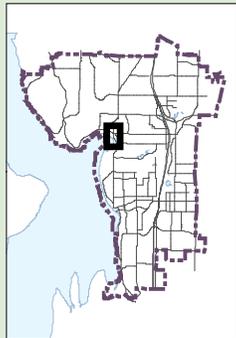
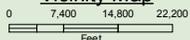


# XIAOWEI PRIVATE AMENDMENT REQUEST- CAM12-01461

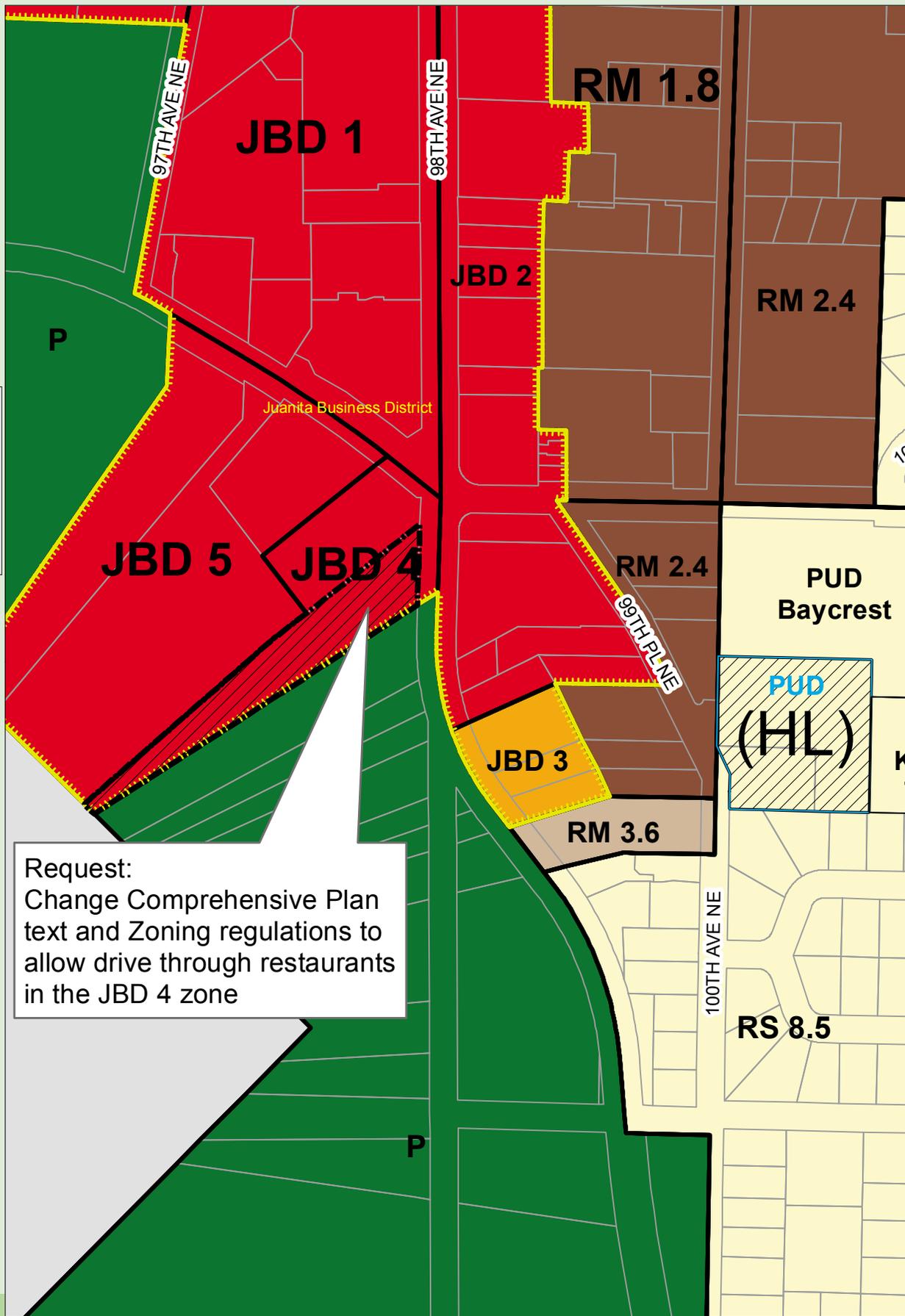


Vicinity Map



Legend

- Tax Parcel Boundaries
- Commercial
- Industrial
- Light Manufacturing Park
- Office
- High Density Residential
- Medium Density Residential
- Low Density Residential
- Institutions
- Park/Open Space



**Request:**  
 Change Comprehensive Plan text and Zoning regulations to allow drive through restaurants in the JBD 4 zone



Produced by the City of Kirkland.  
 © 2013, the City of Kirkland, all rights reserved.  
 No warranties of any sort, including but not limited to accuracy, fitness or merchantability accompany this product.



## XV.I. NORTH/SOUTH JUANITA NEIGHBORHOOD

### 8. JUANITA BUSINESS DISTRICT

attractive streetscape along 98th Avenue should be encouraged. Pedestrian access easements should be provided for connections between East Ridge and Juanita Beach Park through the business district.

***A gateway into the business district should be provided in JBD 3.***

#### ***JBD 3***

In this area, office or multifamily uses should be allowed, but restaurants, taverns, or any retail uses should not be allowed. Drive-through facilities should be prohibited. The maximum building height should be three stories. Since access onto 98th Avenue NE is dangerous in this area due to poor sight distances and high traffic volumes, access should be taken from 99th Place NE through East Ridge whenever possible. Additional setbacks and landscaping should be provided along 98th Avenue NE to create an attractive entrance or gateway into the business district.

***Retail, office, and residential uses should be allowed in JBD 4.***

#### ***JBD 4***

Retail, office, and residential uses which are a maximum of two stories should be allowed in non-wetland areas. Driveways should be combined due to hazardous traffic conditions along 98th Avenue NE. Drive-through facilities should be prohibited. Buildings should be clustered to provide views of the lake when possible. The wetland area should be preserved and regulated in accordance with the shoreline management regulations in the Kirkland Zoning Code. Public access along or near the shoreline should be required as described in the Natural Environment and Shoreline Area sections.

***Continuous shoreline access between Juanita Bay Park and Juanita Beach Park is important; the missing link should be acquired.***

#### ***JBD 5***

Office and multifamily uses are allowed as should be restaurants, taverns, or neighborhood-oriented retail. Drive-through facilities should be prohibited. The maximum building height should be two stories. The most important objective in this area is to provide pedestrian access along the shoreline. The City should pursue acquisition of a footbridge or other structure waterward of the Bayview Condominiums. This stretch of shoreline is a critical link needed to complete a Juanita Bay Shoreline Trail between Rose Point and the city limits on the west. The trail should be clearly signed for use by the public and maintained properly.

***Pedestrian access easements along Juanita Creek should be acquired.***

#### ***JBD 6***

Appropriate uses in this area should be office and multifamily with restaurants, taverns, and neighborhood-oriented retail allowed. Drive-through facilities should be prohibited. Buildings should be a maximum of two stories. However, three-story buildings could be approved if reviewed through a public hearing. Pedestrian access easements along Juanita Creek should be acquired which are designed to prohibit unrestricted access to the creek. All development should protect the creek as described in the Natural Environment section. In the triangular parcel between 98th Avenue NE and 100th Avenue NE, office and multifamily should also be allowed, but not restaurant, tavern, or neighborhood-oriented retail due to its prominent location when entering the district and its proximity to East Ridge.

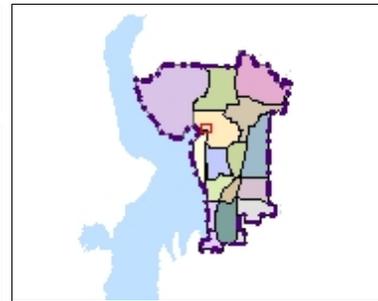


DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS												
Section 52.27	USE ↓ REGULATIONS →	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.010	Retail Establishment providing boat sales, service, or repair. See Spec. Reg. 1.	D.R., Chapter 142 KZC.	None	0'	0'	0'	80%	26' above average building elevation.	A	E	See KZC 105.25.	1. Boat rental and used boat sales are allowed as part of this use. 2. Storage of parts must be conducted entirely within an enclosed structure. 3. Outdoor boat parking and storage areas must be buffered as required for a parking area in KZC 95.45. See KZC 115.105, Outdoor Use, Activity and Storage, for additional regulations.
.020	Restaurant or Tavern								C		1 per each 100 sq. ft. of gross floor area.	1. Drive-in or drive-through facilities are prohibited.
.040	Entertainment, Cultural and/or Recreational Facility										See KZC 105.25.	





GIS MAPPING PORTAL ~ City of Kirkland, Washington ~ Department of Information Technology



- Legend**
- Streams
    - Open
    - Pipe
  - Wetlands
  - Address
  - City Limits
  - Grid
  - QQ Grid
  - Streets
  - Parcels
  - Buildings
  - Parks
  - Schools
  - z\_Image09
    - Red: Band\_1
    - Green: Band\_2
    - Blue: Band\_3

1: 2,441

0.1 0 0.04 0.08 Miles

NAD\_1983\_StatePlane\_Washington\_North\_FIPS\_4601\_Feet  
 Produced by the City of Kirkland. © 2013 City of Kirkland, Washington, all rights reserved.

No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

**Notes**  
 wetlands and streams



RECEIVED

NOV 27 2012

PLANNING DEPARTMENT PM  
BY \_\_\_\_\_



CITY OF KIRKLAND  
PLANNING AND COMMUNITY DEVELOPMENT  
123 Fifth Avenue, Kirkland, WA 98033  
425.587.3225  
www.kirklandwa.gov

**APPLICATION FOR AMENDMENTS TO THE COMPREHENSIVE PLAN,  
ZONING CODE AND ZONING MAP**

*Directions: You may use this form or answer questions on separate pages.*

**I. CONTACT INFORMATION:**

A. Applicant Name: Mark Colon (Tenant of Property Owner.)  
B. Mailing Address: 12008 NE 132nd Court, Kirkland, WA 98034  
C. Telephone Number: 425-444-4772  
D. Email Address: markinseattle1@msn.com

E. Property Owner Name (if different than applicant): Yang Xiaowei  
F. Mailing Address: 2818 - 103rd Place NE, Bellevue, WA 98004  
G. Telephone Number: 206-849-8485  
F. Email Address: al-on@hotmail.com

*Note: If the applicant is the property owner, or is representing the property owner, then the property owner must sign the last page. If the applicant is neither the property owner nor representing the property owner, then the affected property owner must be notified. Send or hand-deliver a copy of this completed application to all affected property owners. Complete the attached Affidavit of Service that this has been done.*

*Also Note: Copies of staff reports and meeting agendas will be sent by email unless you request to the project planner that you want copies mailed to you.*

**II. FOR SITE SPECIFIC PROPOSAL:**

A. Address of proposal: (if vacant provide nearest street names) 11451 98th Ave. NE, Kirkland, WA  
B. King County Tax Parcel number(s): 179150-0315  
C. Describe improvements on property if any: Cosmetic

D. Attach a map of the site that includes adjacent street names.

**III. FOR ALL PROPOSALS:****A. Description of Proposal:**

Amendment of Comprehensive Plan and JBD-4 Use Zone Chart to eliminate Special Regulation No. 1 that states: "Drive-in or drive-through facilities are prohibited.

**B. Description of the specific reasons for making the proposal:**

Applicant is making a proposal, which includes a "C-Curbing" to not allow left-hand turns into or out of the subject property, to enable Applicant to operate a drive-through coffee business on the subject property.

**C. Description of how the proposed amendment relates to the following criteria:**

1. The proposal demonstrates a strong potential to serve the public interest by implementing specifically identified goals and policies of the Comprehensive Plan.

The Proposal will serve the public interest by enhancing choices for consumers, encouraging business growth in the City, and increasing the tax base.

2. The public interest would best be served by considering the proposal in the current year, rather than delaying consideration to a later neighborhood plan review or plan amendment process.

Public interest is best served by not delaying consideration of this proposal because it is critical that the Applicant is able to proceed forward with his business plan and this must occur as soon as possible.

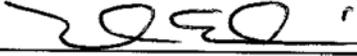
3. The proposal would correct an inconsistency within or make a clarification to a provision of the Comprehensive Plan.

Applicant's position is that the Specific Special Regulation at issue is not consistent with the Comprehensive Plan or zoning in general because it constitutes an illegal and unfair "spot" zone that unfairly restricts the Applicant's property rights when provisions have been made to address traffic and other transportation concerns.

**IV. PROPERTY OWNER'S SIGNATURE OR SERVICE OF AFFIDAVIT:**

- A. *If the applicant is the property owner, or is a legal representative of the property owner, then the property owner must sign below.*

**ORIGINAL SIGNATURES ONLY/ NO COPIES**

Name – sign:   
 Name – print: Mark Colon  
 Property owner or Legal Representative? None - Tenant of Property Owner  
 Date: November 26, 2012  
 Address: 12008 NE 132nd Court, Kirkland, WA 98034  
 Telephone: 425-444-4772

- B. *If the applicant is neither the property owner nor a legal representative of the property owner, then the affected property owner must be notified as follows:*

1. Send or hand-deliver a copy of this completed application to all affected property owners (Exhibit A or Exhibit B); and
2. Complete the attached Affidavit of Service that confirms that a copy of the completed application form has been provided to all property owners. Submit the Affidavit of Service along with Exhibit A and/or Exhibit B with the application form and fee.

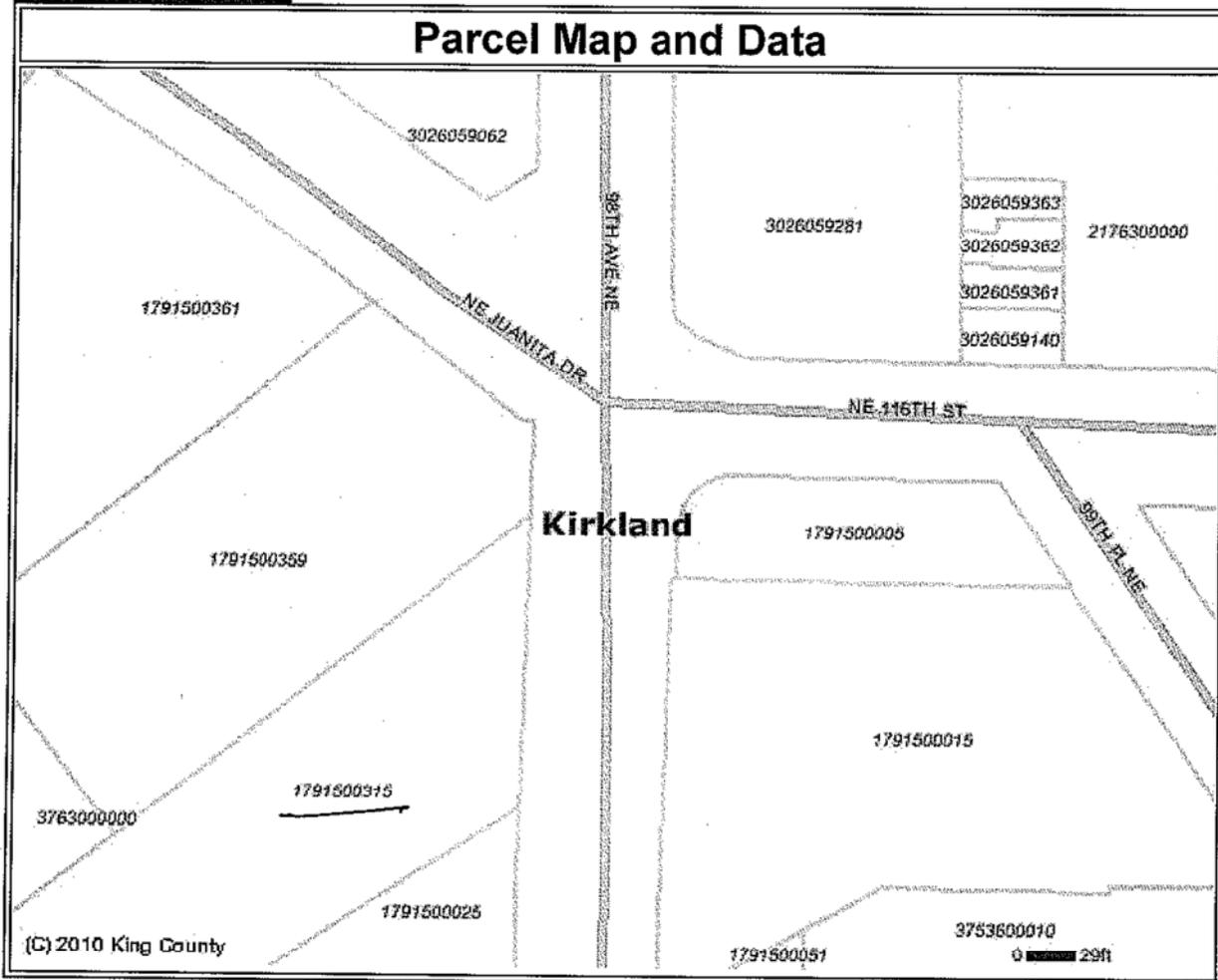
**Attachments:**

- Affidavit of Service
- Exhibit A for mailing document
- Exhibit B for hand delivering document



King County  
Always at your service

### Parcel Map and Data





**AFFIDAVIT OF SERVICE - FILE NO. \_\_\_\_\_**

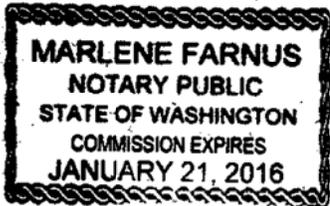
Document Served	Process
Application for Comprehensive Plan Amendment	IV

Lillian Cruz, being first duly sworn on oath deposes and says that I am 18 years of age or older. That I served the above-indicated document by mail or personal service upon the following-named persons who constitute all of the parties entitled to receive same and to participate in the land use proceeding identified in Kirkland Planning and Community Development Department File No. \_\_\_\_\_. A copy of the document is attached to this affidavit.

The persons who were served by mailing, postage prepaid, and the address to which mailed are set forth in Exhibit "A" to this affidavit and which by this reference is incorporated herein.

The persons who I served by personal service are listed on Exhibit "B" to this affidavit which exhibit is by this reference incorporated herein. For the purposes of this affidavit, "personal service" means hand-delivery of the document to the person being served, or in the alternative, hand-delivery to another adult who also makes his or her home at the residence of the person served.

DATED at Kirkland, Washington, this 27th day of November, 2012.



Marlene Farnus  
 Notary's Signature  
Marlene A. Farnus  
 Print Notary's Name  
 Notary Public in and for the State of Washington  
 Residing at: Snohomish  
 My commission expires: 01/21/2016

**EXHIBIT A**

A copy of the *Application for Amendments to the Comprehensive Plan, Zoning Code and Zoning Map* was sent via Certified and Regular Mail to:

Yang Xiaowei  
2818 – 103<sup>rd</sup> Place NE  
Bellevue, WA 98004

**From:** [Joan Lieberman-Brill](mailto:Joan.Lieberman-Brill)  
**To:** [Joan Lieberman-Brill](mailto:Joan.Lieberman-Brill)  
**Subject:** FW: comment letter for PAR staff report.  
**Date:** Monday, March 04, 2013 3:43:12 PM

---

**From:** David Johnston [mailto:[johnston@lfa-law.com](mailto:johnston@lfa-law.com)]  
**Sent:** Monday, March 04, 2013 3:28 PM  
**To:** Joan Lieberman-Brill  
**Cc:** Mark Colon ([markinseattle1@msn.com](mailto:markinseattle1@msn.com)); Eric Shields; Lillian Cruz  
**Subject:** RE: comment letter for PAR staff report.

Dear Ms. Lieberman-Brill:

We are counsel for Mark Colon. The following will provide you and the Planning Commission with information supporting our client's request for a private zoning amendment to allow drive-through at the property he leases located at 11451 98<sup>th</sup> Avenue NE, Kirkland, Washington 98033 (the "Property"). The Property is located in the JBD-4 zone and there is currently the following special regulation that applies to the Property: "Drive-in or drive-through facilities are prohibited." For the reasons set forth below, we believe that City Staff should support this request and the Planning Commission should recommend its approval to the City Council.

Our client entered into a long-term lease of the Property and improvements from the owner. As you are aware, this property has sat vacant and economically unproductive for several years. Our client is working on improving the appearance and functionality of the building. As a part of his decision to lease the Property, Mr. Colon discussed his business concept with the City. He is planning to sell coffee, pastries and light fare at the location. It is very important that he be permitted to have a drive-through at this location and the Property is particularly well-suited for this use. The Property is relatively large and it allows for several vehicles to cue in line while waiting for the drive-through.

Mr. Colon met with Transportation Engineer Thang Nguyen to discuss his proposal before he invested more time, effort and money into his project. Mr. Nguyen's primary concern was with left-hand turns out of the Property heading southbound and northbound traffic taking a left to enter the Property. To resolve this traffic concern, Mr. Nguyen suggested that a "c-curb" be installed that would prevent left-hand turns into and out of the Property. Mr. Colon was fine with installing a c-curb and he assumed that he could move forward with his project. Later, Christian Geitz of Code Enforcement contacted Mr. Colon and advised him that a drive-through or a drive-in at this location was not permitted under the zoning code.

This was a very surprising development to Mr. Colon because several businesses in the immediate vicinity of the Property have the benefit of a drive-through. Included among these businesses is a 76 Gas Station at the corner of 98<sup>th</sup> and 116<sup>th</sup> (both the car-wash and the espresso operation), the Bank of America at 11617 NE Juanita Drive, Java Mamas at 9714 NE Juanita Drive, Walgreens and Bakkers Drycleaner's at 1630 98<sup>th</sup> Avenue NE. As you know, there are only two tax parcels located within the JBD-4 Zone and we are concerned that the zoning legislation is aimed at preventing our client to lawfully use the Property to conduct business. The Property is adjacent to a

City park and abuts Lake Washington, raising the specter of inverse condemnation.

If the City were to grant our client's private amendment, he remains willing, as a condition, to install the c-curb described above. We agree with your Transportation Department that a c-curb on the Property would benefit the City and its citizens. Our client has every right to conduct his business on the Property, without the restrictions imposed by a c-curb. This will result in left-hand turns into and out of the Property and, if his business concept is successful, this may very well create traffic congestion, particularly in the morning.

However, if a c-curb is installed, traffic safety will be improved, even with a drive-through. Mr. Colon anticipates that most of his drive-through business will be generated in the morning. This is also the time when 98<sup>th</sup> Avenue NE heading southbound is most congested. With a c-curb, customers will enter for the drive-through on the north driveway of the Property and merge back into traffic at the south driveway. Traffic is typically moving slowly at the south driveway point in the morning (3-5 mph) so merging will be conducted safely. As referenced above, there is ample room on the Property to handle several cars waiting to merge so this does not present traffic issues.

To further demonstrate the traffic flow described herein, if the Planning Commission recommends approval of the zoning amendment, our client is willing to pay for and provide a reasonable traffic study by a consultant approved by the Transportation Department.

We urge Staff and the Planning Commission to recommend approval of our client's private amendment. Doing so with the c-curb condition would improve safety on this road and benefit the City, its citizens and Mr. Colon. In these difficult economic times, the City should do what it reasonably can to support business, particularly when it can safeguard safety and improve traffic flow at the same time.

Thank you for your consideration and please contact me if you have questions or wish to further discuss.

David B. Johnston  
Livengood, Fitzgerald & Alskog, PLLC  
P.O. Box 908  
121 Third Avenue  
Kirkland, WA 98083-0908  
(425) 822-9281  
(425) 828-0908 (fax)  
[www.lfa-law.com](http://www.lfa-law.com)

This electronic mail transmission and any accompanying documents information contain belonging to the sender which may be confidential and legally privileged. The information is intended only for the use of the intended individual or entity to whom this electronic mail transmission was sent as indicated above. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please delete the message. Thank you.

**From:** llewjohnson [mailto:llewjohnson@seanet.com]  
**Sent:** Saturday, February 23, 2013 10:20 AM  
**To:** Joan Lieberman-Brill  
**Subject:** Xiaowei - File No. CAM12-01461

To: Kirkland Planning Commission

RE: Xiaowei – File No. CAM12-01461 (Proposal: Allow drive thru restaurant...)

Comment: This proposal is beyond stupid, it is dangerous! The restaurant's ingress/egress location would add to existing traffic, bus, and pedestrian issues at an intersection that is already dangerous.

From: Llew Johnson,  
Mailing Address; 700 108<sup>th</sup> Ave NE, #208, Bellevue, WA 98004,  
e-mail; [Llewjohnson@seanet.com](mailto:Llewjohnson@seanet.com),  
Kirkland property address; 8909 NE 118<sup>th</sup> Place, Kirkland, WA 98034 (Goat Hill)