CITY OF KIRKLAND
Planning and Community Development Department
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ADVISORY REPORT
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

To: Kirkland Hearing Examiner

From: _____ David Barnes , Project Planner

_____ Eric R. Shields, AICP, Planning Director

Date: March 12, 2008

File: GLENEALY COURT PRELIMINARY SUBDIVISION (PSB07-00002)
And SEPA APPEAL (APL08-00002)

Hearing Date and Place: Thursday, March 20, 2008 at 9AM
City Hall Council Chamber
123 Fifth Avenue, Kirkland

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INTRODUCTION

A. APPLICATION

1. Applicant: Hamish Anderson

2. Site Location: 11240 and 11406 NE 112th Street and parcel 322605-9101(see Attachment 1).

3. Request: Proposal to combine three parcels totaling 3.30 acres and subdivide into 11 single family lots in an RS 8.5 zone which is located in the South Juanita neighborhood. The minimum lot size requirement is 8,500 square feet, with lots ranging in size from 8,506 square feet to 10,635 square feet. An application has also been made to reduce a wetland buffer by one-third (from 50 feet to 33 feet) and enhance the reduced wetland buffer with native plants. Access is proposed with a new road that connects directly to NE 112th Street. One new public right-of-way would be dedicated within the subdivision for access to the new lots. The current use consists of two single family homes and one detached garage which are proposed for demolition (see Attachment 2).

4. Review Process: Process IIA, preliminary subdivision, Hearing Examiner conducts public hearing and makes final decision.

B. APPEAL OF SEPA DETERMINATION

1. Appellant: Tom Smith, who resides at 11414 NE 112th St. Kirkland, WA 98033

2. Issues: The Appellant has provided an Appeal Letter dated February 25, 2008 stating concerns regarding the setbacks, utilities and drainage and how those impact his property.

3. Review Process: Pursuant to KMC Section 24.02.105, an appeal of a SEPA Determination of Non-Significance will be heard at the open record hearing for the underlying project permit and decided upon by the hearing body hearing the underlying project permit.

4. Staff Analysis: See Section II.D, below.

C. RECOMMENDATIONS

1. Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, I/we recommend approval of the Preliminary Subdivision 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 (see Conclusion II.I.2).

3. Trees shall 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

4. Prior to submittal of the final subdivision, the applicant shall:

   a. Install the required improvements as described in Attachment 3 and as follows:

      (1) An 8-foot wide paved walkway within a 10-foot wide pedestrian walkway easement (see Conclusion II.G.2.b).

      (2) A 25-foot wide public right-of-way with sidewalks.

      (3) Prior to installing these improvements, plans must be submitted for approval by the Department of Public Works.

      (4) In lieu of completing these improvements, the applicant may submit to the Department of Public Works a security device to cover the cost of installing the improvements and guaranteeing installation within one year of the date of final plat approval (see Conclusion II.G.4.b).

   b. Revise the proposed location of new right-of-way to be located outside of the wetland buffer setback (see Conclusion II.G.1.b).

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:

   a. Facts:

      (1) Size: 3.3 acres or 143,649 square feet.

      (2) Land Use: The site contains two single family dwelling units, one detached garage and several accessory structures.

      (3) Zoning: RS 8.5, Residential Single-family with a minimum lot size of 8,500 square feet.

      (4) Terrain and Vegetation: The site is generally flat except for the west side which slopes gently to the east. According to the submitted arborist report, the site contains 173 significant trees (see Attachment 4). The City's Urban Forester has noted that only two trees are considered Type 1 trees. The Urban Forester's comments on the arborist report are contained in Attachment 5. A type 3 wetland is located off-site to the northeast of the property. In addition, three open watercourses flow through the proposed development. These items are discussed further in Section II.G.3, below.

   b. Conclusions: The size, land use, zoning, terrain and vegetation are not constraining factors in the consideration of this application.

2. Neighboring Development and Zoning:

   a. Facts:

      (1) North: Development to the north is within the RS 8.5 zone and contains single-family residences.

(2) South: Development to the south is within the RS 8.5 zone and contains single family residences.

(3) East: Development to the east is within the RS 8.5 zone and contains single-family residences and one type 3 wetland and its buffer and setback.

(4) West: Development to the west of 11406 NE 112th Street and parcel 322605-9101 is zoned RS 8.5 and is the location of Alexander Graham Bell Elementary School.

b. Conclusion: Zoning is not a constraining factor in the review of this application. However, the offsite type 3 wetland's buffer extends on the project site and a new public right-of-way will encroach on that buffer.

B. HISTORY

1. Facts:

(1) Three separate parcels have been combined to create this subdivision proposal.

(2) Two of the parcels have existing single family residences and nothing has ever been built on the third parcel.

2. Conclusion: History is not a constraining factor in the consideration of this application.

C. PUBLIC COMMENT

The initial public comment period ran from October 4, 2007 until October 22, 2007. The Planning Department received 4 comments during this time frame (see Attachments 7.a, 7.b, 7.c and 7.d). Below is a summary of each comment letter received with staff response for each letter.

The first letter is from Curtis and Vivian Hom, who own properties at 11438 and 11430 NE 112th St which are adjacent to the eastern portion of the project site. The Hom's are in favor of the proposed project. However they state that they would like all storm water that would come from the proposed subdivision to be controlled and not adversely affect neighboring properties. In addition, they would like all of the drainage channels to remain clear and flowing through all construction activities and following completion of this proposal (see Attachment 7.a).

Staff Response:

The stormwater for each building site will be handled onsite. Therefore, all the run off from the project site's stormwater will be captured and conveyed through pipes that connect directly to the catchment basin located at NE 112th Street. In addition, during all phases of development prior to piping the drainage channels, Public Work's inspectors shall be onsite to ensure that stormwater and erosion issues are corrected. The three watercourses on the project site will be put into pipes that are properly sized and installed so that future flooding related the channeled watercourse will not occur.

The second letter is from Jane and Cyril Hylton who reside at 11250 NE 112th St. which is adjacent to all three parcels involved in this project. The Hylton's have specific concerns regarding the access to their property as they share a gravel access road that connects directly to NE 112th Street. They understand that the applicant is dedicating one half of the gravel access

road to the City of Kirkland, but would like to know if the City will be responsible for maintaining the gravel road. They also note that stormwater is a problem on their site and that several surrounding neighbors have flooding issues during heavy rainstorms. Concerns were also expressed regarding their home meeting setback requirements on the north portion of their property. Currently, their home is approximately 14 feet from the northern property line that will be adjacent to the new right-of-way. The Hylton's final comment was related to streetlights and the potential glare impacts on their property (see 7.b).

Staff Response:

The applicant will be working directly with the City to ensure that the Hylton's have continuous access to their property during all phases during the implementation of this project proposal. The applicant's intention is to work with the Hylton's to ensure that they have access but that the proposed 11 lots do not have access to the gravel road that the Hylton's share with five other adjacent properties. The stormwater and runoff issues from the project will be tightlined on each proposed building lot along with runoff from the new right-of-way and carried by pipe to a catchment basin located at NE 112 Street. The ditch that is located on the east side of the gravel road will not be part of this project's conveyance of stormwater and runoff. The north setback requirement for the Hylton's will not change as a public pedestrian easement will be recorded between their north property line and the new right-of-way. Streetlights will be a requirement on the new right-of-way and the issue of glare can be addressed in a number of ways. One solution is the use of a shield and locating the streetlight in such a manner that it does no shine directly into any of the surrounding properties.

The third letter is from Reyes Canales, III who resides at 11226 110th Avenue NE, which is located to the west of the project site on the western border of Alexander Graham Bell Elementary School. The specific concerns are the wetland buffer modification, tree clearing in the wetland and surrounding the wetland. There was also an objection the addition of a new right-of-way to serve the proposed subdivision (see 7.c).

Staff Response:

The wetland buffer modification is a Planning Official decision that is informed by the City's consultant, the Watershed Company. The applicant submitted a wetland buffer modification to reduce a portion of a Type 3 wetland buffer from the required 50 feet to 33.33 feet. Attachment 6 is the City's decision on the Wetland Buffer Modification. No development is proposed in the wetland itself. The trees that are currently in the wetland are protected by the provisions of Chapter 90 of the Kirkland Zoning Code. In addition trees in the buffer area are protected as well. The wetland will also be protected before, during and after any of the proposed projects construction activities. The buffer area will require a bond for monitoring and maintenance to ensure the health of the required plantings. A dedicated public right-of-way is required to serve more than 4 lots. Therefore, it is a requirement of Chapter 110 of the Kirkland Zoning Code to construct a road to serve the proposed 11 lots.

The fourth letter is from Tom Smith, who resides at 11414 NE 112th Street, which is adjacent to southeast portion of the project site. His specific concerns are related to the installation of the new right-of-way adjacent to his east property line and his driveway length, stormwater runoff and potential setback issues for his home created by the proposed project (see Attachment 7.d).

Staff Response:

The applicant's survey shows that Mr. Smith's driveway currently extends beyond his east property line and that his home sits approximately 20 feet from his east property line. Twenty feet is the minimum required front yard setback. This should be sufficient depth to park a vehicle without extending over the sidewalk to be installed in the new right-of-way. The new road

will not create a setback from the east property line any greater than 20 feet. Therefore, Mr. Smith's home will not be adversely affected by the required 20-foot front yard setback from his east property line. Mr. Smith also states that his residence is located 2.5 feet from his north property line. His required side yard setback is a minimum of 5 feet. The proposed right-of-way will not increase his side yard setback. The last concern regarding stormwater run off is shared by all neighboring residents. As stated in preceding staff responses, the stormwater on the project site will be collected, piped and conveyed from all proposed building sites and the new right-of-way to a stormwater catchment basin located at NE 112th Street.

Mark Rigos, project manager for Concept Engineering has also provided response letters to that address the concerns of the Hylton's, Canales' and Smith (See 7.b, 7.c and 7.d).

D. STATE ENVIRONMENTAL POLICY ACT (SEPA)

1. Facts:

   a. A Determination of Non-Significance (DNS) was issued on February 13, 2008. The Environmental Checklist, Determination, and additional environmental information are included as Attachment 8.

   b. The DNS was appealed on February 25, 2008. The appeal letter and a response letter from Mark Rigos of Concept Engineering are included as Attachment 9.

   c. The appellant is concerned that the proposed right-of-way will reduce his driveway depth and that he will not have any parking on his property.

   d. The appellant would also like have more information about who is responsible for costs related to undergrounding utilities, moving a water meter and stub out for sewer and storm on his property.

   e. State law specifies that this environmental review under the State Environmental Policy Act (SEPA) is to focus only on potential significant impacts to the environment that could not be adequately mitigated through the Kirkland regulations and Comprehensive Plan.

   f. The issues identified in the appeal letter are analyzed in Section II.C, above and in Attachment 9.

2. Conclusion: The appeal of the SEPA Determination will be heard at this public hearing and decided upon by the Hearing Examiner.

E. CONCURRENCY

1. Facts: The Public Works Department has reviewed the application for concurrency. A concurrency test was passed for water, sewer and traffic on July 19th 2007.

2. Conclusion: The applicant has met the City of Kirkland's requirements for concurrency.

F. 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 plat only if:

(3) It is consistent with the all applicable development regulations, including but not limited to the Zoning Code and Subdivision Code, and to the extent there is no applicable development regulation, the Comprehensive Plan.

b. Conclusion: The proposal complies with Municipal Code section 22.12.230 and Zoning Code section 150.65. It is consistent with the Comprehensive Plan (see Section II). With the recommended conditions of approval, it is consistent with the Zoning Code and Subdivision regulations (see Sections II.) and there are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools. It will serve the public use and interest and is consistent with the public health, safety, and welfare because the proposal will create infill residential development while meeting the goals of the Comprehensive Plan for the South Juanita neighborhood.

G. DEVELOPMENT REGULATIONS

1. Provisions for Public and Semi-Public Land

a. Facts: Municipal Code section 22.28.020 states that the City may require dedication of land for school sites, parks and open space, rights-of-way, utilities infrastructure, or other similar uses if this is reasonably necessary as a result of the subdivision.

(1) The access to the three parcels is currently served by two easement roads that connect the project site to NE 112th Street.

(2) The easement road to the east is paved and serves 11406 NE 112th Street and seven other residences. The subject property is 25 feet-wide where it connects to NE 112th Street.

(3) The easement road to the west is gravel and serves 11240 NE 112th Street, an adjacent unaddressed parcel and six other residences. It is 30 feet-wide. The western 15 feet of the easement area is part of the parcel that contains 11240 NE 112th Street. Public Works Department has recommended that the strip of land be dedicated to the City for potential future right-of-way.

(4) The proposed access for this project will be served by a fully dedicated 25-foot wide right-of-way where the western paved easement road described above is currently located. This new right-of-way will be

accessed from NE 112th Street and run north and loop around to the west and terminate with a fire department turnaround.

b. Conclusion: Pursuant to Municipal Code section 22.28.020, the applicant should dedicate 33,204 square feet for new public right-of-way and sidewalks shown of Attachment 2. An additional 5,669 square feet should be dedicated for a future right-of-way that would connect the western easement road to NE 112th Street.

2. Access – Walkways

a. Facts: 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 reasonable necessary provide efficient pedestrian access to a designated activity center of the city, or if blocks are unusually long.

The applicant has proposed an 8-foot-wide public pedestrian walkway, as depicted on the plans (see Attachment 2) within a 10 ft. wide utility easement across lot 5 to the north property line. The pedestrian walkway will connect the proposed right-of-way to the property located north of Lot 5. That property is currently vacant and could be developed in the future.

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 build a public pedestrian walkway and install the associated improvements as recommended by Public Works.

3. Environmentally Sensitive Areas - Streams, Lakes and Wetlands

a. Facts: Municipal Code section 22.28.200 establishes that the City may require that any area adjacent to a Class A, B and C_stream, a lake, or a wetland be kept in its natural or pre-existing state if reasonably necessary to prevent hazards to persons or property, or to protect unique and valuable environments.

(1) Municipal Code section 22.28.180 states that the applicant has the responsibility in proposing a plat to be sensitive with respect to the natural features, including topography, streams, lakes, wetlands, habitat, geologic features and vegetation, of the property. The plat must be designed to preserve and enhance as many of these valuable features as possible.

(2) The site is adjacent to an offsite Type 3 wetland. The wetland edge is at the east property line of Lot 5. Its buffer is extends 50 feet onto the eastern side of proposed Lot 5.

(3) A buffer modification request has been submitted and approved by a Planning Official decision on February 29, 2008 (see Attachment 6)

(4) Three drainage watercourses exist on the project site.

(5) The Watershed Company has visited the project site and determined that the three drainage watercourses are not streams as defined in chapter 90 of the Kirkland Zoning Code (see Attachment 10).

(6) The applicant has proposed to put the watercourses into underground pipes and connect all three directly to the stormwater catchment basin located at NE 112th Street.

(7) The applicant's project proposal site plan shows that the new right-of-way encroaches into the western edge of the regulated wetland buffer setback.

(8) The wetland buffer modification approved a reduction in wetland buffer from 50 feet to 33.3 feet. The buffer setback remains unchanged at 10 feet.

(9) A right-of-way is not approved to be sited within a wetland buffer setback pursuant to 90.45.2 of the Kirkland Zoning Code.

b. Conclusion: The appropriate action has been taken to evaluate the offsite wetland and provide protection to enhance the function of its buffer. The stormwater drainage courses were also determined not to be streams and are not regulated by Chapter 90 of the Kirkland Zoning Code. The encroachment of the proposed right of shall be changed to reflect compliance with 90.45.2 of the Kirkland Zoning Code.

4. 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 or short 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.

5. 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.

(3) The City's Arborist has reviewed this plan and has made specific recommendations concerning the applicant's tree plan (see Attachment 5).

b. Conclusions:

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.

H. COMPREHENSIVE PLAN

1. Fact: The subject property is located within the South Juanita neighborhood. Figure J-2b on page XV.I-6.1 designates the subject property for low-density residential, 5 dwelling units per acre (see Attachment 11). The Proposed density is 3.33 dwelling units per acre.

2. Conclusion: The proposal is consistent with the Comprehensive Plan designation.

I. DEVELOPMENT STANDARDS

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards, Attachment 3.

2. Conclusion: The applicant should follow the requirements set forth in Attachment 3.

III. SUBSEQUENT MODIFICATIONS

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

IV. APPEALS AND JUDICIAL REVIEW

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

A. APPEALS

1. Appeal to City Council:

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

B. JUDICIAL REVIEW

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

V. LAPSE OF APPROVAL

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

"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 are 11 attached.

1. Vicinity Map
2. Applicant's Development Proposal
3. Development Standards
4. Tree Plan III, prepared by International Forestry Consultants, Inc.
5. Urban Forester Comments
6. Buffer Modification request and Planning Official decision
7. Public comment letters
   a. Curtis and Vivian Hom
   b. Jane and Cyril Hylton and response letter from Mark Rigos, Concept Engineering
   c. Reyes Canales, III and response letter from Mark Rigos, Concept Engineering
   d. Tom Smith and response letter from Mark Rigos, Concept Engineering
8. SEPA Determination of Non-Significance
9. SEPA Appeal letter from Tom Smith and response from Mark Rigos, Concept Engineering
10. Watershed Stream determination letter dated October 31, 2007
11. South Juanita Land Use Plan on page XV.I-6.1, Figure J-2b

VII. PARTIES OF RECORD

Applicant, Hamish Anderson, PO Box 340 Kirkland, WA 98083
Curtis and Vivian Hom, 11438 NE 112th St. Kirkland, WA 98033
Jane and Cyril Hylton, 11250 NE 112th St. Kirkland, WA 98033
Reyes Canales, III 11226 110th Avenue Kirkland, WA 98033
Tom Smith 11414 NE 112th St. Kirkland, WA 98033
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.