



CITY OF KIRKLAND

Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.828.1257
www.ci.kirkland.wa.us

MEMORANDUM

To: Sue A. Tanner, City of Kirkland Hearing Examiner

From: Eric Shields, AICP, Planning Director
Angela Ruggeri, AICP, Senior Planner

Date: March 17, 2011

Subject: **APPEAL OF THE DESIGN REVIEW BOARD DECISION ON THE PARKPLACE MIXED USE PROJECT AT 457 CENTRAL WAY, FILE NO. DRC09-00002, CASE NO. APL11-00001**

RECOMMENDATION

Conduct a hearing for the appeal of the Design Review Board (DRB) decision on the Parkplace Mixed Use project (File No. DRC09-00002) filed by Davidson, Serles and Associates and TR Continental Plaza Corporation (see Attachments 1 and 2). Consider all information and material within the scope of the appeal submitted by the Appellants; adopt findings and conclusions; and either:

- Affirm the DRB decision (see Attachments 3 and 4); or
- Reverse the DRB decision; or
- Modify the DRB decision.

Staff recommends that the Hearing Examiner affirm the decision of the DRB.

RULES FOR HEARING EXAMINER CONSIDERATION

Standard of Review - Kirkland Zoning Code (KZC) 142.40.11.a

Unless substantial relevant information is presented which was not considered by the DRB, the DRB decision shall be accorded substantial weight. The Hearing Examiner may reverse or modify the DRB decision if, after considering all of the evidence in light of the design regulations, design guidelines, and Comprehensive Plan, the Hearing Examiner determines that a mistake has been made.

Scope of Review - KZC 142.40.7

The Hearing Examiner shall only consider the specific elements of the DRB decision that are disputed in the letter of appeal and may only consider comments, testimony, and arguments on these specific elements.

Participation In and Conduct of Appeal - KZC 142.40.6

The following people may participate in the appeal: the Applicant (Touchstone Corporation) or its representative; the Appellants (Davidson Serles & Associates and TR Continental Plaza Corporation) or their representative¹; and the Chair of the DRB (James Truhan) or his representative. Representatives of the Planning and Community Development Department may present this staff report and answer questions concerning the report and record for the Hearing Examiner. The Hearing Examiner directed the parties to file and serve a list of their final witnesses by March 4, 2011.

Written Testimony or Comments

In addition to memoranda, oral testimony, and arguments submitted by the parties that are within the scope of the appeal, the Hearing Examiner may consider the DRB decision, written comments received by the DRB, the letter of appeal, the staff report and presentation, and the DRB Chair's presentation.

Continuation of Hearing - KZC 142.40.10

The Hearing Examiner may continue the hearing. If the hearing is to be continued, the Hearing Examiner should announce the date, time and place of the continued hearing.

BACKGROUND OF DEVELOPMENT PROPOSAL AND DESIGN REVIEW PROCESS

Touchstone's proposal to the DRB was for the review of their 1.8 million square foot mixed-use project that includes 1.2 million square feet of office space and an additional 300,000 square feet of retail. Other uses include a hotel and athletic club.

The Master Plan which was approved by the City Council in December 2008, established the building and open space locations, access points and grid for the internal road system (see Attachment 6). The Zoning, which was also approved by the City Council in December 2008, specifies building heights, setbacks and other development parameters (see Attachments 7, 8, 9 and 10). The Design Review Board worked with the applicant on the design of the buildings and open spaces. The approved Design Guidelines for Parkplace were used by the DRB to guide this process (see Attachment 6).

Design Review Board Meetings

The DRB held one Conceptual Design Conference on February 2, 2009 (File CDC09-00001) and 27 Design Response Conferences from April 6, 2009 to December 13, 2010 (File DRC09-00002). Staff reports, applicant submittals, minutes and audio recordings from these meetings are available at http://www.ci.kirkland.wa.us/depart/Plan ning/DRB_Meeting_Information.htm

¹ At the prehearing conference, the Hearing Examiner ruled that because one appeal had been filed, and one appeal fee paid, the Appellants needed to identify one of the two attorneys signing the appeal as their representative. Mr. Eustis identified himself as Appellants' representative.

and in the above files. Public comment letters and e-mails on the project have been included as Attachment 11 to this report. The Chair of the DRB signed the final decision on December 13, 2010 (see Attachment 3). The Notice of Decision was issued on December 15, 2010 (see Attachment 5).

The architectural drawings are contained in Attachment 4 (Kirkland Parkplace DRB Final Submittal 13 December 2010) and are part of the final decision of the DRB. Drawings from all the Design Response Conferences are available at the above link.

SCOPE OF THE APPEAL

On behalf of Davidson Serles & Associates and TR Continental Plaza, Jeffrey M. Eustis of Aramburu and Eustis, LLP has filed an appeal of the DRB's Design Response Conference (DRC) decision for the Parkplace mixed use project contained in File No. DRC09-00002. In the appeal letter, the Appellants raise four issues. (see Attachment 1)

CLARIFICATION OF ISSUES

The Prehearing Order directed Appellants to file and serve clarification of the first three issues which articulates in what specific respect each appealed element of the DRB decision is inconsistent with the Design Guideline(s) cited in each of the appeal issues. The clarification which was provided by the Appellants (see Attachment 2) is included below.

SUMMARY OF ISSUES BROUGHT FORTH BY APPELLANT AND STAFF RESPONSE

The Appellants appealed the DRB's approval of the Parkplace mixed use project based on the following elements of the DRB decision listed below and contained in Attachments 1 and 2.

1. Part III, C, 1, of the DRB decision, which purports to find the building plans and designs to be consistent with Design Guideline 2b, relating to Massing/Articulation for all districts, is in error.

Clarification by Appellants: Design Guideline 2b, requires that "All building faces should be responsive to the context of the surrounding environment and neighboring buildings."

In text copied almost verbatim from the summary provided by Touchstone's architects, the Design Review Board decision at 6 purports to find compliance with this Design Guideline on grounds that the Kirkland Parkplace design incorporates masonry elements, it utilizes high quality metal and composite panels, building height and scale provide contextual clues, the buildings provide step backs, masonry elements reduce the apparent height and mass, Building E provides major modulation and Building F provides transitional massing between Peter Kirk Park and Building D.

This finding is in error because the approved design is grossly out of scale with the surrounding buildings and environment, in mass, materials and texture. The step backs do not reduce the apparent height and mass of the buildings, Building E does not provide major modulation, Building F does not provide a transition between Peter Kirk Park and the site as a whole, the building faces violate Design Guidelines 2b and 2c, by presenting their "backsides" to the buildings to the east,

and as a result the building faces are not responsive to the surrounding environment and neighboring buildings.

Staff Response: The DRB carefully reviewed and approved both the wording of the text included in the DRB Final Decision (see Attachment 3) and the contents of the DRB Final Submittal packet dated December 13, 2010, which was produced by the Applicant (see Attachment 4). The applicant proposed language that was intended to reflect the consensus of the DRB members at earlier meetings. The DRB then reviewed the language and directed revisions where necessary to represent its findings. The DRB Final Submittal packet is an attachment to the DRB decision and it reflects the findings and conclusions of the DRB. It should be noted that this DRB Final Submittal packet represents the culmination of 28 DRB meetings at which the DRB reviewed, critiqued and provided direction on multiple design iterations for each of the many components of this project.

The Appellants have summarized the explanation in Part III, C, 1 of the DRB decision, which is also shown on Page M6 of the matrix included at the beginning of the DRB Final Submittal packet. It is necessary to see the complete wording to better understand the DRB's decision making process relating to Design Guideline 2b, which requires that "All building faces should be responsive to the context of the surrounding environment and neighboring buildings." There are also references in the matrix to drawings in the packet which visually show that the approved design is responsive to the context of the surrounding environment and neighboring buildings.

The DRB found that Building E does provide major modulation as is shown in the drawings on pages E1, E2, and in the Summary of Building E provided on pages E9 through E16 of the Final Submittal packet.

Building F provides a transitional smaller scale building mass between the other larger buildings on the Parkplace site and Peter Kirk Park as is shown on page F4 and in the cover drawing of the Final Submittal packet. The roof of Building F will be a public roof terrace providing a visual and physical link to Peter Kirk Park to the west and to the site as a whole. The red stairway leading to this roof terrace also provides an important visual and physical link to these elements.

The Appellants have also cited Design Guideline 2c in their clarification for the Hearing Examiner although that design guideline was not part of their original appeal document. Design Guideline 2c states that "All sides of the building shall be designed with care, i.e. there should be no "backside" of a building." The DRB carefully studied all sides of Buildings E and F during the review process. The development of the elevations of Building E can be seen on pages E 9 through E 16 of the Final Submittal packet. In particular see the drawings on page E15 which show what Building E looks like from various locations.

Although the east elevation of Building F is difficult to see from outside the Parkplace site, the DRB did study all elevations to be sure there was not a "backside" to the building. In the case of this building which is lower than others on the site, even the roof provides a pleasant view for adjoining buildings (see site plan on page Z4 of Final Submittal packet).

2. Part III, C, 3, purporting to find the building plans and designs for Building E to be consistent with Building Design Guideline #4, is in error.

Clarification by Appellants: Building Design Guideline #4 requires:

Buildings located in the southern most portion of the site should provide generous and substantial modulation in response to their proximity to neighboring buildings, including:

- creating varied edges and visual interest on long and tall buildings
- employing modulation to visually break up long facades
- providing patterns of windows, bays and/or balconies that emphasize changes in modulation.

The DRB decision at 6-7 purports to find the approved design in compliance with this guideline in part through the following passage:

Design of Building E was revised during the DRB review to provide additional step backs from the building base to the main (north-south) block of the building to further moderate massing from adjacent buildings to the south and southeast. The DRB concluded that these massing changes provide generous and substantial modulation in response to neighboring buildings.

This finding is in error because Building E, the southerly most building, does not provide generous and substantial modulation, neither in an absolute sense nor relative to modulation generally provided for buildings in the CBD and surrounding areas. The modulation provided is insufficient to create visual interest or break up long facades and is not emphasized or reinforced in the manner required.

Staff Response: Pages E11 through E16 of the Final Submittal packet show the development of the design of Building E with specific concern for Design Guideline #4. In particular, the drawings on pages E9 and E10 show that the design of Building E has gone beyond the requirements for setbacks and step backs. These setbacks and step backs provide additional modulation and space between buildings and meet the Design Guideline #4 requirement for generous and substantial modulation.

3. Parts I, III and the Decision as a whole, to the extent that the Decision purports to find compliance with Design Guidelines 2a and h, relating to the massing, articulation and modulation of buildings and facades, is in error.

Clarification by Appellants: To this issue, appellants include non-compliance with Guideline 2c.

Design Guidelines 2a, c and h provide:

2. Massing/Articulation

Intent: To create a variety of form and massing through articulation and use of materials to maintain a pedestrian scale.

- a. In general, break down the scale and massing of buildings into smaller and varied volumes.

- b. All sides of the building shall be designed with care, i.e., there should be no “backside” of a building.

- h. Building modulation should be employed to break up long facades and create a visual interest unique to each building in the project. The type of modulation should be determined by the overall design concept of each building, using dimensions from window sizes, column spacing, rain screen, paneling, etc to determine a distinct design solution.

Apart from simply incorporating Touchstone’s own design proposal, the DRB did not enter separate findings and conclusions regarding the compliance of Touchstone’s proposed design with the above guidelines. To the extent that Parts I and III purport to find compliance, they are in error. For the most part, the approved designs do not break down the scale and massing of buildings into smaller and varied volumes, the approved designs do turn the “backsides” of buildings to the surrounding buildings, particularly to those located to the east, and long facades are not broken up by modulation sufficient to reduce their height, bulk and mass to create visual interest.

Staff Response: As stated in the response to the first appeal issue, the DRB reviewed and approved both the wording in the DRB Final Decision and the contents of the DRB Final Submittal packet produced by the Applicant. These two documents are both part of the DRB final decision and so should be and are consistent with each other.

Guideline 2a relates to breaking down the scale and massing of buildings into smaller and varied volumes. This has been done throughout the site as can be most easily seen on pages 4 and 5 of the DRB Final Submittal packet which includes photos of the detailed project model provided by the Applicant.

The Appellants have again added non-compliance with Design Guideline 2c to their clarification for the Hearing Examiner although this was not part of their original appeal document. This Design Guideline states that “All sides of the building shall be designed with care, i.e. there should be no “backside”. As explained in the staff response to issue #1 above, the DRB carefully studied all sides of each building during their review process with this guideline in mind. Elevations of all sides of all buildings are available in the DRB Final Submittal packet.

Design Guideline 2h relates to building modulation and how it is employed to break up long facades and create a visual interest unique to each building in the project. It states that the type of modulation should be determined by the overall design concept of each building, using dimensions from window sizes, column spacing, rain screen, and paneling to determine a distinct design solution. The Applicant and the DRB spent considerable time discussing the design concept for each of the individual buildings and for the site as a whole. During these discussions, building modulation, including details such as window size, and column spacing were all considered. Detailed plans, elevations, and drawings of each building are included in the DRB Final Submittal

packet. Material and color information is also included for each building along with more general details which are found throughout the site (see the retail canopy and gasket design information on pages G3 and G4).

4. IV, Lapse of Approval, to the extent that this section purports to amend the provision at KZC 142.55 imposing a three-year period for substantial completion of construction of the buildings covered by the DRB approval. This portion of the decision is appealed under KZC 142.55(3) on grounds that the three-year substantial completion period under the provisions of KZC 142.55(1) is established by ordinance and is not subject to DRB modification.

Staff Response: the Hearing Examiner has ruled that KZC 142.55.3 applies exclusively to extension applications sought by the applicant, and issued by the "Planning Official," under KZC 142.55.2, and that the Appellants' appeal issue will be determined in accordance with the process used for the other 3 elements of the appeal. The Hearing Examiner also directed the parties to file and serve separate legal memoranda on this appeal issue and that has been done.

ATTACHMENTS

1. Appeal letter from Davidson Serles & Associates and TR Continental Plaza Corp dated December 23, 2010
2. Appellants' Clarification of Issues and Preliminary Lists of Witnesses and Exhibits
3. Design Review Board decision dated December 13, 2010
4. Kirkland Parkplace - DRB Final Submittal - 13 December 2010
5. Notice of Final Decision
6. Kirkland Parkplace Mixed Use Development Master Plan and Design Guidelines
7. KZC – CBD 5A Use Zone Chart
8. KZC – Plate 5: CBD 5A Required Yards
9. KZC – Plate 6: CBD 5A Maximum Building Heights
10. KZC – Plate 7: CBD 5A Maximum Building Heights and Stories Measurement Points
11. Public comment letters and e-mails

ARAMBURU & EUSTIS, LLP

Attorneys at Law

720 Third Avenue, Suite 2112

Seattle, Washington 98104

(206) 625-9515 Fax: (206) 682-1376

RECEIVED

DEC 27 2010

December 23, 2010

AM PM
PLANNING DEPARTMENT

BY _____

Angela Ruggeri, AICP
Senior Planner
Department of Planning and
Community Development
123 - 5th Avenue
Kirkland WA 98033

Re: Appeal of Design Review Board Decision on Touchstone Application
File DRC09-0002

Dear Ms. Ruggeri:

Pursuant to KZC Section 142.40, Davidson Serles & Associates and T.R. Continental Plaza appeal the Design Review Board's Decision of December 13, 2010 approving Touchstone's plans for the Parkplace project. A copy of the appealed decision is attached. Davidson Serles and Continental Plaza appeal the following elements of the DRB decision:

Part III, C, 1, purporting to find the building plans and designs to be consistent with Design Guideline 2b, relating to Massing/Articulation for all districts;

Part III, C, 3, purporting to find the building plans and designs for Building E to be consistent with Building Design Guideline #4;

Parts I, III and the Decision as a whole, to the extent that the Decision purports to find compliance with Design Guidelines 2a and h, relating to the massing, articulation and modulation of buildings and facades; and

Part IV, Lapse of Approval, to the extent that this section purports to amend the provision at KZC 142.55 imposing a three-year period for substantial completion of construction of the buildings covered by the DRB approval. This portion of the decision is appealed under KZC 142.55(3) on grounds that the three-year substantial completion period under the provisions of KZC 142.55(1) is established by ordinance and is not subject

to DRB modification. Davidson Serles and Continental Plaza are directly affected by the DRB's unauthorized modification of this provision through their potential exposure to construction and construction impacts over the seven year extended time provided in the DRB decision which subjects appellants to greater impacts from noise, vibration, dust, other air pollutants and traffic congestion thereby interfering with the reasonable use and enjoyment of their properties.

Davidson Serles and Continental Plaza are parties to this proceeding because they appeared either orally or in writing before the DRB through their representatives, Ken Davidson and Dan Kilpatric (appearing for Davidson Serles) and Rick Grimes (appearing jointly for Davidson Serles and Continental Plaza).

An appeal fee of \$207 is enclosed, which is the sum listed on the Planning Department's fee schedule and represented by the Planning Department as the appeal fee set by ordinance. For purposes of this action all correspondence shall be served on the following representatives:

Counsel for Davidson Serles & Associates:

Jeffrey M. Eustis
Aramburu & Eustis, LLP
720 Third Avenue, Suite 2112
Seattle WA 98104
(206)625-9515 (phone)
(206)682-1376 (fax),
eustis@aramburu-eustis.com

Counsel for TR Continental Plaza Corp:

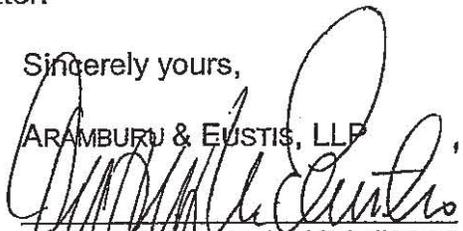
David S. Mann
Gendler & Mann, LLP
1424 Fourth Ave, #715
Seattle WA 98101
(206)621-8868 (phone)
(206)621-0512 (fax)
mann@gendlermann.com

Angela Ruggeri
December 23, 2010
Page 3

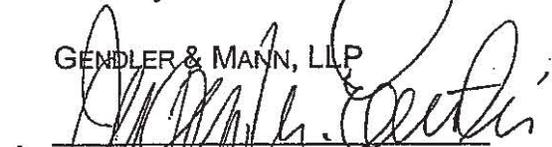
Thank you for your attention in this matter.

Sincerely yours,

ARAMBURU & EUSTIS, LLP


Jeffrey M. Eustis, WSBA #9266
Attorney for Davidson Serles

GENDLER & MANN, LLP


David Mann, WSBA #21068
Attorneys for TR Continental
Plaza Corp.

per authorization

Cc: Davidson Serles & Associates
TR Continental Plaza Corp.

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KIRKLAND HEARING EXAMINER

In the matter of the appeal by
DAVIDSON SERLES & ASSOCIATES and
TR CONTINENTAL PLAZA CORP.
From a decision by the City of Kirkland
Design Review Board

NO. DRC-0002

APPELLANTS' CLARIFICATION OF
ISSUES AND PRELIMINARY LISTS OF
WITNESSES AND EXHIBITS

Pursuant to the Prehearing Order of January 19, 2011, appellants Davidson Serles & Associates and TR Continental Plaza Corp. clarify the issues on appeal and provide preliminary lists of witnesses and exhibits.

I. Clarification of Issues

The Prehearing Order at 2 asks appellants to file and serve a clarification of the first three issues which "articulates in what specific respect ... each appealed element of the Design Review Board decision is inconsistent with the Design Guideline(s) cited in each of the appeal issues." Without limiting the scope and substance of testimony at the hearing, appellants provide the clarification below.

Issue 1

Statement of Issue:

APPELLANTS' CLARIFICATION OF ISSUES
AND PRELIMINARY LISTS OF WITNESSES
AND EXHIBITS - 1

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1 Part III, C, 1 of the DRB decision, which purports to find the building plans
2 and designs to be consistent with Design Guideline 2b, relating to
3 Massing/Articulation for all districts, is in error.

4 Design Guideline 2b, requires that "All building faces should be responsive to the
5 context of the surrounding environment and neighboring buildings."

6 In text copied almost verbatim from the summary provided by Touchstone's
7 architects, the Design Review Board decision at 6 purports to find compliance with this
8 Design Guideline on grounds that the Kirkland Parkplace design incorporates masonry
9 elements, it utilizes high quality metal and composite panels, building height and scale
10 provide contextual clues, the buildings provide step backs, masonry elements reduce
11 the apparent height and mass, Building E provides major modulation and Building F
12 provides transitional massing between Peter Kirk Park and Building D.

13 This finding is in error because the approved design is grossly out of scale with
14 the surrounding buildings and environment, in mass, materials and texture. The step
15 backs do not reduce the apparent height and mass of the buildings, Building E does not
16 provide major modulation, Building F does not provide a transition between Peter Kirk
17 Park and the site as a whole, the building faces violate Design Guidelines 2b and 2c, by
18 presenting their "backsides" to the buildings to the east, and as a result the building
19 faces are not responsive to the surrounding environment and neighboring buildings.

20 Issue 2

21 Statement of Issue:

22 Part III, C, 3, purporting to find the building plans and designs for Building
23 E to be consistent with Building Design Guideline #4, is in error.

24 Building Design Guideline #4 requires

25 Buildings located in the southern most portion of the site
should provide generous and substantial modulation in response to
their proximity to neighboring buildings, including:

- creating varied edges and visual interest on long and tall buildings
- employing modulation to visually break up long facades
- providing patterns of windows, bays and/or balconies that emphasize changes in modulation.

The DRB decision at 6-7 purports to find the approved design in compliance with
this guideline in part through the following passage:

APPELLANTS' CLARIFICATION OF ISSUES
AND PRELIMINARY LISTS OF WITNESSES
AND EXHIBITS - 2

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1 Design of Building E was revised during the DRB review to provide
 2 additional step backs from the building base to the main (north-
 3 south) block of the building to further moderate massing from
 4 adjacent buildings to the south and southeast. The DRB concluded
 5 that these massing changes provide generous and substantial
 6 modulation in response to neighboring buildings.

7 This finding is in error because Building E, the southerly most building,
 8 does not provide generous and substantial modulation, neither in an absolute
 9 sense nor relative to modulation generally provided for buildings in the CBD and
 10 surrounding areas. The modulation provided is insufficient to create visual
 11 interest or break up long facades and is not emphasized or reinforced in the
 12 manner required.

13 Issue 3

14 Statement of Issue:

15 Parts I, III and the Decision as a whole, to the extent that the Decision
 16 purports to find compliance with Design Guidelines 2a and h, relating to
 17 the massing, articulation and modulation of buildings and facades, is in
 18 error. To this issue, appellants include non-compliance with Guideline 2c.

19 Design Guidelines 2a, c and h provide:

20 2. Massing/Articulation

21 *Intent: To create a variety of form and massing through
 22 articulation and use of materials to maintain a pedestrian
 23 scale.*

24 a. In general, break down the scale and massing of buildings
 25 into smaller and varied volumes.

c. All sides of the building shall be designed with care, i.e., there
 should be no "backside" of a building.

h. Building modulation should be employed to break up long
 facades and create a visual interest unique to each building
 in the project. The type of modulation should be determined
 by the overall design concept of each building, using
 dimensions from window sizes, column spacing, rain screen

1 paneling, etc to a determine a distinct design solution.

2 Apart from simply incorporating the Touchstone's own design proposal,
3 the DRB did not enter separate findings and conclusions regarding the
4 compliance of Touchstone's proposed design with the above guidelines. To the
5 extent that Parts I and III purport to find compliance, they are in error. For the
6 most part, the approved designs do not break down the scale and massing of
7 buildings into smaller and varied volumes, the approved designs do turn the
8 "backsides" of buildings to the surrounding buildings, particularly to those located
9 to the east, and long facades are not broken up by modulation sufficient to
10 reduce their height, bulk and mass to create visual interest.

11 II. Witnesses

12 Appellants designate the witnesses listed below:

- 13 1. Rick Grimes, a principal in the firm of Freiheit & Ho Architects, will
14 demonstrate how the approved design fails to comply with the Design Review
15 Guidelines as identified under Issues 1-3. Mr. Grimes is a registered architect
16 and a member of the AIA. He has designed and been the project manager for a
17 number of commercial buildings.
- 18 2. Eric Shields, Planning Director, will be called as an adverse witness to
19 testify with respect to the direction provided by the Planning Department to the
20 Design Review Board concerning the content and scope of DRB review of the
21 Touchstone/Parkplace proposal and his involvement in the content and drafting
22 of the Parkplace Design Review Guidelines.
- 23 3. Angela Ruggieri, Senior Planner, will be called to testify as an adverse
24 witness with respect to her preparation of staff reports for the DRB and with
25 regard to the preparation and adoption of the Parkplace Design Review
Guidelines.
4. Design Review Board representative, as may be designated by the City
under KZC 142.40(6), will be called to testify regarding the content and scope of
DRB review of the Touchstone/Parkplace project.
5. Dave Asher, Kirkland City Councilmember will be called to testify with
regard to the City Council adoption of and amendments to the Parkplace Design
Review Guidelines.
6. Ken Davidson, a principal in Davidson Serles & Associates, an adjacent
landowner, may be called to testify with regard to the failure of the

1 Touchstone/Parkplace proposal to comply with the Parkplace Design Review
2 Guidelines.

3 **III. Exhibits**

4 Appellants preliminarily list the exhibits below:

5 A. Core exhibits, which appellants request be furnished by the City:

- 6 1. Design Guidelines for Pedestrian-Oriented Business Districts;
- 7 2. Parkplace Master Plan and Design Guidelines for CBD 5A
- 8 3. Ordinances 4170, 4171 and 4257
- 9 4. Kirkland Parkplace-DRB Final Submittal-13 December 2010
- 10 5. Design Review Board Decision, December 13, 2010

11 B. Additional Exhibits designated by appellants

- 12 1. Selected tapes and/or transcripts of City Council Proceedings adopting
13 the Parkplace Master Plan and Design Guidelines for CBD 5A
- 14 2. Selected tapes and/or transcripts of DRB proceedings leading up to the
15 approval of Kirkland Parkplace-DRB Final Submittal-13 December 2010
- 16 3. Photos of surrounding environment and neighboring buildings
- 17 4. Model of Touchstone's proposed buildings and surrounding buildings
- 18 5. Digital presentation of Parkplace Design Guidelines, Parkplace buildings
19 and surrounding environment and neighboring buildings
- 20 6. Resume for Rick Grimes

21
22 Appellants reserve the right to amend the lists above based upon the witness
23 and exhibit lists submitted by the Applicant and the Board and documentation provided
24 by the City in response to requests for the production of public records.
25

APPELLANTS' CLARIFICATION OF ISSUES
AND PRELIMINARY LISTS OF WITNESSES
AND EXHIBITS - 5

ARAMBURU & EUSTIS LLP
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Seattle, Washington 98104
Tel. (206) 625-9515 Fax (206) 682-1376

DATED: February 9, 2011

ARAMBURU & EUSTIS, LLP

Jeffrey M. Eustis, WSBA #9266

Attorneys for Davidson Serles and Associates

GENDLER & MANN, LLP

David S. Mann, WSBA #21068

Attorneys for TR Continental Plaza Corp.

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APPELLANTS' CLARIFICATION OF ISSUES
AND PRELIMINARY LISTS OF WITNESSES
AND EXHIBITS - 6

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DECLARATION OF SERVICE

I am an employee in the law offices of Aramburu & Eustis, LLP, over eighteen years of age and competent to be a witness herein. On the date written below, I served and filed copies of the foregoing document as follows:

electronically and by first class mail to:

Robin S. Jenkinson
Office of Kirkland City Attorney
123 Fifth Avenue
Kirkland WA 98033-6189
RJenkinson@ci.kirkland.wa.us

electronically and by messenger to:

G. Richard Hill
McCullough Hill, PS
701 - 5th Avenue #7220
Seattle WA 98104
Rich@mhillseattle.com

Sue Tanner, Kirkland Hearing Examiner
C/o Seattle Hearing Examiner's Office
700 5th Ave., Ste 4000
Seattle, WA 98104
Alvia.Williams@seattle.gov

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED: February 9, 2011



Carol Cohoe

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APPELLANTS' CLARIFICATION OF ISSUES
AND PRELIMINARY LISTS OF WITNESSES
AND EXHIBITS - 7



CITY OF KIRKLAND
Planning and Community Development Department
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DESIGN REVIEW BOARD DECISION

DATE: December 13, 2010

FILE NO.: DRC09-00002

PROJECT NAME: Parkplace

APPLICANT: Touchstone

PROJECT PLANNER: Angela Ruggeri, Senior Planner

I. SUMMARY OF DECISION

The Design Review Board (DRB) hereby approves the plans for the proposed Parkplace project shown in the attachment titled *Kirkland Parkplace-DRB Final Submittal-13 December 2010* and subject to the following. This application is also subject to the applicable requirements contained in the Kirkland Parkplace Mixed Use Development Master Plan and Design Guidelines, Kirkland Municipal Code, Zoning Code, Building and Fire Code and the Planned Action Ordinance. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these documents.

- A As part of the application for a building permit, the applicant shall submit for administrative review construction plans demonstrating compliance with the project plans approved by the DRB (see Attachment).
- B In addition to the section on the phasing for the project in the Kirkland Parkplace Mixed Use Development Master Plan and Design Guidelines (Page PO-4, Section 6), each building permit application shall include plans demonstrating that:
 1. Adjacent right-of-way and on-site landscape/open space improvements shall be installed concurrent with the construction of each building. A plan for the surrounding improvements shall be included with each permit application and shall extend to a logical point from a functional and design perspective as determined by the planning official; and
 2. Each permit or project phase shall provide a fully functional project and shall be integrated with the previous phases of the development. Edge conditions between completed and future phases must be resolved.
- C Prior to issuance of an occupancy permit for each building or phase of the project, the applicant shall schedule a final inspection by the Department of Planning and Community Development to verify compliance with the approved design plans.
- D The Planning Official may approve a modification to the DR approval for the proposed development if it meets the criteria in Section 142.50 of the Zoning Code. Any other

proposed modification, shall be reviewed and decided upon by the Design Review Board as a new DR application under Chapter 142 of the Zoning Code.

- E. Proposed modifications to the Master Plan shall be reviewed to meet the criteria of Section 5. Modifications of the Kirkland Parkplace Mixed Use Development Master Plan and Design Guidelines (Page PO-4).

II. DESIGN RESPONSE CONFERENCE MEETINGS

A. Background Summary

The DRB held 28 meetings to discuss the Parkplace project in 2009 and 2010. A Conceptual Design Conference was held at the February 2, 2009 Design Review Board meeting. At that meeting the DRB reviewed the newly adopted Zoning, and Master Plan and Design Guidelines for the project and provided feedback to the applicant on design concepts. The DRB also determined the structure of the DRB review process for the entire development.

The Design Response Conference was held over a series of 27 meetings in 2009 and 2010. The Board reviewed each building and site improvement in the project separately and also reviewed the relationship of the individual project components to the entire development.

B. Public Comment

Public comment was taken at the first 25 Design Response Conference meetings. The DRB closed the conference to public comment on October 4, 2010 to allow final deliberations by the DRB. All public comment letters and e-mails received during the period that the Design Response Conference meetings were held were forwarded to the Board for consideration in addition to the oral comment given at the public meetings. All written comments are contained in the City's official file. Oral comments are available on the City's Design Review Board webpage.

III. DESIGN REVIEW BOARD DISCUSSION AND CONCLUSIONS

Documentation of all approved plans and their compliance with the Kirkland Parkplace Mixed Use Development Master Plan and Design Guidelines is included as an attachment to this report. Below is a summary of the key issues and conclusions reached by the Design Review Board during the Design Response Conference process. For more background on these issues see staff advisory reports from the design response conference contained in File DRC09-00002 and also on the City's Design Review Board webpage.

A. Master Plan Modifications

Page PO-4 in the Policy Overview section of the Master Plan and Design Guidelines for Parkplace contains Section 5 - Modifications. This section states that a major modification to the Master Plan is one which substantially alters the Plan's proposed development such as: decrease in open space quantity, changes to locations of primary access/pedestrian streets, or changes in allowed use. Major modifications to the Master Plan require a staff review for consistency with the Comprehensive Plan and City Council approval. There are no proposed major modifications.

Section 5 – Modifications also addresses minor modifications to the Master Plan as any proposal that would result in a change that would not substantially alter the Plan’s proposed development such as: façade treatments, street design variation, character/design detail of public spaces, or minor variations in design of sidewalks, pathways, lighting and landscaping. The DRB may grant a design departure or minor variation only if it finds that both of the following requirements are met:

- a. The variation is consistent with the intent of the guideline and results in superior design.
- b. The departure will not result in any substantial detrimental effect on nearby properties or the neighborhood.

The following minor variations to the Parkplace Master Plan are approved by the DRB:

1. Design Guideline: Gateway District, Building Design, 2. Upper Levels, b. Step backs (Page M11 of Attachment). *A modulated step back should be incorporated after the third level (approximately 50') on the building façade along Central Way. This step back can vary in depth from 0-10 feet, as long as the upper levels of the building appear to be receding from the base. Step backs are measured from the exposed face of the building above grade, not from any property line.*

The DRB allowed minor modifications from this guideline for Building A which meet the criteria as follows (see pages A7 and A8 of Attachment).

- a. The variation is consistent with the intent of the guideline and results in superior design.

The DRB relaxed the requirement that the step back occur uniformly above the 3rd floor, to allow for a superior design which addresses the important corner at 6th and Central Way, as well as the entry to the site to the west of the building. The design incorporates the 10' step back at various levels along the entire Central Way façade and also provides strong modulation while visually minimizing the height of the building. The intent of the guideline is met because the “upper levels of the building appear to be receding from the base.”

- b. The departure will not result in any substantial detrimental effect on nearby properties or the neighborhood.

The design does not result in any substantial detrimental effect on nearby properties or the neighborhood. The DRB concludes that the departure allows a building which appropriately addresses the corner of 6th and Central Way, and transitions into the entry to the site to the west of Building A. Both of these features are important to the surrounding properties and to the neighborhood.

2. Design Guideline: Gateway District, Building Design, 2. Upper Levels, c. Top Floor/Roof Edge (Page M11 of Attachment). *Should have a distinct profile against the sky through elements such as projections, overhangs, cornices, step backs, trellises, changes in material or other elements.*

The DRB allowed minor modifications from this guideline for Building A which meet the criteria as follows (see pages A1 and A2 of Attachment).

- a. The variation is consistent with the intent of the guideline and results in superior design.

The contemporary design of Kirkland Parkplace does not make use of the traditional cornices, overhangs, or other means of articulation but instead considers the sculptural form of the building as a whole and provides for a superior design overall. The combination of massing, materiality, and detailing around the building provides a rich and varied experience for the pedestrian. The DRB permitted flexibility by allowing the design team to achieve the intent of this guideline through the use of major massing moves and material changes of the façade to break up the linear edge without the use of the traditional roof edge treatments.

- b. The departure will not result in any substantial detrimental effect on nearby properties or the neighborhood.

This flexibility in design does not result in any substantial detrimental effect on nearby properties or the neighborhood. Instead, it provides for a building design which adds interest to the new development and the neighborhood as a whole.

3. Revised street sections shown on Pages L23 through L29 – Pages MP-8 through MP-14 of the Master Plan and Design Guidelines show the various types of streets anticipated in the project. This section allows for some adjustment in the final design as long as access is in compliance with city codes and policies for public improvements and emergency access.

Adjustments are highlighted in green on pages L23 through L29 of the Attachment to this decision. The Public Works Department has reviewed and approved these adjustments. The DRB allowed minor modifications to the street development standards which meet the criteria as follows.

- a. The variation is consistent with the intent of the guideline and results in superior design.

These adjustments are consistent with the intent of the guidelines and result in superior design by providing increased sidewalk widths, increased planted areas, an improved parking garage ramp location under Building C, added parallel parking, improved pedestrian crossings and various other design improvements that are outlined in detail for each revised street section in the Attachment.

- b. The departure will not result in any substantial detrimental effect on nearby properties or the neighborhood.

Those adjustments which relate to the exterior of the site and which could therefore have an impact on neighboring properties have been considered in detail by the DRB and staff to be sure that they will not have a detrimental effect on those properties or the neighborhood.

B. Minor Variations (Zoning Code Section 142.37)

Section 142.37 of the Zoning Code provides a mechanism for requesting minor variations from requirements in certain zones, including minimum required yards in the CBD zone. The DRB may grant a minor variation only if it finds that the following requirements are met:

- a. The request results in superior design and fulfills the policy basis for the applicable design regulations and design guidelines;
- b. The departure will not have any substantial detrimental effect on nearby properties and the City or the neighborhood.

There is one minor variation from required yards for the project. KZC Chapter 180, Plate 5 requires a 55' minimum yard along the west property line. The applicant proposes a minor 15' encroachment as follows:

- Building F – 15' Stair landing/overlook projection into required park setback yard (see pages F1 and F3 of Attachment).

The DRB determined that this minor variation of the 15' stair landing/overlook projection in the setback requirement is consistent with the above criteria.

- a. The request results in superior design and fulfills the policy basis for the applicable design regulations and design guidelines;

The request results in a superior design which provides a place for pedestrians to pause as they make their way from the park level up to the rooftop garden on Building F. The landing livens up the design of the west side of the building and serves as a visual cue for access to the public rooftop terrace. The design of the landing is open to avoid the perception of any substantial mass encroaching into the setback.

- b. The departure will not have any substantial detrimental effect on nearby properties and the City or the neighborhood.

The departure does not have any substantial detrimental effect on the adjacent properties or the neighborhood. In fact, it acts as a visual cue to people in Peter Kirk Park that there is additional open space available on top of Building F and also leads them into the new development.

C. Additional Design Discussion

The DRB has spent considerable time discussing the following aspects of the design although they did not require any modifications to the Master Plan or the minimum required yards. The key discussion points are included below.

1. Design Guideline: All Districts, Building Design, 2.b Massing/Articulation (Page M6 of Attachment) – *All building faces should be responsive to the context of the surrounding environment and neighboring buildings.*

The existing context surrounding Kirkland Parkplace varies, ranging from one-story retail on Central Way to offices on 6th Street, to a mix of multi-family residential and office buildings to the south. The design of Kirkland Parkplace incorporates masonry elements in the form of terra cotta panels and utilizes high quality metal panels and composite panels. Contextual cues to the surroundings include building height and scale. The northern edge of the site relates to the varied scale of the adjacent properties with a major step back above the first level on the northwest end of the site. On the northeastern and eastern end of the site, the design incorporates step-backs above the 6th floor in many places in response to the surrounding buildings. The masonry elements around the northeastern, eastern and southwestern portions of the site feature a two-story module to reduce the apparent height and mass of the buildings. Building E incorporates major modulation, setbacks and step backs above the 4th floor on the east, south and west sides to be sympathetic to the neighboring properties as well as the park. Building F continues a lower-scaled edge along the park and provides a transitional massing between Peter Kirk Park and Building D.

2. Design Guideline: Gateway District, Site Planning #4 - Atrium/Breezeway Space (Page M10 of Attachment) – *Create a pedestrian connection, visually open, from the corner of 6th and Central Way into the heart of the project...*

This visual connection is established at the pedestrian level with a large cutback portion of the first 2 floors along the breezeway and the inclusion of an 'all glass' façade two stories in height for the retail space in this area (see Pages A1 and B1 of Attachment).

3. Building E – The DRB had many discussions relating to the design of Building E. Key points from these discussions are outlined below (see Pages E9 to E16 of Attachment for an additional summary).
 - Design Guideline: Central Retail Hub, Building Design #4 (Page M15 of Attachment) – *Buildings located in the southern most portion of the site should provide generous and substantial modulation in response to their proximity to neighboring buildings, including:*
 - *creating varied edges and visual interest on long and tall buildings*
 - *employing modulation to visually break up long facades*
 - *providing patterns of windows, bays and/or balconies that emphasize changes in modulation.*

Design of Building E was revised during the DRB review to provide additional step backs from the building base to the main (north-south) block of the building to further moderate massing from adjacent buildings to the south and southeast. The DRB concluded that these massing changes provide generous and substantial modulation in response to neighboring buildings.

Pages E9, E10 and E13 of the Attachment show the increased setbacks that were added to the design on the east, west and south sides of the building in order to provide additional modulation and space between buildings.

- Relationship to the Park (Page E1-Image 1 of Attachment) - The applicant was also encouraged to enliven the long surfaces of the building in a more playful way, given the building's adjacency to the park. The final design accomplishes this through a series of colored vertical fins across the west, north and a portion of the east façade. The design is vertically and horizontally modulated across the main (north-south) block to further break down the mass of the structure, and a diverse vocabulary of patterns, windows and materials are used to emphasize changes in modulation.
4. Color & materials - The material and color references noted on the plans reflect current products that represent the intent of the design team and the Design Review Board. Final selections may vary from those listed due to availability, obsolescence, compatibility with other materials and colors or other similar situations.

IV. APPEALS OF DESIGN REVIEW BOARD DECISIONS AND LAPSE OF APPROVAL

Appeals

Section 142.40 of the Zoning Code allows the Design Review Board's decision to be appealed to the Hearing Examiner by the applicant or any person who submitted written or oral comments to the Design Review Board. The appeal must be in the form of a letter of appeal and must be delivered, along with any fees set by ordinance, to the Planning Department by **5:00 p.m., December 29, 2010**, fourteen (14) calendar days following the postmarked date of distribution of the Design Review Board's decision.

Only those issues under the authority of the Design Review Board as established by Kirkland Zoning Code 142.35(3) are subject to appeal.

Lapse of Approval

Section 142.55.1 of the Zoning Code states that unless otherwise specified in the decision granting D.B.R. approval, the applicant must begin construction or submit to the City a complete building permit application for development of the subject property consistent with the D.B.R. approval within one (1) year after the final decision to grant the D.B.R. approval or that decision becomes void. The applicant must substantially complete construction consistent with the D.R. approval and complete all conditions listed in the D.B.R. approval decision within three (3) years after the final decision on the D.B.R. approval or the decision becomes void. Application and appeal procedures for a time extension are described in Sections 142.55.2 and 142.55.3.

The DRB has determined that given the size of the project, the Planned Action designation, and the fact that the project will be constructed in phases over a period of years, this approval shall be valid for the duration of the Planned Action Ordinance (Ordinance #4175 or its successor) or ten (10) years, whichever is greater, provided that the first complete building permit application is submitted no later than five (5) years following the date of this approval.

V. ATTACHMENTS

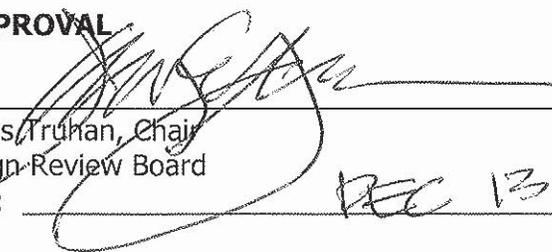
1. Kirkland Parkplace - DRB Final Submittal - 13 December 2010

VI. INTERESTED PARTIES

The following is a list of parties that have submitted written or oral comment to the DRB:

1. Margaret Bull
2. Ken Davidson
3. Rick Grimes
4. Rob Brown
5. Bea Nahon
6. Roberta Krause
7. Manny Mankowski
8. Cynthia Smith
9. Elaine Darling
10. Brian Granowitz
11. Ross Woods
12. Julie Merken
13. Marian Luther
14. Rachel Loveall
15. Jason Sanchez
16. Lindsey Lettvin
17. Gary Levell
18. Cami Keyes
19. Patricia Knight
20. Maureen Kelly
21. Janis Rabuchin
22. Doug Waddell
23. Jeff Ridley
24. Liz Hunt
25. Ronald W. Knight, M.D.
26. Sarah Johnson
27. Michael Phillips
28. Chris Conrad
29. Kirstin Larson
30. Andrew Vort
31. Dan Kilpatric

VII. APPROVAL



James Truhan, Chair
Design Review Board
Date: _____

DEC 13, 2010