

Dear Robin:

I am writing today on behalf of CiViK, the appellant in the above referenced appeal, to object to portions of the 28-page "Comments and Suggested Revisions Regarding Proposed Findings and Conclusions" submitted by attorneys for the applicant SRM to the Council on May 28, 2008.

At its May 6, 2008 meeting, the Council voted to reverse the decision of the Design Review Board. Following that oral decision, the City Attorney was asked to prepare Findings and Conclusions reflecting that decision. She did prepare such materials and provided them to the parties on May 14, 2008. Concerned that the Findings did not reflect the Council's actual intentions in reversing the DRB, CiViK provided comments to the council on May 19, 2008. At the May 20, 2008 meeting the council was to make a decision on the text of findings and conclusions to enter for its reversal decision. However, the council tabled the resolution.

At the meeting on May 20, counsel for SRM requested the opportunity to comment on the findings and respond to the CiViK comments. Citing fairness concerns, the City Council determined that SRM would be permitted to comment on the Findings and Conclusions. The draft minutes for this meeting that reflect the Council's direction state:

"Following the motion to table Resolution R-4707, Council indicated that the only further testimony that would be accepted for consideration would be a response from the Applicant to the Appellant's interim submittals."

May 29, 2008
Page 2

Further, the Council decided that CiViK, though the appellant, and ordinarily entitled to the last word in quasi-judicial proceedings, would not be given the opportunity to respond to SRM's materials.

SRM has gone well beyond the limited authority given by Council in its May 28 submission. It does so in two regards: a) it essentially asks the Council to reconsider its decision and approve SRM's proposal, and b) it provides additional information not a part of the record, which is now closed.

On the first point, SRM's cover letter states:

As part of its comments on the Findings and Conclusions, SRM has proposed *modifying the Council's decision from a reversal of the DRB's approval of the BOA/Merrill Gardens project to an approval of the project as modified.*

(Underline in original, italics supplied). Thus SRM essentially asks the Council, under the guise of comments on the Findings and Conclusions, to reconsider their decision and enter a whole new decision. This is clearly beyond what the council authorized. CiViK objects to this portion of SRM's comments and asks that they be stricken from the record.

On the second point, SRM, in blatant disregard of the Council's limited authority to comment on the findings, has attached new evidence and testimony. As the SRM's cover letter states:

To facilitate this discussion, SRM has included revised renderings of the project showing increased setbacks between the second and third floors and between the fourth and fifth stories along Lake Street South.

(Emphasis supplied). This is wholly new evidence completely beyond the limited dispensation of the council to allow SRM to comment on the findings to be entered from the Council's reversal of the DRB decision.

In addition, SRM provides further new evidence and argument in the form of a drawing with a restaurant layout where the bank was in SRM's original submissions.¹ Once again this is new information. This constitutes a request for the City Council to reconsider its decision about the bank space, not appropriate in comments on findings and conclusions regarding the reversal of the DRB decision. Moreover, this suggestion

¹ SRM had unlimited opportunity to present alternate designs during the evidentiary portion of the hearing, but declined to do so.

May 29, 2008

Page 3

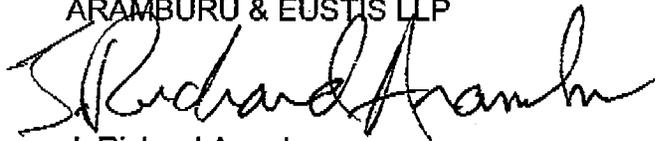
is entirely inappropriate for a space where the known owner and user is the Bank of America.

CiViK objects to the additional arguments, drawings and any references to them and asks that they be stricken from the record.

While we recognize the Council's directive to not provide additional materials, we cannot keep silent about this abuse of the Council's limited allowance. We ask that the Council strike from the record SRM's unpermitted submissions.

Sincerely yours,

ARAMBURU & EUSTIS LLP

A handwritten signature in black ink, appearing to read "Richard Aramburu", written over the typed name below.

J. Richard Aramburu

JRA:cc

cc: Client

Molly Lawrence (mlawrence@gordonderr.com)



June 3, 2008

Robin Jenkinson
Kirkland City Attorney
123 Fifth Ave.
Kirkland, WA 98033

Re: Appeal of Merrill Gardens/BOA Project
Appeal Case No. APL08-00001; DRC 07-00006

Dear Ms. Jenkinson:

We are in receipt of Mr. Aramburu's letter dated May 30, 2008. SRM Development objects to CiViK's letter. In approving SRM's request to submit comments on the proposed findings and conclusions, including rebuttal to CiViK's suggested revisions thereto, the Council explicitly instructed CiViK that it was not authorized to submit a response to SRM's comments. Despite that clear direction, CiViK nevertheless submitted its May 30th letter responding to SRM's comments on the proposed findings and conclusions. This was inappropriate and unauthorized. SRM merely sought the same opportunity to comment that CiViK assumed in its May 19, 2008, submission to the Council. It would be unfair for the Council to accept comments from one party while refusing to accept them from the other.

What is more important, however, is that the majority of the City Council members have indicated that they would like to identify an approvable project for the subject site. There is no question that the Council has the authority to consider modified designs during the current proceeding. This is an open record hearing, not a closed record appeal. KZC 142.40.11(b) provides: "The hearing body or officer shall adopt findings and conclusions and either: (1) affirm the decision being appealed; or (2) reverse the decision being appealed; or (3) *modify the decision being appealed.*" (Emphasis added.). Moreover, the Council has final decision-making authority in this matter, and has clearly indicated that it has an independent vision from the DRB for Downtown. In such a case, a return to the DRB would be an expensive and inefficient use of both public and private resources.

SRM seeks direction from the Council regarding not only what it will not approve, but what it will approve. SRM's comments regarding the proposed findings and conclusions are aimed at clarifying the Council's decision and identifying the modification(s) necessary to reach an approvable project. Absent such design direction from Council, the property will remain as-is for the foreseeable future. That result would defeat the purpose of the Downtown Plan.

E-Page # 523

Robin Jenkinson
Kirkland City Attorney

- 2 -

June 3, 2008

SRM apologizes for interjecting this letter at this point, but could not remain quiet while CiViK attempted to mischaracterize and silence SRM's efforts to clarify the Council's reasoning and to identify an approvable project. Thank you for your consideration.

Very truly yours,



Molly A. Lawrence

MAL:mal

cc: Richard Aramburu, Counsel for CiViK
Andy Loos, SRM Development

ARAMBURU & EUSTIS LLP

Attorneys at Law

720 Third Avenue, Suite 2112

Seattle, Washington 98104

(206) 625-9515 Fax: (206) 682-1376

June 10, 2008

Ms. Robin Jenkinson
Kirkland City Attorney
123 Fifth Avenue
Kirkland, WA 98033

Re: SRM Proposal

Dear Ms. Jenkinson:

As you know, this office continues to represent CIVIK in the quasi-judicial appeal concerning the SRM proposal.

Following the Tuesday, June 3, 2008 City Council meeting at which CIVIK's appeal was again discussed, Jim McElwee of CIVIK, learned from Kendall Watson of the *Kirkland Reporter* that you had received an anonymous letter from a project proponent of the SRM proposal. He asked the City Clerk about the letter and received a copy by e-mail.

Jim learned from the City Clerk that you received this letter back on May 21, 2008. Despite the fact that the letter made specific reference to "CIVIK's appeal on the Bank of America project" you never sent this letter to us.

The letter is an obvious attempt by a SRM project proponent to influence the City Council to change its mind about its prior decision. It does so by resorting to threats such as: "This could cost the City of Kirkland big bucks." Who would receive these "big bucks" is not stated, but it must refer to SRM, the project proponent.

As an anonymous communication related to a pending quasi-judicial

June 10, 2008

Page 2

matter, it should have been either ignored or destroyed.¹ Incredibly, we understand you delivered this letter to the City Council without prior notice to, or delivery of, the communication to me or any member of CIVIK. What were you thinking; why were you distributing ex parte communications to the Council in a secretive manner? Since when are anonymous communications by a project proponent, concerning a quasi-judicial matter, containing threats, delivered to Council members at all?²

Given the comments made by councilmembers at the opening of the meeting on June 3, and the protracted length of the Executive Session (as well as the previously unscheduled Executive Session topic referenced by the Mayor of "potential litigation"), it appears that the scurrilous letter may also have been discussed at the Executive Session scheduled for that meeting. Please confirm whether this is true or not. As well, we want to know who made the decision to treat the matters as confidential; was it you, the city manager or one or more councilmembers? If this matter was discussed during the executive session, please indicate what you consider to be the statutory basis for treating this letter as confidential. We believe there is no basis to treat an anonymous communication from a project proponent as confidential or the basis for an executive session. Further, in a quasi-judicial matter ex parte communications are prohibited, and if received, must be disclosed publicly and on the record under RCW 42.36.060.

We also ask that you disclose and make available to us any other communications by any person, including you and other staff of the City of Kirkland, that were submitted to the council outside the current record concerning, in any manner, the SRM proposal or CIVIK's appeal thereof. By example only, the City Clerk has indicated that a memo was provided by you to Council Member Burleigh on April 15, 2008.

¹ Not even the *Seattle Times* will publish anonymous letters.

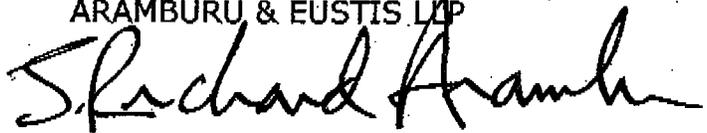
² As an experienced city attorney, you are aware the content of the communication regarding campaign activities was spurious as a) even expressions of opinion about a project during political campaigns cannot be considered violations of appearance of fairness doctrine (RCW 42.36.040); and b) properly disclosed campaign contributions are not the basis for any appearance of fairness challenges (RCW 42.36.050).

June 10, 2008
Page 3

Frankly, I have not seen such an egregious violation of the appearance of fairness doctrine in many years. The communication, and particularly the manner in which it was hidden from the public and CiViK, and given to the council and subsequently to Mr. Watson, who is not even a party to the proceeding, shakes the faith that citizens have in the fairness of appeal and public hearings in the City of Kirkland. Further, the online edition of the *Kirkland Reporter*, and presumably their upcoming print edition, has cited and quoted this memo as though it is factual and relevant when in truth, it is neither. The City's handling of this anonymous letter has lent it unmerited credibility, causing unwarranted embarrassment and potential harm to the reputation of my client, to citizens of your City, and to members of the Kirkland City Council.

We request your prompt attention and response to the questions and requests made in this communication. Once we have these responses, CiViK will consider what further actions to take with regard to these circumstances.

ARAMBURU & EUSTIS LLP



J. Richard Aramburu

JRA/py



June 16, 2008

J. Richard Aramburu
Aramburu & Eustis LLP
Attorneys at Law
720 Third Avenue, Suite 2112
Seattle, WA 98104

Re: Bank of America Project

Dear Mr. Aramburu:

I write in reply to your letter to me dated June 10, 2008.

I disagree with your characterization of the anonymous document as either an ex parte communication or a communication by a project proponent. The document's anonymous author does not offer information or express opinions about the application that is currently pending before the City Council regarding a proposed new development at 101 Kirkland Avenue. Instead, the document's author makes allegations regarding circumstances that are alleged to have existed in 2005, and then asserts, in effect, that these alleged circumstances give rise to a violation of the appearance of fairness doctrine that could be grounds for a legal challenge to the fairness of the City Council's decision.

The applicable statute, RCW 42.36.060, states that:

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 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. . . .

In this case, the document at issue is not a communication "with respect to the proposal" that is pending before the Council, but instead an allegation of a violation of the appearance of fairness doctrine based upon relationships that allegedly existed in 2005 between members of your client's Board and certain members of the City Council, during the Council Members campaigns for office and years before the land use decision at issue was pending before the City.

I am unaware of any authority, either in Chapter 42.36 RCW or in caselaw, which says that an allegation of a violation of the appearance of fairness doctrine is itself a violation of the doctrine that cannot be communicated to the persons about whom the allegations are made. It was appropriate for Council Members to be advised of the allegations questioning their ability to be fair, and the document, once it was submitted to the City, became a public document that was and is available to any member of the public who requests a copy, including Mr. Watson.

Two of the Council Members named in the document determined that it was appropriate to respond to the allegations regarding their ability to be fair, and these Council Members did so at the start of the resumed hearing on June 3rd.

Since they were not responding to ex parte communications with respect to the proposal, but to allegations that the alleged existence of certain relationships in 2005 affected their ability to be fair, there was no need for the parties to be given an opportunity to "rebut the substance" of the allegations in the document, as provided in RCW 42.36.060(2). If you nonetheless would like to request such an opportunity, you may do so in response to this letter or at the July 1st Council meeting.

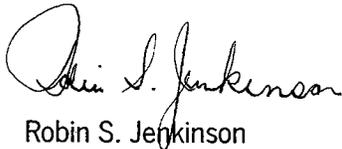
As to the Council's executive session, that was held, as announced, pursuant to RCW 42.30.110(1)(i):

- (i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

The discussion in the executive session was subject to the attorney-client privilege, so I am not at liberty to answer your questions about what was discussed. You also requested "communications by any person, including [me] and other staff of the City of Kirkland, that were submitted to the council outside the current record" I provided the Council with an attorney-client privileged memorandum dated April 9, 2008, concerning litigation risks. Similarly, the memo to which you refer, from me to Council Member Burleigh, provided legal advice in response to a request for such advice and it is therefore subject to the attorney-client privilege as well. I also provided the Council with your letter dated June 10, 2008. The only other document of which I am aware that might be

responsive to your request is a memo dated May 28, 2008, from Mayor Lauinger to the other Council Members about the next procedural steps in their deliberations. I have enclosed a copy for your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin S. Jenkinson". The signature is written in a cursive style with a large initial "R".

Robin S. Jenkinson
City Attorney

Enclosure

cc: City Council
Dave Ramsay, City Manager
Molly Lawrence



CITY OF KIRKLAND

123 Fifth Avenue, Kirkland, WA 98033 425.587.3000

www.ci.kirkland.wa.us

MEMORANDUM

To: City Council

From: Mayor Jim Lauinger

Date: May 28, 2008

Subject: Proposed Outline for Bank of America Hearings/June 3 and June 17, 2008

I believe that there may have been confusion after our last City Council Meeting as to what was left to do and what we should be prepared to do with the Bank of America matter. I have asked that the City Attorney review these remarks, edit and pass them along to the Council.

As the next meeting on June 3rd is also the start of the McLeod Appeal, we should set a time, maybe 9:00 p.m., to wrap up the Bank of America portion of that meeting. We could then take a break before opening the McLeod hearing. I will make this suggestion at the beginning of the meeting.

The first order of business for the Bank of America matter is to begin discussion of our findings and conclusions. If the Council is willing to review alternative designs that are consistent with the oral decision from our May 6th hearing, formulation of the findings and conclusions should provide the Applicant with the necessary direction. I suggest that we each come prepared to formulate the findings and conclusions from our comments at the May 6th hearing. We must keep to the record.

Once the Council has agreed upon proposed findings and conclusions, then the process would be to have the Applicant submit the alternative design to the City, with a copy to the Appellant. The hearing then would be reopened at our next meeting on June 17th. If the Applicant and the Appellant can agree that the alternative design is acceptable to them both, then that design can be presented to the Council for the Council to confirm that is consistent with the findings and conclusions. If the Applicant and the Appellant cannot agree, then the Applicant will present its alternative design to the Council. The Applicant and staff would have the opportunity to respond to the alternative design and make presentations to the Council as to whether the alternative design is consistent with the Zoning Code, Downtown Plan, the Council's oral decision, and with the proposed findings and conclusions.

Then City Council would have the remaining task of: 1) approving a modification to the DRB decision; or 2) reversing the DRB decision, or 3) modifying in part and reversing in the part the DRB decision. This would be accomplished by passing a resolution adopting findings, conclusions, and decision.

If the City Council is unwilling to review alternative designs, we would proceed immediately to the passage of a resolution adopting findings, conclusions, decision reversing the DRB decision.

If you have any questions I would ask you to speak directly with our City Attorney.

Thank you.

ARAMBURU & EUSTIS LLP**Attorneys at Law**

720 Third Avenue, Suite 2112

Seattle, Washington 98104

(206) 625-9515

Fax: (206) 682-1376

June 24, 2008

Robin Jenkinson
City Attorney
City of Kirkland
123 Fifth Avenue
Kirkland WA 98033

Dear Ms. Jenkinson:

Thank you for your June 16 reply to my letter of June 10 regarding the Bank of America project. I must say I have strong disagreement with your characterization of the pertinent documents and events.

Initially, I am amazed that you would give an anonymous letter any credence of any kind, particularly when it was part of an on-going quasi-judicial matter.

You begin by denying that the anonymous letter received by you on May 21 had anything to do with the pending Bank of America appeal. This is incorrect. The letter was a blatant attempt to convince the city council to change its vote on the CiViK appeal. The very first sentence of the letter discusses council action "ruling on CiViK's appeal of the Bank of America project. . . ." The reference to the vote to uphold the CiViK appeal that "could cost the City of Kirkland big bucks" is a threat from a project proponent to intimidate the Council into changing the Council decision just made.

Even if it was an allegation of a violation of the appearance of fairness, it was obviously out of order for several reasons. First, the council had closed the record, specifically prohibiting CiViK from providing additional information. However, you chose to treat this scurrilous letter - not even sent to the Council - as a part of the council deliberation and even considering the same in executive session. Second, even if this objection was made by the applicant it was far too late. No party is permitted to raise objections to sitting councilmembers after their vote, based on alleged events that you even admit occurred in 2005, if at all. Such a practice allows project proponents to withhold objections so as to not risk the adverse consequences of a personal appearance of

June 24, 2008
Page 2

fairness challenge before the decision, and only raise such issues after they know the Councilmember's vote.

In any event, there was no basis upon which to consider this matter in executive session as was apparently done. You have not answered my question as to the basis upon which this matter was considered secretly by the Council. Lacking any justification for an executive session on this matter, we believe the Council's consideration of this letter secretly is a clear violation of the open public meetings laws.

You have also refused to provide us with memoranda provided by you to the Council on April 9 and April 16 on the basis of attorney-client privilege. Apparently, these memoranda address the merits of CIVIK's appeal and discuss, by your own admission, "litigation risks." Since there was no pending or threatened litigation, we cannot understand what "litigation risks" existed. The courts will not accept suits by anonymous persons. It is indeed offensive to us that such subject matter was provided to the Council on April 9, six days before the first evidentiary hearing on CIVIK's appeal. How could litigation risks be discussed when the Council had not yet heard the evidence?

These private, ex parte communications are completely contrary to the City ordinance and the rules for this appeal hearing. This appeal had three parties, CIVIK as appellant, SRM as the applicant and the City providing staff comments. Indeed before the hearing, the staff provided a memorandum to the Council (dated March 27) addressing the issues on appeal, which included its interpretation of various city ordinances and rules. This was a part of the agreed hearing procedure that was set forth in your March 6 letter to the parties. There was nothing that contemplated or authorized private, secret memoranda from staff to the Council and you never disclosed to us that you would provide off the record memoranda to the Council. Obviously, we have not seen whatever was said in your April 9 and 16 memoranda and have no chance to determine if rebuttal is warranted and if so, to rebut the substance thereof. Further, what is the reason for secrecy? Your legal opinions could have been integrated into the hearing process with full opportunity for review and debate. These ex parte communications were contrary to the hearing rules. Since there is no basis for the non-disclosure of these documents, we believe their continued non-disclosure violates the public records statute.

You continue to assert attorney-client privilege, but as you know this privilege is not the attorney's, but the client's. Have you consulted with the Council and have they decided to assert the attorney-client privilege? If so, please inform us. For that matter, even if privilege had existed at any time, Councilmember Burleigh's public citation of matters from this memo would make the document(s) subject to public disclosure under RCW 42.56.280.

June 24, 2008
Page 3

In summary, we request the following to be provided to this office:

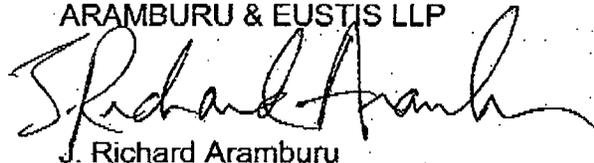
1. A full and complete disclosure on the record of the content of the executive session held by the Council on June 3 to the extent relating to the anonymous letter delivered to you on May 21.
2. The April 9 and 16 memoranda that you provided to the Council together with the opportunity to respond to the same at our own choosing.
3. A copy of any other document prepared by you or any other member of the City staff, which provides advice or commentary to staff, the Design Review Board (DRB), the City Council, and/or to the applicant or their representatives, regarding this proposal and/or this appeal, for any purpose whatsoever, from September 1, 2007 to the present that was not included in the online packet for a DRB meeting or City Council meeting.
4. Identification of all persons who received a copy of any of the items identified above and the date such copy was provided.
5. Identification of outside counsel, if any, which you have consulted with, either with respect to the project, the appeal, the anonymous memo, or any other matter which bears on the like.

I trust that you will respond to the requests of this memo promptly and fully. It is not typical for me to have to place what must seem to be a wide-ranging and open ended document request in a matter such as this, however, the recent series of events and the handling thereof make this request necessary in order to protect the interests of my client.

Frankly, neither CIViK nor I relish the continued correspondence on this subject. CIViK would prefer that the anonymous message and the various memoranda did not exist; indeed, none of this was the idea of CIViK and was not written by them. All these documents have done is create more time, trouble and expense for us and for the Council. CIViK will not, however, sit patiently by while unauthorized materials are received and covert internal memos are created and secret meetings are held.

Sincerely yours,

ARAMBURU & EUSTIS LLP



J. Richard Aramburu

JRA:cc

cc: CIViK
Molly A. Lawrence

ARAMBURU & EUSTIS LLP

Attorneys at Law

720 Third Avenue, Suite 2112

Seattle, Washington 98104

(206) 625-9515 Fax: (206) 682-1376

June 27, 2008

Kirkland City Council
c/o Ms. Robin Jenkinson, City Attorney
123 Fifth Avenue
Kirkland, WA 98033

Re: APL08-0001 Bank of America/Merrill Gardens proposal

As you are aware, this office continues to represent Citizens for a Vibrant Kirkland (CIViK) in the quasi-judicial appeal concerning the above-referenced SRM proposal.

The City Council has closed the record to new information or testimony on this matter. Accordingly, we must object to SRM's planned submission of an alternative design to the City Council and your consideration of it, intended to be provided to the City Council on Monday, June 30.

Specifically, we refer to Council agenda item 11.b for its upcoming July 1 meeting. The June 19 memorandum (found in the Council's packet for the July 1 meeting) from Janice Soloff and Eric Shields to David Ramsay, states "Staff was informed that the applicant intends to propose a revised design to the Council and will submit plans on Monday June 30. Staff will forward materials to Council members immediately upon receipt" and "[i]n a telephone conversation, the applicant indicated his intention to propose an alternative design to the City Council. Plans are expected to be submitted on Monday June 30 and will be forwarded to the Council prior to the meeting."

We object to this proposed submission and its consideration by the City Council for the following reasons:

June 27, 2008

Page 2

1. The record is closed to additional testimony and/or argument by the parties, and the alternative design and plans would constitute exactly that. No Council action has been taken to reopen the record and no motion to reconsider the ruling has been made.
2. We have attached a copy of a verbatim transcript from the Council's meeting on June 3, 2008.¹ The Council's discussions contemplated the possibility of viewing a revised plan that both parties might be able to agree on, but did not at any point in its conversation contemplate viewing a plan that solely the applicant's.
3. The staff memo (in the Council's packet) itself is out of order. Kirkland Zoning Code 142.40(6) states that "[o]nly the persons who filed the appeal, the applicant, and the chair (or designee) of the Design Review Board may participate in the appeal." The only opportunity for Planning staff to participate in the appeal is provided in KZC 142.40(8) whereby the Planning Official is directed to prepare a staff report which may be presented orally. That report has been presented, and the opportunity for planning staff's direct participation has concluded absent further requests from the Council.

We have noted continued occurrences where the applicant or its counsel has approached your Planning staff, who will then interject the applicant's comments into the Council's deliberation. With regard to the memo in question, the applicant has told your Planning staff of their intention to submit new plans, and once again is using your Planning staff as a means to communicate new information to you. At this point in the process, the staff's sole role should be to provide answers to the Council's questions, upon their specific inquiry.

4. The staff memo is clairvoyant. The memo is dated June 19, which is four days before the parties' last meeting. This

¹ The verbatim transcript was prepared by the City for the parties' use for their recent meetings.

June 27, 2008
Page 3

memo says it was to be forwarded to me and to CIViK, but never was; we learned of it only through the on-line Council packet. Apparently your staff knew in advance what was going to take place, and most important, that the applicant had full intention of submitting new plans to the Council irrespective of what might take place in the meetings between the parties.

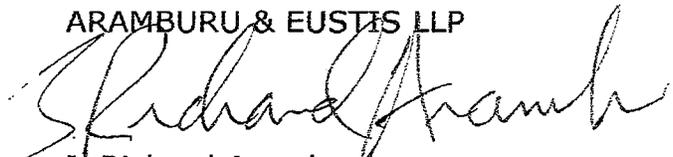
We ask that the Council enact Resolution 4707 as it has been drafted and enter the findings and conclusions as attached to the draft resolution. The Council has already reviewed and considered these findings and conclusions, and the time has come to conclude the quasi-judicial process and enter the decision. Immediately thereafter, the applicant is free to submit its new proposal to the Design Review Board that fits within the Zoning Code and the Comprehensive Plan, benefitted by the guidance that is contained in your findings and conclusions.

To do otherwise - for the Council to accept the materials for a new proposal and consider the same - places the Council in exactly the role it has said it does not want to do, namely to function as the DRB and to design from the dais. Moreover, the presentation and rebuttal will only continue to extend this matter out further and further, causing additional costs for the parties and taking the Council's valuable time.

Please forward this correspondence to the Council immediately, so that they may consider it contemporaneously with their agenda packet which they received yesterday.

Thank you for your consideration.

ARAMBURU & EUSTIS LLP



J. Richard Aramburu

JRA:cc

cc: Molly Lawrence
CIViK



June 30, 2008

J. Richard Aramburu
Aramburu & Eustis LLP
720 Third Avenue, Suite 2112
Seattle, WA 98104

Re: Bank of America Project

Dear Mr. Aramburu:

I write in reply to your letter dated June 24, 2008, which I received on June 26th when I returned from vacation.

Once again I do not agree with your letter's characterization of the facts, nor with its assertions regarding the law that is applicable to the facts. I also do not agree with some of your characterizations of what I said in my June 16, 2008, letter to you. For example, I did not say that the anonymous document had nothing to do with the pending appeal, only that it made allegations regarding circumstances alleged to exist in 2005 rather than assertions regarding the issues currently before the Council.

To the extent that your letter simply expresses your disagreement with what I said in my June 16th letter, I will not repeat myself here.

An allegation of a violation of the appearance of fairness doctrine can be made at any time prior to the issuance of a decision. RCW 42.36.080. The Council has not yet issued its final decision, and therefore it is appropriate for the members of the Council to be apprised of allegations regarding their ability to be fair.

My June 16th letter explains the basis for the Council's executive session. If you wish to ask the Council to vote to waive the attorney-client privilege, you should make that request to the Council.

The legal memoranda that I wrote on April 9, 2008, and April 16, 2008, are subject to the attorney-client privilege, and there is nothing inappropriate in the Council receiving legal advice from its attorney regarding issues raised by a pending quasi-judicial appeal, any more than it is inappropriate for members of the Court of Appeals to review legal memoranda prepared by their law clerks regarding pending judicial appeals. I also disagree that RCW 42.56.280 applies to these memoranda: that statute applies to certain

June 30, 2008

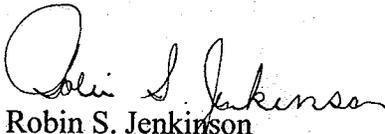
Page 2

“preliminary drafts, notes, recommendations, and intra-agency memorandums”, not to documents that are subject to attorney-client privilege.

In specific response to items 1-5 on page three of your letter:

1. I decline to provide you with information regarding the executive session on June 3, 2008, for the reasons discussed above and in my June 16th letter.
2. I decline to provide you with copies of my April 9th and June 16th memoranda, for the reasons discussed above.
3. I am not aware of any other documents that are responsive to this request. I forwarded your prior, similar request to Planning staff, and the only responsive document that staff and I are aware of is the memo dated May 28, 2008, from Mayor Lauinger to the City Council. I provided you with a copy of this document with my June 16th letter.
4. This item requests information, not documents, and the Public Records Act applies to documents. Mayor Lauinger's May 28th memo was addressed to the City Council, and it may have been read by City staff, but I am aware of no documents that answer your question.
5. Your item number five also requests information, not documents, and the Public Records Act applies only to documents. I will nonetheless respond by informing you that the City has engaged Foster Pepper, PLLC, and that I have consulted with Dick Settle and Pat Schneider regarding certain issues identified in your request.

Sincerely,


Robin S. Jenkinson
City Attorney

cc: City Council
Dave Ramsay, City Manager
Molly A. Lawrence



June 30, 2008

Kirkland City Council
c/o Robin Jenkinson, City Attorney
123 Fifth Ave.
Kirkland, WA 98033

Re: Appeal of Merrill Gardens/BOA Project
Appeal Case No. APL08-00001; DRC 07-00006

Dear Council Members:

Thank you on behalf of SRM Development for agreeing to consider design modifications for the Merrill Gardens/BOA Project at 101 Kirkland Avenue. The attached materials represent the Project design as modified. Each of the proposed modifications is aimed at responding to concerns expressed by the Council regarding the original, disapproved design. We request that the Council approve the Project as shown in the attached materials.

As the Council is aware, you have clear authority pursuant to KZC 142.40.11(b) to consider modified designs as part of this appeal process. Moreover, a majority of the Council indicated during your prior discussions of the Merrill Gardens/BOA Project appeal that you would like to identify an approvable design.

The materials included with this letter are:

- A series of slides depicting and explaining the proposed design modifications to be presented during the July 1, 2008 Council meeting;
- A one page summary of the modifications made to the Project in response to the Council's comments/concerns;
- A listing of the retail uses currently occupying the superior retail spaces in each of the three project previously granted an additional story in downtown Kirkland; and
- Proposed revisions and additions to the Resolution, Findings, Conclusions and Decisions for the Merrill Gardens/BOA Project reflecting the modified Project design.

Again, SRM Development thanks each of you for your efforts regarding this Project and consideration of the appeal. We believe that we have listened carefully to each of the concerns raised by the Council and modified the Project to respond to those concerns. As modified, the Project meets each of the City's criteria for approval. We, therefore, request that the Council approve the Merrill Gardens/BOA Project as modified.

Very truly yours,



Molly A. Lawrence

MAL:mal

Enclosures

cc: Richard Aramburu, Counsel for CiViK
Andy Loos, SRM Development

**101 KIRKLAND
DESIGN
MODIFICATION**

**COUNCIL AGREED TO CONSIDER
ALTERNATIVE DESIGN OPTIONS**

**THE COUNCIL REVERSED THE DRB'S
APPROVAL OF THE ORIGINAL DESIGN BASED
ON TWO PRINCIPLE ISSUES:**

- APPARENT BUILDING HEIGHT ALONG LAKE ST.
- CRITERIA FOR FIFTH STORY

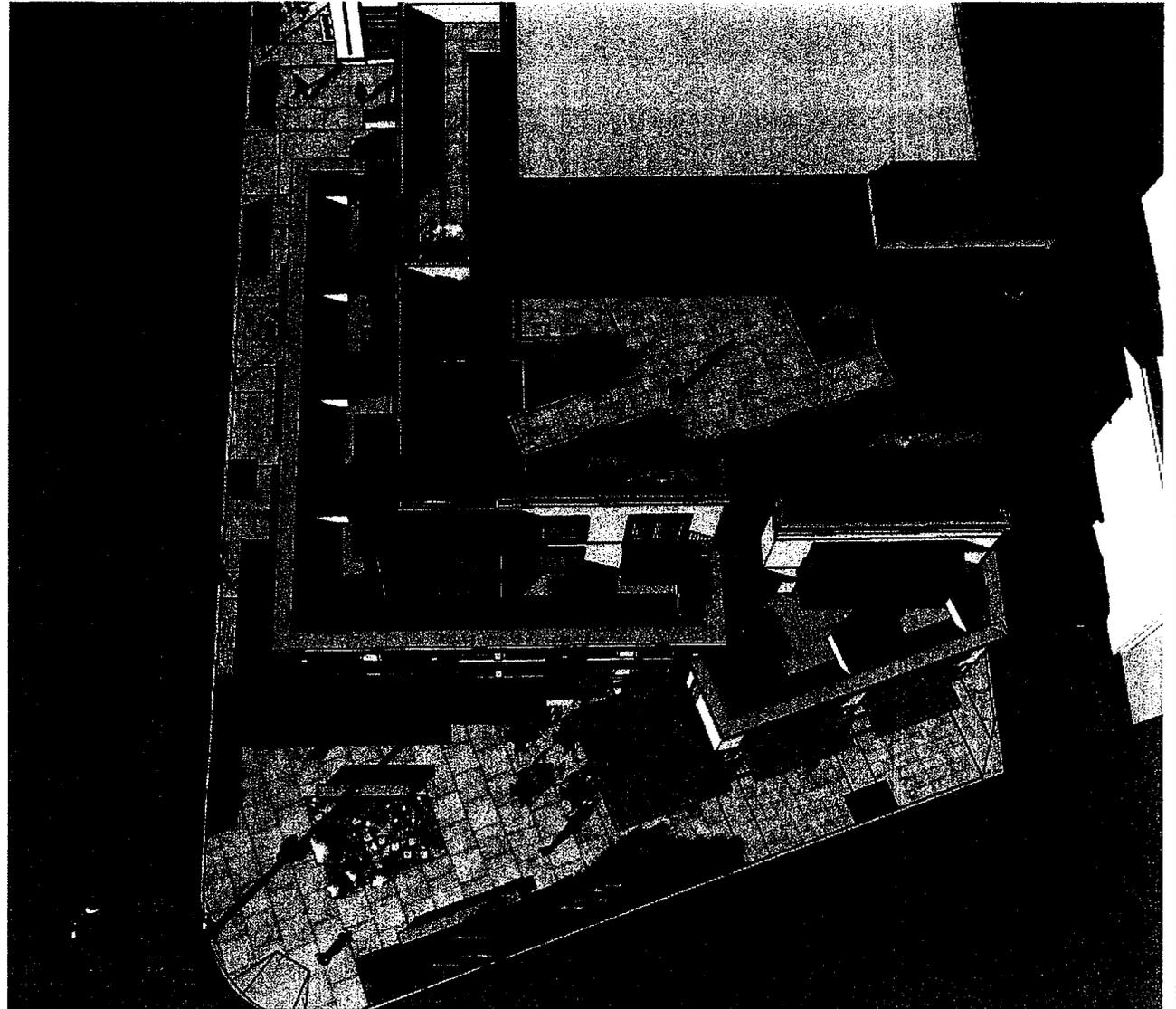
CRITERIA FOR FIFTH STORY:

- “At least 3 of the upper stories are residential”;
- “The total height is not more than one foot taller than the height that would result from an office project with three stories of office over ground floor residential”;
- “Stories above the second story are set back significantly from the street”;
- “The building form is stepped back at the third, fourth, and fifth stories to mitigate the additional building mass”; and
- “The project provides superior retail space at the street level.”

DEFINITIONS

SETBACKS: The distance between the curb-line of the street to the face of a building at any given level.

STEP BACKS: The distance between the building edge below to the face of a wall above.



BRUNBERG
group

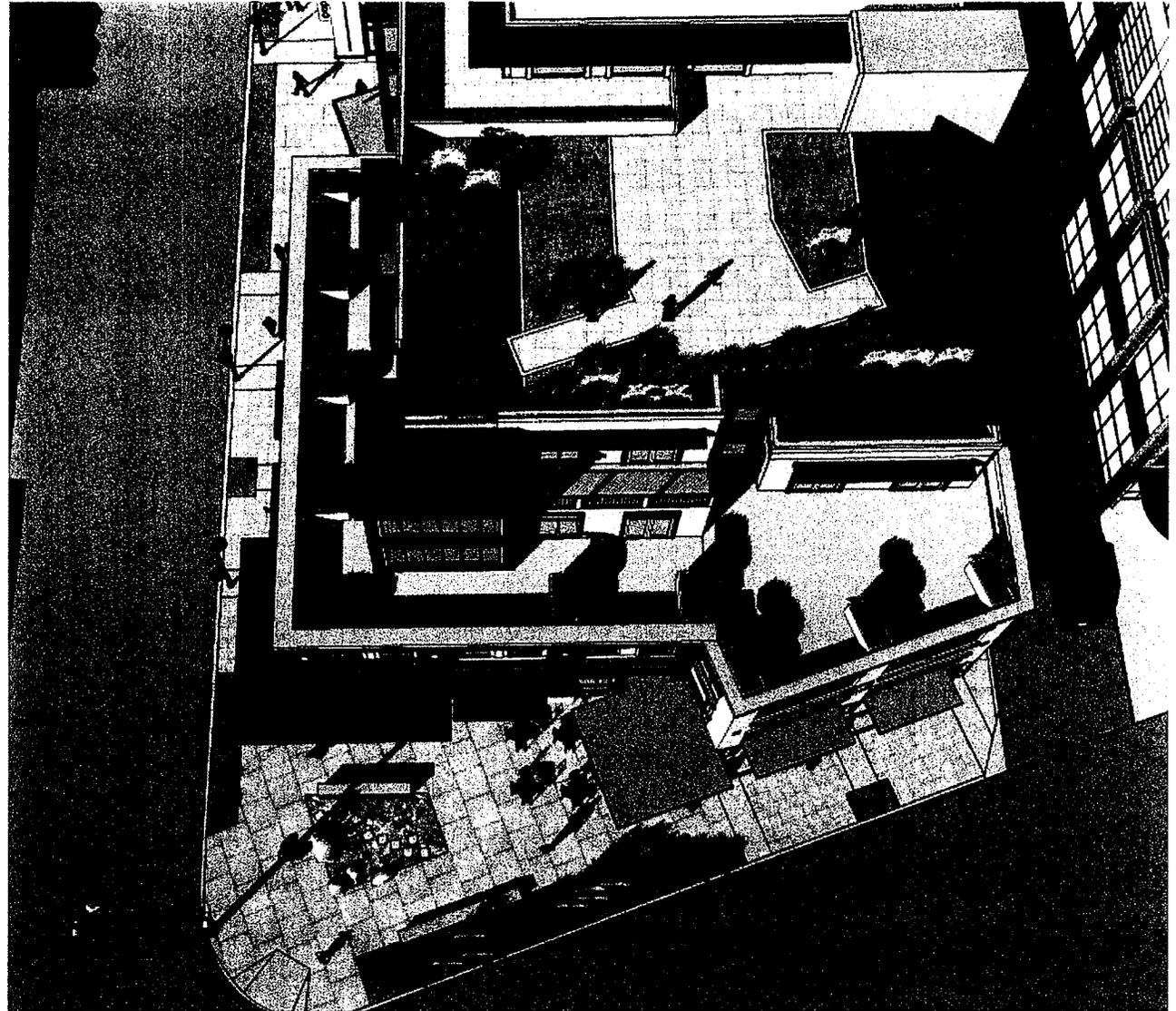

MERRILL GARDENS


SHONS
KIPARD
W. GUN GIL
DEVELOPMENT, LLC

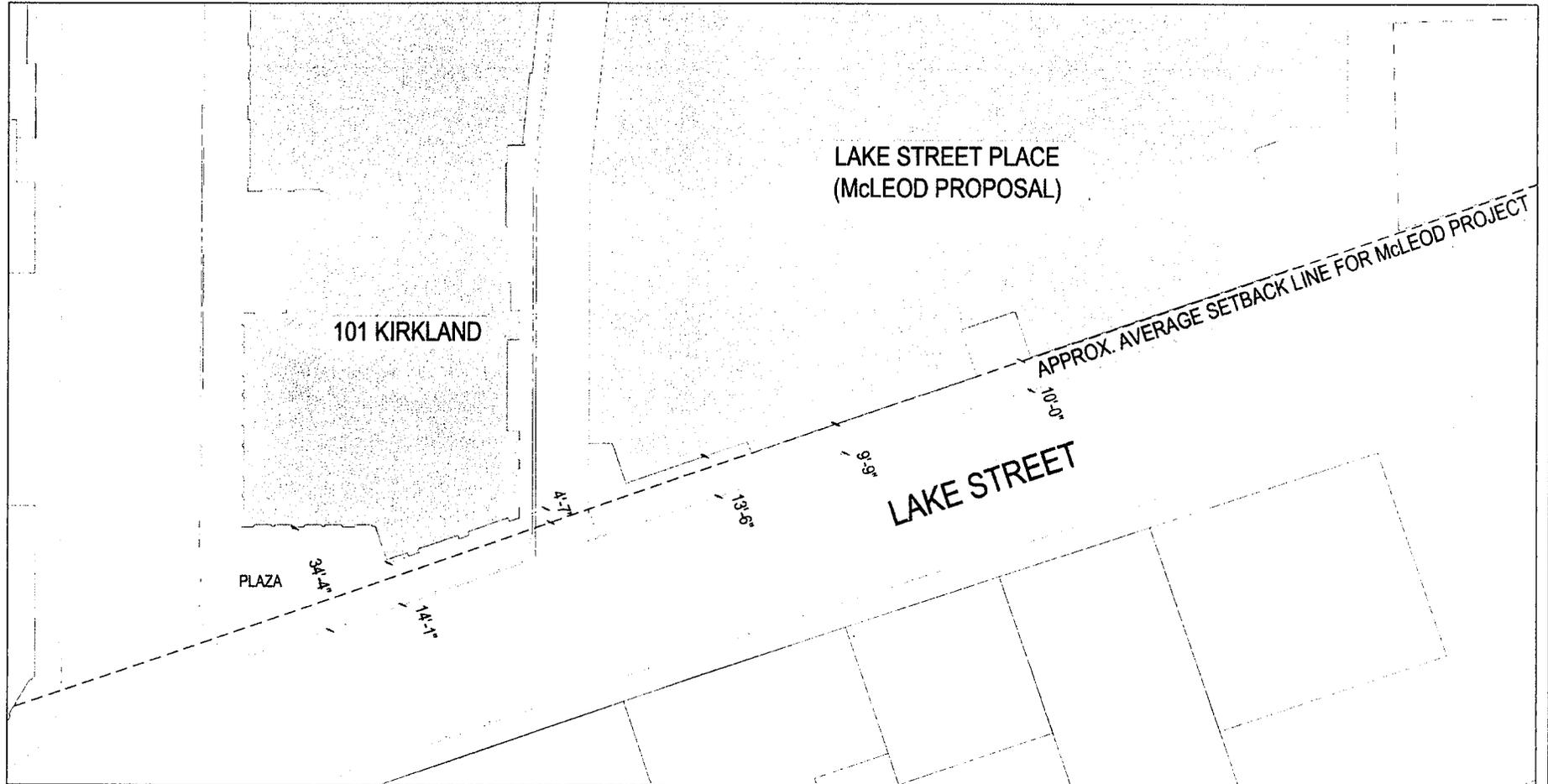
101 Kirkland Avenue
Architectural Development
July 2008

SUMMARY OF MODIFICATIONS IN RESPONSE TO HEIGHT AND SETBACK/STEP BACK ISSUES

- Added 2nd story to southwest corner to create a continuous 2-story appearance along Lake Street
- Stepped back 3rd story an additional 4'-10' from the 2nd story (10' to 22' step back, 32' to 46' setback)
- Stepped back portions of the 4th floor an additional 4'-6' from portions of the 3rd Story (10' to 32' step back, 36' to 46' setback)
- Stepped back the 5th floor an additional 22' from the 4th floor so that 5th floor does not begin until the eastern edge of the bank space (44' step back, 67' to 95' setback)
- Retained plaza as in original design



COMPARISON OF SETBACKS AND STEP BACKS WITH McLEOD PROPOSAL



LEVEL 1 & 2

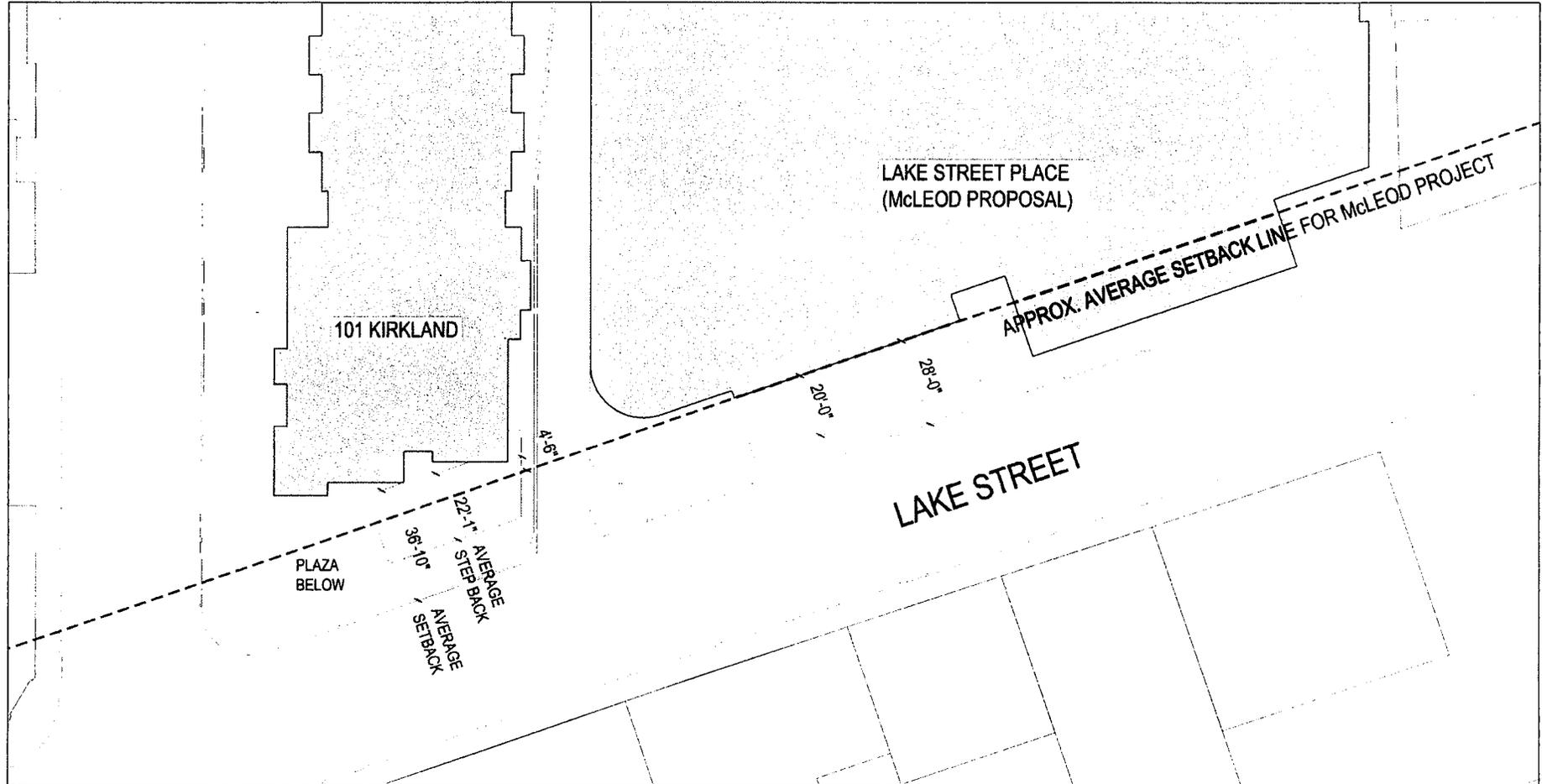
Average of 40% more sidewalk width than McLeod



MODIFIED

101 Kirkland Avenue
Mixed Use Development
July 11, 2008

COMPARISON OF SETBACKS AND STEP BACKS WITH McLEOD PROPOSAL



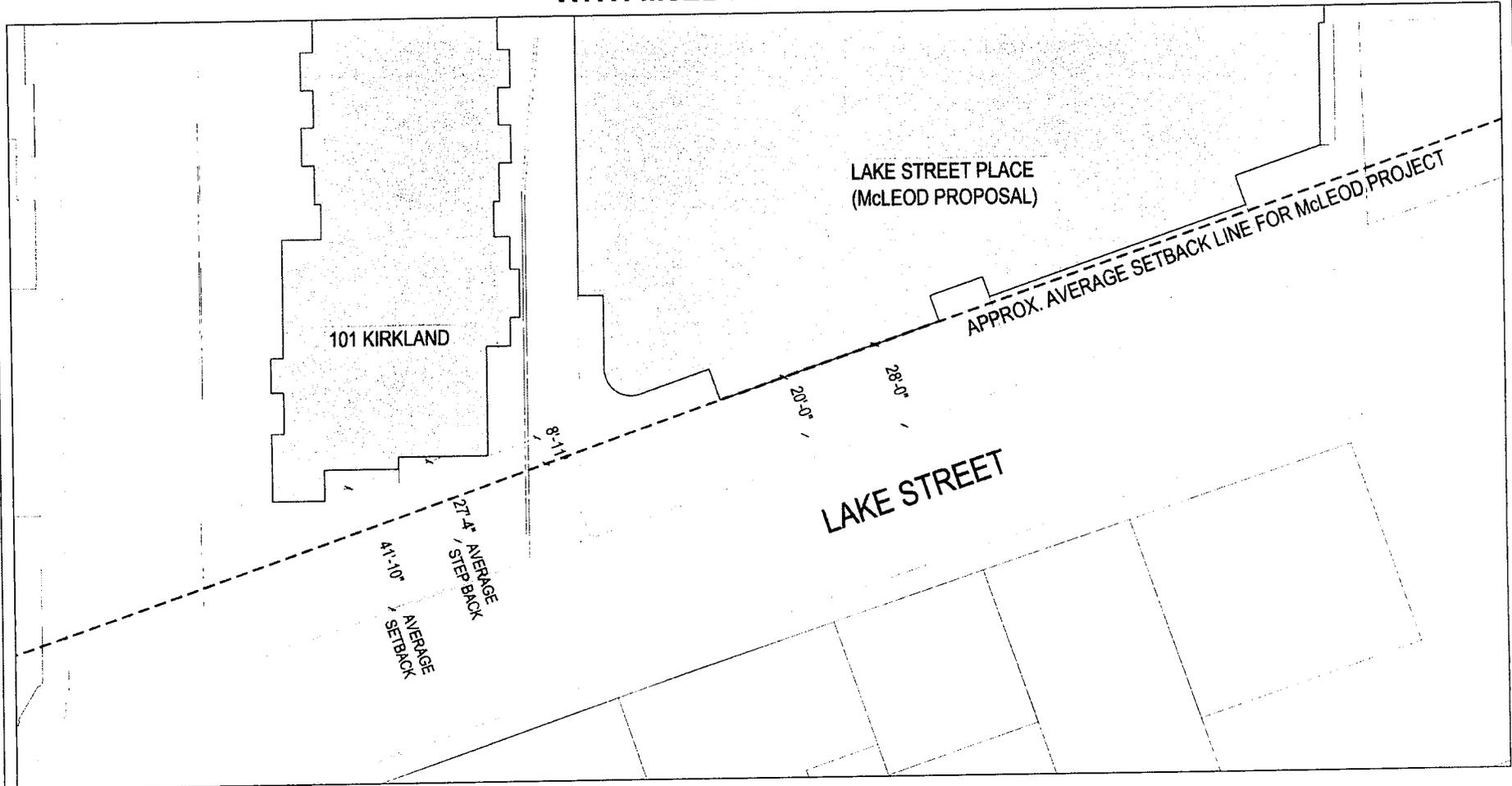
LEVEL 3

32% greater average setback than McLeod



101 Kirkland Avenue
Mixed Use Development
© 2009

COMPARISON OF SETBACKS AND STEP BACKS WITH McLEOD PROPOSAL



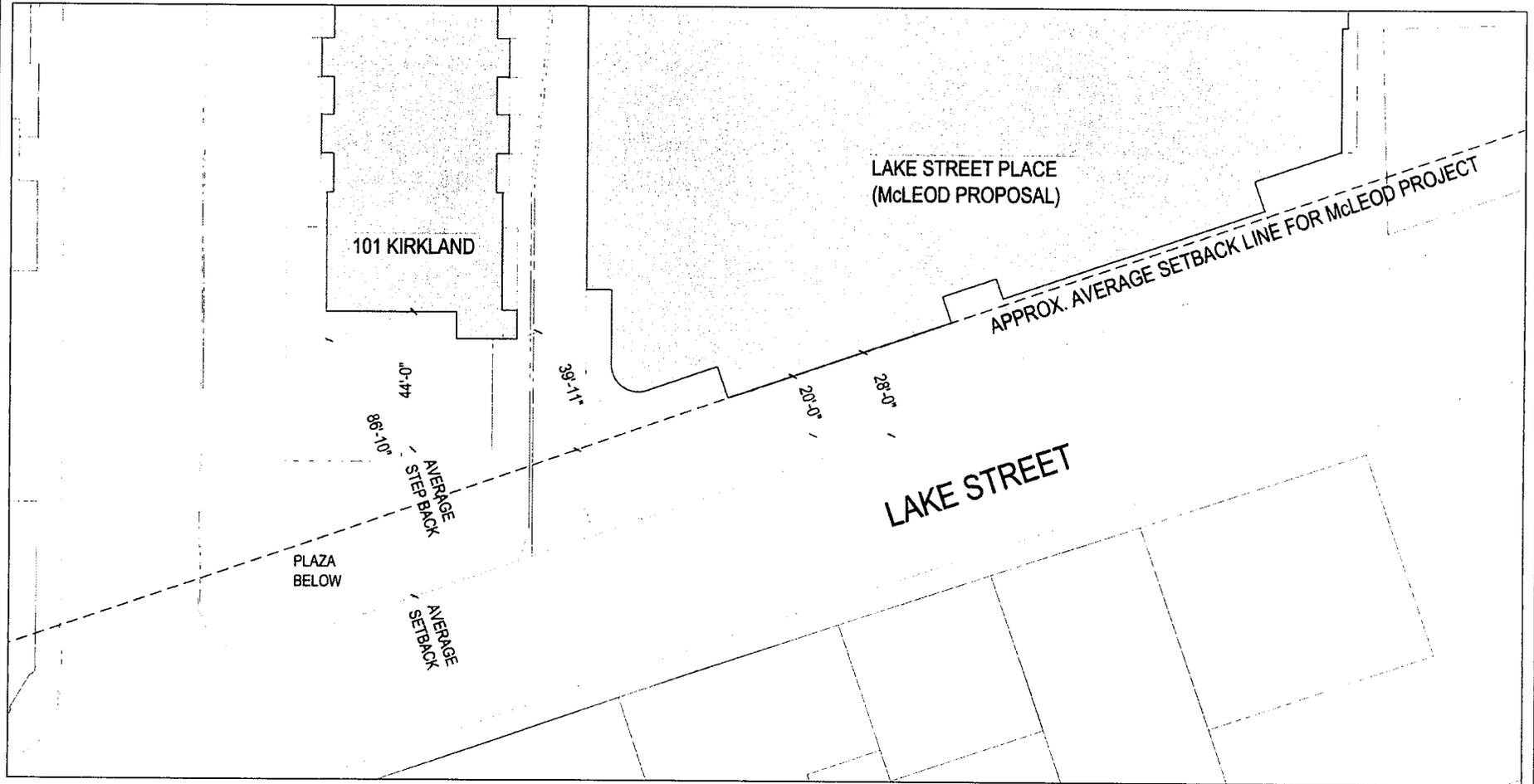
LEVEL 4

50% greater average setback than McLeod



101 Kirkland Avenue
Mixed Use Development
July 11, 2008

COMPARISON OF SETBACKS AND STEP BACKS WITH McLEOD PROPOSAL



LEVEL 5

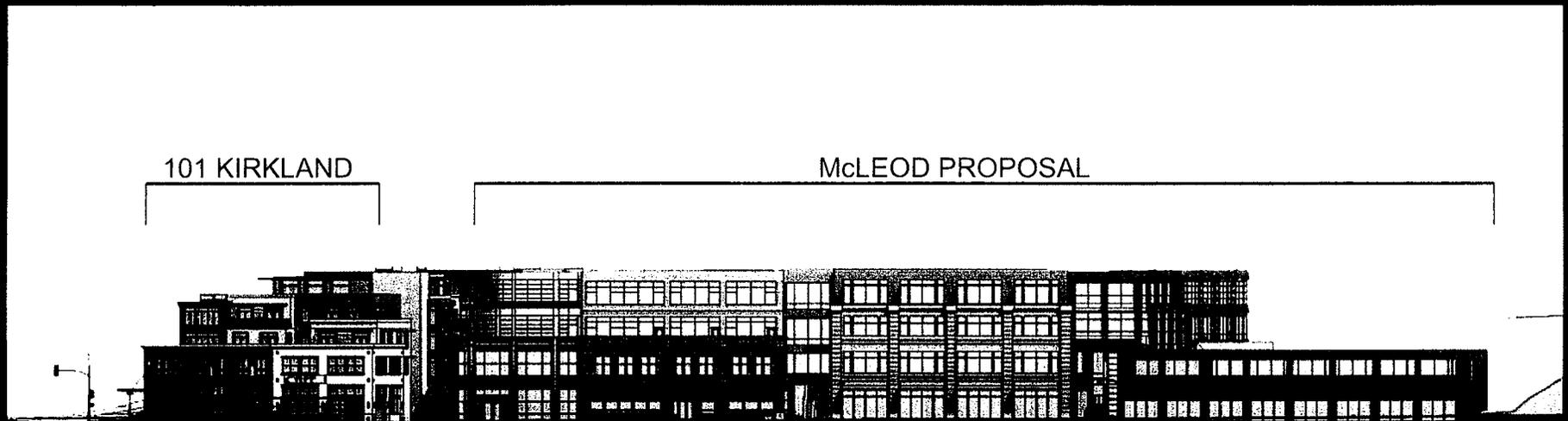
- Bank of America/Merrill Gardens only 1 foot taller than McLeod
- 210% greater setback than McLeod (compared to McLeod's 4th story)



101 Kirkland Avenue
Merrill Gardens Development
July 2008

MODIFIED DESIGN MEETS THE SETBACK AND STEP BACK CRITERIA FOR 5TH FLOOR:

- SETBACKS ARE 32% TO 210% GREATER THAN THE ADJACENT McLEOD PROJECT ON LAKE STREET.
- BUILDING STEPS BACK AT EACH OF THE 3RD, 4TH, AND 5TH STORIES. STEP BACKS RANGE IN DEPTH BETWEEN 10' AND 44' FEET.



AERIAL VIEW – 101 KIRKLAND & McLEOD PROPOSAL



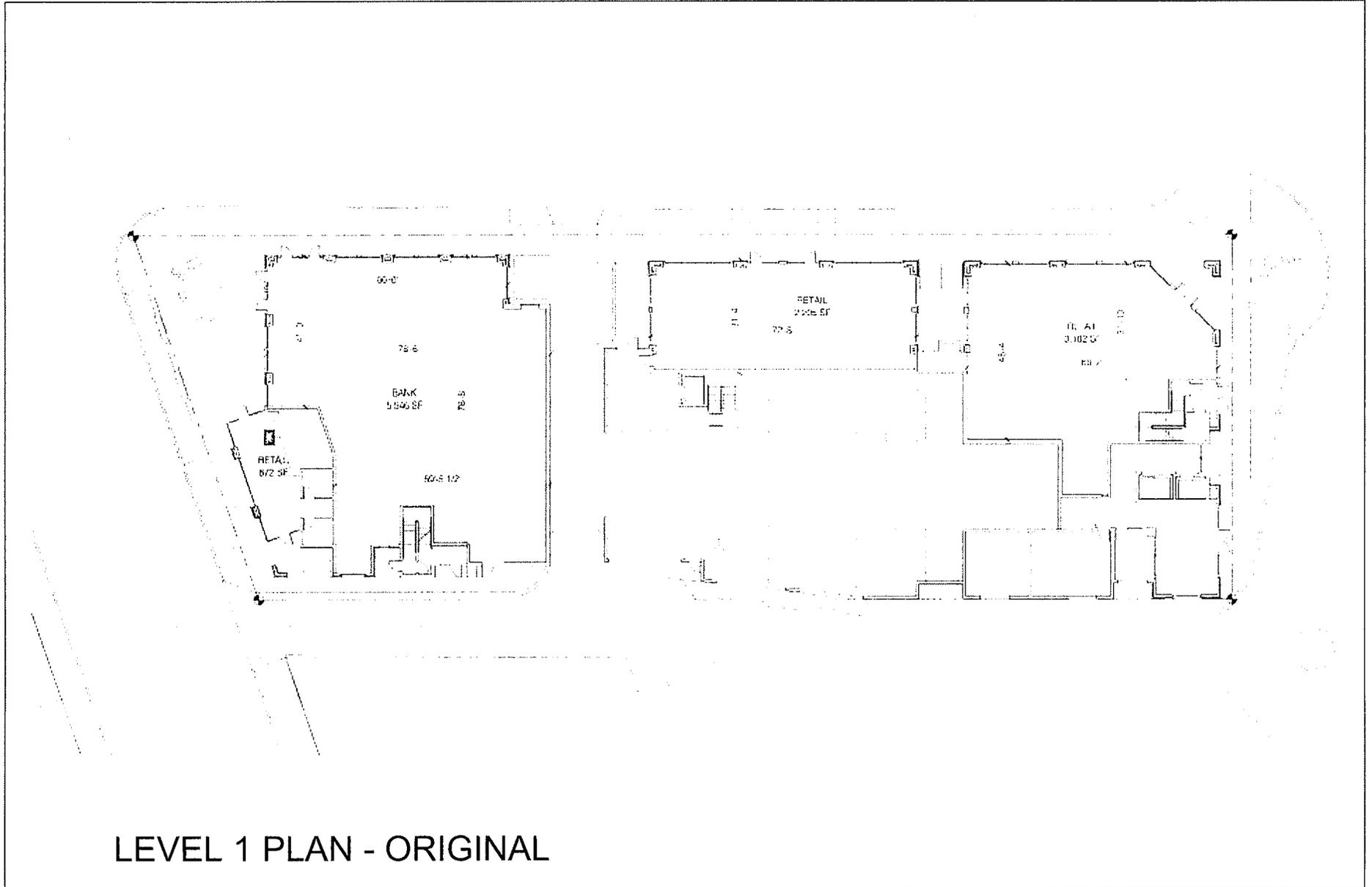
MCLEOD
group


MERRILL GARDENS

STONE
HAWARD
M. GONZALEZ
DEVELOPMENT, LLC

101 Kirkland Avenue
Merrill Gardens Development
July 11, 2012

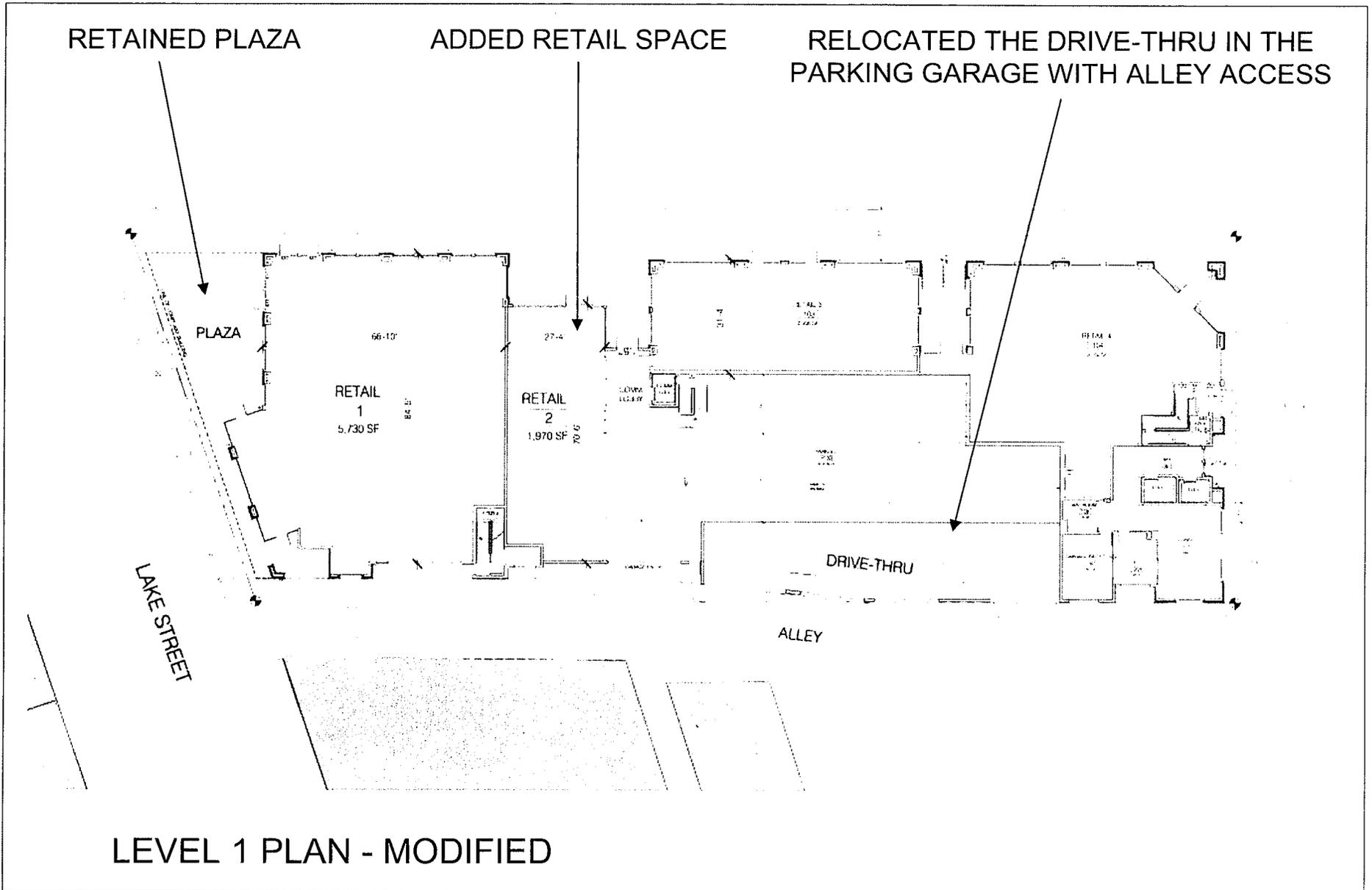
SUPERIOR RETAIL



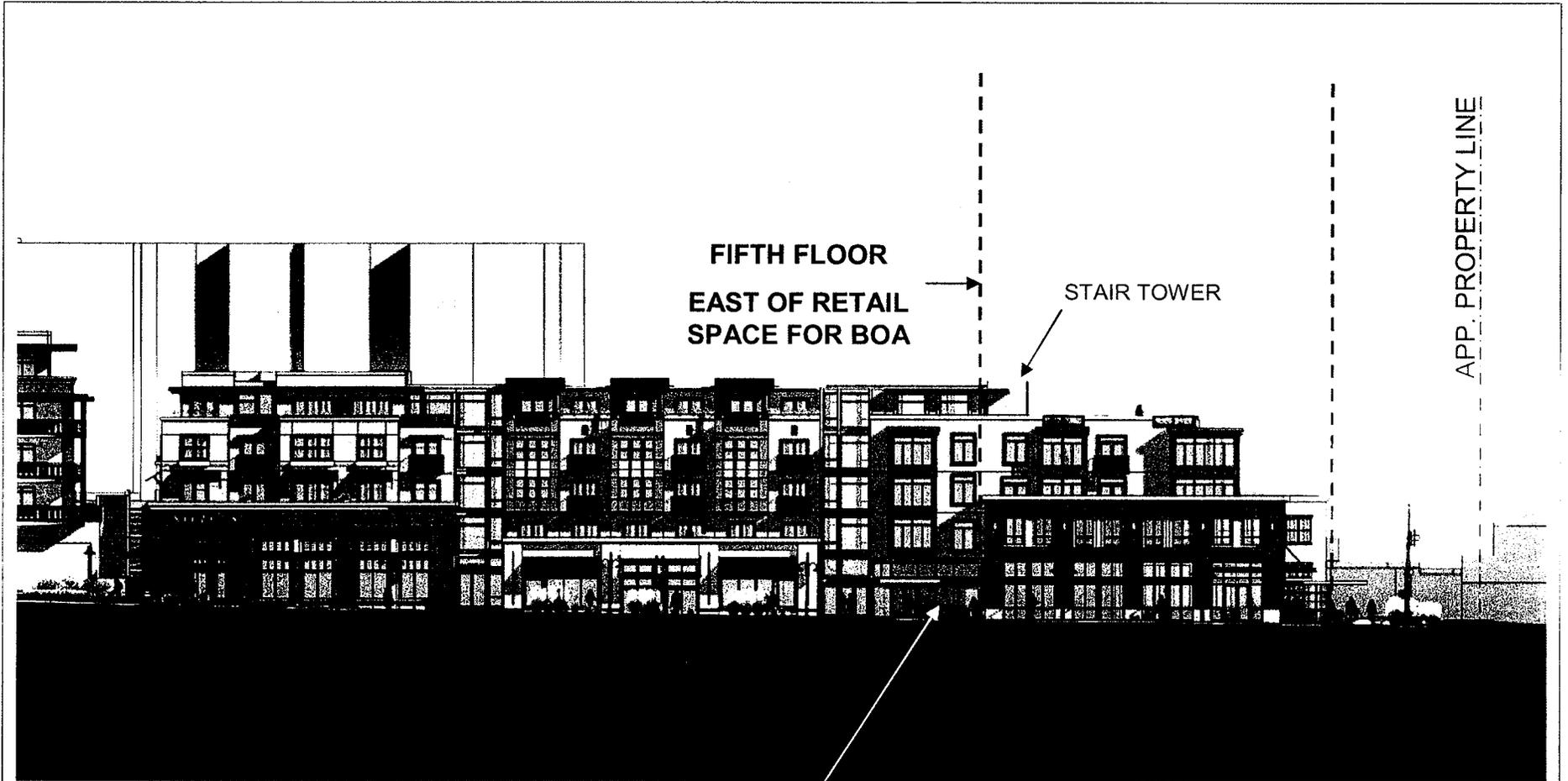
LEVEL 1 PLAN - ORIGINAL



101 Kirkland Avenue
Merrill Gardens Development
Merrill Gardens
Merrill Gardens



LEVEL 1 PLAN - MODIFIED



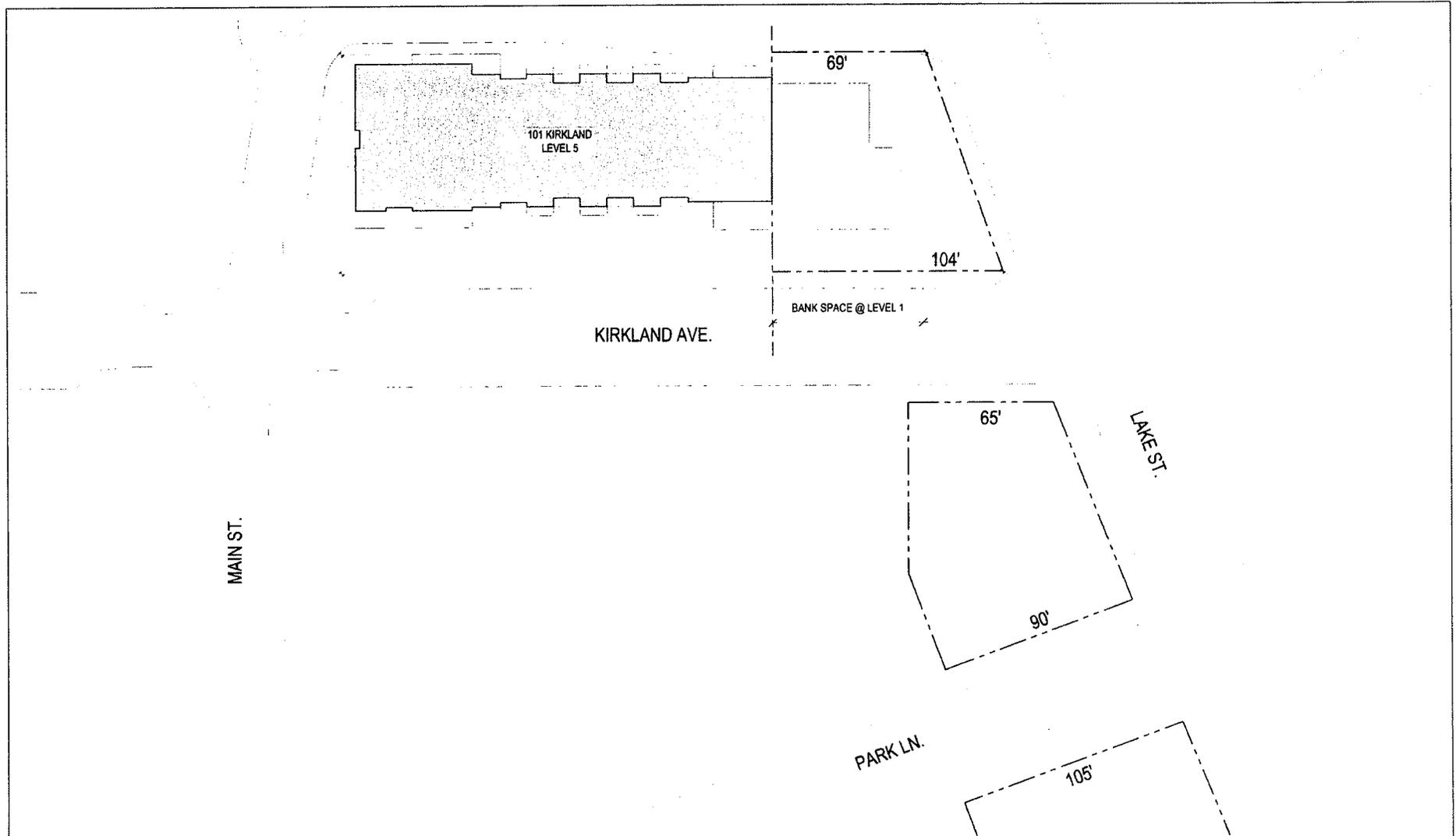
SUBSTITUTED ADDITIONAL
RETAIL IN PLACE OF DRIVE-
THRU

RETAIL SPACE
FOR BOA



MODIFIED

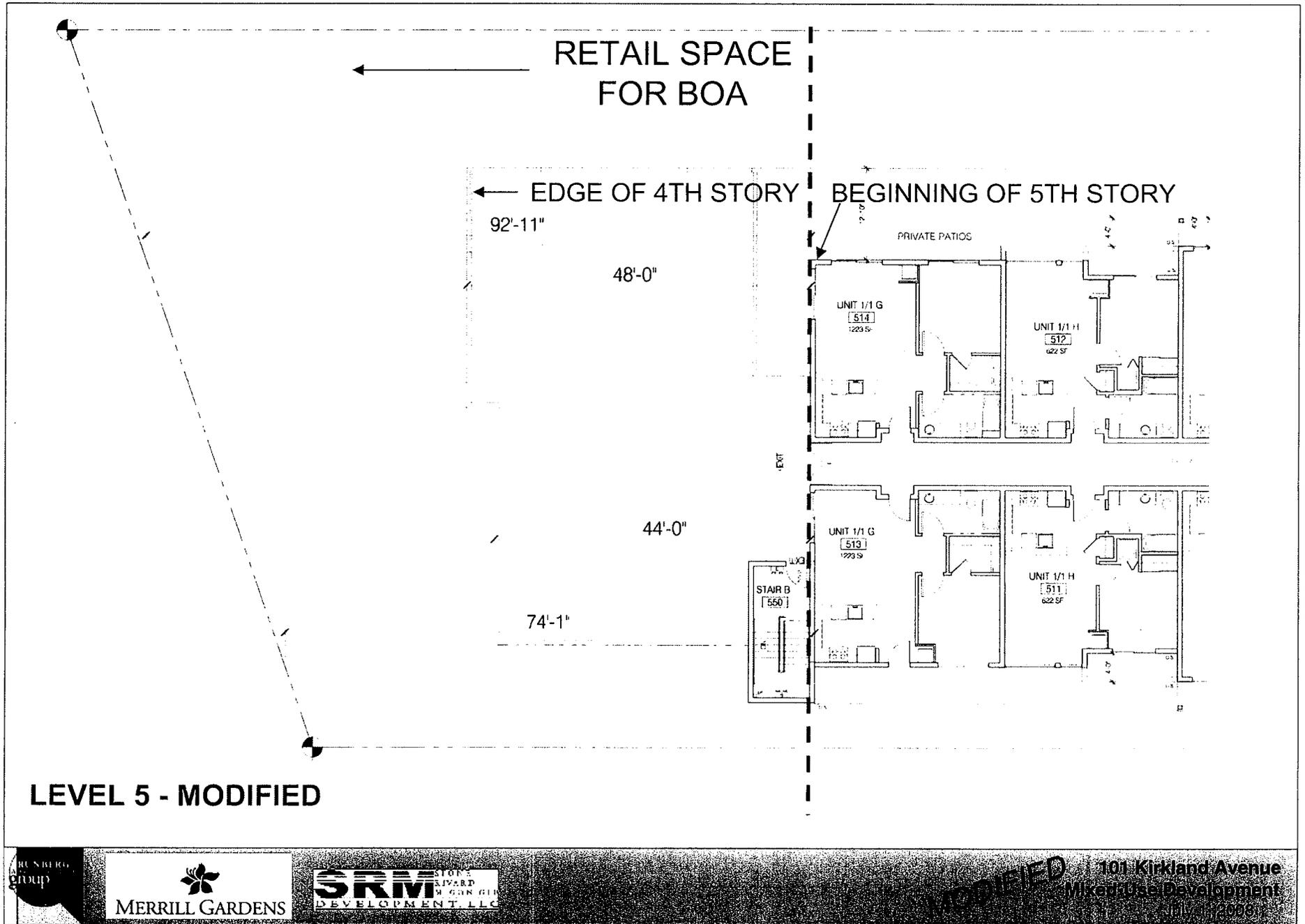
101 Kirkland Avenue
Mixed Use Development
July 11, 2008

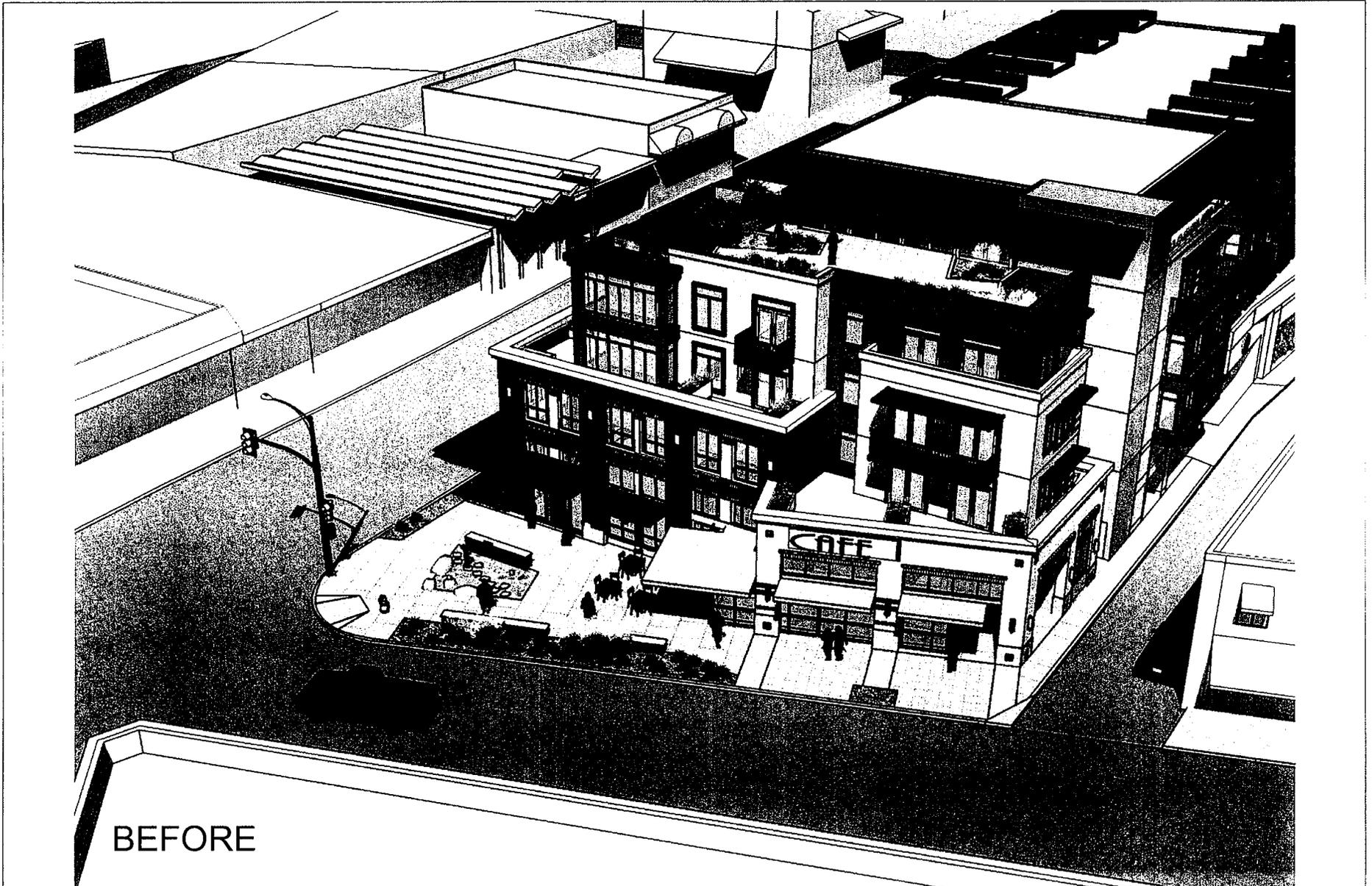


The 4-story portion of the BOA/Merrill Garden's building occupies a parcel of land deeper than the parcel to the north of Kirkland Avenue and equal to the parcel on the corner of Lake St. and Central Way.



101 Kirkland Avenue
Merrill Gardens Development
© 2006





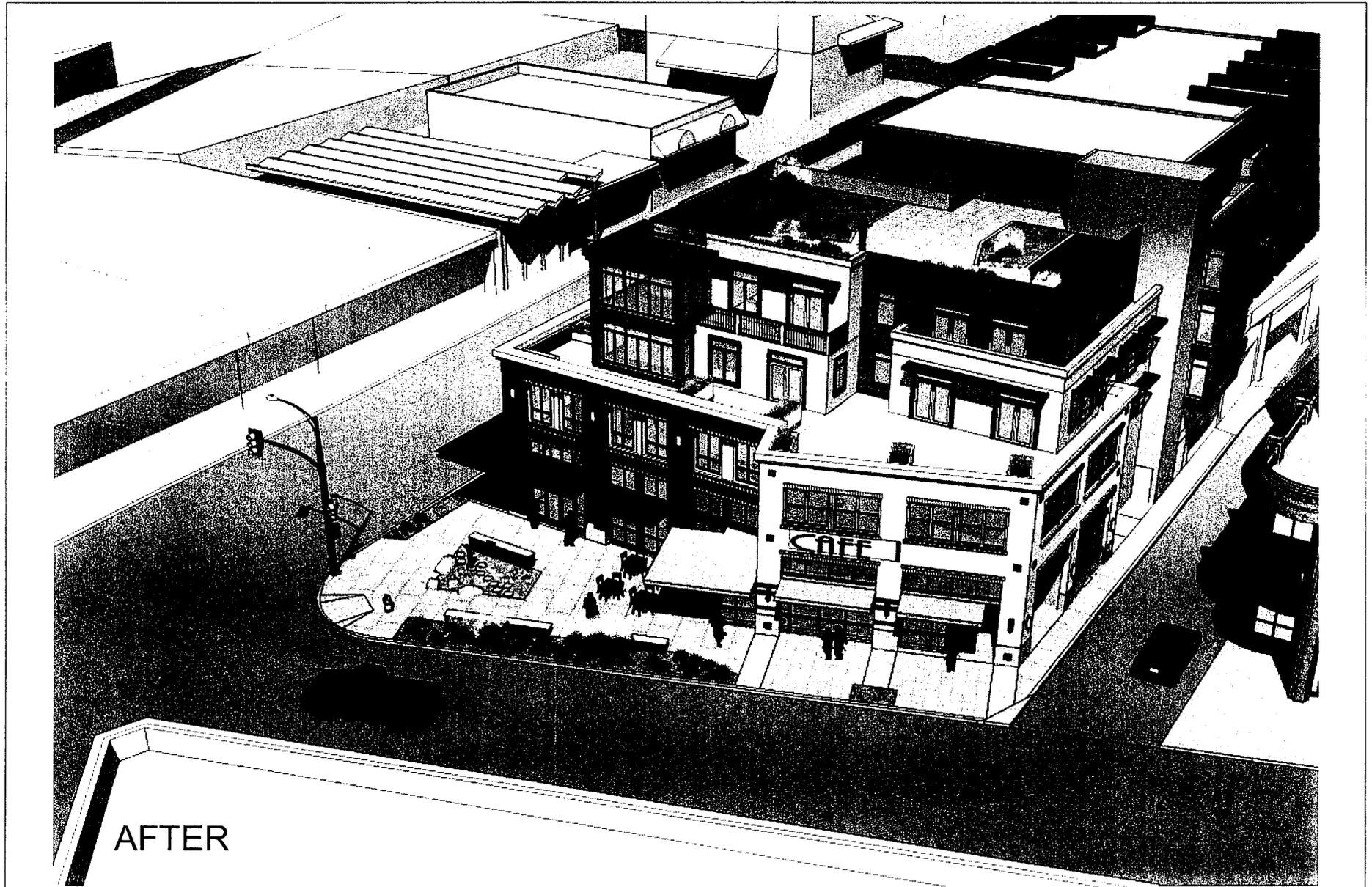
BEFORE

RUSBERG
group

MERRILL GARDENS

STONE
MARTIN
SMITH
W. GINN GIL
DEVELOPMENT, LLC

101 Kendall Avenue
Mixed Use Development
July 11, 2008



AFTER

BRUNBERG
group

MERRILL GARDENS

SRM
SHELDON
ROBERT
W. GONZALEZ
DEVELOPMENT, LLC

101 Kirkland Avenue
Mixed Use Development
July 1, 2008

Modified exterior to mitigate the concern that the space was “designed as a bank.”



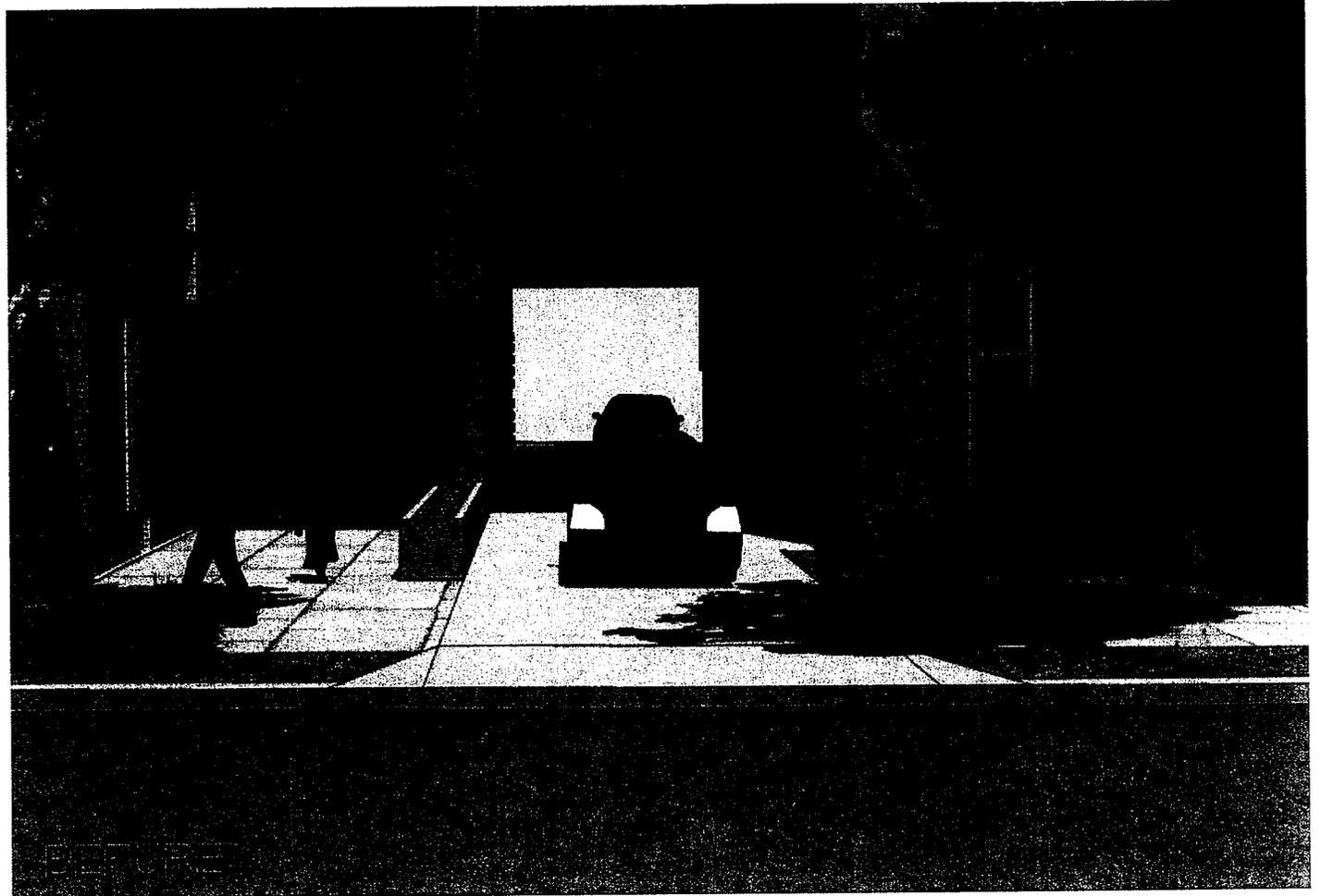
101 Kirkland Avenue
Mixed Use Development
July 2008

Summary of Modifications

- Changed storefront window fenestrations
- Changed corner door treatment
- Changed corner canopy from metal to fabric
- Could change the color of the brick if necessary
- *Anything else necessary?*



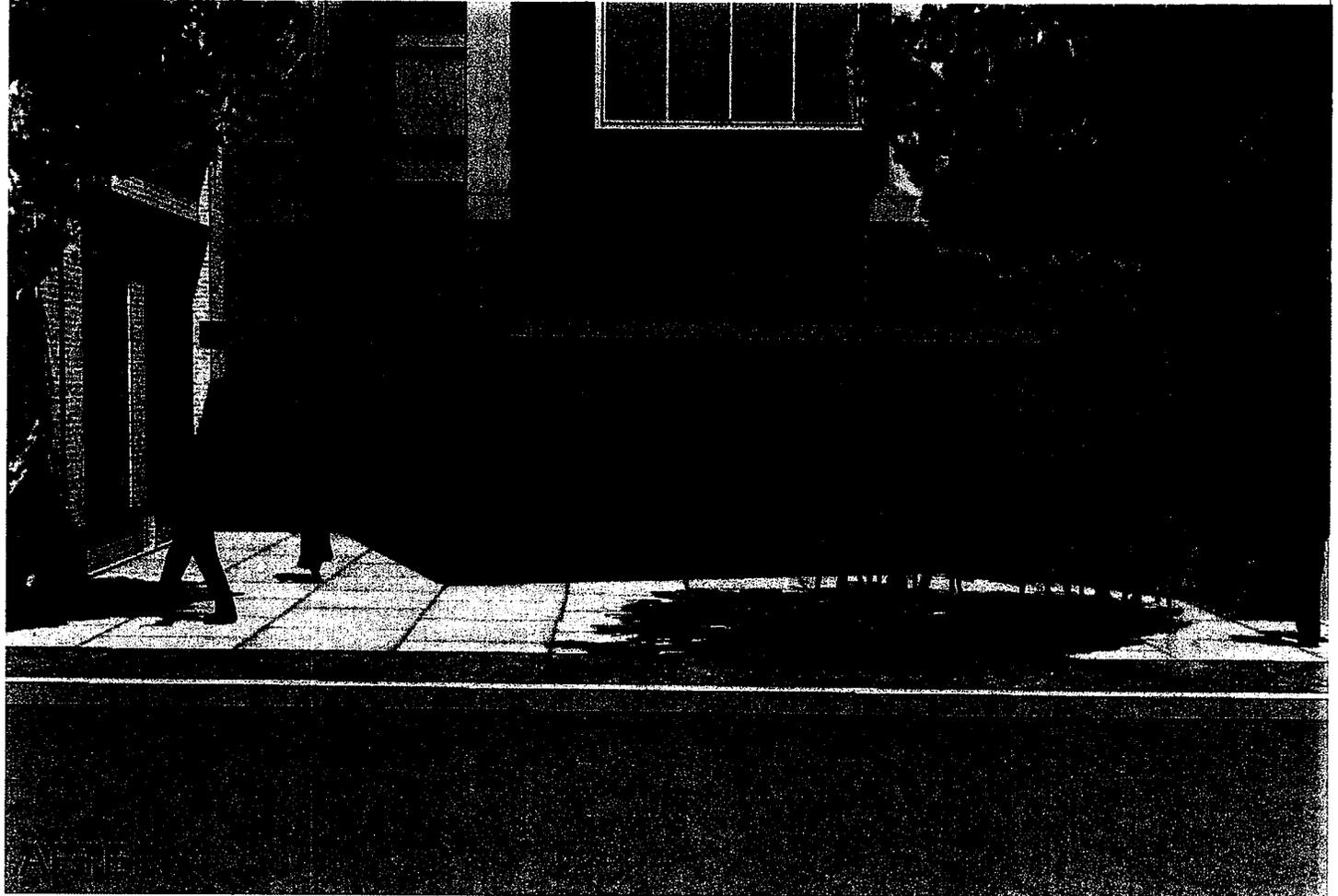
Relocated Drive-thru

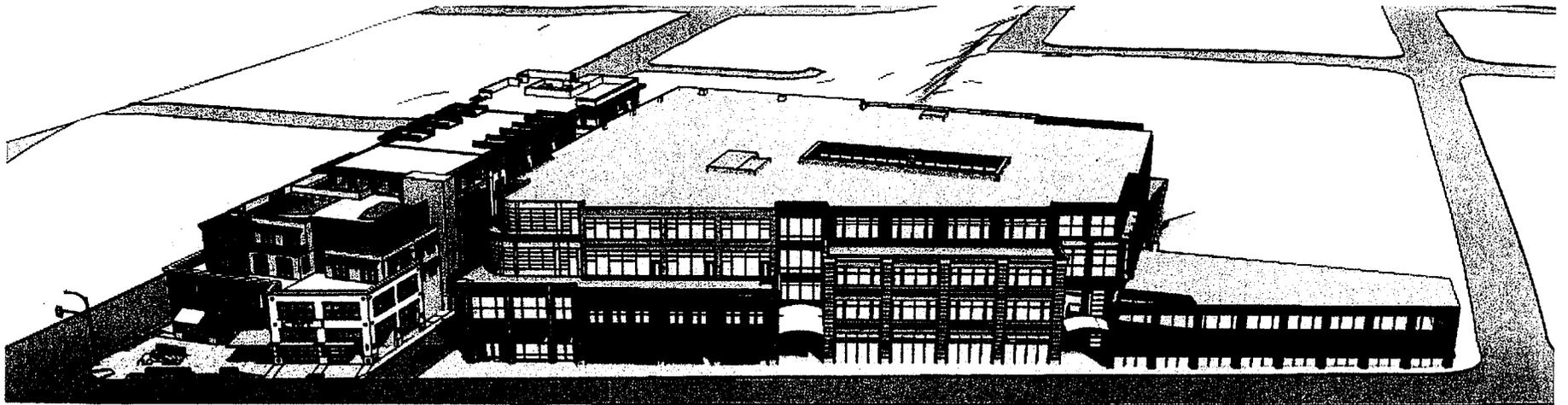


1000 Standard Avenue
Merrill Gardens
July 2003

Summary of Modifications

- Drive-thru was moved inside building with access off the alley
- An additional retail space has been added at previous drive-through location





West Elevation of Lake Street South



101 Kirkland Avenue
Mixed Use Development
July 1, 2009

Merrill Gardens/BOA Project

July 1, 2008

Summary of Modifications to Project Design:

- Retained plaza
- Added 2nd story to the southwest corner to create a continuous 2 story appearance on Lake Street
- Stepped back the 3rd story an additional 4'-10' from the 2nd story (*10' to 22' step back, 32'-1" and 46'-5" setback from Lake Street*)
- Stepped back portions of the 4th floor an additional 4' to 6' from portions of the 3rd story (*10' to 32' step back, 36'-7" and 46'-5" setback from Lake Street*)
- Stepped back the 5th floor an additional 22' from the 4th floor so that the 5th floor does not begin until the eastern edge of the bank space (*44' step back, 67'-8" and 95'-9" setback from Lake Street*)
- Relocated drive-thru to the alley
- Created an additional retail space along Kirkland Avenue in place of the drive through
- Changed the doors, awnings and windows on the exterior of the Kirkland Avenue/Lake Street corner retail space to mitigate concerns that the space was "designed as a bank"

Merrill Gardens/BOA Project

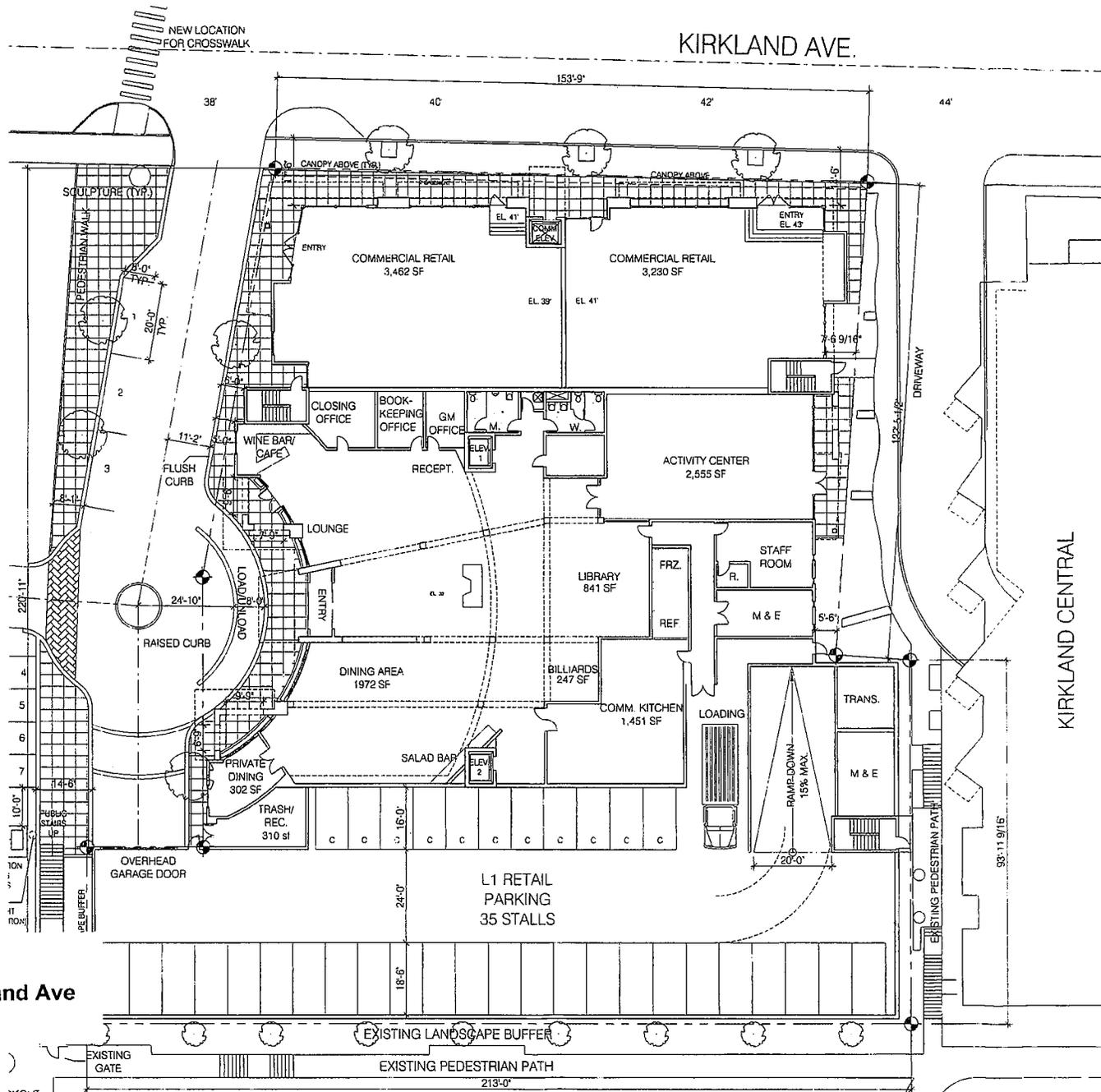
July 1, 2008

Prior Superior Retail Space Project Approvals:

- (1) Kirkland Hotel/Heathman Hotel
Uses at street level:
 - Hotel lobby
 - Hotel rooms
 - Spa
 - Restaurant

- (2) Kirkland Central Condo
Uses at street level:
 - Washington Mutual Bank (corner space)
 - Yoga Studio
 - Shnoo Yogurt
 - Elle Salon and Boutique
 - French Bakery and Espresso
 - Terra Bite

- (3) 201 Kirkland Avenue/SRM Merrill Gardens I
Uses at street level not yet known. Building under construction.



Street Level 201 Kirkland Ave

**SRM'S PROPOSED REVISIONS TO THE RESOLUTION AND
FINDINGS/CONCLUSIONS BASED ON MODIFIED DESIGN**

July 1, 2008

Supplement to Resolution R-4707:

Insert new paragraphs following paragraph ending "review approval of the Bank of America project":

WHEREAS, at SRM Development's request, the City Council authorized SRM Development to submit proposed modifications to the design of the Bank of America project;

WHEREAS, on July 1, 2008, SRM Development presented a modified project design that responded to and alleviated the concerns of the majority of the Council members;

WHEREAS, at the conclusion of the July 1, 2008, hearing, the City Council voted to approve the Bank of America project *as modified*.

Supplement to the Findings, Conclusions, and Decision on Appeal:

Section I, Procedural Findings:

New Paragraph 1.9: At the May 20, 2008, hearing, SRM Development requested the opportunity to submit modifications to the Bank of America project design in an effort to respond to the concerns expressed by the Council regarding the original, disapproved design;

New Paragraph 1.10: SRM Development returned at the July 1, 2008, meeting with a modified proposal for the design of the Bank of America project. Following SRM's presentation, the Council deliberated regarding the modified proposal and voted to approve the Bank of America project as modified.

Existing paragraph 1.9 is renumbered as Paragraph 1.11.

Section III, Findings Regarding Appeal:

New Paragraph 3.24: As modified by SRM Development's July 1, 2008 submittal, the first and second stories of the Bank of America/Merrill Gardens project are proposed to be setback 14'-1" and 40'-2" from Lake Street. As modified, the third story is proposed to be setback between 32'-1" and 46'-5" from Lake Street. As modified, the fourth story is proposed to be setback between 36'-7" and 46'-5" from Lake Street. As modified, the fifth story is proposed to be setback between 67'-8" and 95'-9" feet from Lake Street.

New Paragraph 3.25: As modified by SRM Development's July 1, 2008 submittal, the drive through facility is located within the building with both the entrance and exit located along the alley. As modified, the drive through no longer exits onto Kirkland Avenue.

New Paragraph 3.26: As modified by SRM Development's July 1, 2008 submittal, the several retail spaces range in size between approximately 1,970 square feet and 5,730 square feet.

New Paragraph 3.27: As modified on July 1, 2008, the Bank of America/Merrill Gardens project has been modified to mitigate concerns that the space on the corner of Kirkland Avenue and Lake Street was "designed as a bank." As modified, this retail space could be used by any number of different retail use tenants.

Section IV, Conclusions as to Superior Retail:

New Paragraph 4.6: Through its July 1, 2008 submittal, SRM Development mitigated the effect of the drive through on the Bank of America/Merrill Gardens project by relocating the drive through so that it is accessed exclusively from the alley, and reconfigured the area utilized as the drive through in the original design as an additional superior retail space. As a result of these modifications, the City Council concluded that the Bank of America/Merrill Garden's project as modified satisfied the criteria for superior retail space.

Alternate Paragraph 4.6: Through its July 1, 2008 submittal, SRM Development effectively divided the Bank of America/Merrill Gardens project into two components. SRM setback the fifth story of the project from Lake Street between 67'-8" and 95'-9" such that no portion of the fifth story was located above the retail space proposed for use by Bank of America. In so doing, SRM sought to divide the project into two "buildings": the western "building" containing the Bank of America retail space which is limited to four stories; and the eastern "building" which contains several superior retail spaces and is granted a fifth story. In addition, SRM Development mitigated the effect of the drive through on the Bank of America/Merrill Gardens project by relocating the drive through so that it is accessed exclusively from the alley, and reconfigured the area utilized as the drive through in the original design as an additional superior retail space. As a result of these modifications, the City Council concluded that the Bank of America/Merrill Garden's project as modified satisfied the criteria for superior retail space.

Section V, Conclusions as to Height on Lake Street:

New Paragraph 5.7: As modified on July 1, 2008, the Bank of America/Merrill Gardens project provides significant setbacks and step backs from Lake Street to meet the requirements of the two-story building limitation along Lake Street. Further, as modified on July 1, 2008, the Bank of America/Merrill Gardens project provides sufficient setbacks and step backs to mitigate the scale and mass of the proposed third, fourth and fifth stories.

Section VI, Decision:

Add the following: The modified design for the Bank of America/Merrill Gardens project as presented by SRM Development on July 1, 2008, is APPROVED.

RESOLUTION R-4707

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING FINDINGS AND CONCLUSIONS AND REVERSING THE DECISION OF THE DESIGN REVIEW BOARD GRANTING DESIGN REVIEW APPROVAL TO THE BANK OF AMERICA/MERRILL GARDENS MIXED USE PROJECT AT 101 KIRKLAND AVENUE. (FILE NO.: DRC 07-0006; APPEAL CASE NO.: APL08-0001)

WHEREAS, the applicant, SRM Development LLC, applied for design review approval of the Bank of America/Merrill Gardens five-story mixed use project ("Bank of America project") located at 101 Kirkland Avenue; and

WHEREAS, on January 17, 2008, the Kirkland Design Review Board issued its decision granting design review approval to the Bank of America project; and

WHEREAS, the appellant, Citizens for a Vibrant Kirkland, a Washington non-profit corporation, timely filed an appeal of the Design Review Board's decision; and

WHEREAS, on April 15 and May 6, May 20, June 3, and July 1 2008, the Kirkland City Council heard the appeal in an open record proceeding; and

WHEREAS, at the conclusion of the May 6, 2008, portion of the hearing, the City Council voted to reverse the Design Review Board's decision granting design review approval to the Bank of America project; and

WHEREAS, Kirkland Zoning Code 142.40.11.b requires that the City Council adopt findings and conclusions.

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

Section 1. In support of the decision reversing the Design Review Board's decision granting design review approval to the Bank of America project, the City Council hereby adopts the Findings, Conclusions, and Decision attached hereto as Exhibit "A" and by this reference incorporated herein.

Section 2. The City shall distribute the Council's decision by mail to the appellant and the applicant.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2008.

Signed in authentication thereof this ____ day of _____, 2008.

MAYOR

Attest:

City Clerk

EXHIBIT A (Staff)
Revised for August 5, 2008 meeting

BEFORE THE KIRKLAND CITY COUNCIL

APPEAL OF THE DESIGN REVIEW) BOARD DECISION ON THE BANK) OF AMERICA/MERRILL GARDENS) MIXED USE PROJECT AT 101) KIRKLAND AVENUE) FILE NO.: DRC07-00006) <hr style="width:100%;"/>	APPEAL CASE NO.: APL08-00001 CITY COUNCIL’S FINDINGS CONCLUSIONS, AND DECISION ON THE APPEAL
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I. PROCEDURAL FINDINGS

1.1 The Applicant, SRM Development, LLC (“Applicant”) applied for design review approval of the Bank of America/Merrill Gardens five-story mixed use project (“Bank of America project”) at 101 Kirkland Avenue.

1.2 On January 7, 2008, the Kirkland Design Review Board voted to approve the project subject to conditions and issued its decision dated January 17, 2008, granting design review approval to the Bank of America project. *Design Review Board Decision*.

1.3 Citizens for a Vibrant Kirkland (CiViK) (“Appellant”), a Washington non-profit corporation, timely filed an appeal of the Design Review Board’s Decision. *Letter from J. Richard Aramburu dated January 31, 2008*.

1.4 On April 15, May 6, May 20, June 3, and July 1, 2008, the Kirkland City Council heard the appeal in an open record proceeding. *April 15, May 6, May 20, June 3, and July 1, 2008, Proceedings*.

1.5 Appellant was represented by J. Richard Aramburu of Aramburu and Eustis, LLP at the City Council’s open record proceeding. Applicant was represented by Molly Lawrence of GordonDerr.

1.6 The City Council Members made appearance of fairness disclosures at the outset of the proceedings and no objections were raised by the parties to the participation of any member. Mayor James Lauinger presided over the appeal proceedings. *April 15, May 6, May 20, June 3, and July 1, 2008, Proceedings*.

1.7 The City Council heard testimony from the Department of Planning and Community Development (“Planning”) staff, the Chair of the Design Review Board, testimony and oral argument from members of the Appellant and representatives of the Applicant, and asked questions of the witnesses. The City Council had before it the

following documents: (a) the decision of the Design Review Board with attachments including Planning staff memoranda, applicant submittals and public comment letters to the Design Review Board; (b) the Planning staff report to the City Council with attachments; and (c) the written submissions by the parties, including briefing and exhibits. After hearing the presentations and oral arguments of the parties, the City Council deliberated and reached a decision on the appeal. By a vote of four-to-three, the City Council reversed the Design Review Board's decision granting design review approval to the Bank of America project. *April 15 and May 6, 2008, Proceedings.*

1.8 The City Council's motion reversed the Design Review Board's decision, denying the application, and directed staff to return to the next regular City Council meeting with a resolution setting forth findings and conclusions that: 1) the development does not contain superior retail that warrants the additional height, bulk, and mass of the project; and 2) the project does not present/meet the requirements of a two-story building along Lake Street South. *May 6, 2008, Proceedings.*

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

II. STANDARD OF REVIEW

2.1 The Kirkland City Council has jurisdiction over the appeal pursuant to Kirkland Zoning Code (KZC) 142.40.1.ab. The appeal was timely filed. Under KZC 142.40.11.a, "[u]nless substantial relevant information is presented which was not considered by the Design Review Board," the City Council is required to accord the decision of the Design Review Board "substantial weight."

2.2 The decision of the Design Review Board "may be reversed or modified if, after considering all of the evidence in light of the design regulations, design guidelines, and Comprehensive Plan" the City Council "determines that a mistake has been made." *KZC 142.40.11.a.*

III. FINDINGS REGARDING APPEAL

3.1 The Central Business District (CBD) 1 zone permits a maximum height of structure of two to five stories above each abutting right of way for attached or stacked dwelling units. *CBD 1 Use Zone Chart KZC 50.12.080.*

3.2 Buildings exceeding two stories in CBD 1 must demonstrate compliance with the design regulations of Chapter 92 KZC and all provisions contained in the Downtown Plan. *KZC 50.10.*

3.3 The Downtown Plan provides guidance concerning the allowed building height in the eight height and design districts within Downtown Kirkland. *Downtown Plan, pages XV.D-9 to XV.D-15.*

3.4 The Downtown Plan provides that the maximum building height in Design District 1 should be between two and five stories with no minimum setback from property lines and requires that stories above the second story should be set back. *Downtown Plan, pages XV.D-10.*

3.5 South of Kirkland Avenue, building forms should step up from the north and west with the tallest portions at the base of the hillside to help moderate the mass of large buildings on top of the bluff. *Downtown Plan, Page XV.D-10.*

3.6 With respect to building heights along Lake Street South, the Downtown Plan, XV.D-10, provides, in pertinent part:

Buildings should be limited to two stories along all of Lake Street South to reflect the scale of development in Design District 2.

3.7 The scale of development of buildings in Design District 2 is a maximum height of one to three stories. *Downtown Plan, page XV.D-12, Design District 2.* The scale of development in Design District 2 across from the subject property is a maximum height of two stories.

3.8 The Downtown Plan, page XV.D-10, provides a fifth story may be considered by the Design Review Board for a building within Design District 1B where:

at least three of the upper stories are residential, the total height is not more than one foot taller than the height that would result from an office project with three stories of office over ground floor retail, stories above the second story are set back significantly from the street and the building form is stepped back at the third, fourth, and fifth stories to mitigate the additional building mass, and the project provides superior retail space at the street level . . .

3.9 The requirements for the design of retail space are established in the Zoning Code regulations for CBD 1, Design Regulations of KZC Chapter 92, the Downtown Plan, and the Design Guidelines for Pedestrian Oriented **Business Districts Standards**.

3.10 The Bank of America project is located within the CBD 1 Zone of the Zoning Code and Design District 1B of the Downtown Plan. *Downtown Plan, page XV.D-10, Figure C-5.*

3.11 The Bank of America proposal is for a five story building. *Design Review Board Decision, III.A., DRB Conclusions, page 8.*

3.12 Along Lake Street South the second story is proposed to be set back between 14'3" and 32'3" feet from the street. The third and fourth stories are proposed to be set back between 14'3" and 34'8" feet from the street. There is no setback proposed from the 3rd to the 4th story. *Exhibit 201, Final Setbacks Levels 3-4.*

3.13 The bank would occupy the northwest corner of the site and a drive through banking facility would be located within the building, so that automobiles enter on the alley and leave the building on Kirkland Avenue. *Design Review Board Decision, Summary of Decision, page 1.*

3.14 The four proposed retail spaces range in size from approximately 880 square feet for a café to 2,365 SF and 2,450 SF for spaces along Kirkland Avenue and approximately 5,720 square feet for the bank. *Design Review Board Decision, 111.A, Retail Size, page 2.*

3.15 Banking and related financial institutions are an allowed use in the CBD 1 zone, but a drive-through bank is allowed in this location only because a drive-through bank presently exists on the site. *KZC 50.12.025.*

3.16 The bank space has very clearly and specifically been designed for a bank tenant.

3.17 The bank is proposed for the portion of the building at the corner of Kirkland Avenue and Lake Street South, one of the most prominent corners in the CBD.

3.18 The Design Review Board is authorized to determine compliance of buildings in CBD 1 with these provisions, subject to appeal to the City Council. *Downtown Plan, XV.D-10; ~~KZC 50.12.030~~; KZC 50.12.080; ~~KZC 50.12.100~~; KZC 142.40.*

3.19 In issuing its decision on the Bank of America project, the Design Review Board determined that the term "superior retail space" applies to the physical characteristics of the retail space and not the use. *Design Review Board Decision, III.A., Superior Retail, page 8.*

3.20 The Design Review Board concluded that the Bank of America project provided superior retail space at the street level. *Design Review Board Decision, III.A., DRB Conclusions, page 8.*

3.21 Restaurants, delicatessens, and specialty shops, including fine apparel, gift shops, art galleries, import shops, and the like constitute the use mix and image contemplated in the Vision for Downtown. These uses provide visual interest and stimulate foot traffic and thereby provide opportunities for leisure time strolling along Downtown walkways for Kirklanders and visitors alike. *Downtown Plan, Page XV, D-4.*

3.22 KCZ 50.12.080, Special Regulation 1 requires that retail uses occupying the street level floor of a building fronting on Lake Street South have a minimum depth of 30 feet.

3.23 The Design Review Board further concluded that the stories above the second story of the Bank of America project are set back significantly from the street, the building form is stepped back at the third, fourth, and fifth stories to mitigate building mass, and approved the fifth story. *Design Review Board, III, DRB Conclusions, page 8.*

IV. CONCLUSIONS AS TO SUPERIOR RETAIL SPACE

4.1 After according substantial weight to the decision of the Design Review Board, the City Council is left with the definite and firm conviction that the Design Review Board committed a mistake with regard to its conclusion that the proposed drive-through bank provides superior retail space at street level, and the Design Review Board's decision on this issue is clearly erroneous.

4.2 In order for the Design Review Board to consider a fifth story, all of the six criteria set forth in the Downtown Plan must be met.

4.3 The Design Review Board correctly noted that banks are listed in the Use Zone Chart as permitted uses in the CBD 1. However, drive-through facilities for banks are permitted only if they have existed since before January 1, 2004. A drive-through facility, moreover, is not consistent with superior retail space in the CBD 1, as explained in the Downtown Plan, page XV.D-6:

The desired pedestrian character and vitality of the core area requires the relatively intensive use of land and continuous compact retail frontage. Therefore, automobile drive-through facilities should be prohibited. Similarly, office uses should not be allowed to locate on the ground level. These uses generally lack visual interest, generate little foot traffic, and diminish prime ground floor opportunities for the retail uses that are crucial to the ambiance and economic success of the core area.

The attractiveness of the core area for pedestrian activity should be maintained and enhanced. . . .

4.4 While a drive-through facility in the proposed new building is permitted because it is a use that has existed since before January 1, 2004, a drive-through facility is not consistent with a superior retail space in the CBD 1, and the proposed building does not warrant the additional height, bulk and mass of a fifth story.

4.5 For each of the reasons noted in this section, and with consideration of the exhibits and expert testimony provided, the City Council determined that the space,

which is designed for a bank, fails to achieve the objectives and requirements of superior retail space. Accordingly, the proposed building does not warrant the additional height, bulk and mass of a fifth story.

V. CONCLUSIONS AS TO HEIGHT ON LAKE STREET SOUTH

5.1 After according substantial weight to the decision of the Design Review Board, the City Council is left with the definite and firm conviction that the Design Review Board committed a mistake with regard to its interpretation and application of the provisions of the Downtown Plan regarding height along Lake Street South.

5.2 The Downtown Plan states that “buildings *should* be limited to two stories along all of Lake Street South to reflect the scale of development in Design District 2.” The term “should” is directive and not mandatory, but the Design Review Board failed to give meaning and effect to the fact that the Downtown Plan uses different and stronger language in describing height along Lake Street than it does when describing height in other locations. For example, the next sentence of the Plan, which refers to buildings on other streets in Design District 1, says that the height of these buildings should only be limited “along street frontages.”

5.3 The Downtown Plan thus says that “buildings” that are “along” Lake Street South should be limited to two stories, and by using the word “should” the Plan requires an applicant who wishes to include a third or fourth floor to demonstrate that exceptional circumstances justify such additional height. No such demonstration has been made in the record before the City Council.

5.4 The Downtown Plan does not, however, require that an entire building located along Lake Street South be limited to two stories, regardless of the depth of the building, because the purpose of this limitation is to “reflect the scale of development in Design District 2.” Under the Downtown Plan, it is intended that buildings abutting Lake Street South should create the impression, from a pedestrian’s perspective, of being a maximum of two stories in height.

5.5 Upper stories must be sufficiently set back from Lake Street South to minimize their visibility.

5.6 The Bank of America project does not present as or meet the requirements of a two-story building limitation along Lake Street South because the third and fourth floors are not stepped back from the second floor, nor from Lake Street South, far enough to comply with the Downtown Plan. Further, the proposal has not demonstrated compliance with all of the provisions of the Downtown Plan so as to mitigate the scale and mass of the proposed third and fourth floors.

VI. DECISION

For the reasons set forth in the foregoing Findings and Conclusions, the decision of the Design Review Board is hereby REVERSED.

Decision adopted by the Kirkland City Council _____, 2008.

MAYOR