



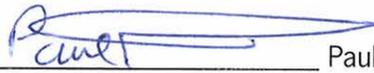
CITY OF KIRKLAND

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

To: Kirkland Hearing Examiner

From:  Tony Leavitt, Associate Planner

 Paul Stewart, AICP, Deputy Planning Director

Date: July 11, 2007

File: JUANITA BAY TOWNHOMES PRELIMINARY SUBDIVISION (PSB06-00001) AND SEPA APPEAL (APL07-00005)

Hearing Date and Place: July 19, 2007
City Hall Council Chamber
123 Fifth Avenue, Kirkland

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I. **INTRODUCTION**

A. **APPLICATION**

1. Applicant: Steve Smith Development, Property Owner
2. Site Location: 11444 98th Avenue NE and 11435 99th Place NE (see Attachment 1)
3. Request: Proposal to subdivide two existing parcels (.44 total acres) into 11 separate parcels within the Juanita Business District (JBD) 2 Zone (no minimum lot size for attached residential units) (see Attachment 2). The new lots will be developed with the townhome units that were approved as part of Design Review Board File No. DRC06-00004. Primary vehicular access for each lot will be provided via an access tract that connects directly to 99th Place NE. Emergency vehicle and secondary access will be provided to and from 98th Avenue NE via an existing private vehicular access easement.
4. Review Process:
 - a. Preliminary Subdivision: Hearing Examiner conducts public hearing and makes final decision.
 - b. SEPA Appeal: Pursuant to Kirkland Municipal Code Section 24.02.105 the SEPA appeal hearing will be conducted by the Hearing Examiner and combined with the public hearing for the Preliminary Subdivision. The Hearing Examiner will make the final decision on the SEPA appeal (see Section II. D).
5. Summary of Key Issues:
 - SEPA Determination of Nonsignificance Appeal Consideration (see Section II.D). The appeal relates to potential traffic impacts from the applicant's plan to use an existing access easement to 98th Avenue NE and offsite grading work.
 - Compliance with Kirkland Municipal and Zoning Code Approval Criteria (see Section II.F).

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 condition:

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.

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:

a. Facts:

- (1) Size: 19,800 square feet (.44 acres)
- (2) Land Use: The subject property contains an office structure on the western most parcel and a single family residential structure on the eastern most parcel. These structures are proposed to be removed as part of the proposal.
- (3) Zoning: Juanita Business District (JBD) 2 Zone (no minimum lot size for attached residential units)
- (4) Terrain: The site has a significant downward slope on the eastern half of the property and levels out on the western half of the property.
- (5) Vegetation: The subject property contains a total of 2 significant trees.

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

2. Neighboring Development and Zoning:

a. Facts: The following are the uses, allowed heights, and zoning of the properties adjacent to the subject property:

North: JBD 2 Zone. The property to the north contains the Columbia Athletic Club building and an associated parking lot.

East: RM 2.4 Zone. A 3 story multi family development, The Hallmark Juanita Condominiums, currently exists on the site.

South: JBD 2 Zone. The property to the southwest contains the Juanita Veterinary Hospital and the property to the southeast is vacant.

West: JBD 2 Zone. The property immediately to the west contains a parking lot owned by the owners of the Juanita Veterinary Hospital property. On the west side of NE 98th Street is Juanita Bay Park.

b. Conclusion: The neighboring development and zoning are not factors in the review of this application. Columbia Athletic Club has filed a SEPA Appeal related to the use of private vehicular access easement that is located on their property. The SEPA Appeal is discussed in Section II.D.

B. HISTORY

In August of 2006, the applicant applied for Design Board Review of the proposed townhome structures. The Design Review Board approved the project, subject to conditions, on November 6th, 2006.

C. PUBLIC COMMENT

Facts: The initial public comment period for this application started on March 29, 2007 and ended on April 19, 2007. Two public comment letters were received (see Attachments 4 and 5). The issues raised in the letter along with staff responses follow:

- Construction Impacts

One neighbor is concerned that construction of the proposed project could impact NE 116th Street.

Staff Response: The subject property is not located on NE 116th Street, so any potential impacts to this street will be minimal.

- Vehicular Access Easement Impacts

The property owner to the north of subject property requests that the City require that the applicant install a gate across the existing private vehicular access easement to 98th Avenue NE in order to restrict use of the access easement to emergency vehicles only.

Staff Response: Staff addresses the vehicular access easement in Section II.D.

D. STATE ENVIRONMENTAL POLICY ACT (SEPA)

1. SEPA Threshold Determination

a. Facts:

- (1) A Determination of Nonsignificance (DNS) was issued on June 13, 2007. The Environmental Checklist, Determination, and additional environmental information are included as Attachment 5.
- (2) A timely appeal of the SEPA Determination was filed on June 27, 2007 by the Jim Fitzgerald representing Columbia Athletic Clubs, Inc. (see Attachment 7).
- (3) The Hearing Examiner will conduct a public hearing on the SEPA appeal concurrently with the public hearing for this permit application on July 19, 2007.
- (4) The Hearing Examiner will consider the appeal and the testimony received during the public hearing in making her decision to either: affirm the decision being appealed; reverse the decision being appealed; or modify the decision being appealed. Within eight calendar days after the public hearing, the hearing body will issue a written decision on the appeal.

- b. Conclusion: Once the Hearing Examiner issues a decision on the appeal of the SEPA Determination of Non-Significance, the City and the applicant will have satisfied the requirements of SEPA.

2. SEPA Appeal

a. Facts:

- (1) KMC Section 24.02.105.b establishes the following parties as able to appeal the SEPA determination: The applicant or proponent; any agency with jurisdiction, any individual or other entity who is specifically and directly affected by the proposed action.
- (2) KMC Section 24.02.105.g.2 states that only those persons entitled to appeal the threshold determination may participate in the appeal.
- (3) KMC Section 24.02.105.i of the Kirkland Municipal Code relating to SEPA states that:
 - The matters to be considered and decided upon in the appeal are limited to the matters raised in the notice of appeal.
 - The decision of the responsible official shall be accorded substantial weight.
 - All testimony will be taken under oath.
 - The decision of the hearing body hearing the appeal shall be the final decision on any appeal of a threshold determination including a Determination of Nonsignificance.
- (4) The appellants claim in their letter of appeal that the SEPA Determination ignores or fails to take proper account of probable significant adverse environmental impacts, specifically traffic impacts, from the applicant's plan to use an existing access easement to 98th Avenue NE. The appellants also object to any grading work on their property without prior approval.
- (5) The applicant intends to use the existing private vehicular access easement for emergency vehicle and secondary access to and from 98th Avenue NE. The private vehicular access easement runs across the southwest corner of the appellant's property (see Attachment 2).
- (6) The appellants claim that the use of the existing private vehicular access easement is limited and that the easement may not be used as proposed by the applicant.
- (7) The appellant requests that a condition be imposed on the project that requires that a fence and gate be placed along the common boundary between the appellant's property and the subject property. The gate would be located across the access easement and restrict access to emergency vehicles only.
- (8) The Public Works Department reviewed the Concurrency Management Review Application for the proposed development and concluded that

the project will not have a negative traffic impact on existing public facilities.

- (9) The existing vehicular access easement is a private easement and the use of the easement is not regulated by the City of Kirkland.
- (10) Potential grading work on the appellants' property is a private issue as City issued permits do not authorize offsite work. As a result, the applicant would need secure approval from the Columbia Athletic Club for any work on their property.

b. Conclusions:

- (1) Absent identification of probable significant adverse environmental impacts, Staff has concluded that the City does not have the authority to restrict use of the private vehicular access easement by requiring that the applicant install an emergency vehicle access gate (see Attachment 6, SEPA Determination Memo).
- (2) As noted above, Staff has not identified negative traffic impacts and is not requiring access restrictions.
- (3) Although the appeal includes a number of concerns regarding the use of the easement, none of them represent significant environmental impacts. Therefore, the decision by the responsible official to issue a DNS was appropriate.

E. CONCURRENCY

1. Facts: The Public Works Department has reviewed the application for concurrency. A concurrency test was passed for traffic on January 31, 2007 (see Enclosure 4 of Attachment 6) and for water and sewer on March 13, 2007 (see Attachment 3).
2. Conclusion: The proposal meets the City's concurrency requirements.

F. APPROVAL CRITERIA

1. Preliminary Subdivisions
 - a. Facts: Kirkland 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 H). With the recommended conditions of approval, it is consistent with the Zoning Code and Subdivision regulations (see Sections II.G) 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. Vehicular Access Easements or Tracts
 - a. Facts: Municipal Code sections 22.28.110 and 22.28.130 establish that if vehicular access within the plat is provided by means other than rights-of-way, the plat must establish easements or tracts, compliant with Zoning Code Section 105.10, which will provide the legal right of access to each of the lots served.
 - (1) Zoning Code section 105.10 establishes dimensional standards for vehicular access easements and tracts. For the proposed use, the minimum standard is 20 feet of unobstructed paved surface within a 20 foot wide easement or tract.
 - (2) The project includes a proposed vehicular access easement that will be 25 feet wide with a 20 foot wide unobstructed paved surface.
 - b. Conclusion: The proposed vehicular access tract complies with section 105.10.
2. Natural Features - Significant Vegetation
 - a. Facts:
 - (1) Regulations regarding the retention of trees can be found in Chapter 95 of the Kirkland Zoning Code. KZC Section 95.35.2.b.2 requires that a Tree Plan II be submitted for the project.
 - (2) The applicant has submitted a Tree Plan II that identifies two significant trees on the subject property. The applicant intends to remove these two significant trees based on the location of the proposed improvements.
 - b. Conclusions: The project complies with the requirements of KZC Section 95.35.2.b.2.

H. COMPREHENSIVE PLAN

1. Fact: The subject property is located within the South Juanita neighborhood. The South Juanita Neighborhood Land Use Map designates the subject property for commercial uses (see Attachment 8). The Comprehensive Plan Glossary states that commercial may include multi-family uses.
2. Conclusion: The proposal is consistent with the land use designation indicated in the Comprehensive Plan.

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.

VI. APPENDICES

Attachments 1 through 8 are attached.

1. Vicinity Map
2. Development Plans
3. Development Standards
4. Letter from Michael's Craft Store dated April 16, 2007
5. Letter from James S. Fitzgerald dated April 19, 2007
6. SEPA Determination, Memo, and Enclosures
7. SEPA Appeal Letter from James S. Fitzgerald dated June 27, 2007
8. South Juanita Neighborhood Land Use Map

VII. PARTIES OF RECORD

Applicant: Steve Smith Development, 9500 Roosevelt Way NE #300, Seattle, WA 98115

Party of Record: James Fitzgerald; Livengood, Fitzgerald, & Alskog; PO Box 908, Kirkland, WA 98083

Party of Record: Jan Jordan, Michael's Lease Compliance Administrator, 8000 Bent Branch Drive; Irving,
TX 75063

Department of Planning and Community Development

Department of Public Works

Department of Building and Fire Services

A written decision on the preliminary subdivision application and the SEPA appeal will be issued by the Hearing Examiner within eight calendar days of the date of the open record hearing.

