



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
MEMORANDUM

To: Planning Commission

From: Angela Ruggeri, AICP, Senior Planner

Date: July 15, 2010

Subject: **TOUCHSTONE (PARKPLACE)**
FILE ZON07-00016

I. RECOMMENDATION

Receive staff presentation on the history of the Touchstone (Parkplace) proposal. No action is requested at this time.

II. BACKGROUND

The Planning Commission held a public hearing on the Parkplace amendments to the Comprehensive Plan and Zoning Code on June 24, 2010. Eric Shields was also there as SEPA Responsible Official to hear comments on the Draft Supplemental Environmental Impact Statement (DSEIS). After taking public comment, the Planning Commission asked staff to return on July 22 to explain the history of the Parkplace proposal. This was done because many of the Commissioners were not part of the Commission that made the original Parkplace recommendation to the City Council in 2008. The project history is included below.

The City Council received a private amendment request from Touchstone for the Parkplace property in 2007. The Private Amendment Request (PAR) process has two steps: 1) the threshold determination by the City Council to decide whether to further consider the request; and 2) the study process when the requests that are selected are considered further. The study process involves public hearings by the Planning Commission, a recommendation from the Planning Commission to the City Council, and a final decision by the City Council.

In July of 2007 the City Council made the Phase 1 decision to further consider the Touchstone (Parkplace), PAR along with the Orni and Altom PARs, located east of the Parkplace site. At that time, the Council also passed a resolution which directed the Design Review Board (DRB) to play a role in advising the Planning Commission on the Parkplace PAR.

The role of the DRB during the annual amendment process was to help staff and the Planning Commission develop appropriate Comprehensive Plan policies, development regulations and design guidelines for the portion of CBD 5 where Parkplace is located. The primary issues that the Board focused on were site layout and building massing. The DRB's recommendation was used by the Planning Commission to help in the development of a preliminary proposal (referred to as the review alternative) that was studied in the Final Environmental Impact Statement (FEIS).

The review process for the three PARs followed the Process IV procedures as established in the Zoning Code. Below is a brief timeline and summary of this process.

- June 28, 2007** The Planning Commission recommended to the City Council that four PARs including Touchstone, Orni, and Altom move forward for study in the 2007-2008 work program.
- July 17, 2007** The City Council conducted a threshold review of several private amendment requests and directed staff to begin full review of the Parkplace, Orni, and Altom PAR's. Council also passed a resolution directing the Design Review Board (DRB) to advise the Planning Commission on the Parkplace PAR.
- March 25, 2008** The DRB made recommendations to the Planning Commission on key issues including site organization and building mass and placement for consideration with the PAR. The DRB recommendation followed a series of six meetings reviewing a variety of conceptual development plans.
- April 4, 2008** The Draft Environmental Impact Statement was issued.
- April 24, 2008** The Planning Commission held a public hearing on the three PARs and DEIS.
- June 2007-
October 2008** The Planning Commission held numerous study sessions.
- June 12 & June
26, 2008** The Planning Commission held public hearings on the three PARs.
- October 16, 2008** The Final Environmental Impact Statement was issued.
- October 23, 2008** The Touchstone (Parkplace) public hearing was held.
- November 13, 2008** The deliberation portion of the public hearing for the Parkplace recommendation to the City Council was held.

December 2, 2008 The City Council held a study session on the Parkplace proposal. The Planning Commission recommendation on the project was presented at this study session.

December 16, 2008 The final ordinances amending the Comprehensive Plan and Zoning for the Parkplace site were passed by the City Council, along with the Master Plan and Design Guidelines and a Planned Action Ordinance.

The Planning Commission *packets* for the study sessions and public hearings for the three PARs can be found at the link below (meeting dates include: 6/28/07, 8/23/07, 10/25/07, 11/29/07, 3/27/08, 4/10/08, 4/24/08 public hearing, 5/8/08, 5/22/08, 5/29/08, 6/12/08 public hearing, 7/10/08, 7/31/08, 8/14/08 Parkplace only, 8/28/08, 9/23/08 Parkplace only, 9/25/08, 10/2/08 Parkplace only, 10/22/08 public hearing for Orni and Altom, 10/23/08 public hearing for Parkplace, and 11/13/08 Parkplace only).

http://www.ci.kirkland.wa.us/depart/Planning/Planning_Commission.htm

The Planning Commission *minutes* for the study sessions and public hearings can be found at the link below (see above for list of meeting dates):

http://www.ci.kirkland.wa.us/depart/Planning/Planning_Commission/Planning_Commission_Meetings_Online.htm

The Design Review Board *packets* for Parkplace can be found at the link below (meeting dates include: 5/14/07, 9/17/08, 12/3/07, 1/7/08, 2/4/08, and 3/11/08):

http://www.ci.kirkland.wa.us/depart/Planning/DRB_Meeting_Information.htm

The Design Review Board *minutes* can be found at the link below (see above for list of meeting dates):

http://www.ci.kirkland.wa.us/depart/Planning/DRB_Meeting_Information/Design_Review_Board_Meetings_Online.htm

Once the Comprehensive Plan and Zoning amendments for the Parkplace project were approved by the Council, the DRB began its design review using the newly adopted Master Plan and Design Guidelines for Parkplace which can be found at the following link:

<http://www.ci.kirkland.wa.us/Assets/Planning/Planning+PDFs/Parkplace+master+plan.pdf>

The DRB will have their 21st meeting on the Parkplace project on Monday, 7/26/2010.

III. PLANNING COMMISSION RECOMMENDATION

A memo which presented the Planning Commission's recommendation to the City Council in November, 2008 is included as **Attachment 1** to this memo. It includes a complete analysis of how the Planning Commission weighed the benefits and impacts of the Touchstone proposal including the proposed square footage.

The Planning Commission held numerous study sessions and three public hearings on the Touchstone PAR before they made their recommendation to the City Council. They also received hundreds of e-mails and letters along with petitions both for and against the proposal. The public comment is summarized in the attached Planning Commission memo.

IV. ENVIRONMENTAL REVIEW

The City issued a Determination of Significance for the Touchstone, Orni, and Altom PAR's on October 16, 2007. A Draft Environmental Impact Statement was issued on April 4, 2008 with a subsequent 45 day comment period running until May 19, 2008. A public open house was held on April 16, 2008 and a public hearing was held on April 24, 2008. The Final Environmental Impact Statement was issued on October 16, 2008.

V. LEGAL CHALLENGES

There is presently a petition before the Growth Management Hearings Board relating to the proposed Parkplace project. The petitioners, Davidson Serles and Continental Plaza, sought review of Ordinance Nos. 4170 and 4171 which amended the Comprehensive Plan and Zoning Code in association with the private amendment request for the Parkplace project. These are the ordinances that were passed by the Council in December 2008. The petitioners challenged the ordinances on a number of grounds: lack of compliance with the State Environmental Policy Act; inadequate service by transportation and other public facilities; lack of financing plans for capital improvements; intensity of development inconsistent with the County-wide Planning Policies for King County; and inadequate public facilities.

The Hearings Board issued its decision in October 2009. While it found in favor of the City and upheld the ordinances with respect to most of the petitioners' objections, the Hearings Board found that: 1) the Final Environmental Impact Statement failed to include reasonable alternatives to the Touchstone proposal, including offsite alternatives; and 2) the Comprehensive Plan requires amendments to its Capital Facilities and Transportation Elements to include all necessary capital improvements and a multi-year financing plan based on the ten-year transportation needs identified in the Comprehensive Plan. It is important to note that the Hearings Board did not invalidate the ordinances; rather it remanded them to the City for the purpose of correcting the issues identified by the Hearings Board. The Hearings Board initially gave the City six months to comply, however, later agreed to the City's request for additional time to allow the City Council to consider the proposed legislative amendments by October 5, 2010.

Although the Planning Commission recommendation will be related to the petition before the Growth Management Hearings Board and the Board's decision, there are also other legal actions pending which involve the Parkplace proposal. **Attachment 2** is a memo from the City Attorney that provides a description of these legal actions. **Attachment 3** shows the pending matters graphically.

Attachments:

1. Planning Commission Recommendation to City Council dated 11/20/08
2. Memo from City Attorney
3. Legal actions shown graphically



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225
www.ci.kirkland.wa.us

MEMORANDUM

To: City Council

From: Planning Commission
Byron Katsuyama, Chair

Date: November 20, 2008

Subject: **PLANNING COMMISSION RECOMMENDATION
TOUCHSTONE (PARKPLACE) PRIVATE AMENDMENT REQUEST
FILE ZON07-00016**

I. INTRODUCTION

The Planning Commission is pleased to submit this recommendation on the Touchstone (Parkplace) Private Amendment Request. Touchstone has submitted a private amendment request (PAR) to amend the Comprehensive Plan and Zoning for the 11.5 acre site of the existing Kirkland Parkplace Center. The request includes a building height increase from 3-5 stories to 4-8 stories as measured from the grade of 6th Street and Central Way and allowance for taller buildings to be located next to Central Way and 6th Street. It also includes a request for a building setback reduction from 20 feet to 0 feet on Central Way and 6th Street, and from 10 feet to 0 feet next to Peter Kirk Park. Flexibility in other regulations such as parking requirements and lot coverage is also requested.

II. RECOMMENDATION ON THE TOUCHSTONE (PARKPLACE) PRIVATE AMENDMENT REQUESTS

The Planning Commission developed potential amendments to the Comprehensive Plan and Zoning Code, as well as a master plan and design guidelines after considering the Touchstone PAR over the past several months at study sessions and public hearings. In shaping draft codes and policies, the Planning Commission has met for over a year to weigh the benefits and impacts of the Touchstone PAR. The Planning Commission's recommendation reflects that deliberation, with the concept of using height as a tradeoff for public benefits including open space, sustainability measures, retail requirements, and pedestrian improvements. The Planning Commission has included regulations and design guidelines to enhance the relationship and orientation to Peter Kirk Park, create wider setbacks from adjoining properties, establish building step backs at key locations, and ensure light and sun into the central public open space. In the end, the majority of the Planning Commissioners supported these amendments, but there were two dissenting opinions which are summarized later in this memo. The recommended amendments include the following:

Comprehensive Plan

The draft amendments to the Downtown Plan include the following key revisions:

- East Core Frame Land Use District: Addition of retail as a significant part of any Parkplace mixed-use development and clarification of where and when residential uses are allowed.
- Urban Design: reference to a new design review document titled “Master Plan and Design Guidelines for Parkplace”, and emphasis on public views near I 405 rather than at 6th Street and Central Way.
- Height and Design District 5: Divides the district into a Design District 5 (properties in the southern portion) and Design District 5A (the Parkplace site). Policies for Design District 5 stay largely the same with minor text edits and clarifications. Design District 5A policies establish:
 - Height range of 3-8 stories with maximum heights allowed as a tradeoff for public open space and creation of a retail destination.
 - Emphasis on vehicular and pedestrian circulation, landscaping, and open space.
 - Special attention to building design and size at downtown gateway, along Central Way, and adjoining Peter Kirk Park.
 - Aggressive sustainability measures including green building, transportation demand management measures, and low impact development techniques.

Various other minor text edits and corrections to the Downtown Plan are included. Note that additional changes to the text of the Moss Bay Neighborhood Plan are recommended for the Orni and Altom PAR's.

Zoning Map and Zoning Code

The draft amendments to the Zoning Map and Kirkland Zoning Code include the following key revisions:

- Creation of a new CBD 5A zone covering the Parkplace center site with regulations that establish the following:
 - The primary allowed use is mixed-use development with office, retail, and restaurant uses. The square footage of retail and restaurant uses must be equal to or exceed at least 25% of the office square footage.
 - Development must be pursuant to the Master Plan and Design Guidelines.
 - Maximum heights are established in four height sub-districts: the center/southeast portion of the zone allowing 115' buildings with a maximum of 8 stories, the Central Way frontage portion allowing 100' buildings with a maximum of 7 stories along Central Way, the Peter Kirk Park frontage portion allowing 60' buildings with a maximum of 4 stories, and a transitional area between the Park portion and the center portion allowing 100' buildings with a maximum of 7 stories.
 - The minimum setbacks are 55' from Peter Kirk Park, 20' from properties to the south and east, and 0' from Central Way and 6th Street.
 - Big box retail (over 70,000 square feet) and drive through uses are prohibited.
 - Rooftop appurtenances are allowed to exceed height limits by 16' with a maximum 25% coverage of rooftops.

- Parking for mixed-use development using a shared parking method is allowed. Parking reductions through parking management and a transportation management program may be considered.
- Amendments to Chapter 142 (Design Review) to incorporate the Master Plan and Design Guidelines under design review authority.

Master Plan and Design Guidelines

The amendments include creation of a master plan and design guidelines, adopted by the Kirkland Municipal Code Section 3.30 that would provide an additional level of detail for reviewing redevelopment plans for the Parkplace center site. The document is divided into three key elements:

- A Policy Overview section establishing the vision, procedures, and design intent.
- A Master Plan Standards section establishing basic site planning requirements for amenities, retail frontages, pedestrian space, access points, and the interior street grid.
- A Design Guidelines section establishing detailed design standards for the site and buildings. The Design Guidelines are divided into four sub districts (Gateway, Central Way, Park Interface, and Retail/Office Hub) to respond to the surrounding context and site conditions.

III. RATIONALE FOR PLANNING COMMISSION'S RECOMMENDATION

It's been nearly a year and a half since the City Council directed the Design Review Board (DRB) and Planning Commission to begin a review of the Parkplace private amendment request (PAR) in July, 2007. The DRB subsequently held a series of six study sessions reviewing a variety of conceptual development plans and made their final recommendation to the Planning Commission on March 25, 2008.

Building upon the DRB's recommendations, the Planning Commission began its own series of study sessions and public hearings to discuss the PAR and to hear input from citizens. The environmental review process was also going on at this time and the draft environmental impact statement was issued in April, 2008. This was followed by several more study sessions and a public hearing resulting in the development of the Commission's preferred alternative to be analyzed in the Final EIS (FEIS) which was issued on October 16, 2008. Throughout our review process there has been significant community interest that has resulted in hundreds of email comments, letters, petitions and public testimony both in support and in opposition to the proposed project.

The final result of this extended process is the Commission's recommendation on the Comprehensive Plan, Zoning, Master Plan and Design Guidelines, and Planned Action Ordinance for Parkplace that we are now transmitting for your consideration and review.

Interest-Based Approach to Project Mitigation Issues

Touchstone's PAR is designed to accommodate their proposal for a 1.8 million sq. ft. mixed-use project that includes 1.2 million sq. ft. of office space and an additional 300,000 sq. ft. of retail. Other uses include a hotel and athletic club.

Throughout our review, the Planning Commission has sought to work with the developer using an interest-based approach aimed at striking a balance between Touchstone's interests in maintaining the parameters of their mixed-use program and the community's interests in addressing issues regarding building size, bulk and mass, and its affect on community character as well as the anticipated traffic and parking issues.

While the commission is generally in favor of the mixed-use project, we have had serious concerns about the size and massing of the buildings on the site just as the DRB did during their deliberations and as they expressed to us in their final recommendations. We have, in fact, agreed with most of the DRB's recommendations on this issue and have crafted recommendations calling for increased building setbacks, upper-story step backs and reduced building heights and mass particularly along Central Way and along the park edge. Our proposal for a three-story height limit immediately adjacent to Central Way actually reflects limitations contained in the city's current regulations for the CBD5 zone.

We also agree with the DRB in their judgment that the best location for the tallest buildings will be along the southern and eastern boundaries of the site. The sloping contours of this site offer a unique opportunity to realize the comprehensive plan's vision for locating a greater intensity of office and retail development here while minimizing some of the inevitable visual impacts on surrounding development.

We have been generally pleased with Touchstone's willingness and ability to creatively address our questions and concerns and to find ways to incorporate these into the project's design, including calls for increased building setbacks, upper-story step backs, height restricted zones along Central and along the park edge, a network of public open spaces, green rooftop terraces, sustainable building measures, and other design-related requirements, the sum total of which we believe have achieved a viable balance between the interests of the developer and the surrounding community.

The Importance of Retail

The commission favors an office/retail mixed-use development for a number of reasons. First and foremost has been our conclusion that a strong retail component should be an essential element of any redevelopment of the Parkplace site.

Most of those who have spoken in favor of the mixed-use project have done so on the basis of their desire to see a vibrant destination retail development in our downtown. Many have also spoken in support of a retail mix that includes a significant proportion of neighborhood convenience retail that will give residents the option of shopping in Kirkland as opposed to having to travel to Redmond or Bellevue for that purpose. For many, this is a simple matter of convenience, but having such options also has implications for other important community goals including reduced traffic generation, increased sales tax revenues and carbon footprint reductions.

Although the voices of Kirkland's youth were not heard in proportion to their numbers during our review process, we were impressed with the testimony of one young lady who took the time to come to two of our public hearings to express her support for the mixed-use proposal and to point out the need for more safe and fun places for teens to go and meet their friends in our downtown. We have also heard similar opinions from parents and adults who have worked with teens in our community.

Another aspect that has been frequently mentioned is the desire to have more "third places" in Kirkland where our residents can go to gather, be entertained and socialize in a variety of indoor and outdoor settings. The multiple public open spaces, restaurants, theater, health club, upper story terraces and other amenities that are included in the mixed-use proposal will add considerably to these types of third place opportunities in our downtown.

Finally, the mixed-use proposal has received broad support among downtown business and property owners, including the Downtown Association and the Chamber of Commerce, and employees who have consistently given us the same message: 5,000 new office workers coupled with a strong retail presence at Parkplace will provide a much needed boost to all of our downtown businesses. An economic impact analysis provided by one of Touchstone's consultants projected a potential 20% increase in sales revenues for businesses located within the downtown area as a direct result of the mixed-use project.

No Requirement for Retail in Current CBD5 Zone

While many have raised questions about the desirability of amending the Comprehensive Plan and Zoning provisions affecting this site, we are convinced that few, if any, would oppose amending the current CBD5 zoning to require that any future development include a certain percentage of retail uses.

Would we be looking at the same or a similar project now if the current zoning code contained a requirement for a fixed percentage of retail in the CBD5 zone? There are those who argue that we would not. But, implicit in that argument is the assumption that any retail requirement that might have been contained in the zoning code would have made economic sense for potential developers. In spite of our best intentions there is no guarantee that this will always be the case.

In fact, any developer considering a mixed-use project on this site would still have to make their own independent determination as to the economic viability of their plans in light of the allowed building heights and any set retail requirements as well as many other aspects of our zoning regulations that can and do affect such bottom line business decisions.

Such zoning and economic considerations will always be factors that developers will have to evaluate as a part of their business decision making process. To be effective, our zoning regulations must be reasonably cognizant of such basic business and market factors.

Office Use

The office component of Touchstone's mixed-use proposal at 1.2 million sq. ft. will of course constitute the single largest use on the site representing an increase of approximately 1.1 million sq. ft. of office space in the area over existing conditions that will transform Parkplace into the key employment focal point of downtown Kirkland.

Intensive office development at this location is in keeping with the land use and economic development elements of the City's Comprehensive Plan that encourage more in-city employment. The policies relating to the East Core frame encourage redevelopment in large intense mixed-use development, particularly office. The CBD5 zone is highlighted as one of the best areas in which to develop a vital downtown employment base.

The mixed-use project is also in keeping with statewide GMA goals to reduce urban sprawl by directing more development into existing urban areas where public facilities and services exist or can be provided in an efficient manner and to encourage economic development through the promotion, retention and expansion of businesses.

Many of the business owners who wrote in or spoke to the Planning Commission emphasized their support for more office space to accommodate the needs of growing businesses in Kirkland. We heard numerous accounts of businesses that have been forced to leave Kirkland as they outgrew their existing space and were unable to find suitable alternatives within the city.

Parking

Touchstone's mixed-use project proposal includes a request for a significant reduction in the parking spaces that would normally be required for each of the uses on the site. A strict application of the parking standards contained in the city's zoning code would call for approximately 5,157 spaces. Touchstone is requesting that this number be reduced to approximately 3,650 spaces. The reduction is based upon a plan that will allow some of the parking on the site to be shared by the different uses whose peak parking demand characteristics vary by the time of day and/or by day of the week. In addition the project will implement transportation demand management and parking management programs to encourage use of alternative transportation modes and more efficient use of the available parking to ensure that the total parking supply on the site will be adequate to meet the demand.

The Planning Commission agrees with the Parking Advisory Board's conclusion that the parking demand estimate for the Parkplace mixed-use project appears to be reasonable as well as the analysis of the peaking characteristics of the various uses by time of day. We note that the use of parking demand rates in the Institute of Transportation Engineers (ITE) *Parking Generation* (3rd Edition) as the basis for the analysis provides a very conservative estimate since these rates are derived primarily from free-standing suburban sites without mixed-uses that have free parking. In addition, in response to a suggestion by the Parking Advisory Board, Touchstone added 150 more parking spaces to provide a buffer during peak commercial parking periods and to reduce the amount of circulation by vehicles looking for parking.

Traffic

Questions about the amount of traffic that will be generated by Touchstone's mixed-use project have consistently been at or near the top of nearly everyone's list of issues and concerns including both project opponents and supporters. With employment estimates for the project topping 5,000 new jobs and with Touchstone's plan to establish Parkplace as a regional retail destination, the Planning Commission certainly agrees that an understanding of the project's potential traffic impacts and proposed mitigation measures are critical elements in the review of this project. We know that the project is likely to add significantly to traffic volumes and congestion in the city. The key questions are: (1) how much new traffic will be generated by the project? (2) what mitigation measures are proposed to deal with it? and (3) how effective will the proposed mitigation measures be as measured by the city's level of service standards?

To answer these questions the Planning Commission has relied primarily upon the analysis provided by Jones & Stokes, the city's traffic consultants. The applicant's implementation of a transportation management plan will also have an effect on traffic levels to the extent they are successful with measures that encourage employees to use alternative modes of transportation.

The Institute of Transportation Engineers *Trip Generation Manual*, which is based upon observed data, was used to estimate vehicle trip rates. Various adjustments to the vehicle trip rates were made using mode split assumptions that were based upon local census data and data collected from actual Kirkland businesses subject to commute trip reduction (CTR) requirements. The Planning Commission asked many questions regarding the consultant's assumptions and methodology and has been generally satisfied with the quality of the analysis and the validity of consultant's conclusions.

A key table presented by the consultant and city staff, "Evaluation of 2014 TIA Mitigation Intersections – PM Peak Hour LOS," compares the projected levels of service, unmitigated and mitigated, associated with the "no action" and "proposed action" scenarios for the 10 intersections for which adverse LOS impacts were identified for 2014 which is the year projected for full project build out. These are the ten intersections where the project related traffic volumes were high enough to trigger mitigation requirements under the city's Traffic Impact Analysis standards.

Evaluation of 2014 TIA Mitigation Intersections – PM Peak Hour LOS

ID	Intersection	Traffic Control ¹	Existing		No Action				Proposed Action			
					Unmitigated		Mitigated		Unmitigated		Mitigated	
			LOS	Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS	Delay
Southwest Subarea												
4	Central Way/Parkplace Driveway	Signal	C	20.2	F	>200	A	10.0	F	>200	C	21.3
105	Central Way/6th Street	Signal	C	30.9	-	-	-	-	F	96.3	D	39
109	NE 85th Street/114th Avenue NE	Signal	F	87.7	F	132.1	F	93.0	F	227.9	F	110.4
110	6th Street/4th Avenue	Signal	B	12.7	-	-	-	-	E	75.1	C	22.0
112	Kirkland Way/6th Street	Signal	C	22.3	-	-	-	-	F	231.0	C	23.6
128	Central Way/5th Street	TWS	E	48.2	-	-	-	-	E	66.2	D	38.7
129	Central Way/4th Street	TWS	E	48.3	F	82.4	C	18.1	F	119.0	C	21.3
169	6th Street/7th Avenue	AWS	B	13.7	-	-	-	-	F	86.7	E	42.6
Northwest Subarea												
211	Market Street/15th Avenue	Signal	C	23.0	-	-	-	-	F	153.3	B	15.9
East Subarea												
402	NE 85th Street/124th Avenue NE	Signal	E	67	-	-	-	-	F	81.0	E	78.4

1. Traffic control for mitigated conditions. AWS = All Way Stop; TWS = Two Way Stop (LOS/Delay shown for worst movement at TWS)
 Source: Heffron Transportation, Inc. 2008

What is noteworthy here with respect to the proposed action is that while the “unmitigated” LOS for most of these intersections is at a level F or E, the “mitigated” LOS improves significantly with most of the intersections achieving an LOS of C or D. Only one intersection is projected to be at a “mitigated” LOS of F, and that intersection (NE 85th St. and 114th Ave. NE) happens to be the only intersection that is at an LOS of F under existing conditions as well. It is also instructive to compare the “mitigated” LOS for the proposed action with the LOS levels under existing conditions at these intersections. This comparison shows that three of the intersections are actually projected to achieve a “mitigated” LOS that is a grade higher than their LOS under existing conditions. Four of the intersections have the same LOS for the existing and “mitigated” conditions, and three of them are reduced by one LOS grade level each from existing to “mitigated” conditions.

As the DEIS points out, while the effects of additional vehicles on traffic congestion can be mitigated to varying degrees the actual increase in traffic volumes generated by the project may be considered a significant unavoidable adverse impact. Significant adverse impacts can also result if one or more mitigation measures are not implemented.

A review of the data in the above table suggests that while there will certainly be some significant unavoidable adverse traffic impacts associated with this project, the projected change in LOS for

the 10 intersections that triggered impact mitigation requirements will likely be within an acceptable range as compared to current LOS levels.

Touchstone's Alternative Proposal

In addition to their mixed-use PAR proposal, Touchstone has submitted a design review application for an alternative development plan that does not require a Comprehensive Plan amendment. The alternative proposal would include 1.2 million square feet of office with limited retail. Touchstone has indicated a preference for the larger mixed-use PAR proposal, but has consistently maintained that it is only feasible if all of the requested additional building heights and related square footage are approved. The alternative office development would only be built if the PAR is not approved. Touchstone offered its most detailed explanation for the program/financial requirements that drive the 5-8 mixed-use proposal in its "[Planning Commission Response Packet](#)" dated June 20, 2008, beginning on page 3.

Throughout this process the Planning Commission has been acutely aware of the large size of the project and the likely significant impacts it will have on the downtown and surrounding areas of the city. At the same time, we are in general agreement that the mixed-use project that includes a strong retail component will, on balance, provide greater benefits to the city than the applicant's alternative proposal to build what will essentially be an office park on the same site. Both proposals would result in developments that are significantly larger than the current Parkplace development.

It is worth noting that while we have heard many people express their opposition to the applicant's project as proposed, most of those same individuals have also stated that they do support the concept of an office/retail mixed-use approach on the site, albeit at a significantly reduced scale. In contrast, few individuals have spoken in favor of the alternative office park proposal.

Project Benefits vs. Impacts/Costs

The following list summarizes the Planning Commission's overall evaluation of the proposed project's anticipated community benefits relative to the anticipated impacts and costs.

Benefits:

- Leverage additional building height into greater public benefits on the site including: public open space, green building design and less surface parking.
- Enhanced retail activity on the site and resulting additional sales and property tax revenues will aid city's fiscal needs. Retail sales in particular are an important revenue component for all Washington cities that have few alternative revenue sources.
- Enhanced shopping opportunities and convenience for residents (reduced need for trips to other regional shopping centers).
- Enhanced employment base for economic development.

- Enhanced office and retail activity will provide a much needed economic boost to nearby downtown businesses.
- More concentrated employment and retail activity will contribute to regional anti-sprawl goals (GMA).
- Increased employment opportunities for residents that are located close in (GMA).
- Make the best use of the commercial zones that we have to avoid commercial creep.
- Development of a new north/ south street that breaks up the existing super block between 3rd St and 6th St.
- Create greater community building opportunities and places where people can meet and interact (more third places).
- Greater hotel and meeting space. We have a deficit of meeting space.
- Increased ridership will lead to improved Metro service for all Kirkland riders.
- An additional venue for free public events, like summer concerts
- Publicly accessible roof-top gardens – the 1st in the city.
- Improved streetscape on Central Way, the primary access route into downtown Kirkland.
- Visually dramatic building as gateway to downtown Kirkland.
- Retail and residential do not make a successful community. They are two legs of stool, but without the third leg – employment – Kirkland is a bedroom community which means more commuting traffic, more pollution, and less shared experiences in our town.
- Avoid the all office business park alternative. 1.2 million square feet of office is possible today, with no retail and no public benefits. Peak hour traffic impacts are (nearly) the same, view impacts are (nearly) the same.

Impacts/Costs:

- Bigger/taller buildings will alter character of CBD5 with a significantly more intensive development pattern which many project opponents feel will have an adverse affect on community character.
- Higher intensity development on this site will result in some declines in LOS at nearby intersections compared to the “no action” and “office only” alternatives.
- Increased shading of buildings to the north and east will occur with both the “office only” and FEIS reviewed alternatives with slightly more shading with the FEIS reviewed alternative.

- View blockage of properties located to the south and east will be significant.
- There is some risk that the project will result in some parking spillover into surrounding neighborhoods. There are safeguards included in the planned action ordinance calling for corrective action on the part of the developer but this will require some monitoring and enforcement action by the city.

IV. CURRENT COMPREHENSIVE PLAN AND ZONING

The subject property is located in the Moss Bay Neighborhood area of the Comprehensive Plan. Policies for development of the area can be found in the Downtown Plan section. The Downtown Plan designates the area as East Core Frame for land use purposes and encourages development in this area to represent a wide range of uses in several large, mixed-use projects. The Downtown Plan notes that this area represents the best opportunity for a vital employment base and should continue to emphasize office redevelopment over residential. The Downtown Plan also designates the area as Design District 5 and discusses maximum building heights of three to five stories, preservation of a sense of openness, and lower height toward the perimeter stepping up to the center of the district. The Plan encourages building orientation to Peter Kirk Park, emphasizes pedestrian and vehicular circulation, and the significance of the gateway at the northeast corner.

The subject property is zoned CBD 5 which allows buildings three to five stories in height and allows a variety of uses including retail, office, hotel, and limited residential. There are currently no requirements in the CBD 5 zone for retail uses.

V. PRIVATE AMENDMENT REQUEST CRITERIA

Criteria found in the Zoning Code must be considered when reviewing a private amendment request.

A. Factors for Consideration: KCZ 140.25 establishes that the City must take into consideration, but is not limited to, certain factors when considering a Comprehensive Plan Amendment. Below is a list of the criteria followed by staff analysis.

1. *The effect upon the physical, natural, economic, and/or social environment.*

The effects of the proposed amendment have been reviewed in detail by the Draft and Final Environmental Impact Statement (EIS) and have been considered in the drafting of the proposed amendment.

2. *The compatibility with and impact on adjacent land uses and surrounding neighborhoods.*

The proposed amendments have been reviewed in the EIS for compatibility with and impact on adjacent uses and surrounding neighborhoods and mitigations have been identified where incompatibilities or significant impacts were identified.

3. *The adequacy of and impact on public facilities and services, including utilities, roads, public transportation, parks, recreation and schools.*

Existing public facilities and services have been evaluated in the EIS and with the mitigating measures identified in the Planned Action Ordinance the public facilities and services are adequate to accommodate the proposed amendment.

4. *The quantity and location of land planned for the proposed land use type and density.*

The proposal is located in an area designated in the Comprehensive Plan as an Activity Area. The Activity Area is planned for high density uses with an emphasis on commercial uses surrounded by high density.

5. *The effect upon other aspects of the Comprehensive Plan.*

The proposed amendment has been reviewed in the EIS for consistency with other aspects of the Comprehensive Plan.

B. Criteria for Amending the Comprehensive Plan: KZC 140.30 establishes the criteria for evaluating a Comprehensive Plan Amendment. These criteria and the relationship of the proposal to them are as follows:

1. *The amendments must be consistent with the Growth Management Act.*

The amendment is consistent with the Growth Management Act, including the following planning goals (RCW 36.70A.020):

- Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. *Locating an employment base and a concentration of retail in Kirkland's Central Business District is consistent with this planning goal. The EIS evaluates adequacy of public services and facilities to serve the potential development and concludes that they are adequate.*
- Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development. *The Parkplace site presents an urban infill opportunity that can concentrate jobs and retail in an appropriate urban environment within a designated urban growth area.*
- Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans. *The Parkplace site is within walking and distance of the existing and soon to be improved Downtown Transit Center and an existing concentration of downtown shops and services. The proposal includes transportation demand management measures to reduce SOV use as addressed in the EIS.*
- Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for

unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities. *The proposal presents a substantial economic development opportunity for the City of Kirkland in an area that has public services and public facilities to accommodate that development (see EIS).*

- Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water. *The draft Comprehensive Plan language encourages aggressive sustainability measures including green building, low impact development, deconstruction, and transportation demand management.*
- Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts. *To date, the proposal has undergone 16 months of intensive public process in community meetings, open houses, DRB review, City Council meetings, Planning Commission public meetings and public hearings.*
- Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards. *The proposal has been reviewed through the EIS for adequacy of facilities and services to support the development. With identified mitigations, the development would meet Kirkland's levels of service.*

2. *The amendments must be consistent with the Countywide Planning Policies.*

The amendment is consistent with the Countywide Planning Policies. Kirkland is within a designated urban growth area. The Policies state that land within Urban Growth Areas shall be characterized by urban development (LU-26). Downtown Kirkland is designated as an Activity Area in Kirkland's Comprehensive Plan consistent with the Countywide Planning Policies (FW-17). Policies encourage infill development that enhance community character and include a mix of uses (LU-69) and support open space and neighborhood commercial land uses within office rather than single purpose office parks (LU-74). Policies encourage urban areas characterized by superior urban design as defined locally (FW-25). Economic development policies encourage the retention and expansion of the economic base and a business climate that is supportive of business formation, expansion, and retention (ED-6).

3. *The amendments must not be in conflict with other goals, policies, and provisions of the Kirkland Comprehensive Plan.*

The amendment has been reviewed for consistency with the Kirkland Comprehensive Plan. The amendment is generally consistent with Downtown Plan policies encouraging high density employment and commercial use in CBD 5. With the mitigation measures identified in the EIS and Planned Action Ordinance the amendments would not be in conflict with the Comprehensive Plan.

4. *The amendments will result in long-term benefits to the community as a whole, and is in the best interest of the community.*

If the request is approved, the amendments will provide the long-term community benefit of establishing a significant employment base in downtown Kirkland and an opportunity to maintain the community-oriented aspects of the current Parkplace site as a local retail destination enhanced with improved public gathering spaces. Office development in this area meets the objective of the Downtown Plan by providing a significant increase in office square footage adjacent to the core area as a way to enhance the core area for retail and service businesses (page XD.D-4). The mixed use approach to the amendments also allows mutually supportive land uses on the same site and opportunities for shared parking. As noted in the Economic Development Chapter of the Comprehensive Plan,

“Mixed use development, when combined with multi-story structures, promotes a more compact and sustainable land use pattern and encourages walking and transit use to reduce dependence on automobiles.” (page VIII-10)

The amendments do involve additional mass and scale of buildings to accommodate the proposed density and mix of uses and the issue of scale has been a consistent community interest in the public process to date. The Community Character and Economic Development Chapters of the Comprehensive Plan acknowledge the need to balance growth and change with protection of community character. This balancing of community interests to create long-term benefits to the community as a whole is reflected in the proposed amendments, which allow taller buildings in conjunction with community amenities, sustainability measures, and design standards.

Additional assessment of community interests is located in the next section - C of this report.

- C. Criteria for Rezone:** KZC 130.20 establishes the criteria by which a legislative rezone must be evaluated. These criteria and the relationship of the proposal to them are as follows:

1. *Conditions have substantially changed since the property was given its present zoning or the proposal implements the policies of the Comprehensive Plan; and*

The current CBD 5 zoning and the Comprehensive Plan policy basis were established in the late 1980's and early 1990's. Conditions have changed substantially since the zoning was established, with adoption of the Growth Management Act, significant development in the CBD, and a greater City and regional focus on urban infill development and transit-oriented development. In addition, the rezone would implement the proposed policies of the Comprehensive Plan currently under consideration.

2. *The proposal bears a substantial relationship to the public health, safety, or welfare; and*

Much of the public comment around the proposal has focused on areas of character, traffic, retail importance, parking, views, setbacks, job growth, and open space. A review of those public welfare issues follows:

- **Character:** The character of the area will change with redevelopment of the Parkplace center under the existing five story zoning or the proposed eight story zoning. The draft codes, policies, and guidelines do include measures that seek to balance this additional development intensity with new requirements to protect Kirkland's unique character.
- **Traffic:** Traffic impacts have been identified and evaluated against City standards in the EIS and appropriate mitigating measures incorporated.
- **Retail:** Many comments have identified the importance of preserving the retail components of the existing Parkplace center; however, retail is not a required component of redevelopment under the existing zoning for the area. The proposed rezone would require a substantial retail component in any mixed use development. In addition, the Master Plan establishes guidance for community serving retail such as grocery and theater uses within a redevelopment.
- **Parking:** Parking for the preferred alternative has been evaluated thoroughly through the EIS. The proposed zoning text includes base parking requirements but allows shared use to make more efficient use of the parking. Working in tandem with proposed transportation demand management measure to reduce vehicle trip, the zoning also allows parking reductions to be considered based on a parking and transportation management programs.
- **Views:** Views have been considered and evaluated in the EIS and during the policy discussions with the Planning Commission. It should be noted that Kirkland's Comprehensive Plan specifically notes that the City does not protect private views (page IV-10) but does protect public scenic views

and view corridors. Existing and potential views from 6th Street and Central Way across the Parkplace site were evaluated and determined to be negligible currently and likely eliminated with any redevelopment of the area. The more significant view of the water and mountains as one drives from I 405 down 85th Street were also evaluated and found to be largely unaffected by the proposed rezone.

- **Setbacks:** While the initial PAR requested elimination of setback requirements, the proposed zoning would reduce setback to 0' on Central Way and 6th Street but would increase setbacks along the Park from 0' to 55' and increases setbacks from adjoining properties to the south and east from 0' to 20'.
- **Jobs:** Significant job growth may occur under any redevelopment of the area. Touchstone has submitted an alternative proposal for design review that would include a similar square footage of office use but would not include the mixed use components such as retail that are envisioned under the rezone.
- **Open space:** The policy basis for the rezone and additional height as established in the draft Comprehensive Plan amendments is to provide an incentive to the create a network of public open space around which is organized a dynamic retail destination. The proposed rezone and supporting documents would create such an incentive and establish clear requirement.

Based on the mitigations incorporated into the Planned Action Ordinance, the restrictions and requirements incorporated into the CBD 5A zone, and the development requirements included in the Master Plan and Design Guidelines, the proposed rezone does bear a substantial relationship to the public welfare.

3. *The proposal is in the best interest of the community of Kirkland.*

There is clearly a diversity of community opinion around whether the proposed rezone is in the best interests of the community. The proposed rezone does provide a significant opportunity for the community to create a strong employment base in the downtown activity area and derive the economic development benefits that accompany that base. The proposed rezone provides an opportunity to rewrite the rules for redevelopment of the area to require the retail and open space amenities that the community has identified as valuable. As noted above, the proposed rezone has sought to identify the interests of the community and address them in a substantive way.

VI. TWO DISSENTING OPTIONS ON THE PLANNING COMMISSION

One Planning Commissioner felt that the permitted building height for the southwest corner of the site was too great and that a building of that size would not integrate well with the surrounding neighborhood and the park. The Commissioner felt that maximum height for this area of the site should not exceed 5 stories in order to avoid walling off adjacent development from the rest of the downtown and the park. He stated that he generally liked the project including the retail, orientation to the park, and the underground parking, but could not support the Planning Commission recommendation because of the 7 story height allowance for the southern portion of the site.

The other Planning Commissioner had problems with the design in general and felt that it did not fit the character of Kirkland. This Commissioner felt that 5 stories with retail was the appropriate design for the site.

VII. PUBLIC COMMENT

The Planning Commission has held three public hearings on the Touchstone PAR. The final public hearing prior to the Planning Commission making their recommendation occurred on October 23, 2008. Over the course of the year, they have also received hundreds of e-mails and letters along with petitions both for and against the proposal. Much of this correspondence has already been forwarded to the City Council. A full record is included in files in the Council Study Room for easy reference.

Those supporting the Touchstone private amendment request most often cited:

- Importance of retail in the project
- Growth in number of jobs
- Public open space
- GMA goals

Those against the project cited:

- Overall project size/height
- Traffic
- Parking
- Character of Kirkland
- Impacts of height, scale and building mass on properties to the east

**CITY OF KIRKLAND**

City Attorney's Office

123 Fifth Avenue, Kirkland, WA 98033 425.587.3030

www.ci.kirkland.wa.us

MEMORANDUM

To: Angela Ruggeri, Senior Planner

From: Robin S. Jenkinson, City Attorney

Date: July 14, 2010

Subject: Update on Parkplace Litigation

This memorandum is written in response to your recent request for an update on the Parkplace litigation pending before the Growth Management Hearings Board, King County Superior Court, and Washington Court of Appeals.

Central Puget Sound Growth Management Hearings Board

Davidson Serles v. City of Kirkland, et al., Central Puget Sound Growth Management Hearings Board (CPSGMHB) Consolidated Case No. 09-3-0007c

This is the petition before the Central Puget Sound Growth Management Hearings Board. The petitioners, Davidson Serles and Continental Plaza, sought review of Ordinance Nos. 4170 and 4171 which amended the Comprehensive Plan and Zoning Code in association with the private amendment request for the Parkplace project. The ordinances were passed in December 2008. The petitioners challenged the ordinances on a number of grounds: lack of compliance with the State Environmental Policy Act; inadequate service by transportation and other public facilities; lack of financing plans for capital improvements; intensity of development inconsistent with the County-wide Planning Policies for King County; and inadequate public facilities. The Hearings Board issued its decision in October 2009. While it upheld the ordinances with respect to a number of the petitioners' objections, the Hearings Board found that: 1) the Final Environmental Impact Statement failed to include reasonable alternatives to the Touchstone proposal, including offsite alternatives; 2) the Comprehensive Plan requires amendments to its Capital Facilities and Transportation Elements to include all necessary capital improvements and a multi-year financing plan based on the ten-year transportation needs identified in the Comprehensive Plan. The Hearings Board did not invalidate the ordinances; rather, it remanded them to the City for the purpose of correcting the issues identified by the Hearings Board. The Hearings Board established April 5, 2010, as the deadline for the City to take appropriate legislative action to comply with the Hearings Board's Order.

In May 2010, the City requested an additional six months for compliance. The Hearings Board granted the City's request and gave the City until October 2010 to achieve compliance.

Ordinances No. 4170 and 4171 remain valid during the remand period.

King County Superior Court

City of Kirkland v. CPSGMHB/Davidson Serles, King County Superior Court No. 09-2-43055-2 SEA

This is a petition for review filed by the City challenging the portion of the Hearings Board's decision which found the City's environmental review for Ordinance Nos. 4170 and 4171 was insufficient for failure to assess reasonable alternatives to the Touchstone Parkplace proposal. In March 2010, the Superior Court Judge granted a motion brought by Touchstone and the City requesting that the petition for review be stayed (suspended) while the City complies with the Hearings Board decision.

Washington State Court of Appeals

There are two appeals pending before the Court of Appeals which have been linked for consideration by the same panel of judges.

Davidson Serles v. City of Kirkland (Appeal No. 64072-1) This is the appeal from the Superior Court matter described below:

King County Superior Court No. 09-2-02204-6 SEA

This was an action for declaratory and injunctive relief. The action challenged the adequacy of the Environmental Impact Statement (EIS) prepared for the Planned Action Ordinance, Master Plan, Comprehensive Plan amendments, and Zoning Code related to the Touchstone and Altom private amendment requests. The action alleged that the EIS failed to identify, consider, and evaluate a full range of alternatives for the proposed action.

The plaintiffs sought to have the Court declare that the EIS was inadequate and to have the City enjoined from taking action to implement the ordinances referenced above. Touchstone filed a motion seeking the dismissal of the Superior Court action in which the City joined. In June 2009, the Superior Court Judge granted summary judgment and dismissed the case.

Davidson Serles v. CPSGMHB/City of Kirkland, (Appeal No. 6451-2-1) Davidson Serles and Continental Plaza requested the Court of Appeals accept discretionary review of the decision of the Hearings Board rather than requiring them to complete the administrative appeal in the Superior Court. The Commissioner for the Court of Appeals accepted review and linked the pending appeals.

King County Superior Court No. 09-2-43060-8 SEA

This is a petition for review filed by Davidson Serles and Continental Plaza challenging the decision of the Hearings Board. The petitioners contend the Hearings Board should have declared the ordinances invalid for lack of an adequate EIS.

The attached chart shows the pending matters graphically.

