



CITY OF KIRKLAND

Planning and Community Development Department
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**ADVISORY REPORT
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

To: Kirkland Hearing Examiner
From: _____ Susan Greene, Project Planner
_____ Eric R. Shields, AICP, Planning Director

Date: November 27th, 2007

File: CEDAR PARK PRELIMINARY SUBDIVISION, PSB07-00001

Hearing Date and Place:
City Hall Council Chamber
123 Fifth Avenue, Kirkland
Monday, December 10th, 2007 at 7 p.m.

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
I. INTRODUCTION	2
A. APPLICATION	2
B. RECOMMENDATIONS	2
II. FINDINGS OF FACT AND CONCLUSIONS	3
A. SITE DESCRIPTION	3
B. PUBLIC COMMENT	4
C. STATE ENVIRONMENTAL POLICY ACT (SEPA)	6
D. CONCURRENCY	6
E. APPROVAL CRITERIA	6
F. DEVELOPMENT REGULATIONS	7
G. COMPREHENSIVE PLAN	11
H. DEVELOPMENT REVIEW COMMITTEE	11
III. MINOR MODIFICATIONS	11
IV. APPEALS AND JUDICIAL REVIEW	12
A. APPEALS	12
B. JUDICIAL REVIEW	12
V. LAPSE OF APPROVAL	12
VI. APPENDICES	12
VII. PARTIES OF RECORD	13

INTRODUCTION

A. APPLICATION

1. Applicant: Geoffrey Thomas of Phoenix Development, Inc.
2. Site Location: 11215 and 11219 NE 132nd Street (see Attachment 1)
3. Request: To subdivide two lots containing 4.58 acres into 24 new single-family lots within an RSX 7.2 zone which has a minimum lot size requirement of 7,200 square feet. The applicant is proposing to use lot averaging as allowed per Kirkland Municipal Code section 22.28.020 and the proposed lots will range in size from 6,770 square feet to 7,913 square feet, with an average lot size of 7,200 square feet. Primary access to the subdivision would be from NE 132nd Street. One new public right-of-way, a cul-de-sac design would be dedicated within the subdivision for access to the new lots. Two new access easements will serve two of the proposed lots. The existing use, a church, associated daycare and parsonage will all be demolished as part of this proposal (see Attachment 2 for the survey, and applicant's lot design).
4. Review Process: Preliminary subdivision. Hearing Examiner conducts public hearing and makes final decision.

B. RECOMMENDATIONS

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

1. 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 (see Conclusion II.H.2).
2. Trees shall not be removed or altered following short plat approval except as approved by the Planning Department. Attachment 3, Development Standards, and Attachment 5, the Urban Forester recommendations, contains specific information concerning tree retention requirements. Additionally, the applicant shall implement the following recommendations of the City's Urban Forester (Arborist) (see Conclusion II.F.4.b of this report for the following recommendations of approval below (a-c)):
 - a. In consideration of the fir trees lined on proposed lots 10, 11 & 12 numbered 562-572 (see Attachment 5a), retention of these trees will need to be evaluated by an arborist at the time that improvements are located on site. If any of these trees will be retained, protective fencing would need to remain in place at 20 feet from the base of each trunk for the entire time of construction, and they must be evaluated periodically for as long as they are retained.
 - b. The grove of trees in the southwest corner of the site numbered 583-586 and along the west property line (tree numbers 589-599; 600 & 631-635) shall be retained as two separate groves of trees and thereby shall be considered when considering placement of the homes or utilities on any lot that would affect these two groves. Prior to approval of the final subdivision, the applicant shall work

with the Planning Department to determine the extent of the protection for these two groves of trees by submitting an easement agreement acceptable to the City Attorney that will preserve these trees in perpetuity.

- c. Tree numbers 606-620, 623 and 624-630 while not significant as defined by Chapter 95 shall be retained and protected during construction.
3. As part of the land surface modification permit application, the applicant shall submit plans for the installation of the required improvements as described in Attachment 3 including a 5-foot wide paved walkway within a 10-foot wide pedestrian easement which will extend to the City's open space to the south (see Conclusion II.F.2).

II. **FINDINGS OF FACT AND CONCLUSIONS**

A. **SITE DESCRIPTION**

1. Site Development and Zoning:
 - a. Facts:
 - (1) Size: 4.58 acres or 199,624 square feet.
 - (2) Land Use: The site contains a church called the Happy Church, a single family home for the pastor, a daycare facility and a mobile home structure.
 - (3) Zoning: RSX 7.2, Residential Single-family with a minimum lot size of 7,200 square feet.
 - (4) Terrain: The site is generally very flat gaining only two feet in elevation from NE 132nd Street to the end of the property which is approximately 629 feet long.
 - (5) Vegetation: According to the applicant's tree inventory and report, the subject property contains a total of 144 significant trees. (see Attachment 4). The City's Urban Forester has provided comments on this tree report (see Attachment 5). Tree Retention is further discussed in Section II.F.4.
 - b. Conclusions: The size, land use, zoning, terrain, and vegetation of the subject property are not constraining factors in the review of this applicant. See Section II.F.4 for more information concerning tree retention.
2. Neighboring Development and Zoning:
 - a. Facts:
 - (1) North: To the north are single family homes and a fire station. Currently, all properties north of the site are within the jurisdiction of King County.
 - (2) South: There is an undeveloped City of Kirkland property that is currently open space and is generally overgrown with blackberry bushes and other underbrush. More information about this property can be found in

a memo from the City's Parks Planning Manager in Attachment 7 of this report. Additionally single family homes in the RSX 7.2 zoning designation exist to the south.

- (3) East: A townhouse development exists to the east with attached units. This property has a Kirkland zoning designation of RM 3.6, which is a multi-family zoning designation allowing 3,600 square feet per unit.
- (4) West: To the west is a single family neighborhood in the RSX 7.2 zoning designation, which is the same zoning for the subject property.

- b. Conclusion: The neighboring development and zoning are not constraining factors in the review of this application.

B. PUBLIC COMMENT

The initial public comment period ran from August 23rd, 2007 until September 10th, 2007. The Planning Department received 8 comments during this time frame and one comment on September 28th, 2007 (see Attachment 6, Enclosures 9-17). Below is a summary of the comments that were received along with staff response:

Traffic

Neighbors raise concerns about the impacts of additional traffic on existing streets (including NE 132nd Street):

Staff Response: The City's Transportation Engineer, Thang Nguyen, addresses these concerns in an attached memo (see Attachment 6, Enclosure 7). He concludes the following:

- *The City's traffic concurrency test and SEPA LOS (Level of Service) tests are used to ensure that the City's transportation infrastructure can accommodate future development and this project has passed the concurrency test. The levels of service have not been exceeded.*
- *This project will be required to pay traffic impact fees which will be used to fund roadway capacity projects throughout the city.*
- *Additionally, the Washington State Department of Transportation has a future funded project which will widen NE 132nd Street to the freeway interchange. The City of Kirkland is also undergoing a study of this street to determine what improvements can be made to this street. Note that Mr. Nguyen has updated his traffic impact review to include the dedication that will be required as part of the State's future project; this update can be found as Attachment 9.*
- *Construction of the new 116th interchange has created unusually long backups on to 132nd that will be alleviated when this project is finished. The new project on 132nd and the 116th interchange should improve traffic in the area when they are both completed.*
- *As it relates to cut-through traffic, the temporary 116th Way NE road closure has created some of the cut-through behavior and police are monitoring the speed in this location and on 132nd to deter speeding.*
- *No offsite mitigation is required as part of this proposal.*

Significant Tree Retention

Some neighbors raise concerns that mature “landmark” status trees will be removed on this site. The City’s Urban Forester has reviewed the arborist report submitted with the proposal and has visited the site to understand better how tree retention will proceed with this development. A review memo can be found as Attachment 5 of this report.

Staff Response: Tree removal is not allowed as part of a preliminary subdivision. As this project moves forward, tree retention should be achieved by evaluating the placement of improvements and the health of each tree.

City owned open space to the south of this site

Several neighbors have mentioned the land to the south which is currently an undeveloped park site. Some residents are asking that this land be developed in to a park. Michael Cogle, the City’s Park Planning Manager has provided some comments concerning the existing public open space to the south of the Cedar Park Site (see Attachment 7).

Staff Response: The City’s Park Planning Manager has addressed the concerns of the citizens that have made comments on this undeveloped park, which can be found in Attachment 7 of this report.

Purchasing of the Cedar Park Site by the City for a park

Some neighbors have commented that the Cedar Park site should be purchased by the City and made in to a park.

Staff Response: The site being developed by a company called Phoenix Development Inc. They have submitted an application for 24 new single family lots: The City has no authority to stop the sale of this property and subsequently buy it.

Public Improvements and pedestrian path

There were questions submitted by neighbors concerning the status of any public streets and pedestrian paths within the site:

Staff Response: As part of the development, the applicant will be required to dedicate area for a new street within the site which is designed as a cul-de-sac. Additionally a new sidewalk will be required along one side of the road. This sidewalk will turn in to a public pedestrian easement which will include a paved path that will extend to the undeveloped park property to the south. When the open space is developed as a City Park, there will be a path in place for the public to walk from the park through the proposed site and to 132nd Street.

Density Concerns

Many neighbors have mentioned that 24 new lots are too dense for this neighborhood.

Staff Response The proposed development meets the density requirements for this zone which are also the same density requirements of the surrounding neighborhood (see Sections II.A.1. and Section II.F.1). The property to the east which is a townhouse development built when this property was under the jurisdiction of King County, is zoned RM 3.6 and allows 3,600 square feet per unit. This is a higher density allowance than the rest of the surrounding single family neighborhood.

Eagles seen hunting on this site

A neighbor has written a comment that he has seen eagles hunting on this site and has heard them in the trees

Staff Response: Nesting eagles have, in the past, been protected by the State Department of Fish and Wildlife although with their recent removal from the list of endangered species this may no longer be required. No nests or eagles were observed on site during staff visits, and no eagle nests are mapped by Fish and Wildlife. Staff concludes that no eagle management plan or protection is needed.

C. STATE ENVIRONMENTAL POLICY ACT (SEPA)

A Determination of Nonsignificance (DNS) was issued on October 12th, 2007. The Environmental Checklist, Determination, and additional environmental information are included as Attachment 6. No appeals of SEPA were filed.

D. CONCURRENCY

The Public Works Department has reviewed the application for concurrency. A concurrency test was passed for traffic on June 4th, 2007 (see Attachment 6, Enclosure 5).

E. APPROVAL CRITERIA

1. PRELIMINARY PLATS

a. Facts: 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 Process IIA application 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 G). With the recommended conditions of approval, it is consistent with the Zoning Code and Subdivision regulations (see Sections II.F and II.H) 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 North Juanita neighborhood.

F. DEVELOPMENT REGULATIONS

1. General Lot Layout and Site Development Standards

a. Facts:

- (1) Municipal Code section 22.28.030 requires all lots to meet the minimum size requirements established for the property in the Kirkland Zoning Code or other regulatory documents. Lots not meeting the minimum size requirements may be allowed pursuant to Municipal Code Section 22.28.040.
- (2) Municipal Code section 22.28.040 states that the minimum lot area shall be deemed to have been met if the average lot area is not less than the minimum lot area required of the zoning district in which the property is located. Lots that contain less area than required for the zoning district shall be located so as to have the least impact on surrounding properties and public rights-of-way.
- (3) Under this provision, not more than 25% of the number of lots in a subdivision may contain an area less than the required minimum for the zoning district if the proposed lots are no more than 10% smaller than the minimum lot size required for the zoning district.
- (4) The minimum lot size for the RSX 7.2 zoning district is 7,200 square feet. Any lot which does not meet the minimum lot requirements could not be smaller than 6,480 square feet or 10% of 7,200 square feet (720 square feet).
- (5) The average lot area for the 24 proposed lots is 7,200 square feet.
- (6) Four lots, or 16% of the number of the lots in the subdivision, contain an area less than the required minimum for the RSX 7.2 zoning district.
- (7) The four lots that are less than the prescribed minimum lots size are as follows:
 - Lot 16 is 7,047 square feet (153 square feet short)

- Lot 13 is 6,775 square feet (425 square feet short)
- Lot 12 is 6,770 square feet (430 square feet short)
- Lot 9 is 7,106 square feet (94 square feet short)

b. Conclusion: The proposed subdivision meets the provisions of Kirkland Municipal Code section 22.28.040 for lot averaging. The average lot area is not less than the minimum lot area required in the RSX 7.2 zone. Less than twenty percent of the number of lots in the short plat contain an area less than the prescribed minimum for this zoning district and none of the lots being created contain an area more than ten percent less than prescribed. These smaller lots, due to their small lot area shortages, will not have an impact on surrounding properties and public rights-of-way, especially given their location in relation to 132nd Ave NE.

2. Access – Walkways

a. Facts:

- (1) Municipal Code section 22.28.170 establishes that the City may require the installation of pedestrian walkways by means of dedicated rights-of-ways, tracts, or easements if a walkway is indicated as appropriate in the comprehensive plan, if it is reasonably necessary to provide efficient pedestrian access to a designated activity center of the city, or if blocks are unusually long.
- (2) Zoning Code section 110.60 states that the Public Works Director may require the applicant to install public pedestrian walkways when the walkway is reasonably necessary as a result of the development activity. Pedestrian access may be required to connect existing or planned dead end streets, through streets, or other pedestrian access.
- (3) The Public Works Department is recommending that the applicant dedicate a public pedestrian path extending from the end of the sidewalk along the cul-de-sac and through to the open space to the south (see Attachment 3 for requirement and Attachment 2 for location). The pedestrian path is required to be paved and separated from road access per Public Works requirements. KZC chapter 110 requires that public pedestrian easements be 5 feet of paving in a 10 foot wide easement.
- (4) The applicant is proposing a public pedestrian easement which would be five feet of paving and would parallel the access easement on Lot 10 then continue along Lot 12 where the easement would be 10 feet wide with 5 feet of paving.

b. Conclusion: Pursuant to Municipal Code section 22.28.170 and Zoning Code section 110.60, as part of the land surface modification permit application the applicant should submit plans to dedicate a pedestrian easement and install the associated improvements as required per Public Works requirements.

3. Bonds and Securities

a. Facts:

- (1) Municipal Code section 22.32.080 states that in lieu of installing all required improvements and components as part of a plat, the applicant may propose to post a bond for a period of one year to ensure completion of these requirements within one year of the decision approving the plat or short plat.
- (2) Zoning Code section 175.10.2 establishes the circumstances under which the City may consider the use of a performance security in lieu of completion of certain site work prior to occupancy. The City may consider a performance security only if the inability to complete work is due to unavoidable circumstances beyond the control of the applicant; there is certainty that the work can be completed in a reasonable period of time; and occupancy prior to completion will not be materially detrimental to the City or properties adjacent to the subject site.

b. Conclusions:

- (1) Site and right-of-way improvements required as a result of the plat should be completed prior to recording, unless a security device to cover the cost of installing the improvements and guaranteeing installation within one year of the date of final plat approval is submitted.
- (2) In order to ensure timely completion of all required site and right-of-way improvements, such improvements should be completed prior to occupancy, unless the applicant can demonstrate compliance with the criteria in Zoning Code section 175.10.2.

4. Natural Features - Significant Vegetation

a. Facts:

- (1) Regulations regarding the retention of trees can be found in Chapter 95 of the Kirkland Zoning Code. The applicant is required to retain all viable trees on the site following the short plat approval. Tree removal will be considered at the land surface modification and building permit stages of development.
- (2) The applicant has submitted a Tree Plan III, prepared by a certified arborist (see Attachment 4). Specific information regarding the tree density on site and the viability of each tree can be found in Attachment 3, Development Standards and in the memo dated October 29th, 2007 by the City's Urban Forester or Arborist (see Attachment 5). The City's Arborist has made specific recommendations concerning the applicant's tree plan, including the following:
 - *In consideration of the fir trees lined on proposed lots 10, 11 & 12 numbered 562-572 (see Attachment 5a), retention of these trees will need to be evaluated by an arborist at the time that improvements are located on site. If any of these trees will be retained, protective fencing would need to remain in place at 20 feet from the base of each trunk for the entire time of*

construction, and they must be evaluated periodically for as long as they are retained.

- *The grove of trees in the southwest corner of the site numbered 583-586 and along the west property line (tree numbers 589-599; 600 & 631-635) shall be retained as two separate groves of trees and thereby shall be considered when considering placement of the homes or utilities on any lot that would affect these two groves. Prior to approval of the final subdivision, the applicant shall work with the Planning Department to determine the extent of the protection for these two groves of trees by submitting an easement agreement acceptable to the City Attorney that will preserve these trees in perpetuity.*
- *Tree numbers 606-620, 623 and 624-630 while not significant as defined by Chapter 95 are in excellent condition and are prime candidates for retention because of their location on site and value as a buffer.*

- (3) Kirkland Municipal Code section 22.28.220 (Preservation of natural features—Easements) states that the city shall require open space or drainage easements or other similar mechanisms to ensure compliance with the preservation of natural vegetation.
- (4) Comprehensive Plan Policy NE-3.2 looks to preserve healthy mature native vegetation whenever feasible. This policy also states that of special importance is the retention of significant stands of native evergreen trees. Needless removal or destruction of such vegetation should not be allowed.
- (5) As part of the building permit approval, the City may require minor alterations to the arrangements of structures on each lot and elements in the proposed development in order to achieve the maximum retention of significant trees

b. Conclusions.

- (1) The applicant has provided a Tree Plan III with the short plat application and this plan has been reviewed by the City's Arborist. The applicant should retain all viable trees during the construction of plat improvements and residences and comply with the specific recommendations of the City's arborist.
- (2) Trees should not be removed or altered following short plat approval except as approved by the Planning Department. Attachment 3, Development Standards, contains specific information concerning tree retention requirements. Additionally, the applicant should implement the following recommendations of the City's Arborist:

- In consideration of the fir trees lined on proposed lots 10, 11 & 12 numbered 562-572 (see Attachment 5a), retention of these trees will need to be evaluated by an arborist at the time that improvements are located on site. If any of these trees will be retained, protective fencing would need to remain in place at 20 feet from the base of each trunk for the entire time of construction, and they must be evaluated periodically for as long as they are retained.
- The grove of trees in the southwest corner of the site numbered 583-586 and along the west property line (tree numbers 589-599; 600 & 631-635) shall be retained as two separate groves of trees and thereby shall be considered when considering placement of the homes or utilities on any lot that would affect these two groves. Prior to approval of the final subdivision, the applicant shall work with the Planning Department to determine the extent of the protection for these two groves of trees by submitting an easement agreement acceptable to the City Attorney that will preserve these trees in perpetuity.
- Tree numbers 606-620, 623 and 624-630 while not significant as defined by Chapter 95 should be retained and protected during construction.

G. COMPREHENSIVE PLAN

1. Fact: The subject property is located within the North Juanita neighborhood. The North Juanita Neighborhood Land Use Map designates the subject property for low density residential use with a density of six units per acre (see Attachment 8).
2. Conclusion: The proposal is consistent with the Comprehensive Plan for the North Juanita Neighborhood.

H. DEVELOPMENT REVIEW COMMITTEE

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

III. MINOR MODIFICATIONS

The Department of Planning and Community Development shall be administratively authorized to approve modifications to the approved site plan, unless:

- A. There is a change in use and the Zoning Code establishes different or more rigorous standards for the new use than for the existing use; or
- B. The Planning Director determines that there will be substantial changes in the impacts on the neighborhood or the City as a result of the change.

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

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 9 are attached.

1. Vicinity Map
2. Development Plans
3. Development Standards
4. Tree Plan III evaluation submitted by Brian Gilles for the applicant
5. Memo from the City's Urban Forester, Stacey Ray dated 10/29/07
- 5a. Map of trees to be retained in an easement
6. SEPA memo and enclosures 1-18
 - Enclosure 1: Vicinity Map
 - Enclosure 2: Development Plans
 - Enclosure 3: Environmental Checklist
 - Enclosure 4: Traffic Impact Analysis by TraffEX dated July 11th, 2007
 - Enclosure 5: Concurrency Memo from Thang Nguyen dated June 4th, 2007
 - Enclosure 6: Traffic Impact Analysis from Thang Nguyen dated August 26th, 2007
 - Enclosure 7: Response to public comments, a memo by Thang Nguyen dated October 3rd, 2007
 - Enclosure 8: Tree Evaluation prepared by Gilles Consulting dated May 3rd, 2007
 - Enclosure 9: Comment from Carol Larson
 - Enclosure 10: Comment from Dave Condon
 - Enclosure 11: Comment from Troy Ryno
 - Enclosure 12: Comment from Mark Kiethly

- Enclosure 13: Comment from Scott McMullen
- Enclosure 14: Comment from Elaine Cummins
- Enclosure 15: Comment from Bill Alford
- Enclosure 16: Comment from Wendy Taylor of WASHDOT
- Enclosure 17: Comment from Candice Bartleson
- Enclosure 18: Geotechnical Report submitted by the applicant from Earth Consulting Inc
- 7. Memo from Kirkland Parks Planning Manager, Michael Cogle dated 10/10/07
- 8. North Juanita Neighborhood Land Use Map
- 9. Updated Traffic Impact review memo by Thang Nguyen dated August 26th, 2007.

VII. PARTIES OF RECORD

Applicant: Geoffrey Thomas, Phoenix Development Inc.
Party of Record: Wendy Taylor, Contract Manager for Washington State Department of Transportation, 600-108th Ave NE Suite 405, Bellevue, WA 98004
Party of Record: Elaine Cummins, 13118 114th Lane NE, Kirkland, WA 98034
Party of Record: William Alford, 13012 111th Place NE Kirkland, WA 98034
Party of Record: Dave Condon, 12906 113th Place NE WA 98034
Party of Record: Carol Larson, 11019 NE 131st Way, Kirkland, WA 98034
Party of Record: Mark Keithly, 13029 111th Place NE, WA 98034
Party of Record: Scott McMullen, 13018 111th Place NE, Kirkland, WA 98034
Party of Record: Troy Ryno, 13006 111th Place NE, Kirkland, WA 98034
Party of Record: Candice Bartleson, 12932 111th Place NE, Kirkland, WA 98034
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services
Department of Parks, City of Kirkland

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