Jeremy McMahan

From: David S. Mann [mann@gendlermann.com]
Sent: Monday, April 16, 2012 5:05 PM
To: Jeremy McMahan; Joan McBride; Penny Sweet; Doreen Marchione; Amy Walen; Dave Asher; Bob Sternoff; Toby Nixon; Jay Arnold; Byron Katsuyama; Glenn Peterson; Jon Pascal; Andrew Held; C Ray Allshouse; Mike Miller
Cc: Robin Jenkinson; Kurt Triplett; Eric Shields
Subject: Residential Market
Attachments: 20120416 Letter To Kirkland.pdf

Please see the attached letter.

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April 16, 2012

Kirkland City Council
Kirkland Planning Commission
City of Kirkland
123 Fifth Ave.
Kirkland, WA 98033

Re: *BN and Zoning to Implement the Comprehensive Plan Designation "Residential Market"*

Dear Honorable City Council and Planning Commission Members:

I write on behalf of Support the Ordinances and Plan ("STOP") regarding you the City's ongoing efforts to finally adopt zoning that implements and is consistent with the City's Residential Market Comprehensive Plan designation.

We understand that Potola Village Kirkland ("Potola") complains that the City is considering zoning that diverges from other commercially zoned districts and that the City is, in effect, singling out Potola's property. This is simply not the case. While we agree that there are only two properties affected by the zone change, this is not the result of Potola's proposal. To the contrary, this is the effect of the City's Comprehensive Plan that created the Residential Market commercial designation in 1995 – a designation that has never been challenged and is therefore presumed valid.

On November 10, 2011, STOP filed a Petition for Review before the Growth Management Hearings Board challenging the City's failure to act to adopt zoning consistent with the Residential Market Comprehensive Plan designation. But because the City acted promptly to adopt a moratorium while it reviewed new zoning, STOP withdrew its appeal. It is our strong desire that the City continue to more forward as expeditiously as possible to adopt zoning that finally implements the Comprehensive Plan so that further appeals or land use litigation are not necessary.

The GMA requires that development regulations be consistent with and fully implement the comprehensive Plan (RCW 36.70A.070 (preamble) and RCW 36.70A.040). In this case, the Residential Market designation is very narrow:

> "A residential market is an individual store or very small, mixed use building/center focused on local pedestrian traffic. Residential scale and design

> are critical to integrate these uses into the residential area. Uses may include corner grocery stores, small service businesses (social service outlets, daycares), laundromats, and small coffee shops or community gathering places."

Comprehensive Plan VI-14. While we agree that this is a commercial designation, it remains significantly different than other commercial areas.[1] Thus, it is not surprising, and indeed it is necessary, that the zoning the City adopt will be more limited than other commercial areas. While we agree with Potola that the City should strive for consistent zoning designations, if the City is going to adopt zoning that applies across a range of Comprehensive Plan designations, that zoning must still be consistent with the very limited nature of the Residential Market designation. We offer the following suggestions:

1. *Density Cap.* It is helpful to note that the other property that holds the Residential Market classification has a density cap of 12 dwellings per acre. This could be consistently applied to both Residential Market properties. This would also help with alignment with the CP wherein it states that neighborhood size, scale and character must be achieved. The achievement here would be that the density cap would be the same as surrounding properties thus arguably also neighborhood size. Further, it should be noted that in several areas of the Comp Plan (including the Land Use chapter and the Economic Development chapter 4 of 6, and 6 of 8 categories specifically list housing as an allowed use, however, Residential Market is always left without housing allowed. A cap of 12 units per acre is therefore a generous interpretation.[2]

2. *Size, scale and character.* The historical 80% maximum lot coverage is insufficient to achieve a "VERY SMALL" or even a small or moderate sized building. This is particularly problematic if any development were to combine parcels in a manner not done

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[1] I have attached page VI-14 out of the Comprehensive Plan setting out the different types of Commercial areas. You'll note for example, that the Residential Market designation is the only designation that does not expressly include housing as an allowed type of use. Indeed, while a 1995 draft included apartments, that language was removed before final adoption. Additionally, both Residential Market properties exist on the same block, an area wherein there exists some specific language discouraging apartments "Lying between Lake Washington Boulevard and Lakeview Drive, north of NE 59th Street, is an area of mixed residential densities. Although there is some multifamily housing, almost half of the area is developed as single-family residential…Apartment encroachment in single-family areas usually leads to a decay of the existing structures, demolition, and reconversion to more intense use. In order to minimize this encroachment and forestall a premature decay of the single-family areas, standards should be adopted to allow a transition from low density to higher densities." This Comp Plan discussion then permits medium density development and not high density development.

[2] My clients request that this property, which was down zoned with all the other properties along the east side of "the Boulevard," not be given special treatment and restored density while they are held to the reduced densities. The densities were reduced in response to traffic ingress and egress issues. If the city no longer feels that the traffic ingress and egress issues are applicable, the neighbors would like densities similarly reinstated for them and they would like it done consistently with allowance for the same numerical cap. (My clients do acknowledge that there may be a provision for a first time development to be built as non-conforming at 24/acre). This would again be consistent with the rules that were applied to all properties along Lake St S and Lake Washington Blvd.

elsewhere in the neighborhood. Again a look at the other Residential Market property may be useful. That property has a maximum lot coverage of 60%. The surrounding properties have a maximum lot coverage of 60%. This creates both consistency with the other Residential market and more of a neighborhood size and scale since it would then share similar lot coverage restriction as the other neighborhood properties.

3. *Common Open Space.* It is fairly common in Washington urban areas as with other states, to require 200-300 square feet of open space per unit in multi-family housing. Indeed, Kirkland itself requires 200 square feet in its multi-family zoning. The other Residential Market area also requires 200 square feet of open space per unit. There is no reason that this same requirement shouldn't be applied to all Residential Market zones as well as the S. Rose Hill BN property. Because the areas surrounding the BN zones and both Residential Market designations already require 200 square feet of opens space per unit, adding this requirement to the BN zone and to the zoning for Residential Market would assist in the requirement to "integrate" the Residential Market into the surrounding residential area.

To a large degree, much of what has been discussed above can be achieved by adding the "(1)" designation, including additional development regulations, to the existing BN zoning making it consistent with the BN(1) zoning found in South Rose Hill neighborhood. In addition to having a (1) that refers to full implementation of the Comprehensive Plan for the property, the other development regulations found at the S Rose Hill site[3] would be steps toward achieving a Residential Market. (e.g. hours of operation, no drive-thru business, compatibility with the neighborhood properties). Certainly the BN residential site should be at least as restrictive as the S Rose Hill site since the latter has a more intense Neighborhood Center - Commercial designation.

In closing, STOP once again thanks you for your continued efforts to carefully adopt zoning that finally implements the Residential Market designation. Please do not hesitate to contact me if you have any questions.

Very truly yours,

GENDLER & MANN, LLP

David S. Mann

[3] I have attached pages XV.G-6,7,8 out of the Comprehensive Plan which list the development regulations in the BN(1) zone. As described by the "Commercial Hierarchy" in VI-14, the Residential Market Commercial found along Lake Street and Lake Washington Boulevard is a lower intensity designation than the Neighborhood Center located in many locations around the city. This includes the BN(1) zone. Thus, in order to fully implement the Comprehensive Plan, the zoning of Residential Markets would need to be meet and exceed the restrictive zoning controls outlined in items 1-9

cc: Kurt Triplett
Robin Jenkinson
Eric Shields
STOP

identified. In the Land Use Element, the general notion of protection of community character is promoted. However, this Element also acknowledges that the community will be growing and that a balance must be struck between providing more housing units and preserving the neighborhoods as they are today.

Several of the most important housing issues – affordability, special needs housing, and accessory units – are not addressed in this Element. They are discussed, instead, in the Housing Element.

Goal LU-4: Protect and enhance the character, quality, and function of existing residential neighborhoods while accommodating the City's growth targets.

Policy LU-4.1: Maintain and enhance Kirkland's single-family residential character.

The community vision, as described in the Vision Statement of this Plan, is that Kirkland's residential areas are diverse with a variety of housing choices including single-family detached, attached, stacked, cottage, carriage styles and accessory dwelling units.

Policy LU-4.2: Locate the most dense residential areas close to shops and services and transportation hubs.

Denser residential areas such as apartments and condominiums should continue to be sited close to or within commercial areas and transportation hubs to increase the viability of the multimodal transportation system.

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

Although the Land Use Element states that opportunities for new housing units should be dispersed throughout the community, significantly greater densities are not targeted for low-density neighborhoods. Instead, infill development is expected in these areas based on availability of developable land, while higher densities are clustered near existing commercial areas.

Policy LU-4.4: Consider neighborhood character and integrity when determining the extent and type of land use changes.

Protection of community character is a theme woven throughout the Land Use Element. Community character is most clearly expressed through the Neighborhood Plans. It is the intent of this policy to direct specific consideration of the unique characteristics of neighborhoods, as described in the Neighborhood Plans, before committing to major area-wide residential land use changes.

COMMERCIAL LAND USES

Commercial land uses are a critical part of the Kirkland community. They provide shopping and service opportunities for Kirkland residents, and also create employment within the City. The tax revenues generated by business help fund the capital facilities and public services that residents enjoy.

In return, the quality of life in the City's neighborhoods provides a main attraction for both businesses and their patrons. The proximity to Lake Washington, the fine system of parks, the availability of a regional medical center with good medical care, top notch educational facilities, the environmental ethic of the community, and quality infrastructure attract outsiders to Kirkland and make the City a good place to do business – for employers, employees, and customers.

Problems that the community faces – traffic congestion, particularly – create concerns for commercial land uses. Ease of transporting goods and adequate parking are especially important. An underlying premise of the Land Use Element, expressed in the Vision Statement, is that, in the future, residents of the City will not drive as much as they do presently to minimize traffic congestion and reduce parking needs. To that end, the Element attempts to promote commercial land use patterns that support alternative transportation modes and locate housing in commercial areas where appropriate.

Along with the need to provide new housing units for future residents, the City will need to designate adequate land area for commercial uses, some of which

may employ Kirkland residents. If the opportunity for local employment is increased, the high proportion of residents who work outside the community may be reduced. This in turn would ease traffic congestion by shortening commute trips and making other modes of travel to work more feasible.

Currently, a hierarchy of "commercial development areas" exists in the City, based primarily on size and relationship to the regional market and transportation system (see Figure LU-2: Commercial Areas).

Some of Kirkland's commercial areas serve primarily the surrounding neighborhood; others have a subregional or regional draw. Most of the larger commercial areas are centered around major intersections. They depend on principal arterials, the freeway, or the railroad for goods transport and for bringing in workers or customers. Smaller commercial areas, Neighborhood Centers, for example, have a more localized draw. Residents depend on their neighborhood grocery store, dry cleaners, bank, etc., for everyday needs.

The Land Use Element provides general direction for development standards in commercial areas and describes the future of specific commercial areas in Kirkland. The following terms are used in the discussion of commercial land uses:

Urban Center

An Urban Center is a regionally significant concentration of employment and housing, with direct service by high-capacity transit and a wide range of land uses, such as retail, recreational, public facilities, parks and open space. An Urban Center has a mix of uses and densities to efficiently support transit as part of the regional high-capacity transit system.

Activity Area

An Activity Area is an area of moderate commercial and residential concentration that functions as a focal point for the community and is served by a transit center.

Business District

A Business District is an area that serves the subregional market, as well as the local community. These districts vary in uses and intensities and may include office, retail, restaurants, housing, hotels and service businesses.

Neighborhood Center

A Neighborhood Center is an area of commercial activity dispensing commodities primarily to the neighborhood. A supermarket may be a major tenant; other stores may include a drug store, variety, hardware, barber, beauty shop, laundry, dry cleaning, and other local retail enterprises. These centers provide facilities to serve the everyday needs of the neighborhood. Residential uses may be located on upper stories of commercial buildings in the center.

Residential Market

A residential market is an individual store or very small, mixed-use building/center focused on local pedestrian traffic. Residential scale and design are critical to integrate these uses into the residential area. Uses may include corner grocery stores, small service businesses (social service outlets, daycares), laundromats, and small coffee shops or community gathering places.

Light Industrial/High Technology Area

A Light Industrial/High Technology area serves both the local and regional markets and may include office, light manufacturing, high technology, wholesale trade, storage facilities and limited retail.

XV.G. South Rose Hill Neighborhood

(8) Vegetative buffering (preferably with native, drought-tolerant plants) should be provided next to single-family areas.

Existing multifamily areas south of NE 80th Street and east of 116th Avenue NE should remain zoned as low-density development due to impacts. Redevelopment should focus on vegetation preservation and access.

Existing multifamily housing located south of NE 80th Street and east of 116th Avenue NE is impacted by existing Planned Area 13 office and multifamily uses to the north, the freeway, and Lake Washington High School. Its designation of low-density development to a maximum of seven dwelling units per acre should continue. If redevelopment occurs, the existing vegetative buffer along the southern border should be preserved. Access should be located so as to maximize sight distances along 116th Avenue NE and NE 80th Street by keeping the access away from the curve formed by their junction. Therefore, the access should be aligned with 118th Avenue NE.

4. Economic Activities

NE 85th Street is a regional transportation and commercial corridor, featuring retail, office, and business park uses. Some medium- and high-density multifamily development is also present.

The only area of economic activity in South Rose Hill is within the commercial district along NE 85th Street (see Figure SRH-3). It is recognized as both a regional transportation and commercial corridor. This area includes retail, office, and business park uses, and, to a lesser degree, some medium- and high-density multifamily development. From I-405 east to the Kirkland city limits, the commercial corridor generally tapers from a depth of over 1,100 feet to about 150 feet at 132nd Avenue NE on both sides of NE 85th Street. See the NE 85th Street Subarea Plan for more information about the commercial corridor.

Commercial development is permitted on the north side of NE 70th Street, across from the Bridle Trails Shopping Center. Medium-density detached single-family residential development is also appropriate in the immediate vicinity.

The northwest corner of NE 70th Street and 132nd Avenue NE contains a small-scale commercial development. Development should not extend into the surrounding low-density residential neighborhood, however.

The northern boundary of the commercial area lies south of the existing single-family development along 132nd Avenue NE. The western boundary lies east of the existing single-family development along NE 70th Street. In the northwestern portion of the site, the boundary generally follows the toe of the existing slope.

To mitigate impacts to the adjoining residential area, development is subject to the following standards:

(1) Commercial uses should be oriented to serving the neighborhood. Uses should not include vehicle service stations, drive-in businesses, auto service and sales, or storage facilities.

(2) Building height, bulk, modulation, and roofline design should reflect the scale and character of single-family development. Blank walls should be avoided.

(3) New structures should be substantially buffered from nearby low-density residential uses. Such buffering should consist of an earthen berm a minimum of 20 feet wide and five feet high at the center. In some places, the existing slope may replace the berm. The berm or slope should be planted with trees and shrubbery in sufficient size, number, and spacing to achieve a reasonable obstruction of views of the subject property. Alternatively, an equal or superior buffering technique may be used.

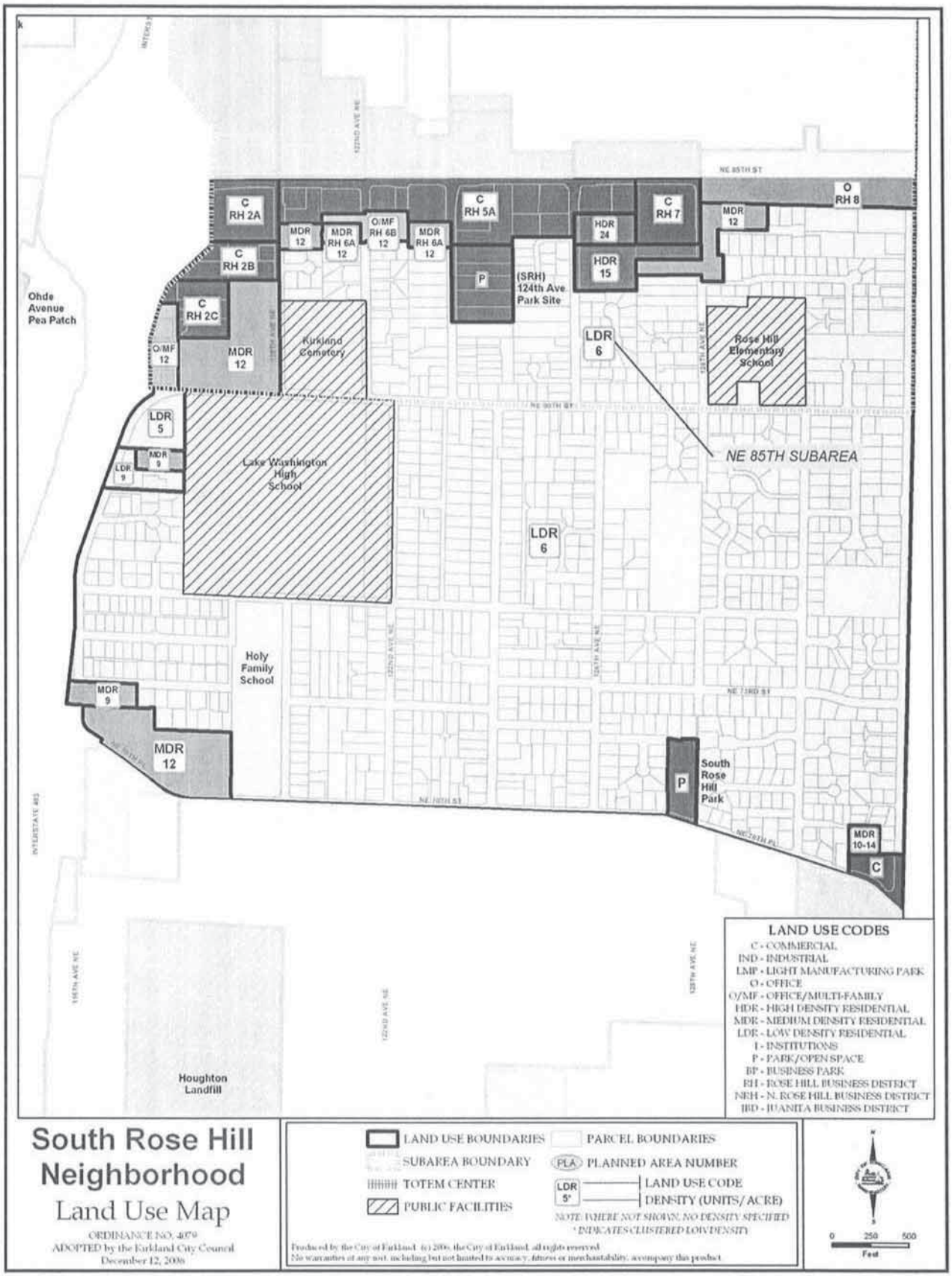

Figure SRH-3: South Rose Hill Land Use

XV.G. South Rose Hill Neighborhood

(4) Businesses must be oriented to NE 70th Street or 132nd Avenue NE and must be directly connected, with on-site sidewalks, to sidewalks in adjacent rights-of-way.

(5) Commercial access must be taken only from NE 70th Street and/or 132nd Avenue NE. Turning movements may be restricted to promote public safety.

(6) Parking areas should be landscaped and visually screened from adjoining residential development.

(7) The number and size of signs should be minimized to avoid a cluttered, intensive, commercial appearance. A master sign plan should be implemented. Back-lit or internally-lit translucent awnings should be prohibited. Only wall- or ground-mounted signs should be permitted.

(8) Noise impacts to surrounding residential development should be minimized.

(9) Hours of operation of businesses on the site should be limited to no more than 16 hours per day, ending at 10 p.m.

Immediately to the north of the commercial area, medium-density residential development is appropriate. Units should be small-lot detached single-family residences, however.

5. Open Space/Parks

South Rose Hill has a number of publicly owned areas that currently provide park and open space opportunities for neighborhood residents. They are briefly described below.

South Rose Hill Neighborhood Park is a 2.5-acre site that was purchased as a result of a successful Park Bond in 1989. This park is located on NE 70th Street, at approximately 128th Avenue NE (see Figure SRH-4). Improvements in this park are typical of a neighborhood park facility, including pedestrian access.

Lake Washington High School is a 38.31-acre site located at NE 80th Street and 122nd Avenue NE. Improvements to this site include school buildings, a playfield, tennis courts, and track.

Rose Hill Elementary School is a 9.75-acre site located at NE 80th Street and 128th Avenue NE. Improvements to this site include school buildings and a playground.

Kirkland Cemetery is a 5.75-acre site located at NE 80th Street and 122nd Avenue NE. The cemetery is an important public historic landmark and open space feature in the neighborhood. Future funded improvements include irrigation, planting, relocation and improvement of cemetery entry, additional parking, new cemetery services, improved pedestrian and vehicular circulation, and expansion to the southeast corner of the property.

Efforts should be made to acquire additional parkland for this neighborhood, including smaller parcels.

Despite these parks and open space facilities, the neighborhood is deficient in parkland based on the standard of 15 acres per 1,000 population, because much of this land is owned by the Lake Washington School District. As a result, every effort should be made to acquire additional parkland for this neighborhood, including smaller parcels for use as "pocket parks." These parks serve limited park needs where neighborhood park opportunities are lacking. Pocket parks are typically less than one acre in size

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May 14, 2012

Kirkland City Council
City of Kirkland
123 Fifth Ave.
Kirkland, WA 98033

Re: *Zoning to Implement the Residential Market Designation:*

Dear Honorable City Council Members:

I write again on behalf of Support the Ordinances and Plan ("STOP") regarding your continuing effort to adopt zoning that implements, and is consistent with, the City's Residential Market Comprehensive Plan designation.

On January 17, 2012 STOP withdrew its "Failure to Act" challenge from before the Growth Management Hearings Board after the City acknowledged, through imposition of a moratorium, that time was needed to review the disconnect between zoning language for BN zones and the 1995 Comprehensive Plan assignment of two geographic areas to the lowest intensity "Residential Market - Commercial" designation. Since that time, members of STOP have been working with other neighbors and citizens in Kirkland to assist the city in development regulations that would fully implement the Comprehensive Plan as directed by the "Implementation Strategies" Chapter in the 1995, 2004, 2007 and 2010 amendments and revisions to the Plan. All stakeholders are hopeful that you will give proper guidance to the Planning Commission and then take the correct, necessary, action yourselves. Of course, there remain cautious citizens, outside of STOP, that we understand are to re-challenge if the City's efforts fall short of fully carrying out this GMA requirement.

During the last several months, citizens and members of STOP have shared many aspects of the Comprehensive Plan that they've identified as lacking proper implementation. One of these topics – traffic ingress and egress – is of particular concern. Traffic ingress and egress problems to the two sites identified as "Residential Market" are discussed in the Comprehensive Plan and cited as the reason that commercial use is not appropriate for these sites, yet the exception is made for the very low intensity commercial businesses, much like what is there currently. This is since these are the types of businesses that serve local neighbors, as stated. This brings very few additional cars to the area and reduces car trips needed when neighbors walk for their burger or laundry or other local service needs.

While the Planning Commission has tried several different ways to limit traffic volume including smaller building plate size, smaller lot coverage and building setbacks, none of those choices

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provide the certainty needed that the number of cars will be restrained to the level articulated in the Comprehensive Plan. A density cap and restrictions on the types of businesses are the only methods contemplated that will provide for the end result required by the historical decisions documented in the City's Plan.

Additionally, density was clearly reduced for all lands identified by the 1979 down zone wherein contiguous land along the Boulevard from south of the Central Business District to the center line of NE 63rd St was all reduced in density without any properties being called out for exclusion. The purpose of the down zone was management of traffic ingress and egress. This down zone has historically been documented in other attempts to develop the BN-Residential Market properties wherein city documented rejection of proposals that were greater than 12 dwellings per acre. Furthermore, the down zone is reflected in the deliberations and agreements made after 5 years of study and preparation of the 1995 Comprehensive Plan. The residential market designation is specifically discussed during numerous meetings of the Growth Management Subcommittee, Planning Commission and City Council. It was not a casual decision or one that was made without extensive thought. It is now time to honor the work done by previous subcommittees, commissions and councils, as required by GMA.

Please remember that GMA planning should be a one-way, progressive, process. It would be unsatisfactory to work backwards by taking a proposed development and modifying the Comprehensive Plan in order to accommodate a project. Instead the direction flows from the study and development of a Comp Plan to the work of drafting development regulations to fully implement the plan. It is only when these have both been accomplished that a project can be evaluated as to whether it is aligned.

There are five areas in the Comprehensive Plan that address the Residential Market-Commercial Properties:

1) The Neighborhood Plan text directing residential densities on the east side of the boulevard to 12 dwelling units per acre and consistent with properties to the north and south along Lake St S / Lake Washington Boulevard.

2) The Neighborhood Plan text directing that commercial use shall be LIMITED in that the small market/service business that serves the local neighbors should be allowed to remain. This includes the wording of traffic ingress and egress being the constraining factor.

3) The Land Use Chapter map that identifies the two "Residential Market" properties and text which directs Residential Market to be a single business or a "very small mixed use building/center" "services for the neighbors" "community gathering area" and places specific limits on approved uses. The approved uses had text including housing in 1993 but then that use was specifically removed in 1995 through the CP process. Residential Market and Industrial Commercial zones were the two where residential was no longer listed as approved.

4) The Economic Development Chapter that calls out 8 different areas for economic development and within 6 of 8 the final use identified is "housing." Again this chapter makes

clear that for two of the 8 areas housing is not an identified use. Statutory rules of construction would therefore indicate that this omission was deliberate.

5) The Implementation Strategies Chapter that specifically directs staff to craft zoning text that will fully implement the new Residential Market- Commercial" designation.

STOP is not anti-growth. It also recognizes that the 1979 agreement allowed for an exception to density wherein a first time development could be built to a density of 22 units per acre. For a development that might encompass the entire corner of BN-Residential Market properties, this would be a development that could be built with 30 units plus neighborhood serving businesses. There are many examples of successful developments of this magnitude built on properties in very desirable areas. STOP requests your positive actions directing the Planning Commission to implement a zoning ceiling.

STOP also notes that the other consideration before you, that of changing the Residential Market designation to a higher intensity "Neighborhood Center" designation would be an "off-cycle" action and would be ill advised as it has not been studied thoroughly and would greatly aggravate land use challenges and traffic challenges that have long been the focus of Comprehensive Plan actions and planning decisions.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

GENDLER & MANN, LLP

David S. Mann

cc: STOP

Jeremy McMahan

From: Manuchehri, Mohammad mohammad manuchehri oein com
Sent: Monda , ril , M
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Cc: uwkk aol com

Dear City Officials:

I am writing with respect to the Residential Market / lowest intensity commercial designation as I hope you will thoroughly consider the ingress and egress issues clearly identified as limiting factors in the Comprehensive Plan.

First of all, it is very important to note that in the entire city (new and annexed) there are only two areas identified for this very low intensity use called residential market. Reading the comprehensive plan, and every neighborhood plan, these are specifically identified for this very "limited commercial" due to ingress and egress issues.
No other property in the whole city mentions ingress and egress trouble. Just these two sites which are on the same block and both along the Boulevard bounded by the Lake to the west and a mostly residential side street.

The ingress and egress limit to development can only be achieved if both of the following are met.

1) The Land Use Chart needs to be changed regarding allowed businesses for BN. This is just for BN that have been identified as residential market and thus very low intensity. Vehicle-intensive businesses should be specifically noted as not allowed in the BN-Res Mkt for this reason. This is currently accomplished in the Comprehensive Plan, however the Land Use Chart allows things like drive thru businesses (auto intensive) and large churches or schools (also auto intensive).
So that there does not continue to be a conflict between the CP and the zoning, the chart must be better aligned with the plan for this subset of BN properties.

2) The residential density MUST be capped to a reasonable level. You cannot provide for only "limited commercial" or "low intensity" or protect the issues around ingress and egress without a residential density cap. You just cannot hold the line on limited ingress and egress without this cap. This is exactly why all properties along the boulevard had their caps reduced in 1977.

Thank you for taking these two essential steps to address ingress and egress. These are unique challenges to having any commercial development at the two very unique properties reclassified by Ordinance as Residential Market Use."

Mo Manuchehri
Lead Design Engineer
747-8, Section 44 Structures
(425) 266-1112

Jeremy McMahan

From: alison□□arnes□martin□□alison□arnesmartin□ mac□com□
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To: Ro□in□□enkinson□□□urt□Tri□lett□□□ric□Shields□□□erem□□McMahan□□□oan□Mc□ride□□□enn□□Sweet□□ □oreen□Marchione□□□m□□Walen□□□ave□□sher□□□o□□Sterno□□□To□□□□i□on□□□a□□□rnold□□□□ron□ □atsu□ama□□□lenn□□eterson□□□on□□ascal□□□ndrew□□eld□□□□Ra□□□llshouse□Mike□Miller
Subject: □ensit□□□or□□ro□ect

Dear Ciy Officials,

As you consider the Residential Market/lowest intensity commercial designation, I hope that you will factor the ingress and egress issues clearly identified as limiting factors in the COMPREHENSIVE PLAN. I'm not going to re-invent the wheel by noting the obvious, but want you to know, as property owner, how I feel about any proposed development as you factor your decisions based on the COMPREHENSIVE PLAN.

First of all, it is very important to note that in the entire city (new and annexed) there are only two areas identified for this very low intensity use called residential market. Reading the comprehensive plan, and every neighborhood plan, these are specifically identified for this very "limited commercial" due to ingress and egress issues. No other property in the whole city mentions ingress and egress trouble. Just these two sites which are on the same block and both along the Boulevard bounded by the Lake to the west and a mostly residential side street.

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Thank you for taking these two essential steps to address ingress and egress s hese are unique challenges to having any commercial development at the two very unique properties reclassified by Ordinance

as Residential Market Use.

Respectfully,

Alison Barnes Martin

Jeremy McMahan

From: □ric□Shields
Sent: Tuesda□, □March □□□, □□□□□□□□□□□M
To: □erem□McMahan
Subject: □W□□□□□IS□□unlimited□densit□□Residential□dwellin□□units□in□all□□ommercial□□oned□□ro□ert□□ in□the□cit□, □includin□□□□□

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Flag Status: □la□□ed

Eric Shields

From: John and Beth McCaslin [mailto:mccaslins@mail.com]
Sent: Tuesday, March 06, 2012 9:01 PM
To: Planning Commissioners
Cc: Cathy Whiteside
Subject: ABOLISH unlimited density Residential dwelling units in all Commercial zoned property in the city, including BN !
Importance: High

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From: Cynthia Glaser
Cc: Eric Shields; Amy Walen; Byron Katsuyama; Doreen Marchione; Dave Asher; Glenn Peterson; Jeremy McMahan; Jay Arnold; Jon Pascal; Kurt Triplett; Mike Miller; Penny Sweet; Toby Nixon; Teresa Swan; Joan McBride; Bob Sternoff; C Ray Allshouse; Andrew Held
Subject: Moratorium Extension
Date: Wednesday, May 02, 2012 7:40:14 PM

I just posted this as a response to the Kirkland Reporter article on Extending the Moratorium

Thank you City Council for the extended moratorium of the Proposed Potala Project (corner of Lake Street and 10th Avenue South)!

The concept of 143 small apartment units on 1.2 acres is an absurd number of units to place on Lake Street/Lake Washington Blvd. at the center of the main thoroughfare from 520 to downtown Kirkland. As residents of this community, we all want downtown Kirkland businesses to be successful and thrive. Adding to the existing traffic on this thoroughfare would deter visitors from coming to Kirkland.

Reducing the number of units to be consistent with the surrounding comprehensive and zoning plans of 12 to 24 units per acre is an absolute must in preserving the community of Kirkland's waterfront by maintaining its "visitor and community friendly" accessibility.

It is incomprehensible something of this density and magnitude is even being considered. I spoke with the proposed developer and one of his managers at the end of the last City Council Meeting. They both indicated they were working on reducing the number of individual dwellings in this structure and making them condominiums. It would be nice if we understood clearly what structure and number of units are being proposed, as many Kirkland residents have seen several different drawings and heard many varying verbal renditions of what will be built. Please can we get clarification? No one is opposed to this property being developed. It is the sheer density of residents that is inappropriate.

Please continue to do what is right for this lovely community and preserving its ambiance. This is not Redmond or Ballard. Kirkland's waterfront is what draws people to our community. Kirkland is the little Sausalito of the North West. Please treat and respect it as such.

There have been many difficult decisions due to budgetary needs made in our country during this really tough recessional time. I would like for all residents of Kirkland to be very proud of the legacy we leave for future generations who will reside in or visit Kirkland, Washington.
Thank you

Cynthia Glaser
206-979-7090
cynthiaglaser7@gmail.com

On May 2, 2012, at 4:03 PM, Chuck Pilcher wrote:

> Eric,
>
> For a year now we have been debating Kirkland Zoning Code Section 40 (BN Zones). During that time, I have never heard anyone explain the planning rationale that would intentionally place unlimited residential density in BN zones.
>
> If unlimited residential density were a planning goal for our BN zones, it seems to me that more than one word in the Zoning Code would have addressed the issue. (The one word is "None" under the

column "Minimum Lot Size" in Zoning table 40.10.100.)
>
> You've been here throughout the period in question for any Zoning Code changes. Would you please explain to me the rationale used by the Planning Commission if it intentionally included unlimited residential density in a BN Zone? Those zones are clearly defined as a place for "Neighborhood Business," so why would the PC put ultra-high density "stacked dwelling units" right in the middle of single-family and medium-density residential neighborhoods?
>
> Chuck Pilcher
> chuck@bourlandweb.com
> 206-915-8593
>
>
>
>

From: Heather Bradford
To: Andrew Held; Amy Walen; Doreen Marchione; Dave Asher; Eric Shields; Glenn Peterson; Jeremy McMahan; Jay Arnold; Jon Pascal; Kurt Triplett; Mike Miller; Penny Sweet; Toby Nixon; Teresa Swan; Joan McBride; Bob Sternoff; C Ray Allshouse
Subject: moratorium on BN zones
Date: Sunday, April 29, 2012 1:55:49 PM

Hi there – I a writing to share my opinion that I believe unlimited density is inappropriate for the Michael's vacant parking lot space from both a traffic and neighborhood aesthetic standpoint, and I would like to request an extension of the moratorium on BN zones

Thanks so much,

Heather Bradford
Moss Bay citizen
527 Kirkland Avenue
Kirkland, WA 98033

From:	Betty Bonnett
To:	Amy Walen; Byron Katsuyama; Doreen Marchione; Dave Asher; Eric Shields; Glenn Peterson; Jeremy McMahan; Jay Arnold; Jon Pascal; Kurt Triplett; Mike Miller; Penny Sweet; Toby Nixon; Teresa Swan; Joan McBride; Bob Sternoff; C Ray Allshouse; Andrew Held
Cc:	lwb77@comcast.net
Subject:	Moratorium on BN Zones
Date:	Sunday, April 29, 2012 2:03:38 PM

TO: Kirkland City Council
FROM: Betty and Bill Bonnett
DATE: April 29, 2012

As original owners/residents of our unit at Marina Pointe, we ask you to extend the moratorium on BN zones.

Our concern specific to our neighborhood is the unlimited density project proposed for the site of Michaels Dry Cleaners, Café, and Vacant Lot. We believe that unlimited density is inappropriate for this location from both a traffic and neighborhood aesthetic standpoint. Our roads cannot support this increase in traffic. The character and charm of the waterfront boulevard and Kirkland's downtown area will be greatly compromised and possibly changed forever.

More work needs to be done, and we are asking for and relying on your leadership to accomplish this.

Respectfully,
Betty and Bill Bonnett
303 2nd St. S. Apt. B4
Kirkland, WA 98033

From: Bruce Heckenberg
To: Amy Walen; Byron Katsuyama; Doreen Marchione; Dave Asher; Eric Shields; Glenn Peterson; Jeremy McMahan; Jay Arnold; Jon Pascal; Kurt Triplett; Mike Miller; Penny Sweet; Toby Nixon; Teresa Swan; Joan McBride; Bob Sternoff; C Ray Allshouse; Andrew Held
Subject: Moratorium on high density building in Kirkland
Date: Sunday, April 29, 2012 4:32:57 PM

I would like to appeal to the City Council to extend the moratorium on building high density projects in downtown Kirkland.
Downtown Kirkland is already loosing it's "charm" which brought my wife and I to live in downtown 12 years ago. If the objective is to try to replicate Bellevue on a smaller scale, this is a formula for disaster in my opinion. We have already overextended ourselves with the annexation of Totem Lake, and with this proposed monstrosity project, downtown will be impossible to navigate.
I hope the Council votes to extend this moratorium for the BN zones until a later time.
Sincerely,
Bruce Heckenberg
129 Third Ave., Apt 404
Kirkland, Wa

Jeremy McMahan

From: Eric Shields
Sent: Monday, March 05, 2012 9:22 AM
To: Jeremy McMahan; Teresa Swan
Subject: FW: From: A & D Mosa To: J Arnold & KPC

Follow Up Flag: Follow up
Flag Status: Completed

Eric Shields

From: lettertokpc@aol.com [mailto:lettertokpc@aol.com]
Sent: Sunday, March 04, 2012 7:03 AM
To: Andrew Held; Byron Katsuyama; C Ray Allshouse; Eric Shields; George Pressley; Glenn Peterson; Jay Arnold; Jon Pascal; Karen Tennyson; Mike Miller; Tennysonkk@aol.com
Subject: From: A & D Mosa To: J Arnold & KPC

June 27, 2011

BN - Residential Market
Adensity of 116 units per acre (10 times that of anything in the immediate vicinity) is irresponsible; Safety issues in residential neighborhood: Aesthetic Mis-Fit into neighborhood

We have lived in the Moss Bay neighborhood for 10 years now and currently own a single family home on 10th Ave S. We wish to be added as a "party of record" for permit requests SHR11-00002 and SEP11-00004. We are concerned about the environmental, commercial, and practical impacts of the Potala Development on the surrounding lower density residential neighborhood around Lake Wash Blvd / 10th Ave S, Kirkland. The Potala Development project in its current form is unacceptable and out of place for the proposed location. We don't believe the City is taking enough time to thoroughly analyze the impacts of the Potala Development with regards to the following:

Traffic/Parking:
Traffic increase on Lake Washington Blvd/Lake Street S/10th Ave S both during construction and after residents have moved into the 143 apartments will be severe. As the parents of 8 month old twins, it's distressing that a project with such extreme density is being considered within mere feet of our currently family friendly neighborhood. We believe the true traffic impact has been far underestimated and needs a more thorough assessment. 10th Avenue S is not designed to be a main thru-street and thus to handle heavy traffic flows. Moreover, with its very residential and family friendly character, the resulting additional traffic would put drivers directly in the path of Lakeview Elementary students walking to and from school and the many mothers/fathers/caretakers who walk with strollers and/or toddlers to the nearby parks.

Furthermore, 10th Ave S is not equipped to handle the additional parking which would result from residents and visitors of the new building with its 143 apartments. While the developer is no longer pursuing the initial parking variance request, we are concerned that the project does not provide sufficient parking.

Environmental Impact:
We are stunned to find out that the Environmental Impact of the proposed project has been not been studied. Given the existing dry cleaning business and former gas filling station on this site and the proximity to the lake, nesting eagles and parks where children play, this is cause for great concern.

Aesthetic "Fit" with our neighborhood:
The proposed building does not fit with the surrounding neighborhood of single family homes and condos. In its current design it is an inappropriate, massive block sitting right on Lake Street; perhaps appropriate for a downtown area, but not at this location. Allowing 143 new apartments at a density of 116 units per acre (10 times that of anything in the immediate vicinity!) is irresponsible.

Please enter this into the record and keep us advised of the "progress" of the Potala Development.

Sincerely,

Andrea & Dirk Mosa
137 10th Ave S
andrea.mosa@live.com
206-228-7627

-----Original Message-----
From: LetterToKPC <LetterToKPC@aol.com>
To: AHeld <AHeld@kirklandwa.gov>; BKatsuyama <BKatsuyama@kirklandwa.gov>; CAllshouse <CAllshouse@kirklandwa.gov>; EShields <EShields@kirklandwa.gov>; GPressley <GPressley@kirklandwa.gov>; GPeterson <GPeterson@kirklandwa.gov>; JArnold <JArnold@kirklandwa.gov>; JPascal <JPascal@kirklandwa.gov>; KTennyson <KTennyson@kirklandwa.gov>; MMiller <MMiller@kirklandwa.gov>; Tennysonkk <Tennysonkk@aol.com>
Sent: Mon, Feb 27, 2012 9:38 am
Subject: Re: To: J Arnold & KPC

How are you making sure to meet the criteria

1) Very Small Mixed Use Building/Ctr - You cannot meet that without reducing lot coverag

2) Retail and Services serving neighborhood - If you don't require 50% of retail/svc, it will become apartments

3) Density does matter.
If you allow density you get a bigger building, period... This is contrary to "Residential Market"
Also:
a) More residential units will mean more noise from TVs, Stereos, fans, Air Conditioning units, etc
b) More residential units bring more windows facing neighbor properties and more loss of privacy as it becomes harder to stagger the windows and they end up looking into the neighbor windows, backyards and porches (Visual tresspass)
c) More residential units bring more windows and light spilling into the neighbor properties, robbing of the enjoyment of the night sky and washing out any remaining public views of the water or mountains on the horizon. (Light Tresspass)

From: Ravi Khanna
To: Amy Walen; Byron Katsuyama; Doreen Marchione; Dave Asher; Eric Shields; Glenn Peterson; Jeremy McMahan; Jay Arnold; Jon Pascal; Kurt Triplett; Mike Miller; Penny Sweet; Toby Nixon; Teresa Swan; Joan McBride; Bob Sternoff; C Ray Allshouse; Andrew Held; Robin Jenkinson
Subject: Need for Density Limit in the area being proposed for the Potala Village project
Date: Sunday, May 13, 2012 10:43:11 PM

Dear Council members,
I understand you are meeting on May 15th to discuss the zoning of the area being proposed for the Potala Village project.
As as been communicated before,any increase in density would be highly deleterious to the area.Washington Boulevard cannot handle the increased traffic and the character of the waterfront will be irrevocably altered for the worse.
As council members,I hope you not allow that to happen to Kirkland.Please order a low density limit for the area.
Sincerely,
Ravi Khanna
303 2nd St S
Kirkland,WA 98033

April 30, 2012

City Clerk & Kirkland City Council
City of Kirkland
Kirkland, WA 98033

Delivered by Hand to City of Kirkland

To Whom It May Concern:

My name is Sharon Nelson and my husband, Arlyn, and I live at 6736 Lake Washington Blvd in Kirkland. We are speaking on behalf of "One Neighborhood Block" – a group of local neighbors that are deeply concerned about the direction the city may be taking with regard to the Comprehensive Plan and high-density/zoning issues. I am a Realtor (managing broker) and my husband and I both work in downtown Kirkland.

We are ALL shocked as to what appears to be a devastating plan for our area.

Living on the 'Blvd', we have noticed a big change in the traffic. It has become extremely difficult to get in and out of our driveway, and during the summer months, cars are at a virtual stand-still. We can walk to town faster than the cars get there! Having guests during certain times of the year is also very difficult because parking is impossible - already.

Our boulevard and parks are a very positive and unique attraction. Where can you go these days and enjoy sun, water activities, beautiful views, walking, riding bicycles, jogging, picnics, etc. like we have here? So why on earth would you cram more cars, people (density) in an already high traffic area?

One of our neighbors inquired of the city as to any potential development going in before they purchased their property and were told that wouldn't happen but now they are hearing a different story. They purchased their home at a premium based on what information they received from the city and now they feel betrayed. They are sickened and very angry.-We, also, paid a premium for our location, only to discover plans for a high-density multi-family building being built nearly next door, when the zoning is for **Neighborhood Business.**

All due respect, but there appears to be a lack of 'vision' as to what our city should/could be. Kirkland has such great potential and uniqueness but any real and appropriate vision seems to be lacking. With our lake and park accesses, views, etc. it could be so much more. Now, we face the possibility of ruining the waterfront and close-in areas by inappropriate development. We HAVE a GOOD master plan. Why don't we just enforce it with our Zoning Code?

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APR 30 2012
CITY OF KIRKLAND
CITY MANAGER'S OFFICE

Please consider our position. We are NOT against development, just inappropriate development and zoning. We would LOVE to see Kirkland thrive, but put high-density in areas where it is appropriate. Listen to your constituents, not developers who benefit from city mistakes.

A wrong decision now could be tragic for our city and may just set the stage for more negative uprisings. Now is the time for the city to LISTEN to their residents and LISTEN well.

In a nutshell, here are our concerns:

- "One Neighborhood Block" would like to establish "standing" for any future hearings and go on record with our concerns.
- Please extend the moratorium for an additional 6 months. We would be supportive of an earlier termination of the moratorium if the work of aligning the zoning of Residential Markets with the Comp Plan is achieved prior to that.
- The Comprehensive Plan of Kirkland clearly states that ALL development may only be approved if it is in compliance with that Plan.
- The zoning changes that are required by the Comprehensive Plan for Residential Market/Neighborhood Business are still not in place.

We want what is best for the city of Kirkland both now and for the future. Now is the time to set things right so we can go forward with proper guidelines.

Thank you for your time!

Sharon & Arlyn Nelson
6736 Lake Washington Blvd NE #8
Kirkland, WA 98033
425.260.3500

Jeremy McMahan

From: LetterToKPC@aol.com
Sent: Wednesday, March 07, 2012 10:57 AM
To: Andrew Held; Byron Katsuyama; C Ray Allshouse; Eric Shields; George Pressley; Glenn Peterson; Jay Arnold; Jon Pascal; Karen Tennyson; Mike Miller; Tennysonkk@aol.com; Jeremy McMahan
Subject: From: L Obrzut & D Ling To: J Arnold & KPC
Attachments: Potala--Neighborhood_Comment_Letter.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Lee Obrzut and Dan Ling
Water's Edge
925 Lake St S, Unit 302S
Kirkland, 98033

As you know the neighbors along Lake St and 10th Avenue are deeply concerned about the scale and **density** of the Potala project being proposed for the corner of Lake and 10th. Attached please find a detailed letter covering our concerns.

We hope you will carefully review this project and find ways to mitigate the neighborhood's concerns.
Yours truly,

Lee Obrzut and Dan Ling

FILE

FOSTER PEPPER PLLC

Direct Phone (206) 447-5942
Direct Facsimile (206) 749-1946
E-Mail gills@foster.com

June 24, 2011

Teresa Swan, Senior Planner
123 - 5th Ave.
Kirkland, WA 98033

Re: SEP11-00004 SEPA Comment Letter

Dear Ms. Swan:

Thank you for providing an opportunity to comment on the City of Kirkland's SEPA Determination of Non-Significance ("DNS") for the Potala project on Lake Street at 10th Avenue South. As you are aware, this law firm represents a coalition of Kirkland citizens who live in the Moss Bay neighborhood immediately surrounding the proposed Potala project. This letter details our clients' serious concerns about the probable significant environmental impacts of this project, all currently left unaddressed by the City's decision to issue a DNS.

A project of this scale in this neighborhood requires, at the least, an environmental impact statement ("EIS"). In the alternative, we request that the City impose mitigating conditions under its substantive SEPA authority as informed by adopted SEPA policies incorporating by reference the Comprehensive Plan and SEPA itself. Unless our clients' concerns are addressed by close of business on June 28, 2011, we will appeal the City's DNS to the Hearing Examiner.

This project proposes almost ten times the density of any neighboring structure or zone. It includes at least ten times the number of units of any single development in the vicinity. The design calls for a 48-foot-tall building in a zone with a 30-foot height limit. The design would place massive façades, beyond the scale of any existing development in the neighborhood, against the City's rights of way in Lake Street and 10th Avenue South. The project would create traffic conflicts on the already-congested Lake Street as vehicles wait to turn left only a few feet south of traffic turning left from westbound 10th Avenue South. The neighborhood is concerned about the impacts associated with siting a development of this scope and scale in the middle of a medium-to-low density neighborhood.

Neither the Kirkland Comprehensive Plan ("Comp Plan"), nor any Comp Plan EIS or supplement thereto, contemplated this sort of development at this location. In recognition of the property's existing uses—a small hamburger stand and a drycleaner—the Comp Plan designates this property as Residential Market, the lowest intensity commercial zone in the City. *See* Comp Plan at LU-2. The Comprehensive Plan defines this designation as:

> an individual store or very small, mixed-use building/center focused on local pedestrian traffic. Residential scale and design are critical to integrate these uses into the residential area. Uses may include corner grocery stores, small service businesses (social service outlets, daycares), laundromats, and small coffee shops or community gathering places.

Comp Plan at VI-14 (emphasis added).

Indeed, the Comprehensive Plan addresses this very parcel, stating that "[l]imited commercial use . . . should remain." Id. at XI.D-24 (addressing "[t]he southeast quadrant of the 10th Avenue South and Lake Street intersection"). In contrast to the small-scale development contemplated by the Comp Plan, the proposal would create 6,000 square feet of office, 143 residential units, and underground parking for hundreds of vehicles—hardly a project one could call "very small" or "limited commercial use." It certainly does not fit among the list of uses the Comp Plan contemplates in a Residential Market designation.

The Neighborhood Business ("BN") zoning on the parcel is inconsistent with the Comprehensive Plan designation. During the Comp Plan update in 2004, the City Council issued a directive that the discrepancy be addressed by "[a]mend[ing] the Zoning Code as appropriate to establish standards for residential markets." *Id.* at XIV-5, Table IS-1 (LU-6). Unfortunately, this task was not completed before the applicant sought permits. Unlike all other zones outside of downtown and heavy commercial zones, the BN zone contains no residential density limit. KZC 40.14.090-.100. It allows large-scale mixed-use projects without regard to compatibility with neighboring zones and uses. *Id.* It limits structure height to 30 feet, but due to the City's "average building elevation" height measurement technique, coupled with the fact that the site increases 23 feet in elevation from west-to-east, the BN zone appears to allow a 48-foot-tall façade spanning the entire block, with two floors of underground parking. The SEPA checklist states that the four-story project will have four levels in residential use, which would violate the zoning code's prohibition against ground-floor residential, KZC 40.10.100. With this exception, which the City must examine, the project may comply with the zoning code. Nevertheless, the City has broader authority to protect its citizens from inappropriate development than just the zoning code.

The City's substantive SEPA authority empowers it to impose conditions to mitigate a project's impacts without regard to whether the project complies with applicable zoning. Although zoning codes control over conflicting comprehensive plan provisions, the City has adopted the provisions of its Comp Plan as substantive SEPA policies. In addition, the City has adopted the policies of SEPA itself, which place a strong emphasis on protecting neighborhood aesthetics and welfare. Under these policies, as a matter of SEPA law, the City may condition the project to better comply with the Comp Plan notwithstanding the zoning code.

This project has been inadequately studied. The City failed to recognize the probable significant environmental impacts of this project when it issued the DNS. The City should withdraw its DNS and prepare an EIS. Alternatively, the City should re-issue its DNS with conditions sufficient to mitigate the project's impacts.

I. The City Erred in Issuing a DNS—the Project Will Impose Significant Environmental Impacts that Must be Studied in an EIS

Neither the environmental impacts of this project, nor any project of its type at this location, have ever been studied. The checklist submitted by the applicant does not provide the City with enough information to meaningfully evaluate potential impacts, and no other environmental study to our knowledge has done so either. Specifically, neither the programmatic environmental study for the Comp Plan, nor its amendments, has ever evaluated the impacts of such dense development in this location—outside of downtown and the City's heavy commercial areas. These types of environmental unknowns are exactly what SEPA was designed to identify before adverse impacts occur. The City must thoroughly study the probable significant environmental impacts of this project as currently designed.

With many urban infill projects, a DNS is appropriate. After all, if a project complies with the zoning code, which in turn is consistent with the comprehensive plan, most of the project-level impacts will already have been analyzed in the programmatic EIS for the comprehensive plan. For example, there is no need to analyze the environmental impacts of constructing an office building on land zoned "office" that also carries a comprehensive plan designation of "office use," because the impacts would already have been analyzed in the comprehensive plan EIS.

Here, by contrast, although the project arguably complies with the zoning code, the zoning code is plainly inconsistent with the Comp Plan. On its face, the BN zone conflicts with the Residential Market designation. *Compare* Comp Plan at VI-14 (defining "Residential Market" as "an individual store or very small, mixed-use building") *with* KZC 40.14.090-.100 (development standards for BN zone, containing no residential density limit and an effective 48' height limit). It appears that the BN zone pre-dates the Comp Plan and has yet to be updated, despite the Comp Plan's directive to create zoning standards for the "Residential Market" designation. Comp Plan at XIV-5, Table IS-1 (LU-6). Because the Comp Plan envisions such a low-intensity designation to this property, no review of the environmental impacts of this use or of a project like this has ever been conducted.

The apparent presumption that the project will produce no significant environmental impacts because it complies with the zoning code is unfounded. This project is virtually certain to produce a variety of significant environmental impacts, none of which have been studied.

Among the significant environmental impacts that require more in-depth study are:

- **Neighborhood aesthetics**: The height, bulk, and scale of the project are far beyond anything in the immediate vicinity, and the proposal will result in massive walls along 10th Avenue South and Lake Street;
- **Density**: The project is ten times the density of any building in the area and will concentrate a large number of people in an area not suited to handle it;

- **Traffic**: Vehicles turning left from the project will have conflicts with vehicles turning left from 10th Avenue South; the exit point from the project is just steps away from a heavily used crosswalk; Lake Street is already very congested at peak hours (and often gridlocked on sunny afternoons all the way from Carillon Point to downtown); and additional pedestrian/bicycle traffic will create conflicts with existing motorized and non-motorized transportation;
- **Construction**: The proposal calls for 45,000 cubic yards of cut and 50 cubic yards of fill, producing at least 3,000 truck trips (assuming a relatively large, 15 cy truck) over the excavation period of construction;
- **Environmental contamination**: The proposal would displace an existing drycleaner as well as several barrels of waste, and it appears the property was once in use as a gas station, both of which suggest that the site may contain toxic soils, and neither of which were discussed in the SEPA checklist;
- **Plants and animals**: Neighbors report eagles roosting in the trees on the project site;
- **Recreation**: Parks within walking distance, including the privately owned and maintained facility across Lake Street near the Water's Edge condominium, are already heavily used and could be overwhelmed by the addition of hundreds of new residents;

In light of the fact that none of these environmental impacts have been studied, and many are ignored or only cursorily mentioned in the applicant's SEPA checklist, the City should withdraw its DNS and issue a Determination of Significance, and prepare an EIS for the project.

II. The City Should Exercise its Broad Authority to Condition Projects Under Substantive SEPA

The City has the authority under SEPA to impose conditions to mitigate impacts that a strict application of its zoning code would allow. *See, e.g.*, *Victoria Tower Partnership v. City of Seattle*, 59 Wn. App. 592, 597, 800 P.2d 380 (1990) ("There is no longer any question that SEPA policies can restrict projects otherwise permitted under zoning regulations."). Here, the proposed project offends not only the Comp Plan, but also SEPA's policy statements seeking to protect the character and aesthetic qualities of the built and natural environment.

Victoria Tower is instructive. In that case, the applicant sought to construct a 16-story apartment tower that complied with Seattle's zoning code—in particular, its proposed height of the sixteen-story building (179 feet) was well under the allowed height of 239 feet. *Id.* at 594. The planning director found that the proposed building was out-of-character with the neighborhood, despite the fact that the immediate neighboring building was a nine-story condominium. *Id.* at 595. The director denied the permit, and the hearing examiner affirmed. *Id.* at 596. The City Council approved the permit subject to a condition limiting the project to eight stories, which the superior court affirmed. *Id.* at 595-96, 602. The appellate court agreed that the mitigation imposed by the City Council was appropriate and within its very broad substantive SEPA authority. *Id.* at 600.

As the Seattle City Council did in *Victoria Tower*, here the City can and should impose conditions under its substantive SEPA authority to mitigate the significant adverse impacts to the neighborhood. Chief among them are height, bulk, and scale: Compared to the existing neighborhood, this development is simply huge. It is taller, wider, and deeper than any building around it, and it introduces 143 units into a neighborhood where the largest multi-family structures contain only 15 units. This concentration of units creates a host of associated problems, not the least of which involves traffic. As discussed below, the City's SEPA policies address circumstances such as these, and the City must act to protect both its citizens and the built environment from inappropriate development.

A. The City's SEPA Policies Address Impacts to Neighborhood Aesthetics

The City has incorporated a broad range of SEPA policies by reference. *See* KMC 24.02.038. Among these are "[t]he policies of the State Environmental Policy Act—Chapter 43.21C RCW" and "[t]he most recent version of the Comprehensive Plan." KMC 24.02.038(a)-(b). Contained within the Comprehensive Plan and SEPA are general statements regarding protection of aesthetics, including the aesthetics of the built environment. SEPA seeks to "[a]ssure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings" RCW 43.21C.020(2)(b) (emphasis added). This policy supported the City of Seattle's decision to limit to eight stories a multi-family structure in a zone that allowed 239-foot towers. *Victoria Tower*, *supra*.

Here, the aesthetics of the neighborhood would be severely impacted by a structure with the height, bulk, and scale of the proposal. As discussed above, the project proposes a 48-foot-tall façade stretching a full block on Lake Street, far taller and wider than any existing improvements in the area. The project presents a similar wall to 10th Avenue South. The proposal takes full advantage of the building envelope allowed by the zoning code, offering no relief in terms of added setback or modulation. The renderings show that the architect attempted, by means of a multi-colored paint scheme and false balconies, to create the illusion of modulation, but at the end of the day the project will produce an enormous, block-long wall on the edge of 10th Avenue South.

B. The City's SEPA Policies Address Impacts to the General Welfare, Including Safety

The SEPA policies seek to "[f]oster and promote the general welfare." RCW 43.21C.020(1) (incorporated by reference by KMC 24.02.038(a). This project is counter to the general welfare of the community. It would introduce hundreds of new residents to a small area that is ill-equipped to handle them. The small community park across the street would be overrun with patrons. The privately owned and maintained dock next to this park is already heavily used by the public.

These hundreds of new residents, driving hundreds of cars, would make hundreds, if not thousands, of daily vehicle trips on Lake Street and 10th Avenue South. Although the traffic study concludes that the addition of these trips will not reduce level of service at area intersections, the proximity of the Potala's driveway to 10th Avenue South means that vehicles

turning left (south) onto Lake Street would create conflicts with one another and with pedestrians crossing either street. Moreover, given the challenges of exiting the development to the left, residents are likely to exit to the right and immediately turn up 10th Avenue South, placing additional traffic pressures on a side street that is not designed for heavy use. Additional traffic up 10th Avenue South also results in dozens, if not hundreds, of additional vehicles driving through the Lakeview Elementary school zone, adding to the potential safety hazards and policing requirements for that area.

The general welfare is likewise not served by allowing pollution to escape the site and enter the groundwater or Lake Washington. The neighbors are not convinced that the site is clean—drycleaners are notorious for producing polluted soils and groundwater, and the property once had a gas station. A number of rusting barrels of waste currently sit on the property, with more behind the hamburger stand. The neighbors do not know what is in these barrels, nor do they know what is in the dirt. Based on a review of the information submitted by the developer, the City has no idea either. Insofar as there is pollution in the soils, it cannot be addressed by simply scooping it out and hauling it away. Even if the project proceeds as planned, it is likely that excavation will not commence until the end of summer, and continue through the fall rains. Precautions must be taken to prevent any contaminated soils or surface water from reaching Lake Washington.

C. The City's SEPA Policies Address Density Impacts

As discussed above, the Comprehensive Plan designates this property with the lowest-intensity commercial development in the City: Residential Market. This designation contemplates very small-scale commercial development, like that currently existing on the property and the convenience store further down Lake Street. It does <u>not</u> contemplate a massive mixed-use office and apartment complex like the one proposed. As a matter of SEPA policy, the City could require development on a Residential Market scale.

The Comp Plan also expresses concerns about abrupt density shifts across adjacent districts. It states outright that "significantly greater densities" should not be sited in areas of predominately low-density use (defined as not exceeding seven dwelling units per acre, Comp Plan at VI-3-4). Comp Plan at VI-13. This policy recognizes that there are negative impacts associated with abrupt changes in density. The Comp Plan defines "high-density development" as that exceeding 15 dwelling units per acre. Here, the surrounding neighborhood is zoned RM 3.6 (12.1 units per acre) and RS 8.5 (5.1 units per acre), while the proposed density of Potala is <u>116 units per acre</u>—nearly ten times the designated density of <u>any nearby property in any direction</u>. This type of abrupt increase in density across property lines is exactly the sort of incongruous shift the Comp Plan seeks to avoid by encouraging residential growth "consistent with the basic pattern of land use in the City." Policy LU 4.3, Comp Plan at VI-13.

Comp Plan provisions cannot, on their own, trump contrary zoning code provisions. However, because the City incorporates the Comp Plan provisions as substantive SEPA policies, the City may (and should) impose conditions to protect the values expressed in the Comp Plan.

D. The City Should Issue a DNS With Conditions

The City should condition the project as follows:

- **Height, Bulk, and Scale**: The City should restrict height to twenty feet above Average Building Elevation, rather than the zoning code limit of thirty feet. This would eliminate the top floor of residential, reducing the yield to a more appropriate 90-100 units and the density to 73-81 dwelling units per acre. The reduction in height would protect the neighborhood aesthetics, while the reduction in yield would have the added benefit of mitigating impacts associated with excessive density, including traffic, park usage impacts, and construction impacts.
- **Height, Bulk, and Scale**: The City should impose 20-foot setbacks in the side and rear yards, rather than the 10-foot setbacks currently provided. This would reduce the length and depth of the façades on Lake Street and 10th Avenue South, helping to protect neighborhood aesthetics. This would further reduce yield by an unspecified amount, helping address density impacts as noted above.
- **Environmental Remediation**: The City should require that the site be studied for contamination and, if necessary, cleaned up before excavation begins. A Phase I environmental assessment should be completed.
- **Plants and Animals**: The City should require the applicant to conduct a habitat survey to determine if the site contains any eagle nesting sites. If so, the City should impose conditions protecting the sites or mitigating their loss.
- **Construction Impacts**: The City should restrict construction truck traffic to non-peak, weekday hours.

III. CONCLUSION

Our clients respectfully request that the City withdraw the DNS and prepare an EIS for the project, or, in the alternative, that the City issue a DNS with conditions. When viewed against the existing context of the neighborhood, the proposal as currently designed would produce significant adverse environmental impacts. At a minimum, the City erred by issuing a DNS without imposing appropriate conditions pursuant to its substantive SEPA authority.

Our clients would like to work with the applicant and the City to arrive at a solution that allows the applicant to recover an acceptable return on his investment, while protecting the built and natural environment. We are happy to discuss any of the matters raised in this letter, and invite the City and the applicant to contact us. However, if we do not reach a negotiated settlement, we will have no choice but to file an appeal with the Hearing Examiner. We think the Examiner will agree that, in light of the record, the City committed clear error in issuing a DNS for a project of this scope in this neighborhood.

Sincerely,

FOSTER PEPPER PLLC

Steven J. Gillespie