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PLANNING DEPARTMENT
BY

CITY OF KIRKLAND
HEARING EXAMINER FINDINGS, CONCLUSIONS AND RECOMMENDATION

APPLICANT: Cher Anderson, KLN Construction, Inc.

FILE NO: SUB15-00572

APPLICATION:

1. Site Location: 4600 – 4646 116th Avenue NE

2. Requests: The applicant requests approval of a rezone and preliminary subdivision as follows:

   a. Rezone the 17.59 acre subject property from RS/RSX 35 (single-family residential, minimum lot size of 35,000 square feet (s.f.)) to RS 12.5 (single-family residential, minimum lot size of 12,500 s.f.).

   b. Subdivide the property into 35 lots for construction of single-family homes. Access to the lots will be provided via a new public access road off of 116th Avenue NE.

   c. Fill and "paper fill" a portion of a wetland to provide vehicular access that meets City requirements. Proposed compensatory mitigation includes wetland creation, restoration, and enhancement.

   d. Reduce the wetland buffer only where necessary to provide access to the remainder of the property. Mitigation is proposed through enhancement.

   e. Install a stream culvert to create vehicular access and install utilities that comply with the City's requirements.

   f. Discharge stormwater using a piped outfall to the wetland buffer.

   g. Install a bioswale along the south side of the new access road to treat stormwater runoff prior to water reaching stream/wetlands or their associated buffers.

3. Review Process: Process IIB, the Hearing Examiner conducts a public hearing and makes a recommendation to the City Council, which makes a final decision.

4. Key Issues:
   - Compliance with rezone criteria
   - Compliance with subdivision criteria
   - Compliance with various sensitive area criteria

- Equestrian and pedestrian access to Bridle Trails State Park

SUMMARY OF RECOMMENDATIONS:

Department	Approve with conditions
Hearing Examiner	Approve with conditions

PUBLIC HEARING:

The Hearing Examiner held a public hearing on the applications on March 9, 2016, at 7:00 p.m. in the Peter Kirk Room, City Hall, 123 Fifth Avenue, Kirkland, Washington. A verbatim recording of the hearing is available at the City Clerk's office. The minutes of the hearing and the exhibits are available for public inspection in the Planning and Building Department. The Examiner visited the site in advance of the hearing.

TESTIMONY AND PUBLIC COMMENT:

A list of those who testified at the public hearing, and a list of the exhibits offered at the hearing are included at the end of this Recommendation. The testimony is summarized in the hearing minutes.

For purposes of this recommendation, all section numbers refer to the Kirkland Zoning Code ("KZC") or Kirkland Municipal Code ("KMC") unless otherwise indicated.

FINDINGS, CONCLUSIONS AND RECOMMENDATION

Having considered the evidence in the record and reviewed the site, the Hearing Examiner enters the following:

Findings of Fact and Conclusions:

A. Site Description

The reference to "Attachment 2, Sheet 2 of 14" on page 5 of the Staff Report (at II.A.1(4)) is corrected to read Attachment 2, Sheet 3 of 14. With that correction, the Facts and Conclusions on site development and zoning, and on neighboring development and zoning, set forth at Subsection II.A of the Staff Report are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

Additional Facts:

1. The Sablewood development, located to the north of the subject property, is zoned RS 12.5 and has lot sizes ranging from 10,500 to 19,353 square feet.

2. Cor Sun Ranch Estates to the south is zoned RSX 35 and has lots sizes ranging from 28,002 to 47,502 square feet.

3. Only one of the 40 lots to the south of the subject property and within the Kirkland city limits has a paddock area.

B. History

The Facts and Conclusion on the subject property's tax history, set forth in Subsection II.B of the Staff Report are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusion.

C. Public Comment

The Facts and Conclusion on public comment set forth at Subsection II.C of the Staff Report are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

Additional Facts:

1. Public comments at the hearing reiterated some of the concerns expressed in the comment letters included in the record as Attachment 5 to the Staff Report, particularly those expressing opposition to the requested rezone as failing to comply with the applicable Neighborhood Plan and threatening the area's equestrian lifestyle.

2. Some members of the public emphasized that the market for "horse properties" remains strong but that such properties are in short supply in the area. They pointed out that the lots in the Cor-Sun development to the south of the subject property allow keeping of horses only with special approval of an architectural control committee. *See* Exhibit I at 3. They also stated that the Zoning Code would prohibit the keeping of horses on most of the lots in the development for the subject property.

3. The lots in the proposed subdivision range in size from 12,506 to 24,752 square feet. Six of the lots exceed 20,000 square feet.

4. KZC 115.20.5.b(3) provides that in zones other than "RS 35 and RSX 35 within the Bridle Trails neighborhood north and northeast of Bridle Trails State Park," the City may approve the keeping of up to two horses on lots less than 35,000 square feet using Process I in Chapter 145 KZC and specific setback regulations.

5. Conclusion: As the subdivision is presently configured, it may be possible for a few of the lots to support horse keeping. *See* Attachment 2 to the Staff Report, Sheet 11 of 14.

D. State Environmental Policy Act and Concurrency

The Facts and Conclusion on this application set forth at Subsection II.D of the Staff Report are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

E. Approval Criteria

1. REZONE
   a. Facts:
      (1) Zoning Code section 130.40 states that a quasi-judicial rezone may be approved only if:
      - Conditions have substantially changed since the property was given its present zoning or the proposed rezone implements the policies of the comprehensive plan; and
      - The proposed rezone is compatible with the existing land uses in the immediate vicinity of the subject property; and
      - The proposed rezone bears a substantial relationship to the public health, safety, or welfare; and
      - The proposed rezone is in the best interest of the community of Kirkland; and
      - If the rezone is to place or remove an overlay zoning designation on the Zoning Map, the proposal meets the applicable designation criteria of chapters 70 through 80 of the Zoning Code.

      (2) Figure BT-1 on page XV.C-2 of the Neighborhood Plan designates the subject property for low density residential development, 1-3 dwelling units per acre. *See* Attachment 9 to the Staff Report. Table LU-3 in the Land Use Section of the Comprehensive Plan lists RS 35,000 as the comparable zoning classification for low density residential development "Up to 1 d/a," and RS 12,500 as the comparable zoning classification for low density residential development "Up to 3 d/a". The applicant seeks RS 12,500 zoning and proposes a development density of 2 dwelling units per acre.

      (3) Historical information regarding annexation, land use designation, and zoning on the subject and adjoining properties includes the following:

         (a) On February 21, 1989, Ordinance 3158 was signed agreeing to the property owners' petition for annexation. The annexation included the entire subject property, Cor-Sun Ranch Estates, and the properties located on the east side of Cor-Sun Ranch Estates and west of Bridle Trails State Park. At the time of annexation the entire area was zoned RS 35.

         (b) Sablewood, the adjoining subdivision to the north of the subject property, was originally part of the City of Houghton and zoned for approximately 12 dwelling units per acre. After the cities of Houghton and Kirkland consolidated,

the property was downzoned, but the downzone was overturned in court. A subsequent development proposal was denied pursuant to SEPA, and an appeal followed. Ultimately, a negotiated agreement led to the property being rezoned to RS 12.5 in 1985, and the Sablewood subdivision was approved in 1987.

(c) Cor-Sun Ranch Estates, to the south of the subject property, was already developed when it was annexed into the City of Kirkland in 1989. Based on size alone, most of the lots in Cor-Sun are large enough to keep a horse without any special Zoning Code review or process although, as noted, covenants require a special approval by an architectural review committee. No horses or paddock areas are visible on the aerial maps for Sablewood or Cor-Sun Ranch Estates. *See* Attachment 8 to the Staff Report.

(d) One residential parcel between Cor-Sun Ranch Estates and Bridle Trails State Park shows evidence of a paddock area and active horse use. In 2008 a stable and paddock area was located on the most southeasterly property between Cor-Sun Ranch Estates and Bridle Trail State Park. It has been demolished and the site is currently unimproved.

(4) Comprehensive Plan policies relevant to the rezone include the following:

(a) Land Use Policy LU-2.2: Use land efficiently, facilitate infill development or redevelopment, and where appropriate, preserve options for future development.

This land use policy supports a rezone to a maximum of three units per acre as designated on Comprehensive Plan Figure BT-1, the Bridle Trails Land Use Map. *See* Attachment 9 to the Staff Report.

(b) Land Use Policy LU-2.3: Ensure an adequate supply of housing units ... to meet the required growth targets through efficient use of land.

If developed to the maximum allowed development potential under the Comprehensive Plan of 3 units per acre, the property could provide 15 dwelling units more than the number that could be provided under the existing zoning designation of 1 unit per acre. *See* Section II.F.1 of the Staff Report. (As noted, the development proposal is for two dwelling units per acre.)

(c) Land Use Policy LU 4.3: Continue to allow for new residential growth throughout the community, consistent with the basic pattern of land use in the City.

(d) Natural Environment Policy NE-1.8: Strive to minimize human impact on habitat areas.

As discussed in Sections II.E.3 through II.E.8 of the Staff Report, if the rezone is approved, multiple existing encroachments into the critical areas and their associated buffers would be removed, and the proposed project would conform to critical areas regulations. The northern access, which bisects Wetland B, would be reestablished as wetland, and the southern access, which is between Wetlands B and C, would become wetland buffer. Additional wetland and buffer mitigation would compensate for new encroachments proposed with the development.

(e) The introduction to the Comprehensive Plan addresses the relationship between the Citywide Elements of the Plan and the Neighborhood Plans:

> The Neighborhood Plans allow a more detailed examination of issues affecting smaller geographic areas within the City and clarify how broader City goals and policies in the Citywide Elements apply to each neighborhood. It is intended that each neighborhood plan be consistent with the Citywide Elements. However, because many of the neighborhood plans were adopted prior to the 1995 Plan update, portions of some of the neighborhood plans may contain inconsistencies. Where this is the case, the conflicting portions of the Citywide Elements will prevail.

(f) Under the vision statement for the Bridle Trails Neighborhood Plan, it is explained that the "primary policy direction for this neighborhood is to *maintain the low-density residential character with some areas containing large lots capable of keeping horses*." Emphasis added.

(g) The Neighborhood Plan addresses specific geographic areas, including:

(1) an area east of I-405 with "relatively new" residential developments, where new residential development "*should be low density (up to five dwelling units per acre)*;"

(2) the single-family area north of the State Park and south of NE 70th Street, which "contains some large lots capable of keeping horses," and in which "[r]esidential sites ... should be designed to allow sufficient space to provide ... for horses, and to appropriately buffer development bordering equestrian areas;"

(3) the Bridlewood Circle, Silver Spurs Ranch, and Bridle View areas, which "should remain *at a very low density (one dwelling unit per acre)* with private stable facilities permitted;" and

(4) the area "southwest of Bridle Trails State Park and adjacent to 116th Avenue NE," which includes the subject property and is described as an area that, at the time the Neighborhood Plan was adopted, "*contains low-density*

residential development (one to three dwelling units per acre) and large stable facilities. Existing equestrian access to Bridle Trails State Park from this area should be preserved."

Emphasis added.

(h) The Neighborhood Plan then addresses "[p]roblems with utilities and traffic in the area southwest of the State Park and adjacent to 116th Avenue NE. It states that the extension of water and sewer services should always be a condition of development in the area, and that "higher-density residential uses" would increase traffic volumes, noise and hazards and should not be permitted. "Based upon the above considerations, development in this area should be limited to *low-density equestrian-oriented residential (one to three dwelling units per acre)*. In addition, the existing stable facilities should be encouraged to remain ...."

Emphasis added.

(5) As noted above, the area to the north of the subject property was developed at a density of 3 dwelling units per acre (RS 12.5 zoning), and the area to the south of the subject property was developed at a density of 1 dwelling unit per acre (RSX 35 zoning). The proposal would be developed at a density of two dwelling units per acre.

(6) The proposal would preserve the subject property's existing equestrian/pedestrian access to Bridle Trails State Park.

b. Conclusions: The proposed rezone is consistent with the criteria set forth in KZC 130.40:

(1) The proposed rezone would implement the Comprehensive Plan's Land Use policies supporting infill housing and ensuring an adequate housing supply. It would also protect the wetlands and streams and their associated buffer to the maximum extent possible, including removing existing non-conforming wetland encroachments and bringing non-conforming wetland buffers into conformance with existing regulations, thereby implementing policies in the Plan's Natural Environment element.

(2) The rezone would also implement the Bridle Trails Neighborhood Plan. It is clear from the explanatory statement under the vision statement that maintenance of the low-density residential character in the area is key, and that "some areas" should continue to maintain large lots for horses. The Neighborhood Plan expressly directs that in the single family area north of the State Park and south of NE 70th Street, residential sites within areas that are equestrian-oriented should be designed to allow for keeping horses. It also expressly directs that Bridlewood Circle, Silver Spurs Ranch and Bridle View should remain at "very low" residential density, which is stated to be one dwelling unit per acre. But for the area in question, southwest of the State Park along 116th Avenue NE, both "low density development and equestrian facilities should be

permitted." "Low density" is repeatedly explained as being from one to three dwelling units per acre.

The Neighborhood Plan's discussion of "very low density" as one dwelling unit per acre and "low density" as one to three dwelling units per acre is consistent with the comparable zoning classifications for those densities listed in Table LU-3 of the Comprehensive Plan. Thus, the Neighborhood Plan does not conflict with the Comprehensive Plan.

(3) The rezone would be compatible with existing land uses in the immediate vicinity of the subject property. Properties to the north and south are developed with low-density residential development and, with one exception, the lots are not used for keeping horses.

(4) The rezone bears a substantial relationship to public health, safety, or welfare because the proposal will create infill residential development while meeting the goals and policies of the Comprehensive Plan, including the applicable Neighborhood Plan.

(5) The proposed rezone would be in the best interest of the community of Kirkland because it would increase the housing stock, thereby assisting the City in meeting its housing targets while protecting the stream and wetlands to the maximum extent possible.

(6) The rezone will not place or remove an overlay zoning designation on the Zoning Map.

2. PRELIMINARY PLAT
3. CRITICAL AREAS

The Facts and Conclusions concerning the proposal's consistency with the approval criteria for a preliminary subdivision and with critical area requirements are set forth in Subsections II.E.2 through II.E.3 through II.E.8 of the Staff Report and are adopted by reference as the Hearing Examiner's Findings and Conclusions.

F. Development Regulations

The Facts and Conclusions on the proposal's consistency with applicable development regulations are set forth at Subsection II.F of the Staff Report are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

G. Comprehensive Plan

The proposal's consistency with the Comprehensive Plan is addressed above in Section E.

H. Development Standards

The Fact and Conclusion on this matter set forth at Subsection II.H of Exhibit A are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

I. Process IIB Decisional Criteria

As noted above, the application for the rezone, preliminary subdivision and sensitive area approvals is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, with the Comprehensive Plan, and it is also consistent with the public health, safety and welfare. It therefore meets the requirement of KZC 152.70.3.

Recommendation:

Based upon the foregoing findings of fact and conclusions, the Hearing Examiner recommends that the City Council approve the entire application subject to the conditions set forth in Section I.B of the Staff Report.

Entered this 16th day of March, 2016.

Sue A. Tanner
Hearing Examiner

EXHIBITS:
The following exhibits were entered into the record:

Exhibit A	Department's Advisory Report with Attachments 1 through 17
Exhibit B	Department's PowerPoint presentation
Exhibit C	Packet of public comments sent to the Department after release of Department recommendation
Exhibit D	Illustrative Site Plan, Site Enlargements & Photos, Engineering Plans & Sections, Vicinity Map and Site Vicinity Enlargement (total 5 sheets)
Exhibit E	Declaration of Michael Crooks, former owner of subject property
Exhibit F	Traffic data for 116th Ave.NE/NE 60th St. before and after start of I-405 tolling
Exhibit G	Illustration of "paper fill" of wetland
Exhibit H	Comments of Jennifer Duncan
Exhibit I	Protective Covenants – Plat of Con-Sun Ranch Estates
Exhibit J	Illustration re balancing development with community character
Exhibit K	Enlarged aerial photos of Con-Sun Ranch Subdivision
Exhibit L	Comments of Ann Shilling
Exhibit M	Comments of Molly Lawrence
Exhibit N	Comments of Jim Erckmann

Exhibit O Comments of Mary Decher
Exhibit P Comments of Deborah Giddings
Exhibit Q Comments of Jessica Reaves
Exhibit R Comments of Jana Hobbs
Exhibit S Comments of Klara Lukacs
Exhibit T Comments of Andrea Lorig, former owner of subject property

PARTIES OF RECORD:

Cher Anderson, KLN Construction, Inc., applicant
Brian Holtzclaw, attorney-at-law, on behalf of applicant
Jim Erckmann
Jennifer Duncan
Suzanne Kagen
Amy Supple
Molly Lawrence
Mary Decher
Rob Hemingson
Carolyn Adams
Jana Hobbs
Gavin Wissler
Andy Held
Ann Shilling
Lynn Erckmann
Kay Brossard
Mehri Kaufman
Alice Prince
Suki Steiner
Amy Itkin
Paula Munson
Parties of Record prior to hearing
Planning and Building Department
Department of Public Works

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.

CHALLENGES AND JUDICIAL REVIEW

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

CHALLENGE

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or

testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., March 28, 2016, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

JUDICIAL REVIEW

Section 152.110 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 twenty-one (21) calendar days of the issuance of the final land use decision by the City.

LAPSE OF APPROVAL

Under KMC 22.16.010, "Final plat – Submittal – Time limits," if the final plat is not submitted to the City Council within the time limits set forth in RCW 58.17.140, it shall be void.