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JUN 27 2007

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June 27, 2007

Ms. Nancy Cox
Environmental Coordinator
Planning and Community Development Department
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033

Re: Juanita Townhomes Preliminary Subdivision File No. PSB06-00001—Appeal of
SEPA Determination of Non-Significance (“DNS”)

Dear Ms. Cox:

I am writing on behalf of Columbia Athletic Clubs, Inc. and its owners, as well as the Oskoui Family Limited Partnership (“OFLP”). Columbia Athletic Clubs, Inc. is the owner and operator of the Juanita Bay Club immediately adjacent to the above-referenced subject property on the north side thereof. OFLP is the owner of the property on which the Juanita Bay Club is located. The parties appealing will be collectively referred to herein as “CAC.”

CAC appeals the SEPA Determination of Non-Significance issued in the above-referenced file on June 12, 2007. The \$150 Appeal Fee is enclosed.

CAC is a party of record to this application and has standing to file this appeal. CAC’s business and property location is immediately adjacent to the applicant’s property and is burdened with an easement which the applicant desires to use as part of its access. CAC is specifically and directly affected by the proposed application and action. CAC’s contact information is as follows:

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

ATTACHMENT 7

PSB06-00001

CAC has by previous letter stated its opposition to this application. If suitable mitigation of probable significant adverse environmental impacts can be agreed upon with the applicant, CAC reserves the right to withdraw this appeal.

CAC respectfully submits that the DNS Threshold Determination issued by the Responsible Official in this case is in error. The Determination ignores or fails to take proper account of probable significant adverse environmental impacts resulting from the applicant's plan for access to its property and use of that access by others unrelated to the applicant. In short, CAC's SEPA Appeal focuses on traffic—not just traffic generated by the project, but by traffic that can be reasonably expected to use the subject property as a street when the project is constructed. The plan will open a throughway that does not presently exist. A probable significant adverse environmental impact will result and this has not been properly or adequately addressed by either the applicant or the City.

Factual Background

CAC understands that the application is to subdivide the subject property into eleven (11) separate parcels, to be developed with eleven (11) town home units. The DRB approval states that primary vehicular access is to be via 99th Pl. N.E., with secondary access to 98th Ave. N.E. via an 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.

The Easement

As part of a settlement of a lawsuit between CAC and the applicant's 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 Pl. N.E., and the business property on the west portion was (and is) accessed from 98th Ave. 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. CAC is of the opinion that the easement is so limited and may not be used as proposed by the applicant.

Adverse Environmental Impacts

The easement was not and is not intended to be a thoroughfare between 98th Ave. N.E.

and 99th Pl. N.E. The easement may not be used as proposed by the applicant. This means that the planned secondary access may not be available as desired by the applicant. Please be advised that CAC will resist any attempt to use the easement as planned by the applicant for a number of reasons, not the least of which are the following:

1. The easement is limited for users solely of the subject property, and not for any others (such as neighbors to the east).
2. 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.
3. 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.
4. The easement would be used a shortcut to avoid the traffic on 98th Ave. N.E. and its intersection with N.E. 116th St. This is not a permissible use of the easement.
5. Use of the easement as planned by the applicant would result in exacerbating an already difficult traffic situation in the vicinity of 98th Ave. N.E., N.E. 116th St. and 99th Pl. N.E. This has not been adequately addressed. The probable significant adverse impacts will arise out of the reasonably anticipated use by those not having permission for such use, such as vehicles desiring to avoid the intersection in order to access neighborhoods to the east and vice versa. These impacts have not been addressed and are both serious and dangerous.
6. The Traffic Concurrency analysis assumes 53 daily, 4 AM and 5 PM peak hour trips. CAC does not necessary contest this assumption. The SEPA Checklist represents that there were be 9.9 trips per unit per day, generating 108 trips. However, these assumptions are based solely on traffic generated by the anticipated residents of the proposed project. They do not account for or consider the fact that as proposed, a new road is effectively being opened in a very congested traffic area. That will result in a far different picture than the foregoing assumptions.
7. The fact is that this is a significant and serious safety issue for the patrons of

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CAC, the residents and guests of the subject property, and the motoring public who will bear the impact of the improper and illegal easement use.

Mitigation Measures

CAC has previously gone on record that the only reasonable manner to mitigate the probable significant adverse environmental impacts identified above (and which CAC reserves the right to supplement), is to impose a condition 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 townhouse owners or CAC patrons, to the benefit of both. We have already verified with Public Works that such an arrangement would be acceptable.

We request a hearing as authorized by the Kirkland Municipal Code. Please advise when the hearing will be held.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

In advance, thank you.

Very truly yours,

LIVENGOOD, FITZGERALD
& ALSKOG, PLLC



James S. Fitzgerald

JSF:me

Enclosure

cc: Columbia Athletic Clubs, LLC
Eric Shields
Steve Smith Development LLC