



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

**Date:** October 15, 2009

**File:** Courter Change in Non-Conforming Use, ZON09-00013

**Hearing Date and Place:** October 22, 2009  
1PM  
City Hall Council Chamber  
123 Fifth Avenue, Kirkland

**TABLE OF CONTENTS**

<b><u>Section</u></b>	<b><u>Page</u></b>
Application.....	2
Recommendations .....	2
Site Description.....	2
History.....	3
Public Comment .....	4
State Environmental Policy Act (SEPA) & Concurrency .....	4
Approval Criteria .....	4
Comprehensive Plan .....	6
Development Review Committee.....	6
Minor Modifications.....	6
Appeals and Judicial Review .....	6
Lapse of Approval.....	7
Appendices .....	7
Parties of Record.....	7

## I. INTRODUCTION

### A. APPLICATION

1. Applicant: James S. Fitzgerald on behalf of property owner Carrie Blanton.
2. Site Location: 11414 120<sup>th</sup> Avenue NE (see Attachment 1).
3. Request: Proposal to change a legal nonconforming use of a portion of existing property from retail auto sales to another legal nonconforming use to include retail lawn and garden equipment sales and repair (see Attachment 2).

Kirkland Zoning Code section 162.35.2 establishes when and under what circumstances a nonconforming use must be brought into conformance. This section defines a use as a specific activity being conducted and not the definition in KZC section 5.10.955.

The applicant is required to apply for a Process IIA zoning permit to show that the proposed new use will not be more nonconforming and will have a less adverse effect on the neighborhood than does the existing use.

4. Review Process: Process IIA, Hearing Examiner conducts public hearing and makes final decision.
5. Summary of Key Issues and Conclusions:
  - Compliance with Nonconforming Use Approval Criteria (see Section II.E)

### B. RECOMMENDATIONS

1. Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, I/we recommend approval of this application subject to the following conditions:
2. 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: 44,400 square feet (1.01 Acres)
    - (2) Land Use: The site currently contains a 13,162 square foot commercial structure that is being used by Honda of Kirkland for automobile sales.

- (3) Zoning: The subject property is zoned TL 10E (Totem Lake Office Use). This zone supports light industrial uses, office uses, wholesale trade, high technology and specific limited retail uses. Retail Garden sales and equipment repair are not listed as an allowed use in the TL10E Zone.
- (4) Terrain and Vegetation: The site is relatively flat but slopes towards the west near the adjacent right-of-way at 120<sup>th</sup> Avenue NE. There are landscaping buffers on the north and south sides of the property. The south side of the property contains approximately eight significant trees. All trees and vegetation are proposed to be retained at this time.

b. Conclusions:

- (1) Size, terrain and vegetation are not relevant factors in the review of this proposal.
- (2) Land use and zoning are relevant to the review of this proposal, due to the fact that retail garden equipment and repair use is not an allowed use in the TL10E Zone.

2. Neighboring Development and Zoning:

- a. Facts: The subject property and all adjacent properties are zoned TL10E. The property to the north contains a wholesale trade use, to the west wholesale trade and auto repair uses, to the south a business park and to the east is Interstate 405.
- b. Conclusion: Neighboring Development and Zoning are relevant factors in reviewing this proposal.

**B. HISTORY**

1. Facts:

- a. In 2002, a building permit was issued by the City of Kirkland to convert the subject property's use from 405 Collision Center (auto care) to the Kia Car Dealership (new and used car sales).
- b. The subject property prior to 2007, was located in the LIT Zone (Light Industrial Technology Zone). The LIT Zone Use Zone Chart listed Vehicle or Boat Sales and Repair as an allowed use.
- c. In 2007, the LIT Zone became the TL10E zone as adopted by Ordinance No. 4051. The allowed uses in the TL10E zone did not include automobile sales.
- d. In fall 2008, Kia moved from the subject property to its current location along NE 85<sup>th</sup> Street. As of October 10<sup>th</sup> 2008, the subject property continued to be operated by the Honda Corporation for retail automobile sales, which is a legal nonconforming use. The attached letter describes the applicant's agent's understanding that the City of Kirkland will preserve the legal non-conforming automobile sales use as long as the owner is making a good faith effort to release the premises for automobile sales use ( see Attachment 4).
- e. On August 9<sup>th</sup> 2009, Staff determined that the proposed use (retail lawn and garden sales and repair) was a specific activity change, per Kirkland Zoning

section 162.30.2, and that the proposed nonconforming use would be required to go through a Process IIA review. The applicant then applied for this zoning permit on August 13<sup>th</sup> 2009 on the behalf of property owner Carrie Blanton.

2. Conclusion: History is a consideration in the review of this application because it establishes the legal non-conformance of the automobile sales on the subject property.

### C. PUBLIC COMMENT

The public comment period commenced on September 17<sup>th</sup> 2009 and concluded on October 5<sup>th</sup> 2009. No public comments were made on this permit.

### D. STATE ENVIRONMENTAL POLICY ACT (SEPA) & CONCURRENCY

The project is Categorical Exempt from SEPA Requirements and as result is exempt from Concurrency Review.

### E. APPROVAL CRITERIA

#### 1. GENERAL ZONING CODE CRITERIA

- b. Facts: Zoning Code section 150.65.3 states that a Process IIA application may be approved if:

- (1) It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
- (2) It is consistent with the public health, safety, and welfare.

- c. Conclusion: The proposal complies with the criteria in section 150.65.3. It is consistent with all applicable development regulations (see Section II.E.2). In addition, it is consistent with the public health, safety, and welfare because it replaces one nonconforming use with another nonconforming use that will not be more nonconforming and will have a less adverse effect on the neighborhood than previous uses.

#### 2. Non-Conforming Use Criteria

- a. Facts:

- (1) Zoning Code section 165.32.2(a) states that for the purpose of determining a nonconforming use, the word "use" refers to the specific activity being conducted and not the definition of use set forth in KZC 5.10.955. A nonconforming use may be continued by successive owners or tenants.
- (2) Zoning Code section 165.32.2(b) states the following:  
Any nonconforming use except for a detached dwelling unit must be brought into conformance or discontinued if:
  - a) The applicant is making a structural alteration or increasing the gross floor area of any structure that houses or supports the nonconforming use; or

- b) The nonconforming use has ceased for 90 or more consecutive days; or
  - c) The nonconforming use is replaced by another use; the City may allow a change from one nonconforming use to another such use if, through Process IIA, the City determines that the proposed new use will not be more nonconforming and will have a less adverse effect on the neighborhood than does the existing use.
- (3) The applicant will be making minor changes to the building including cosmetic changes to the exterior and interior modifications (including wall partitions and electrical work).
  - (4) The use on the property immediately prior to the proposed use is automobile sales. Honda of Kirkland has continued to use the property for automobile sales since October 2008 (see Attachment 4).
  - (5) The statistics about the Kia operation were provided by the applicant's Agent. The Kia Corporation, as the site's last major tenant had 25 employees, sold roughly 70-95 new and used vehicles per month with a monthly sales volume between \$1 million to \$1.5 million. Kia also had 25-35 customer visits per day, in addition to employee trips, and 2-5 daily delivery trucks coming to the site (see Attachment 5).
  - (6) The proposed use, Goodsell, a retail home and garden sales and repair business has statistics available from their Bellevue Store. The Bellevue store has 8 employees, generates \$300,000 in monthly sales, 30-35 daily customer visits and 2-3 daily deliveries (see Attachment 5).
  - (7) The building that houses Goodsell's Bellevue location is approximately 6,500 square feet. The proposed Kirkland location will use approximately 72% of the 13,165 square feet building which is 9,485 square feet. However, the applicant does not anticipate more employees at the proposed site than at the Bellevue location.

b. Conclusion:

- (1) The proposed use is a change in specific activity from the immediately preceding uses being conducted on the subject property.
- (2) The applicant is not making structural alterations or increasing the gross floor area of any structure that houses or supports the nonconforming use. The proposed changes to the existing structure are normal routine maintenance items.

- (3) The nonconforming use of the property has not ceased for 90 days or more.
- (4) The proposed use will not be more nonconforming than the previous uses. Based on the facts presented, the proposed use would not have any more impact than an automobile sales use.

#### **F. COMPREHENSIVE PLAN**

1. Fact: The subject property is located within the Totem Lake neighborhood. Figure TL-3 on page XV.H-7 designates the subject property for Business Park (see Attachment 5).
2. Conclusion: The Comprehensive Plan designates the property for Business Park use. Nonconforming uses are not addressed within Comprehensive Plan for the Totem Lake Neighborhood.

#### **G. 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 a 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., \_\_\_\_\_, twenty-one (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 150.135 of the Zoning Code, the applicant must begin use of land approved under Chapter 150, within four (4) years after the final approval on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 150.130, 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 required development activity, use of land, or other actions.

"Date of approval" means the date of approval by the City of Kirkland, or the termination of review proceedings if such proceedings were initiated pursuant to RCW 90.58.180 and WAC 173-27-220.

**VI. APPENDICES**

Attachments 1 through 6 are attached.

1. Vicinity Map
2. Development Proposal and Site Plan
3. Development Standards
4. Letter dated October 10, 2008 from James Fitzgerald (Applicant's Agent) to Eric Shields (City of Kirkland's Planning Director)
5. Email dated August 26, 2009 from James Fitzgerald (Applicant's Agent) to David Barnes (City of Kirkland Project Planner)
6. Totem Lake Neighborhood Land Use Map

**VII. PARTIES OF RECORD**

Applicant: James Fitzgerald on behalf of property owner Carrie Blanton

Department of Planning and Community Development  
Department of Public Works  
Department of Building and Fire Services

A written decision will be issued by the Hearing Examiner within eight calendar days of the date of the open record hearing.

Review by Planning Director:

I concur  I do not concur

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNED COPY ON FILE IN PLANNING DEPARTMENT

\_\_\_\_\_  
Eric R. Shields Date



## Exhibit B

### Statement Describing Compliance With Applicable Zoning Code Criteria

The Application Checklist requires "A statement describing how the application specifically complies with applicable criteria set forth in the Zoning Code." This is a general "Zoning Permit" application and thus contains requirements that may not be applicable in every instance to an application. Such is the case here.

The applicant is seeking a substitution of legal non-conforming use. In other words, the existing use (retail auto sales and service) is a legal non-conforming use. The proposed use for a portion of the property is retail lawn and garden equipment sales and service (including small-engine power generators), also a non-conforming use. No material change in the structure is anticipated other than internal tenant improvements.

KZC Section 162.35.2.b.3 expressly allows the City to approve a change from one nonconforming use to another such use if, through Process IIA, the City determines that the proposed new use will not be more nonconforming and will have a less adverse effect on the neighborhood than does the existing use.

Accordingly, the question is not conformance with the Comprehensive Plan or the express uses allowed under the zoning category for the subject property (since the proposal is for another nonconforming use which, by definition, does not conform to the Comprehensive Plan), but whether the proposed new use will not be more nonconforming and will have a less adverse effect on the neighborhood than does the existing use.

The proposed use will not be more nonconforming and will have a less adverse effect on the neighborhood than does the existing use. A retail lawn and garden equipment sales and service business is much less intense than retail auto sales in a variety of ways. The traffic is less, the products sold and serviced are much smaller in scope, and the customer count is significantly less.

In addition, the products sold have significant benefit to homes and businesses. For example, the proposed user, Goodsell Equipment, supplies generators and other types of power equipment to the following municipalities:

- City of Bellevue (Parks, Streets, Water, Fire, Utilities)
- City of Kirkland (Parks, Streets, Water, Fire, Utilities)
- Bellevue School Dist
- City of Redmond (Parks, Streets, Water, Utilities, Fire)
- City of Mercer Island- All Departments
- City of Medina
- City of Clyde Hill

Town of Yarrow Point  
City of Woodinville  
City of Bothell  
City of Lake Forest Park  
City of Shoreline  
King County Parks  
Washington State DOT  
City of Issaquah  
City of Duvall  
City of Carnation  
Shoreline Water Dist  
Puget Sound Energy  
City of Fall City  
Fall City Water Dist.  
City of Renton  
City of Auburn

On January 16, 2007, the Mayor of the City of Bellevue wrote a letter of thanks to Goodsell for its support in the City of Bellevue's response to the December 2006 windstorm and power outage which devastated the region. The Mayor lauded Goodsell's willingness to respond to the City's needs in a timely manner and stated that its provision of expertise and assets exemplified the best in corporate citizenry. (See attached)

Goodsell always offers its municipal customers a 24 hour phone contact for after-hours emergencies. During the above-referenced windstorm and power outage, the Goodsell staff was at its shop for 18-20 hours a day for 10 days straight taking care of the public. The business does everything it can to be there when there is a need.

Accordingly, the applicant can demonstrate that the proposed new use will not be more nonconforming and will have a less adverse effect on the neighborhood than does the existing use, as well as the fact that the proposed new use and business engaged in that use will have a demonstrable and unique public benefit.

**City of  
Bellevue**



Office of the Mayor • Phone (425) 452-7810 • Fax (425) 452-7919  
Post Office Box 90012 • Bellevue, Washington • 98009 9012

January 16, 2007

**Goodsell's Power Equipment  
13310 Bel-Red Rd Ste 203  
Bellevue, WA 98005**

Dear Duane,

On behalf of the City of Bellevue, I would like to thank you and your company for supporting the city's response to the windstorm and subsequent power outage that devastated the region in mid-December. In the aftermath, 90% of the city was without power, many downed trees and powerlines caused extensive road closures and safety hazards, and debris removal efforts continue to today.

Many lessons were learned during this event, but one of the most poignant is the importance of having all partners, both private and public, individuals and organizations, work together to serve our populace. Your willingness to respond to the city's needs in a timely manner and provide your expertise and assets exemplifies the best in corporate citizenry, especially in light of the challenges that many of you were also facing.

Thank you again for your invaluable assistance.

Mayor Grant Degginger

City of Bellevue offices are located at 450 110th Avenue N.E.



0.1

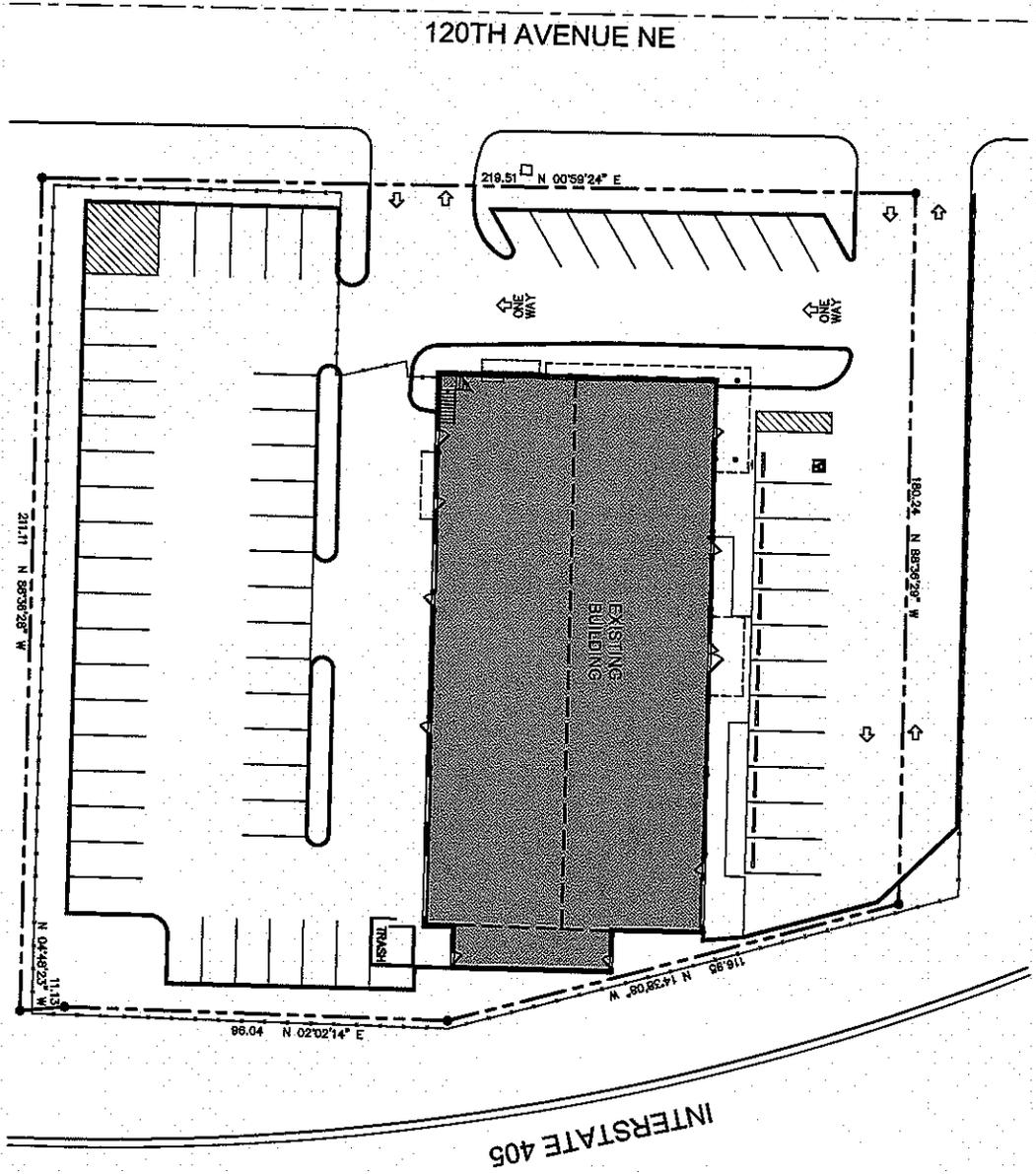
1" = 30'-0"

EXISTING SITE PLAN

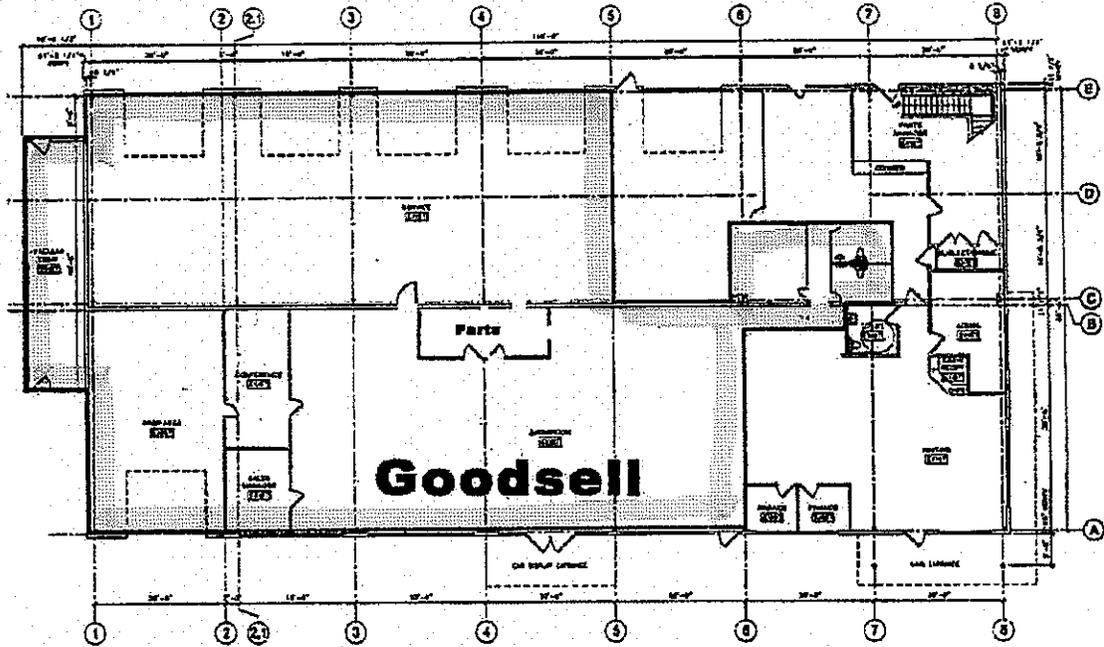
APR 3326056029  
APPROX SITE AREA 44,610 S.F.

KIRKLAND HEIGHTS BUILDING  
1144 120TH AVE NE  
KIRKLAND, WA 98033  
DATE 09/29/09

NOTE: THIS CAD DRAWING IS BASED ON HAND DRAWING  
PRINTS BY ADVA, INC, DATED 2002. THE INFORMATION  
ON THIS DRAWING HAS NOT BEEN VERIFIED IN THE FIELD  
AND IS FOR REFERENCE PURPOSES ONLY.



[Outline of the Premises]



1

**MAIN LEVEL FLOOR PLAN**

APR: 3524039028

1/16" = 1'-0"

APPROX. MAIN FLOOR AREA: 10,472 SF.

**KIRKLAND HEIGHTS BUILDING**  
1184 120TH AVE. NE  
GRANDLAND, WI 53033

NOTE: THIS CAD DRAWING IS BASED ON HAND  
DRAWING PRINTS BY AGM, INC. DATED 2002.  
THE INFORMATION ON THIS DRAWING HAS NOT  
BEEN VERIFIED IN THE FIELD AND IS FOR  
REFERENCE PURPOSES ONLY.

**RECEIVED**  
JUL 23 2009

AM \_\_\_\_\_ PM  
PLANNING DEPARTMENT  
BY \_\_\_\_\_



## CITY OF KIRKLAND

### Planning and Community Development Department

123 Fifth Avenue, Kirkland, WA 98033 425.587-3225

[www.ci.kirkland.wa.us](http://www.ci.kirkland.wa.us)

## DEVELOPMENT STANDARDS LIST

**File:** ZON09-00013

Courter Change in Non-Conforming Use

### ZONING CODE STANDARDS

**100.25 Sign Permits.** Separate sign permit(s) are required. In JBD and CBD cabinet signs are prohibited.

**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.

**105.60.4 Parking Lot Walkways.** All parking lots which contain more than 25 stalls must include pedestrian walkways through the parking lot to the main building entrance or a central location. Lots with more than 25,000 sq. ft. of paved area must provide pedestrian routes for every 3 aisles to the main entrance.

**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.

**105.96 Drive Through Facilities.** See section for design criteria for approving drive through facilities.

**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.

**115.47 Service Bay Locations.** All uses, except single family dwellings and multifamily structures, must locate service bays away from pedestrian areas. If not feasible must screen from view.

**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.p HVAC and Similar 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.a Driveway Width and Setbacks.** For a detached dwelling unit, a driveway and/or parking area shall not exceed 20 feet in width in any required front yard, and shall be separated from other hard surfaced areas located in the front yard by a 5-foot wide landscape strip. Driveways shall not be closer than 5 feet to any side property line unless certain standards are met.

**115.115.d Driveway Setbacks.** Parking areas and driveways for uses other than detached dwelling units, attached and stacked dwelling units in residential zones, or schools and day-cares with more than 12 students, may be located within required setback yards, but, except for the portion of any driveway which connects with an adjacent street, not closer than 5 feet to any property line.

**115.120 Rooftop Appurtenance Screening.** New or replacement 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.

LAW OFFICES

## LIVENGOOD, FITZGERALD &amp; 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.+

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

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

GORDON A. LIVENGOOD (1921 - 2001)

October 10, 2008

Mr. Eric Shields  
 Planning Director  
 City of Kirkland  
 123 Fifth Avenue  
 Kirkland, WA 98033-6189

**Re:** Former KIA of Kirkland Dealership  
 Located at 11414 - 120<sup>th</sup> Avenue NE, Kirkland, WA 98033 (the "Property")

Dear Eric:

As you may recall, I represent the Courter family and Kirkland Heights, LLC, the holding company for the Property. As you are undoubtedly aware, Lee Johnson KIA has now moved from the Property to its own new facility on its site on NE 85<sup>th</sup>. Accordingly, the Property is being actively marketed for lease. As you know, these are difficult times for leasing space. For that reason, Honda of Kirkland is utilizing the Property for retail auto sales and is maintaining salesperson availability at that location. However, it may not be efficient and economic to continue this practice and it is my understanding that Carrie Blanton, Property Manager for Kirkland Heights, LLC, discussed with you her concern about making sure that the legal non-conforming use for the Property as a retail automotive dealership is not lost. I understand that you stated that as long as the owner is making a good-faith effort to relet the premises for auto use, the City of Kirkland would not take the position that the legal non-conforming use has "expired." Your statement was very much appreciated and while it is not necessarily an issue yet due to the fact that Honda of Kirkland is utilizing the Property on an interim basis, as I said, that may not continue and we very much appreciate the fact that while we are awaiting a new tenant, the legal non-conforming use will not be lost.

Eric, I am enclosing an extra copy of this letter and a stamped, self-addressed envelope. If you would be so kind as to sign the copy below where indicated, confirming the accuracy of my understanding, and return it to me, I would appreciate that as well. If you are unable to do so, please let us know that and the reasons.

COPY

Mr. Eric Shields  
Planning Director  
City of Kirkland  
October 10, 2008  
Page 2

---

In advance, thank you.

Very truly yours,

LIVENGOOD, FITZGERALD  
& ALSKOG, PLLC



James S. Fitzgerald

JSF:lc

Enclosure

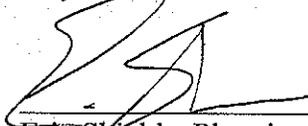
cc: Kirkland Heights, LLC, c/o Carrie Blanton

\\s04y328\WordDoc\Court\Kls Property\Ltr.Shields.2008-10-10.doc

I hereby confirm the accuracy of the foregoing.

Dated: October 21, 2008.

City of Kirkland



---

Eric Shields, Planning Director

**David Barnes**

---

**From:** James S. Fitzgerald [fitzgerald@lfa-law.com]  
**Sent:** Wednesday, August 26, 2009 3:13 PM  
**To:** David Barnes  
**Cc:** Carrie C. Blanton; Duaine Henrickson; Tom Robison  
**Subject:** Courter Substitution of Non-conforming Use (Goodsell) - City of Kirkland File No. ZON09-00013

Dear David:

In furtherance of your correspondence of Friday, August 21, 2009, in which you asked for some additional information, I am pleased to provide the following in support of our application.

The statistics demonstrate clearly that the proposed new use will not be more non-conforming than the present use of car sales. While on an interim basis the property is being used for selling pre-owned vehicles, the most recent and relevant use was the operation of Lee Johnson KIA, an automotive dealership that has since moved to the Lee Johnson Auto Group campus on NE 85th St. and I-405. I am general counsel to that company as well so was able to obtain some pertinent statistics.

In that location Lee Johnson KIA sold, on average, 70 - 95 new and used vehicles per month at the subject site, with monthly dollar volumes averaging between \$1 million and \$1.5 million. It had approximately 25 employees. Between sales and service, there were approximately, on average, 25 - 35 customer visits daily in addition to employee trips. Delivery trucks ranged from two to five daily trips. In addition, an auxiliary lot was used for employee parking and inventory.

In its current location the above numbers for Lee Johnson KIA have increased.

In contrast, Goodsell currently averages approximately \$300,000 in monthly sales from approximately 30 - 35 daily customer visits for sales and service. It has 8 employees in its current 6,500 square foot facility. It has delivery truck visits averaging two to three daily trips. It will not need an auxiliary lot for employee parking or inventory.

At the risk of stating the obvious, Goodsell's proposed use is demonstrably less intense (and thus less non-conforming) than the KIA dealership or another retail automotive use.

We believe some additional points are relevant and should be considered. We are informed by real estate professionals that the Comprehensive Plan notwithstanding, the Parmac area has and likely will be for the foreseeable future a preferred location for companies that provide a sales and supply service to the contractors and individuals that require a specific tool or product for their craft. The Parmac area is preferred by national companies more than the Redmond area because of its access to the I-405 corridor, which is seen as a tremendous advantage. That is why several regional and national supply companies are located there -- because of exposure and easy and convenient access.

Many of the companies in the Parmac area are service oriented, whether it be automotive service or granite and marble suppliers. The present mix is that of wholesale and industrial retail, and Goodsell fits in very well to that mix. Goodsell supplies and services professional landscapers, municipalities and the individual consumers. It carries specialty equipment items that the chain stores frequently do not carry. In addition, Goodsell offers very product-specific knowledge and advice.

Finally, Goodsell makes a point of being open during emergencies. That ability and the visibility from the freeway make the community safer.

David, I believe I have responded fully to your inquiries. Kindly confirm that I have done so or let me know what additional information would be helpful or required.

In advance, thank you.

Regards,  
 Jim  
 James S. Fitzgerald

Livengood, Fitzgerald & Alskog, PLLC  
121 Third Avenue  
Kirkland, WA 98083-0908  
E-mail: [fitzgerald@lfa-law.com](mailto:fitzgerald@lfa-law.com)  
Voice: (425) 822-9281 ext. 328  
Fax: (425) 828-0908  
[www.lfa-law.com](http://www.lfa-law.com)

The contents of this message and any attachments may be protected by the attorney-client privilege, work product doctrine or other applicable protection. If you are not the intended recipient or have received this message in error, please notify the sender and promptly delete the message. Thank you for your assistance.

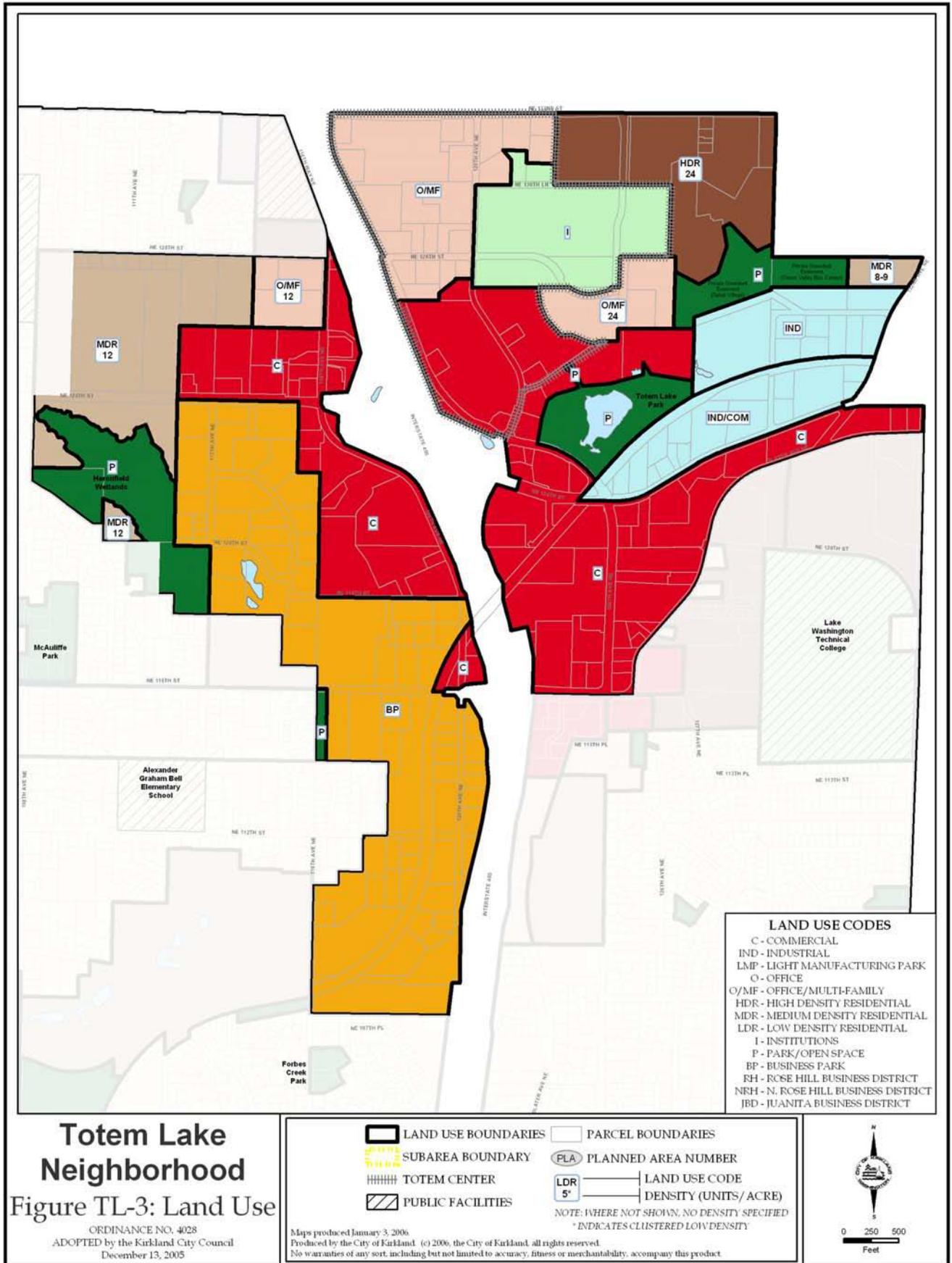


Figure TL-3: Totem Lake – Land Use