



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: _____ Rob Jammerman, Development Engineering Manager
Date: June 8, 2009
Subject: APPEAL OF CITY'S DECISION TO APPROVE LAND SURFACE MODIFICATION PERMIT NO. LSM08-00002
APPEAL FILE NO: APL09-00005

Hearing Date and Place: Thursday, June 18, 2009; 9:00 a.m.
City Hall Council Chamber
123 Fifth Avenue, Kirkland

I. INTRODUCTION

- A. Appellant: Clement and Donna Neil, 700 5th Avenue South
- B. Action Being Appealed: The City's decision to approve a Land Surface Modification (LSM) Permit to install utilities, street improvements, pedestrian path improvements and a driveway access to Lot 3 of the Aubry Short Plat, File No. SPL06-00007. Appeal of this action is allowed under Kirkland Municipal Code (KMC) Title 29.36 and the appeal provisions in KMC Article XII of Chapter 21.06 (see Exhibit A).
- C. Issues Raised in Appeal: The appellant disputes the applicant's proposal and Public Works Department approval of a private driveway access for Lot 3 from 7th Street South. (see Exhibit B).

II. RULES FOR THE APPEAL HEARING AND DECISION

Conduct the appeal hearing on June 18, 2009. Take oral comments from parties entitled to participate in the appeal as defined in Kirkland Municipal Code (KMC) 21.06.580. Decide to:

- A. Affirm the decision being appealed; or
- B. Reverse the decision being appealed; or
- C. Modify the decision being appealed.

The Hearing Examiner shall issue his or her decision within 15 days of the appeal hearing and the decision shall be mailed to the applicant and appellant within 4 days after the decision is issued. The decision by the Hearing Examiner is the final decision of the City.

III. HEARING SCOPE AND CONSIDERATIONS

KMC 21.06.582 states that the scope of the appeal is limited to the specific elements of the Building Officials order, decision, or determination disputed by the appellant and the Hearing Examiner shall only consider comments, testimony and arguments on these specific elements (see Exhibit A).

IV. BACKGROUND & SITE DESCRIPTION

- A. Site Location: 341 8th Street South (see Exhibit C).
- B. Zoning and Land Use: The site is zoned RS 8.5, a low density residential zoning designation. The lot is 24,375 square feet. On March 22, 2007, the City approved Short Plat application SPL06-00007 to subdivide the property into three lots.
- C. Proposal: LSM Permit NO. LSM08-00002 allows the applicant to install utilities, street improvements, pedestrian path improvements and a driveway access to Lot 3 of the Aubry Short Plat, File No. SPL06-00007.
- D. Staff review of Land Surface Modification Permit
1. Public Works staff has reviewed the LSM Permit for compliance with all City Codes including the Public Works Pre-Approved Plans and Policies and KMC Title 29 – Land Surface Modification.
 2. The appeal centers on the proposed driveway access to Lot 3 within the 5th Avenue South right-of-way from 7th Street South, which crosses (east/west) in front of the appellant's property. The appellant contends that the driveway access for Lot 3 should come from 8th Street South. Public Works staff reviewed the proposed driveway access and could find no grounds for denying access from 7th Street South.
- E. History
1. On July 19, 2007, the Kirkland City Council upheld an appeal to not open the 5th Avenue South right-of-way, along the south side of the Aubry Short Plat, to public vehicular use (improving the 5th Avenue South right-of-way as a public street was a condition of the Short Plat). During the appeal proceedings, Council acknowledged that Mr. Aubry would need to build a driveway in the 5th Avenue South right-of-way in order to gain access to Lot 3.
 2. At the August 7, 2007 City Council meeting, the Council approved Resolution R-4657 which adopted the findings, conclusions, and decisions in the Aubry Short Plat Appeal. Within the Resolution the following conclusion is stated:

The applicant may propose to locate a residential driveway in the unopened 5th Avenue South right-of-way to access Lot 3 of the Aubry Short Plat. The design for the required pedestrian and bicycle path and the driveway will be reviewed and approved by the Public Works Department.
(see Exhibit D, page 5, Conclusion #7)
 3. Shortly after the Aubry Short Plat received final Council approval, Mr. Aubry and the owners of the three properties adjacent to the 5th Avenue South right-of-way began discussing the proposed location of the driveway for Lot 3 and a disagreement about where the driveway should be located arose. The Public Works Department agreed that a driveway, located in the unopened 5th Avenue South right-of-way, could access either 7th Street South or 8th Street South. Given that dispute over the driveway was primarily a civil matter, it was recommended that the owners and Mr. Aubry attend mediation. The parties agreed to attend mediation, but after meeting on two different occasions, they were unable to resolve the matter and no further mediation sessions were held.

4. When the Neil's were notified that the Aubry LSM Permit had been approved with a driveway access to Lot 3 from 7th Street South they filed this appeal on May 6 2009 (see Exhibit B). On June 4, 2009, the Neil's provided an additional letter (see Exhibit E).

V. STAFF ANALYSIS OF ISSUES RAISED IN THE APPEAL:

Staff would like to offer the following comments regarding the proposed driveway access:

- A. The proposed driveway will not put the safety of pedestrians in jeopardy. The pedestrian pathway is separated from the proposed driveway and pedestrians will have to cross 7th Street South as they do today.
- B. The existing topography will not create safety problem for the driveway, the pathway or the adjacent homes. If additional safety concerns become apparent during construction of the improvements, the issue will be addressed with safety railings, fences, or other methods approved and directed by the Public Works Department. It is important to note that the topographic difference between the 5th Avenue South right-of-way and the adjacent properties is fairly consistent along the entire length of the right-of-way and a driveway access from 8th Street South would face similar circumstances.
- C. A driveway for Lot 3, whether taken from 7th Street South (as proposed) or 8th Street South, will require the pedestrian path to be reconstructed. Neither access point has substantially less impact on the existing pathway location.
- D. The surface water from the proposed driveway will be collected and conveyed to the City's surface water system.
- E. As mentioned above, the City Council approved a specific condition in Resolution R-4657 allowing for a driveway in the unopened 5th Avenue South taking access from either 8th Street South or 7th Street South.
- F. Staff understands that the Neil's would rather have the driveway for Lot 3 be accessed from 8th Street South, but cannot find any language in the Land Surface Modification regulations (KMC Title 26) or any other City regulations that provide grounds to require the driveway to be relocated.

VI. RECOMMENDATION

Staff recommends that the Hearing Examiner find that the appellant's proposal does not have merit for denying the Land Surface Modification Permit and affirm that the Permit remain approved.

VII. JUDICIAL REVIEW

Under KMC Section 21.06.588, any judicial appeal of the Hearing Examiner's decision shall be reviewed in King County Superior Court pursuant to Chapter 36.70C RCW, the Land Use Petition Act ("LUPA"). The Land Use Petition must be filed within twenty-one calendar days of the issuance of the Hearing Examiner's decision

VIII. ATTACHMENTS

- Exhibit A – KMC Title 29.36 and KMC Title 21, Article XII
- Exhibit B - Letter of appeal from Clement and Donna Neil receive May 6, 2009
- Exhibit C – Vicinity map and site plan depicting proposed access from 7th Street South
- Exhibit D – City Council Resolution 4657
- Exhibit E – Additional letter from Clement and Donna Neil receive June 4, 2009

EXHIBIT A

Chapter 29.36 SUSPENSION OR REVOCATION, APPEALS AND ENFORCEMENT

Sections:

- [29.36.010](#) Suspension or revocation.
- [29.36.020](#) Appeals.
- [29.36.030](#) Enforcement.

29.36.010 Suspension or revocation.

The city is authorized to suspend or revoke a permit issued under the provisions of this chapter whenever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code. (Ord. 4151 § 3 (part), 2008)

29.36.020 Appeals.

The decision of the city in approving or denying a land surface modification may be appealed using the appeal provisions, as applicable, of Article XII of Chapter 21.06. (Ord. 4151 § 3 (part), 2008)

29.36.030 Enforcement.

Violations of the requirements of this title shall be enforced through the provisions, as applicable, of Chapter 170 KZC. (Ord. 4151 § 3 (part), 2008)

Article XII. Appeals

21.06.570 Appeals to hearing examiner.

Appeals of orders, decisions and determinations of the building official shall be heard and decided by the city of Kirkland hearing examiner. To the extent the codes adopted by reference in this title refer to a “board of appeals” or a “building board of appeals,” those references shall be deemed to refer to the city of Kirkland hearing examiner. (Ord. 4099 § 2 (part), 2007; Ord. 4083 § 4, 2007)

21.06.572 Limitations on appeals.

An appeal under this chapter shall be based on a claim that this code or the technical codes have been incorrectly interpreted, that the provisions of this code or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed. (Ord. 4099 § 2 (part), 2007; Ord. 4083 § 5, 2007)

21.06.574 When to appeal and appeal fee.

An appellant shall file a written appeal of the order, decision or determination of the building official with the Kirkland fire and building department within thirty days of the date of the decision of the building official. There shall not be an appeal fee for appeals of stop work orders or code enforcement orders. For all other matters, the appeal fee shall be one hundred twenty-five dollars and shall accompany the written appeal. Failure to timely file the appeal or pay the appeal fee shall result in dismissal of the appeal. (Ord. 4099 § 2 (part), 2007; Ord. 4083 § 6, 2007)

21.06.576 Contents of notice of appeal.

The appeal shall contain a clear reference to the matter being appealed and a statement of the specific elements of the building official's order, decision or determination disputed by the appellant. (Ord. 4099 § 2 (part), 2007: Ord. 4083 § 7, 2007)

21.06.578 Notice of the appeal hearing.

(a) The building official shall prepare a notice of the appeal hearing containing the following:

- (1) The file number and a brief description of the matter being appealed;
- (2) A statement of the scope of the appeal including a summary of the elements of the building official's order, decision or determination that are contested in the appeal;
- (3) The time and place of the hearing on appeal before the hearing examiner; and
- (4) A statement of who may participate in the appeal.

(b) At least fourteen days before the hearing on the appeal, the building official shall send a copy of the notice of appeal hearing to each person who has appealed the building official's order, decision or determination. (Ord. 4099 § 2 (part), 2007: Ord. 4083 § 8, 2007)

21.06.580 Participation in the appeal.

Only those parties who have appealed the building official's order, decision or determination may participate in the appeal. Appellants may participate in either or both of the following ways:

- (1) By submitting written comments or testimony to the hearing examiner prior to the commencement of the hearing; or
- (2) By appearing in person, or through a representative, at the hearing. The hearing examiner may reasonably limit the extent of oral testimony or oral argument to facilitate the orderly and timely conduct of the hearing. (Ord. 4099 § 2 (part), 2007: Ord. 4083 § 9, 2007)

21.06.582 Scope of appeal.

The appeal will be an open record appeal hearing. The scope of the appeal is limited to the specific elements of the building official's order, decision or determination disputed by the appellant and the hearing examiner shall only consider comments, testimony and arguments on these specific elements. (Ord. 4099 § 2 (part), 2007: Ord. 4083 § 10, 2007)

21.06.584 Record of appeal hearing.

The city shall make an electronic sound recording of the hearing. (Ord. 4099 § 2 (part), 2007: Ord. 4083 § 11, 2007)

21.06.586 Decision on the appeal.

The hearing examiner shall consider all information and material within the scope of the appeal submitted by persons entitled to participate in the appeal. Based on the hearing examiner's findings and conclusions, the hearing examiner may affirm, reverse or modify the order, decision or determination being appealed. The hearing examiner shall issue his or her decision within fifteen days of the appeal hearing. Within four business days after it is issued, the hearing examiner's decision shall be mailed to the applicant and to each person who has requested notice of the decision. The decision by the hearing examiner is the final decision of the city. (Ord. 4099 § 2 (part), 2007: Ord. 4083 § 12, 2007)

21.06.588 Judicial review.

Any judicial appeal of the hearing examiner's decision shall be reviewed in King County superior court pursuant to Chapter 36.70C RCW, the Land Use Petition Act ("LUPA"). The land use petition must be filed within twenty-one calendar days of the issuance of the hearing examiner's decision. (Ord. 4099 § 2 (part), 2007: Ord. 4083 § 13, 2007)

May 2, 2009

EXHIBIT B



Dear City Hearing Examiner,

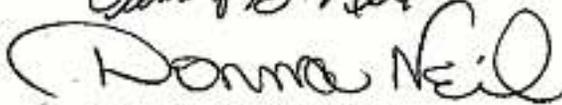
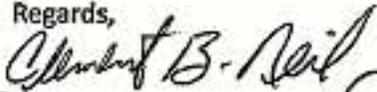
This is our notice that we are appealing the Aubry Short Plat Land Surface Modification Permit, LSM 08-00002. Our reasons are as follows:

1. We have always been first and foremost concerned with the safety of Children, Adults and pets, who walk, bike, jog, stroller and use a wheelchair to access the path. By putting a road off of fifth avenue south to access lot #3, would put in jeopardy the safety of Children and Adults.
2. Dave Aubry himself said there is a 6 to 7 foot vertical increase of the path which is above the existing homes and lots. This creates a shear drop off from the path to the homes near the path. The Aubry's have been opposed to a road since 1972; they are in favor of keeping the path as is and not destroying the greenery. Now that the Aubry's are selling their house, they are for a road and if the greenery of the path is destroyed they are not concerned.
3. How legal and safe is a road that is 6 to 7 feet higher than the houses below grade? Our house is a rambler and the safety of this road is a great concern or ours. Our son's bedroom, our office and dining room is in the front of the house where a car can come crashing into our house and harming us or guests. This road will attract someone thinking this is a thru street and will have to change direction at the last minute to get back to fifth avenue south. The elevation difference as well as if the driver is distracted or impaired, will allow for someone getting seriously injured.
4. The Mayor, Deputy Mayor and City Council Members, at the City Council Meeting, on June 19, 2007 unanimously voted for Option #2, which is to only have improvements made to the existing pedestrian and bike path and no trees could be removed in the improvement process. Fifth Avenue South access to a road is closed. The Mayor, Deputy Mayor and all City Council Members must be present during the appeal process, since they are the ones that decided this matter in 2007.
5. The safest, easiest, greenest way to access Lot #3, is off of Eighth Street. This has the least impact on the Everest Neighborhood. Accesses off of fifth avenue south will without question destroy the existing path as we know it today. This is exactly what the Everest Neighbors (130 Total), the Mayor, Deputy Mayor and City Council Members did not want. As well as the Aubry's, Gilbert's and Lynn's, per their testimony at the City Council meeting on June 19, 2007.
6. We have never been part of the first discussion of fifth avenue south between the Aubry's, Gilbert's and Lynn's. If we had, we would have said no to the fifth avenue south access for lot #3. We also would have said no if it was put by the Gilbert's or Lynn's. That is why eighth street is the best option to access lot #3, because it does not negatively affect any neighbor. One has to live here to truly understand we feel so strongly against a fifth avenue south access. This is a safety concern for our neighbors and us. We love the beauty of the trail and it is so much fun to see how happy people are when they come in and out of the trail. The people are so used to no cars and we take extra caution when we leave our home. People do not need any more cars to worry about and we are certain they would agree. No car noise or gas fumes should be present when walking on the path. The eighth street access will not intrude on what people of

trail and do not want to destroy it for a road. When spray paint was used to map out the potential road, neighbors were upset. Many of us feel very strong about keeping the path as is.

- 7 This is now become one neighbor (The Neil's) out of the loop and the Aubry's, Gilbert's and Lynn's meeting in secret to put thru a road no-one wants. We are the new neighbors and do not have any long term friendships developed. We are concerned for the safety of our neighbors, our safety and our property value. We went to mediation as the City suggested and we found out how one neighbor felt if the road was put by their property. No-one wants the road by their property, but is it alright to be put by our property? Also, at mediation the Aubry's seemed to not be as willing as they should to work this out with our concerns in mind. The road is not even built and it has put a divider between us. This all could have been avoided by saying that Eighth Street is the only option for access to lot#3 and fifth avenue south should never have been an option. How can the Aubry's ask us to accept this road when no other neighbor wants it by their house?
- 8 There are so many questions and long term issues, such as where will the off street parking be for visitors who live at the house on lot #3? How will you control cars coming and going? Where the trail and the road meet at fifth avenue south is going to be a very dangerous spot. People already use the graveled right of way entirely too much as a turn around. You will significantly increase the flow of traffic at the path head which will create a safety problem.
- 9 A one lane road now can open up to a two lane road in the future, which is what the neighborhood does not want. If accessed off of Eighth Street this will not be a concern now or in the future and will keep the safety of the path for the future.

Regards,



Clement and Donna Neil

Exhibit C



Aubry Short Plat
Vicinity Map

Exhibit C



Aubry Short Plat
Site Plan

EXHIBIT D

RESOLUTION R- 4657

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

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

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

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

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

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

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

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

Passed by majority vote of the Kirkland City Council in open meeting this 7th day of August, 2007.

Signed in authentication thereof this 7th day of August, 2007.


MAYOR

Attest:


City Clerk

BEFORE THE KIRKLAND CITY COUNCIL

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

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

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

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

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

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

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

ADDITIONAL FINDINGS REGARDING APPEAL

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

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

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

10. The Comprehensive Plan has policies which support alternative modes of transportation:
a. Framework Goal FG-9: Provide accessibility to pedestrians, bicyclists and alternative mode users within and between neighborhoods, public spaces and business districts and to regional facilities.

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

PROCEDURAL CONCLUSIONS

1. Except as provided in this Conclusion 1, the City Council hereby adopts the Conclusions set forth in the Department of Planning and Community Development Findings, Conclusions, and Recommendations dated March 20, 2007, and contained in Enclosure 3 of City Council Agenda Item 9.a, June 19, 2007. The City Council does not adopt the Conclusions in Section 5 relating to the opening of the 5th Avenue South right-of-way on pages 12 and 13.

2. The Kirkland City Council has jurisdiction over the two appeals in accordance with Kirkland Municipal Code (KMC) 22.20.245. KMC 22.20.245 provides that the City Council rather than the Hearing Examiner will decide an appeal of the Planning Director's decision on a short plat, when the approval of the short plat would result in the dedication of a new through right-of-way. The two appeals were timely filed. Under Kirkland Zoning Code 145.95, the appellants have the responsibility of convincing the City Council that the Planner Director has made an incorrect decision.

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

CONCLUSIONS REGARDING APPEALS

4. In his Conclusions in Section 5 of the Findings, Conclusions and Recommendations, the Planning Director determined that 5th Avenue South should be opened and improved for through vehicular use.

5. The Planning Director correctly noted that several Comprehensive Plan policies support the opening of the 5th Avenue South right-of-way. However, the Council concludes there are also Comprehensive Plan policies which support not opening the 5th Avenue South right-of-way if it would be to the detriment of neighborhood integrity:

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

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a. Transportation Element Policy T-1.2: Mitigate adverse impacts of transportation systems and facilities on neighborhoods.

- Increased traffic resulting from drivers seeking alternate routes to congested arterials;

b. Transportation Element, page IX-12: The plan supports the maintenance and enhancement of vehicular capacity on the existing system and recognizes the continued importance of vehicular circulation to local mobility, **but not at the expense of other modes of travel or community character.** (Emphasis added.)

c. Framework Goal FG-16: Promote active citizen involvement and outreach education in development decisions and planning for Kirkland's future.

6. Accessibility to pedestrians and bicyclists should be preserved through an improved pedestrian and bicycle path through the unopened 5th Avenue South right-of-way.

7. The applicant may propose to locate a residential driveway in the unopened 5th Avenue South right-of-way to access Lot 3 of the Aubry Short Plat. The design for the required pedestrian and bicycle path and the driveway will be reviewed and approved by the Public Works Department.

8. For all of the reasons set forth above, the City Council concludes that the decision of the Planning Director should be modified. The 5th Avenue South right-of-way should be improved with only a pedestrian and bicycle path and the 5th Avenue South right-of-way should not be opened to through vehicular use.

DECISION

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

Decision adopted by the Kirkland City Council _____, 2007.

MAYOR

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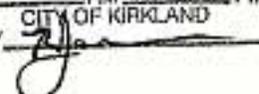
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June 3, 2009

JUN 04 2009

City Hearing Examiner,

EXHIBIT E

AM 2:20 PM
CITY OF KIRKLAND
BY 

Please add to our appeal file the following.

David Aubrey has volunteered at the city for his own good and we can now see how it helped him. He gained inside information, gained their friendship and got to know the codes to help him achieve his project. This played a huge part in the outcome of the destruction of the once safe, beautiful green path. We know this is a conflict of interest and it is just like being on the City pay role. What recourse do we have?

David and Anna Aubrey personally know two of the City Council members. This is another conflict of interest and we feel that he is getting inside information. It is who you know that counts when you need to get a project done that destroys a neighborhood only to benefit one person. It is an unfair advantage and we feel this played a huge part in the outcome. David and Anna Aubrey are leaving out important information the public should know, so they get what they want. They made a sugar coated flier to make themselves look good, they blamed the City for destroying the path. Yet the City was their best friend in all of this.

We now see that the most crucial and important information was not presented to the City Council at the July 19th 2007 meeting. It should have been in black and white on the slide presentation stating that Aubrey's are needing access and will destroy the path. It should have been marked clearly so everyone could see it and understand. They purposely left it out so we the public would not stop the access from happening. When the City Council members agreed to "require only an improved pedestrian and bike path, with no damage to any existing trees", why was it then not brought to the City Council members that night with the important info that shows where it was going to be accessed from. Then they could have gotten a better picture of the access road and this would have not gotten this far (The Mayor personally said that he would of stopped it from going forward). This caused the City Council members to agree on something with crucial information left out. The road access was presented after the City voted on the required pedestrian and bike path and no trees to be damaged. Only after that vote, Rob Jammerman added that the Aubrey's need access. This was at the time when he knew that it was safe to add this, so the Aubrey's will achieve their wants and needs. Again, being a City volunteer, demonstrates it is who you know that helps you get what you want. It was a verbal request at the time of the meeting when everyone was happy and that the road was not to go through. How lucky on the Aubrey's part. Also, in my Garden in the Northwest, a Laural tree is under the category of an evergreen TREE. When did a Laural tree not become a tree. And when it is placed with many beside each other it becomes a hedge. So why did the Aubrey's have no guilt on their part when they had the trail destroyed? Because they again justified what is a tree so they can say to the Council that they never cut down a tree and make themselves look good like always.

They should have never got the lot size reduced down from a R 8.5. The path would never have been destroyed if they would have never been given approval to reduce the lot size and squeeze in a third lot. Lot 3 has so many issues that we are amazed it passed. How did it get this far when they knew that the path would suffer the most and get destroyed. Whoever is responsible for this

should be held accountable. The City is making decisions that will have a negative long term effect on neighborhoods and will not see the negative results until something bad comes from it. This is one of those bad decisions, because it put a driveway beside a path for a pedestrian with no protection from a car when using this path. It is not if, but it is when someone gets hurt that you will say, "this should have never happened". Show me a case that is just like this and let me know how it is working. And do they regret the decision? If you find no example that means it should not go through. Do not let this be the first.

The city is not making the Aubrey's do this as stated at the city council meeting on June 2, 2009. They saved their house from being bull dozed but did not care about the trees on the path from being bull dozed and ripped them from the ground. Is their house better to save than a natural path so they can benefit to make more money. When does money become a higher value than a natural path? They are trying to sell their house and the lots so they can go to France. They are in this for their selfish reasons and will leave us with this mess. We are now at odds with the neighbors, all for the greed of money. How can the City OK a project that gives to one neighbor for the gain of money and takes away from the safety of another neighbor?

The Aubrey's petition many of us signed is not legal, because it does not have the information on every sheet. Many are unaware of what we signed because the cover letter information was not available. We know because when Clement signed it he was told that it was to stop a two lane road and never knew or saw the Aubrey petition about the access road that was going right in front of our property.

When speaking to City public works or planning, they cannot tell us what is really going to happen with the placement of the road. It can come closer to our house than what is stated. We have no written statement from the city as to important details stating how it will affect our property and driveway. How come we are left out on this planning when this will be a huge impact on us. We again have no control of what is happening, because we are not being properly informed. Since the City and the Aubrey's are friends, they are giving them what they want without keeping us in mind. This is a one sided project and anyone can clearly see this. The grading went forward even when we are in the process of appealing the road. This was another loop hole in the Aubrey's project.

When asked by neighbors, did we know that a driveway was proposed before we bought the property, our answer is "Our builder only knew that the city wanted to put in a 2 lane road to connect 7th and 8th street and the neighbors are strongly against this so it will not go through. So we bought the lot for many reasons and were looking forward to building our dream home. We fell in love with the path, because of the beauty and grew passionate in keeping it as is. It was a highly used, beautiful, wonderful path and you would have to live here to see the full benefit of it. People from all around the neighborhoods used it and they commented on how beautiful it is. This was destroyed by the Aubrey's own personal greed to get a 3rd lot. It can never be rebuilt to what it was ever again. The City of Kirkland lost the best greenery path that was in the city. At the council meeting on June 2, 2009 the Mayor spoke of his strong feelings of what had happened to the path and Mary Alice stated it is too soon to judge. I disagree!!!!. What was the greenest canopy that took 30 years to grow and then only took 30 minutes to destroy and remove. Now it is proposed to be replaced with a 2 foot berm with seedling plantings, to a 10 foot access

asphalt road, to a 5 foot asphalt path, to a 2 foot berm with seedling plantings and all of this will go as close to our property as it can. The Aubry's protected the Gilbert's side so they will not be affected at all. How unfair was it to have 3 neighbors against one and since we were new to the neighborhood we do not have any support from anyone.

We are greatly concerned about the large amount of water runoff that will occur from the road. With no more trees to absorb the water, the water will run off into our house and damage our home. This again was not considered by the city. How can the City allow a road that is much higher than our home knowing that the water will naturally come our way. Water runoff is a huge problem to all homeowners in Kirkland. It is a problem with our neighbors and will be a problem of ours. When you take away from nature and replace it with an asphalt road, you have a major problem.

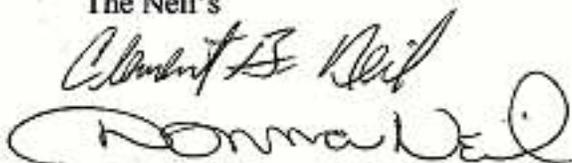
We have a bond with the City to improve the trail. We have no detail of what we have to do now that the Aubrey's destroyed the path. We were to improve the path with asphalt. We are asking that we get exempted from this. We are not nor ever have been in favor of this destruction which now shows the negative results of the path. This project by the Aubrey's destroying the path, should be paid for in its entirety by them. There should be no financial burden placed on us to attempt to rebuild the path.

We are truly saddened at the loss of the path and have lost much sleep over this. We have spent countless hours discussing this and wonder how it could have possibly happened. Other neighbors are in shock and feel the same as we do. We lost one of the best things that our neighborhood had to offer and will never be replaced. The birds are gone which used to sing in the morning and the animals that scampered around on the path are no longer present. We lost our natural privacy and we have to have our blinds kept up for privacy and safety, which we never had to do in the past. The City employees and the Aubrey's who do not care, are the ones to blame for the destruction of the path. I have seen firsthand how horrible greed is and how people do not take into consideration how their actions affect others. We no longer feel a part of the Everest neighborhood and will say that we live between Houghton and downtown Kirkland. The city and some of the neighbors have let us down.

We have no faith in the City of Kirkland to ever do what is right in the future and this is very disturbing to us. If we knew what we know today, we can honestly say we would have built our dream home that we planned to retire in, in another City and neighborhood. For the City to put the greed of revenue and the greed of one neighbor over all else is disgusting. Due to safety concerns we will sell our home in the near future and hopefully put this nightmare behind us.

All the TRUTH FULL facts should have been known to all the citizens of Kirkland. What goes on in one neighborhood does affect other neighborhoods. The City of Kirkland should be ashamed as well as the Aubry's. The city Mission statement goes contrary to what has taken place.

Regards,
The Neil's

The block contains two handwritten signatures. The first signature is in cursive and appears to read 'Clement B. Neil'. The second signature is also in cursive and appears to read 'Norma Neil'. Both signatures are written in dark ink.