

Jan Jordan, RPA®
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APR 19 2007

AM PM
PLANNING DEPARTMENT
BY _____

Michaels
THE ARTS AND CRAFTS STORE®

April 16, 2007

Tony Leavitt
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

RE: Michaels Store, Kirkland, Washington
Notice of Application
Juanita Townhomes Preliminary Subdivision File: PSB06-00001

Dear Mr. Leavitt:

Michaels is concerned about the disruption to our business that could occur based upon the construction of this subdivision. We are concerned about short term congestion with construction vehicles and long term congestion with subdivision traffic on 116th Street. We are also concerned about the need for closures/detours on 116th Street when streets are cut and utility lines are run.

We would appreciate information about how these items will be addressed.

Sincerely,



Jan Jordan, RPA®
Lease Compliance Administrator

LAW OFFICES
LIVENGOOD, FITZGERALD & ALSKOG

A PROFESSIONAL LIMITED LIABILITY COMPANY

JAMES S. FITZGERALD*
DAVID A. ALSKOG
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AM 4:52 PM
PLANNING DEPARTMENT
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GORDON A. LIVENGOOD (1921 - 2001)

April 19, 2007

Hand-delivered

Mr. Tony Leavitt
Project Planner
Planning and Community Development Department
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

Re: Juanita Townhomes Preliminary Subdivision File No. PSB06-00001

Dear Mr. Leavitt:

I am writing on behalf of Columbia Athletic Clubs, Inc. ("CAC"), owner and operator of the Juanita Bay Club immediately adjacent to the above-referenced subject property on the north side thereof. Please list me and my client as a party of record to this application and all other matters involving the subject property and forward all notices pertaining to the subject property to both of us. My client's name and address is:

Mr. Allen Oskoui
Vice President
Columbia Athletic Clubs, LLC
11400 98th Ave. N.E., Suite 300
Kirkland, WA 98033

This letter constitutes CAC's comments on the above-referenced application. CAC opposes the application for the reasons stated hereinbelow. However, CAC is in discussions with the applicant to mitigate the adverse impacts of the proposal and if agreement is reached, reserves the right to withdraw the objection.

It is my understanding that the applicant has acquired title to the subject property and thus is now the owner. As part of a settlement of a lawsuit between CAC and the applicant's

ATTACHMENT <u>5</u>
<u>PSB06-00001</u>

predecessor-in-interest, an easement was created on February 1, 1983 across the CAC property for the benefit of the subject property. At this time, access to the subject property was limited. The home on the east portion was (and is) accessed from 99th Place N.E., and the business property on the west portion was (and is) accessed from 98th Avenue N.E. through the CAC property. No traversing between 98th and 99th was or is possible. The easement was for ingress, egress, maneuvering and backing, but not for loading, unloading or parking. It was created expressly so that the owner of the subject property could access his business with the occasional trucks which serviced it.

Enclosed with this letter is an aerial photo which depicts the subject property and the CAC property. The buildings are clearly visible. The cross-hatched area is the location of the easement where the trucks used to need to turn-around. The proposed use of the subject property eliminates the need for such turn-around.

The easement was not and is not intended to be a thoroughfare between 98th Avenue N.E. and 99th Place N.E. Any attempt to make it so will be strongly resisted for a number of reasons, not the least of which are the following:

- The easement is limited for users solely of the subject property, and not for any others (such as neighbors to the east).
- A tremendous danger to CAC patrons exists if vehicles are allowed to use the easement as a thoroughfare. CAC patrons include children who are accompanying their caretakers to and from their vehicles and a serious safety risk would result.
- Such use would burden the easement and exceed its contemplated allowable use. The easement states it is "primarily for access purposes." When written, this meant access to the commercial structure on the west end of the subject property.
- The easement would be used as a shortcut to avoid the traffic on 98th Avenue N.E. and its intersection with N.E. 116th Street. This is not a permissible use of the easement.

We understand that the application is to subdivide the subject property into eleven (11) separate parcels, to be developed with eleven (11) townhome units. The DRB approval states that primary vehicular access is to be via 99th Place N.E., with secondary access to 98th Avenue N.E. via the easement. The secondary access is for the purpose of allowing emergency vehicle access to the subject property. It allows full use of the west parcel without the need for an emergency vehicle turnaround which would cause a loss of units.

Dealing with eleven different owners to trying and control use of the easement, given its limited purpose, would be difficult at best and impossible at worst. Assuring that the easement was only used by such owners would likewise be impossible without certain measures being taken.

CAC has additional objections based on its review of the plans. On the northeast corner of the subject property, it appears that the applicant seeks to grade on CAC's property. Consent for such grading or even temporary use for construction purposes has not been granted.

In addition, the grading for the roadway to provide access to the lots in the proposed plat would intrude on CAC's property. Permission for this has not been granted.

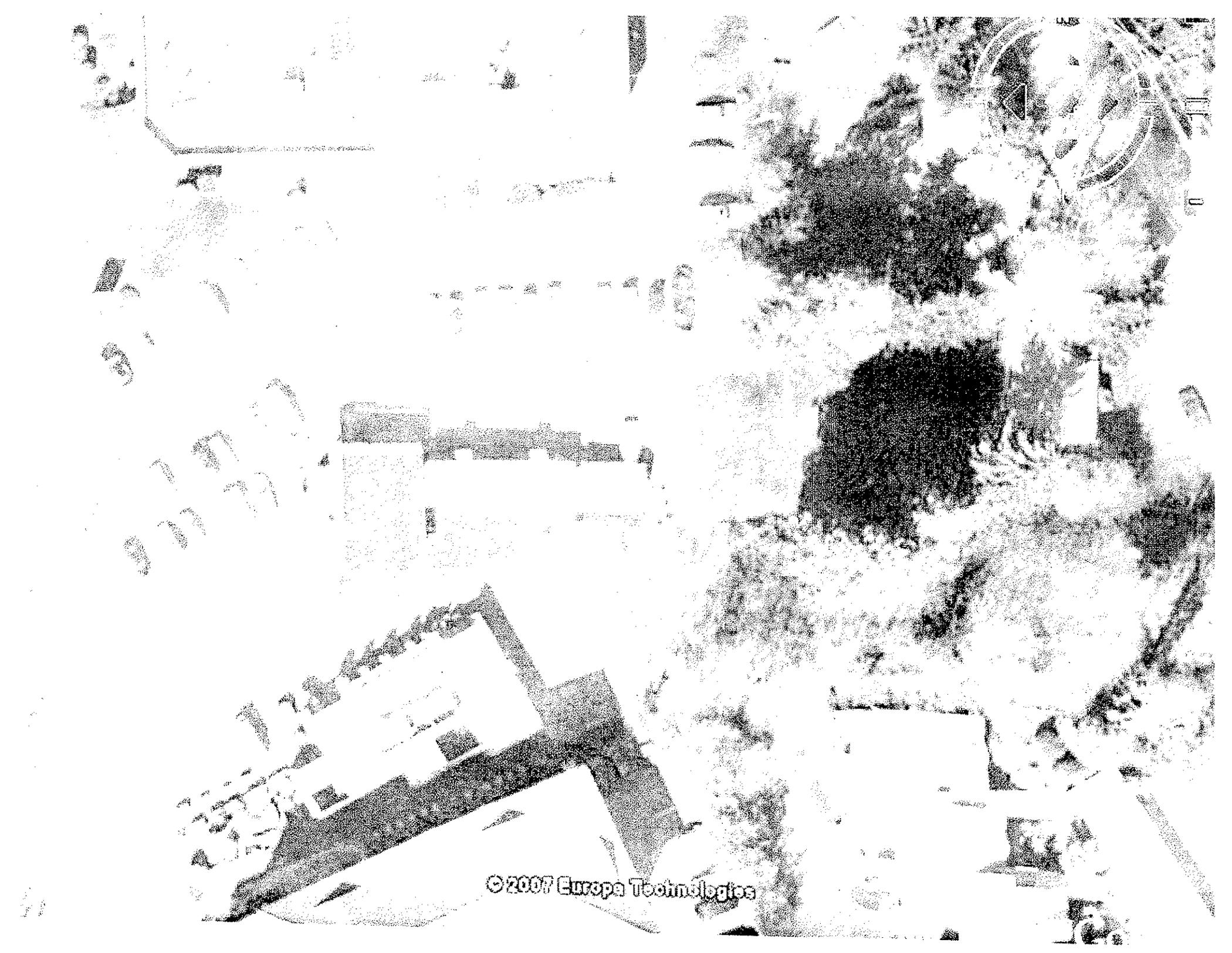
Accordingly, in view of the limited purpose of the easement, CAC opposes the application unless a condition is imposed which would require a fence and gate to be placed between the subject property and the CAC property, with the gate to be located at the point of ingress and egress between the respective properties on the easement premises. The gated access should be accessible only by emergency vehicles, with a Knox key. The fence and gate would be designed to prevent unauthorized parking by either the townhome owners or CAC patrons, to the benefit of both.

We have already verified with Public Works that such an arrangement would be acceptable.

The fact is that this is a significant and serious safety issue for both the patrons of CAC and the residents and guests of the subject property.

CAC has made an effort to meet with the developer and that effort continues. A modification of the easement and placement of a gate is under discussion. If acceptable arrangements are able to be made, then CAC believes that the impact and issues, although not eliminated, will be reduced to acceptable and tolerable levels. If an appropriate gate and fence is installed to CAC's satisfaction, agreement is likely to be reached on the other issues mentioned above. We will continue to work with the applicant to reach mutual agreement but if such is not reached, CAC's opposition will remain for the reasons stated.

If you have any questions regarding the foregoing, please do not hesitate to contact me. Please advise when the hearing before the Hearing Examiner will be held.



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