

13 November 2006

RECEIVED
NOV 13 2006

Attention: City of Kirkland Planning Department

From: Peter and Julie Lemme

PLANNING DEPARTMENT PM
BY _____

*******APPEAL*******

TO THE DECISION TO APPROVE CASE **SPL06-00014** (CASADY ENTERPRISES)

We submitted objection to the decision to subdivide, in-part, on the basis that the property line setbacks should not be reduced from that which exists today. We noted that our buildings had been placed with these setbacks in mind, and that reducing them to minimum five feet had a tangible impact.

We appeal the ruling that the property line bordering our lot be defined as a side property line. We believe the western border of lot 3 to be a front property line and the eastern border of lot 3 to be a rear property line.

*******BASIS OF APPEAL*******

In the case of the existing lots, the front property line is clearly the western edge along 112th Ave (as are the case for lots 1 and 2). That makes the existing (pre-subdivision) eastern property line, bordering the Lemme's lot, a rear property line with a minimum 10' yard.

We disagree with the finding that the eastern border of lot 3 be determined as a side property line. This reduction has tangible and unexpected impact to the Lemme's privacy and resultant property value. The sub-division is a matter of convenience solely benefiting Casady's interests. The existing rear property line setback of 10 feet along the eastern border should be maintained in the subdivision, and not subject to reduction due to arbitrariness.

As a rear property line is defined to be opposite the front property line, we believe that the western border of lot 3 to be a front property line. Furthermore, we believe the eastern borders of lots 1 and 2 are rear property lines.

The western border of lot 3 is adjacent to 112th Ave and is greater than 21 feet in length. The access easement serves all adjacent lots. The notes from the permit state that lot 3 should not be accessible only by using an alley (and shared easements with lots 1 and 2), but the alternative was not desired in the interest of minimizing impact to 112th Ave, and because it would be inconvenient to use. Lot 3 should have had access (and was planned to have access) directly to 112th Ave. This meets the definition of a front property line.

EXHIBIT A
 SPL06-00014 / AP06-0018

~~~~~From the staff report ~~~~~

- c. Setbacks. There is concern expressed about the setback provided along the western and northern borders of the short plat and a request that the setback be increased to minimize the proximity to the existing bordering homes.

*Staff Response:* Building permits on the proposed lots will be reviewed for compliance with the RS 8.5 zoning code standards in place at the time of building permit submittal. Given the configuration of Lot 3, both the north and west property lines are side property lines, which can have a minimum 5 foot side required yard under the RS 8.5 zoning regulations (see Attachment 17). The Planning Department has no authority to require a larger setback.

~~~~~From the notes to the permit ~~~~~

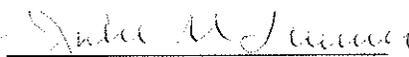
Alley

- A. The alley right-of-way is currently not open for public use.
- B. Lots 1 & 2 front on 112th Ave. NE, but will use the alley for primary access. Lot 3 does not front on a typical public right-of-way and will use the alley as primary access. Typically, an alley does not provide sole access to a lot, but in this case it is recommended because of the unusual site topography and the alley access provides a superior site design. An alternate site plan had been provided by the developer that showed how the property could be subdivided with a steep access easement for lot 3 from 112th Ave. NE. This access would have required a substantial cuts and retaining walls and would have added an additional driveway access onto 112th Ave. NE, which is undesirable to the Public Works Department.
- C. The alley shall be paved a minimum of 12 ft wide and drainage collection and conveyance shall be provided.
- D. Each lot site plan shall show how a car can turn-around on the site and not have to back down the access easement or alley.

Respectfully submitted,



Peter Lemme



Julie Lemme

145.60 Appeals

1. Who May Appeal – The decision of the Planning Director may be appealed by:
 - a. The applicant, or
 - b. Any person who submitted written comments or information to the Planning Director on the application. A party who signed a petition may not appeal unless such party also submitted independent written comments or information.
2. Time To Appeal/How To Appeal – The appeal, in the form of a letter of appeal, must be delivered to the Planning Department within 14 calendar days following the postmarked date of distribution of the Planning Director's decision; provided, that the appeal letter must be delivered to the Planning Department within 21 calendar days of the postmarked date of distribution of the Planning Director's decision if state or local rules adopted pursuant to SEPA allow for public comment on a declaration of nonsignificance issued on the proposed development activity; and provided further, that if the fourteenth or twenty-first day, as applicable, of the appeal period falls on a Saturday, Sunday, or legal holiday, the appeal period shall be extended through the next day on which the City is open for business. It must contain:
 - a. A clear reference to the matter being appealed; and
 - b. A statement of the specific elements of the Planning Director's decision disputed by the person filing the appeal.
3. Fees – The person filing the appeal shall include with the letter of appeal the fee as established by ordinance.
4. Jurisdiction – Appeals from the decision of the Planning Director will be heard by the Hearing Examiner.

145.65 Notice of the Appeal Hearing

1. Content – The Planning Official shall prepare a notice of the appeal containing the following:
 - a. The file number and a brief verbal description of the matter being appealed.
 - b. A statement of the scope of the appeal including a summary of the specific factual findings and conclusions disputed in the letter of appeal.
 - c. The time and place of the public hearing on the appeal before the Hearing Examiner.
 - d. A statement of who may participate in the appeal.
 - e. A statement of how to participate in the appeal.
2. Distribution – At least 14 calendar days before the hearing on the appeal, the Planning Official shall send a copy or a summary of this notice to each person entitled to appeal the decision under KZC 145.60.

145.70 Participation in the Appeal

Only those persons entitled to appeal the decision under KZC 145.60 may participate in the appeal. These persons 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.
2. By appearing in person, or through a representative, at the hearing and submitting oral testimony directly to the Hearing Examiner. The Hearing Examiner may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

145.75 Scope of the Appeal

The appeal will be an open record appeal hearing. The scope of the appeal is limited to the specific elements of the Planning Director's decision disputed in the letter of appeal, and the Hearing Examiner may only consider comments, testimony and arguments on these specific elements.

145.80 Staff Report on the Appeal

1. Content – The Planning Official shall prepare a staff report containing the following:
 - a. The written decision of the Planning Director.
 - b. All written comments submitted to the Planning Director.
 - c. The letter of appeal.
 - d. All written comments on the appeal received by the Planning Department from persons entitled to participate in the appeal and within the scope of the appeal.
 - e. An analysis of the specific elements of the Planning Director's decision disputed in the letter of appeal.
2. Distribution – At least seven calendar days before the hearing, the Planning Official shall distribute copies of the staff report as follows:
 - a. A copy will be sent to the Hearing Examiner.
 - b. A copy will be sent to the applicant.
 - c. A copy will be sent to the person who filed the appeal.
 - d. A copy will be sent to any person who received a copy of the Director's decision.

145.85 Public Hearing on the Appeal

1. Hearing in General – The Hearing Examiner shall hold a public hearing on the appeal.
2. Hearing Declared Open – The hearings of the Hearing Examiner are open to the public.

145.90 Electronic Sound Recordings

The Hearing Examiner shall make a complete electronic sound recording of each hearing.

145.95 Burden of Proof

The person filing the appeal has the responsibility of convincing the Hearing Examiner that the Planning Director made an incorrect decision.

145.100 Continuation of the Hearing

The Hearing Examiner may continue the hearing if, for any reason, he/she is unable to hear all of the public comments on the appeal or if the Hearing Examiner determines that he/she needs more information within the scope of the appeal. If, during the hearing, the Hearing Examiner announces the time and place of the next hearing on the matter, no further notice of that hearing need be given.

145.105 Decision on the Appeal

1. General – 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, he/she shall either:
 - a. Affirm the decision being appealed;
 - b. Reverse the decision being appealed; or
 - c. Modify the decision being appealed.
2. Time Limits – The Hearing Examiner shall issue his/her decision within 90 calendar days of the date the letter of appeal was filed under KZC 145.60.
3. Notice of Decision – Within four business days after it is issued, the Hearing Examiner shall mail a copy of his/her decision to the following persons:
 - a. The applicant.
 - b. The person who filed the appeal.
 - c. All other persons who participated in the appeal.
 - d. Each person who has requested notice of the decision.

In addition, within four calendar days after the Hearing Examiner's decision is issued, the Planning Official shall post a summary of the decision, along with a summary of any threshold determination under SEPA, on the public notice signs erected under KZC 145.22(2)(b).

4. Effect – The decision by the Hearing Examiner is the final decision of the City.

Casady Short Plat

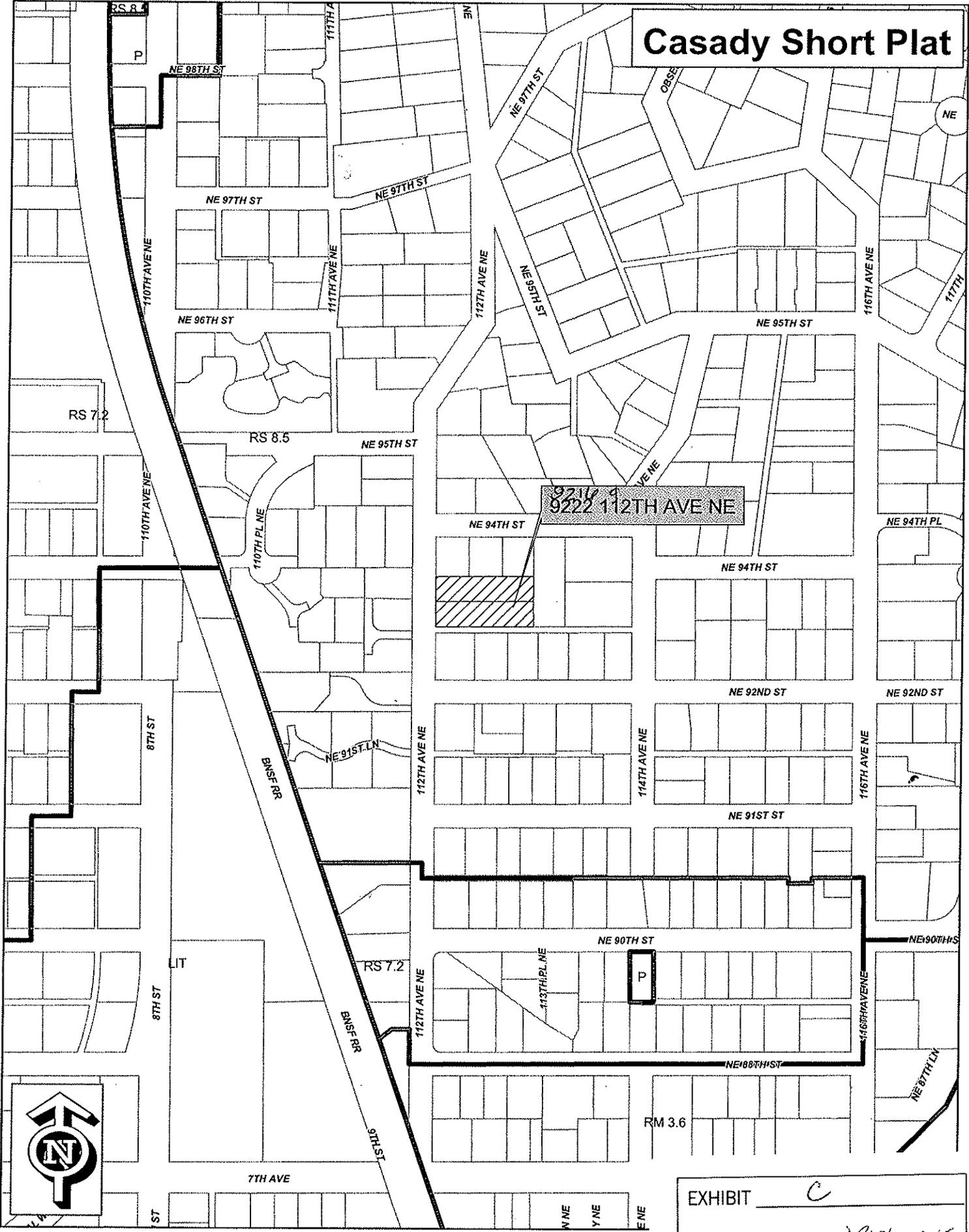


EXHIBIT C
SPL06-00014 & AP06-00015

