

November 19, 2013

Dear Citizens Interested in Potala Village:

Thank you for contacting the City regarding your concerns.

I am replying on behalf of all the Kirkland City Councilmembers. I want to assure you that they have received your emails, but as they do not have a role in processing permits they have asked me as the City Manager to respond for them.

Recent correspondence from you and others has highlighted some possible misunderstandings about the status of the Potala Village development. This message is intended to clarify the status of the application.

Vesting in Development Regulations:

On May 9, 2013, Superior Court Judge Monica Benton issued a decision which directed the City to review an application for a building permit on the Potala Village site "based on the zoning and land use regulations in effect on the date of the shoreline substantial development permit application, i.e. February 23, 2011." The City had unsuccessfully argued that the vesting should occur under the zoning regulations revised in 2012. The applicant has since submitted a building permit application and the City has begun review of the application. In accordance with the Judge's order, neither the City nor applicant is able to "pick and choose" among the old and new regulations, only the 2011 regulations apply. There are a number of differences between the old and new regulations, but perhaps the most significant is that the 2011 regulations did not directly restrict the number of dwelling units, whereas the new code establishes a maximum density of 48 units per acre.

Appeal of Decision:

Even as we review the building permit application under the old regulations, the City has appealed the above mentioned Superior Court decision to the Washington State Court of Appeals. The City filed a brief with the Court on October 28, 2013. A responsive brief from the applicant is required to be filed by December 6, 2013. The next step is for the Court of Appeals to schedule this dispute for oral arguments, but it is not known when that might be, nor when the Court would issue a decision. In the meantime, the City is bound to follow the Superior Court decision.

2012 Mediation:

A few of the recent communications have referenced previous negotiations by the neighbors with the developer and City in an attempt to reach some agreement on the Potala Village project. I presume these may be references to a formal mediation process that took place over many months a year ago. This was a unique effort that occurred with the voluntary participation and hard work of everyone involved. With the encouragement of the City Council, I was an active participant as were my Planning Director and City Attorney. Unfortunately, a mediated solution was not reached. It is important to understand that this was a singular effort and that the community's level of involvement in reviewing the developer's plans and designs through that mediation was not the way building permit applications are normally processed.

Processing of the Building Permit:

A building permit application for a new mixed use building on the Potala site was accepted on July 18, 2013. This is a ministerial permit that must be reviewed by the City staff for compliance with the applicable regulations. It is not a matter in which the City Council has any involvement. Legally, the Council may not interject itself in the staff's review or decision making on the matter. The Council hires the City Manager and the City Manager is responsible for making sure that the City staff correctly processes and issues the building permits.

City staff have preliminarily reviewed the submitted building plans and identified a number of compliance issues based on the applicable codes and the mitigation measures identified in the Environmental Impact Statement and the conditions of approval for the Substantial Development Permit. As is often the case for a project of this size, City staff have met several times with representatives of the applicant to discuss these issues. The meetings are not "negotiations" but opportunities to ensure that the applicant is following applicable regulations. Because many of the issues are likely to have a significant bearing on the project, the applicant has asked City staff to put a hold on the review of the building plans, pending clear direction from City staff as to the mitigating measures and significant development regulations that will apply. Once this information is received by the applicant, we expect that the application materials will be revised and review of the application will begin again.

Thank you again for your email. Please let me know if you have any additional questions.

Sincerely,

Kurt Triplett
Kirkland City Manager