

**FINDINGS AND DECISION OF THE HEARING EXAMINER
FOR THE CITY OF KIRKLAND**

In the Matter of the Appeal of

**DAVIDSON SERLES & ASSOCIATES and
TR CONTINENTAL PLAZA CORPORATION**

Files: APL11-00001
DRC09-00002

from a decision by the Design Review Board

Introduction

The Design Review Board issued a decision approving the plans for what is referred to as "the Kirkland Parkplace project". The Appellants timely appealed the decision.

The appeal hearing was held on March 24, and 28, 2011, before the Hearing Examiner (Examiner). The Appellants, Davidson Serles and Associates and TR Continental Plaza, were represented by Jeffrey M. Eustis, attorney-at-law; the Applicant, Touchstone Corporation, was represented by G. Richard Hill, attorney-at-law; and the Design Review Board (Board), was represented by Robin S. Jenkinson, City Attorney. The Examiner inspected the site prior to the hearing. The record was held open to April 7, 2011 for submittal of the Appellants' written rebuttal and the parties' closing statements. The parties waived the KZC 142.40.11.c decision deadline. After considering the evidence in the record and inspecting the site, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

Site and Vicinity

1. The Applicant owns an 11.5 acre site located at 457 Central Way in downtown Kirkland and known as "Kirkland Parkplace". It is bounded on the north by Central Way, on the east by 6th Street, on the west by Peter Kirk Park, and on the south by adjacent development that fronts on 6th Street, 2nd Avenue, Kirkland Way and Kirkland Avenue.
2. The site sits at an elevation lower than the surrounding area and is presently developed with structures of one to six stories in height that house offices and retail businesses occupying approximately 238,450 square feet. There are multifamily and commercial structures to the north across Central Way, commercial structures to the east across 6th Street, and multifamily and commercial structures and surface parking lots to the south. Several single-story civic buildings lie southwest of the site.

Regulatory Background

3. In 2007, the Applicant sought amendment of the comprehensive plan and zoning code provisions applicable to the property.

4. On December 16, 2008, following environmental review and reviews by the Design Review Board and Planning Commission, Exhibit R, the City Council adopted several ordinances related to the property. Ordinance 4172 (Exhibit L) amended Kirkland Municipal Code Section 3.30.040 to incorporate as a document for use in design review, the Kirkland Parkplace Mixed Use Development Master Plan and Design Guidelines which apply within Kirkland Parkplace (also known as Design District 5A). Ordinance 4170 (Exhibit J) amended the comprehensive plan to add a discussion of Design District 5A and differentiate it from Design District 5 to the south. Ordinance 4171 (Exhibit K) amended the zoning code to create a new zone, Central Business District 5A (CBD 5A) and implementing regulations for Kirkland Parkplace. Ordinance 4175 (Exhibit M) created two planned action areas pursuant to SEPA. Planned Action Area A is Kirkland Parkplace, for which the planned action designation applies to development proposals within the range of 1.2 million square feet of office use and approximately 600,000 square feet of retail/commercial use, for a total of approximately 1.8 million square feet of development. Exhibit M at 4.

5. The Kirkland Parkplace Mixed Use Development Master Plan and Design Guidelines, Exhibit A, Attachment 6, state at the outset of the policy overview that the "proposed mixed-use center includes approximately 1.75 million square feet of development consisting of retail, office, hotel and sports club that are, in effect, an extension of the existing downtown." Exhibit A, Attachment 6 at 189.¹

6. The policy overview section also addresses the prescribed review process:

This document establishes performance criteria and provides recommendations for achieving specific design objectives. Compliance with the Master Plan including: general standards, general public amenity and access locations and street dimensional requirements shall be determined by administrative review. Compliance and consistency with the Design Guidelines shall be determined by the Design Review Board...In the DRB's review of the project, the Board shall respect the requirements and commitments established in this Master Plan".

Id. at 190. The policy overview then describes the phasing for the Parkplace development, *id.*, and the "Guiding Principles for the project" that were used to create the Master Plan and Design Guidelines.

¹ Page numbers for Exhibit A refer to the consecutive page numbers given for the staff report and attachments together.

7. The development standards included within the Master Plan contain the program requirements for the project, including a breakdown of the total site area, a breakdown of open space, and a breakdown of the building gross square footage that provides for 1.2 million square feet of office space and 550,000 square feet of retail and hotel (mixed use) space. *Id.* at 192.

8. The development standards also include the locations for pedestrian connections, retail/restaurant frontage and pedestrian space, as well as diagrammatic information on streets and adjacent improvements. *Id.* at 193-200.

9. Special regulations, setbacks, and maximum building heights as measured from established elevations on the site are set forth in zoning code provisions governing the CBD 5A zone. *Id.* at 217-223. On most of the site, a height of 115 feet, with a maximum of 8 stories is allowed. Along Central Way, a height of 100 feet and a maximum of 7 stories is allowed. And in certain areas adjacent to Peter Kirk Park, heights of between 60 and 100 feet, with a maximum of 4 to 7 stories are allowed, depending upon the specific development location.

10. The subject site is broken into 4 "districts": "Gateway;" "Central Way;" "Park Interface;" and "Central Retail Hub". The Design Guidelines (Guidelines) include Guidelines that address just specific districts and Guidelines that address all districts. *Id.* at 201-15.

Proposal

11. The proposal is for a mixed-use development of seven buildings. Development would total approximately 1.8 million square feet, which would include 1.2 million square feet of office space and approximately 600,000 square feet of retail and hotel/athletic club use. Parking for approximately 85 vehicles would be provided at grade, with below grade parking for 3,600 vehicles.

12. The Applicant intends to market the development to potential high-tech tenants. The program requirement of 1.8 million square feet was a function of both the price paid for the property and the Applicant's desire to attract high-tech tenants by developing a specific mass of technology-oriented space.

13. To determine the necessary floor plate size for the target tenants, the Applicant and its architects relied upon their prior experience with technology tenants and that of real estate brokers experienced in dealing with such tenants. The Applicant determined that efficient floor plates of 30,000 to 40,000 square feet, with widths of approximately 120 to 130 feet, were required to attract high-tech tenants. This required building lengths of approximately 300 feet and building heights of seven to eight stories.

14. A conceptual site plan for the project was used during the City's private amendment/master plan/planned action processes. The Applicant then determined the

Hearing Examiner Decision
Files. APL11-00001 & DRC09-00002
Page 4 of 13

actual layout of the buildings on the site while working with City staff to establish access points to, and pedestrian connections through the site that would weave it into the framework of the surrounding area.

Design Review

15. The Board is composed of members who are design professionals and building/construction experts, as well as "residents of Kirkland capable of reading and understanding architectural plans and knowledgeable in matters of building and design. The Board shall at all times have a majority composition of professionals from architecture, landscape architecture, urban design/planning, or similar disciplines." KMC 3.30/020.

16. KZC 142.35 states that at the design response conferences, the Board is to "review the design plans and provide direction to the applicant on issues to be resolved for final approval." As is common, the Board does not dictate style or even specific design changes when reviewing a proposal. Instead, they provide feedback based on the applicable guidelines, identify areas where they are looking for additional design work by the applicant, and explain what that work is to accomplish. The Board expects an applicant's architect to use professional judgment and experience to develop a response that meets the Board's guidance.

17. Early in the design review process for the proposal, the Board spent considerable time discussing the appropriate context for reviewing it. They determined that the context created by the Kirkland Parkplace Mixed Use Development Master Plan and Design Guidelines, together with the regulations for the CBD 5A zone, was new and entirely different than the context that would be used to review a proposal located outside Design District 5A. Thus, the Board determined that the language of the Guidelines would be interpreted within that new context.

18. The Board understood that the Council's prior actions had established the basic parameters for the project, including the zoning envelope and the breakdown of gross square footage on the site. The Board also understood that the basic layout of buildings on the site was established during the administrative review process. The Board saw its task as working with the Applicant to adjust the design within this basic framework.

19. The application for design review of the proposal was submitted in February of 2009, when the Board held its conceptual design conference pursuant to KCC 142.35.6. At that conference, the Board provided guidance on the Applicant's design concepts and decided on a structure for review of the entire development.

20. Following the conceptual design conference, the Board held 27 additional meetings throughout 2009 and 2010 to review design plans and provide additional design guidance. These included between 2 and 5 meetings on each building, reviewing both the

building and its relationship to the site as a whole and to other buildings around it. Public comment was taken at 25 of the meetings.

21. Throughout the design review process, the Board repeatedly asked the Applicant to make revisions to the design and return to the Board. Some of the design changes affected the sizes of floor plates. Exhibits O and P show the evolution of each building in terms of massing, modulation, articulation, etc., over the two-year design review process. *See e.g.* Exhibit P, presentation materials for "Building E Sections," 6/7/10, 6/28/10 and 7/19/10.

22. Because of the size and complexity of the project, the Board, City staff, and the Applicant collaborated to create a Design Guidelines Compliance Matrix to document the design requirements the Board had reviewed, how the Board had interpreted them, and the Board's rationale. The Board Chair participated in drafting the Matrix, and the draft was brought to the Board during its final deliberation meetings (26, 27 and 28), to guide the process. Where there are comments within the Matrix, they reflect the consensus reached by the Board. *See* Exhibit A, Attachment 4 at 39-54.

23. The Board is required by KZC 142.35.9 to decide whether the application complies with the applicable design guidelines and "shall make its decision by motion that adopts approved project plans in addition to changes or conditions required by the Design Review Board."

24. In the Board's final meeting on December 13, 2010, the six Board members present voted unanimously to approve the December 13, 2010 Kirkland Parkplace-DRB Final Submittal as the plans for the Kirkland Parkplace project. *See* Exhibit A, Attachment 3 at 21.

25. Although not required by Code, the Board issued a written decision on the proposal. The decision document includes a summary of the decision itself, a summary of the design response conference meetings, and a narrative summary of the "key issues and conclusions reached" during the process. Exhibit A, Attachment 3 at 22. The narrative addresses "Master Plan Modifications," "Minor Variations," and a section entitled "Additional Design Discussion," which includes the "key points" of Board discussions on particular aspects of the design. The DRB Final Submittal is attached to the decision as "[d]ocumentation of all approved plans and their compliance with the Kirkland Parkplace Mixed Use Development Master Plan and Design Guidelines." Exhibit A, Attachment 3 at 22.

Appeal

26. The appeal of the Board's decision raised four issues, one of which was disposed of prior to hearing. The remaining issues can be summarized as stating that the decision is in error because the proposal fails to comply with All Districts Building Design Guidelines 2.a, 2.b, 2.c and 2.h relating to massing, and modulation and articulation of

Hearing Examiner Decision
Files. APL11-00001 & DRC09-00002
Page 6 of 13

buildings and façades, and fails to comply with Central Retail Hub Building Design Guideline 4, concerning "generous and substantial modulation" as it relates to Building E. Appellants' December 23, 2010 Letter of Appeal (Letter of Appeal); Appellants' Clarification of Issues and Preliminary List of Witnesses and Exhibits (Clarification) at 1-4. At hearing, the Appellants withdrew any issue with respect to Building F.

27. The Appellants failed to raise the issue of compliance with All Districts Guideline 2.c in their Letter of Appeal and added it in the Clarification. A footnote in the Applicant's Closing Statement asks the Examiner to strike the Appellants' reference to this Guideline.

Guidelines

28. All Districts Building Design Guideline 2 reads in relevant part as follows:

2. Massing/Articulation

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

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

b. All building faces should be responsive to the context of the surrounding environment and neighboring buildings.

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

....

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

Exhibit A, Attachment 6 at 206. Central Retail Hub Building Design Guideline 4 reads as follows:

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

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

Exhibit A, Attachment 6 at 206.

Conclusions

1. KZC 142.40 governs appeals of Board decisions. The Examiner is to accord substantial weight to the Board's decision unless "substantial relevant information" is presented which was not considered by the Board. The Examiner may reverse or modify the decision if, after considering all the evidence in light of the design regulations, design guidelines, and Comprehensive Plan, the [Examiner] determines that a mistake has been made." KCC 142.40.11.a. This is roughly equivalent to the "clearly erroneous" standard of review. *See, e.g. Association of Rural Residents v. Kitsap Co.*, 141 Wn. 2d 185, 196-195, 4 P.3d 115 (2000); *Moss Bellingham*, 109 Wn. App 6, 13, 31 P.3d 703 (2001).
2. The record does not include substantial relevant information that was not considered by the Board. Therefore, the Examiner accords substantial weight to the Board's decision.
3. The only relevant Comprehensive Plan policies cited by the parties are ED-3.4, "Establish development standards that promote attractive commercial areas and reflect the distinctive role of each area," and ED-3.5, "Encourage mixed-use development within commercial areas." Among other things, ED-3.4 notes that commercial area revitalization programs are encouraged, and ED-3.5 observes that mixed-use development, "when combined with multi-story structures, promotes a more compact and sustainable land use pattern and encourages walking and transit use to reduce dependence on automobiles."
4. The Applicant cites KZC 142.40.7 in support of its motion to strike Appellants' reference to All Districts Building Design Guideline 2.c (Guideline 2.c). That Code section states that the "scope of the appeal is limited to *the specific elements of the Design Review Board decision* disputed in the letter of appeal and the hearing body or officer may only consider comments, testimony, and arguments on these specific elements." (Emphasis added.) The elements of the Board's decision disputed by the Appellants in their letter of appeal are "Part III,C,1," "Part III,C,3", and "Parts I, III and the Decision as a whole". Letter of Appeal at 1. At the request of the Applicant, the Appellants clarified the scope of their appeal of these decision elements. In doing so, they added Guideline 2.c as a new basis for their appeal of these elements. They did not add any new elements of the Board's decision to the appeal, however, and the motion to strike is therefore DENIED.
5. The Appellants argue at the outset that the "Board's treatment of Touchstone's parameters as unchangeable pervaded the Board's review and ultimately produced a decision inconsistent with Design Guidelines 2a, 2b, 2c, 2h and 13d," and that the Examiner "is entitled to find that the DRB decision was the product of error" on this ground. Appellants' Closing Statement at 4. The Appellants did not raise this as a basis for their appeal either in their Letter of Appeal or Clarification. Again, however, KZC 142.40.7 requires only that the appeal letter list the "specific elements of the Design

Review Board decision disputed," but does not require that the letter state the bases for disputing the listed elements.

6. The basic program for "the project" was incorporated into the Master Plan for Kirkland Parkplace long before the Touchstone proposal reached the Board. The Master Plan does not require, but clearly anticipates the amount of office and retail development that was ultimately proposed by the Applicant. And the Master Plan expressly instructs the Board to "respect the requirements and commitments" established in the Master Plan. During administrative review, the proposed development was determined to be consistent with zoning requirements for the property, and access points and pedestrian connections were finalized. These determined the layout of the buildings on the property, i.e., the basic site plan. The Board's conclusion, that the basic parameters for the project had been established by Council action and the basic site plan had been established through the administrative process, was not clear error. Moreover, it was consistent with the Board's Code-prescribed role and the Board's customary approach to its job.

7. Within the context of the Master Plan and applicable zoning regulations, the Guidelines provide the framework for the Board's exercise of discretion and professional judgment. Although codified, a Guideline is a *guideline* unless it is stated as a prescriptive standard.

8. The Appellants contend that the Board's decision is in error in concluding that the proposal is consistent with Guideline 2.b, which states that "building faces should be responsive to the context of the surrounding environment and neighboring buildings". In a lengthy paragraph, the Board's decision document addresses this Guideline and how the proposal responds to its surrounding context. See Exhibit A, Attachment 3 at 25-26. The Board was clearly reviewing the proposal's consistency with the Guideline within the new context of the CBD 5A zone, and was satisfied with the proposal's step backs and adaptation of design details and materials from surrounding buildings. The Appellants' architect disagreed with the Board's conclusion, but others, including an architect not connected with the proposal, agreed that the proposal provides an effective response to the surrounding environment. No clear error has been shown.

9. The Appellants assert that the Board erred in concluding that the proposal is consistent with Guideline 2.a, which states that generally, the proposal is to break down the scale and massing of buildings into smaller and varied volumes. Although the Board did not address this Guideline within the decision document, it is clear from the document itself that it is not a compilation of every conclusion the Board reached on the proposal's design.

10. As Appellants' architect testified, three of the proposed buildings are approximately 250 feet long and 120 feet wide, and two others are somewhat larger. However the Appellants focused on the size of the buildings relative to other buildings within the City and/or the surrounding CBD. Again, the Board correctly determined that this was not the appropriate context in which to consider the buildings. The City Council made a policy

decision to allow these larger buildings within the CBD 5A zone. The question is whether the Applicant has generally broken down the scale and massing of these larger buildings. The evidence in the record, including the attachment to the Board's decision (Exhibit A, Attachment 4), Exhibit T, and testimony from architect Howard Fitzpatrick show that the proposal does so through use of setbacks and upper-level step backs, modulation, and variations in scale, materials and color. In addition, features such as colonnades and canopies help to maintain a pedestrian scale, which is also enhanced by careful landscaping. The Appellants disagree with the Board's conclusion that the proposal is consistent with Guideline 2.a, but they have not shown that the conclusion was clearly erroneous.

11. The Appellants claim that two buildings within the proposal include "backsides," which are prohibited by Guideline 2.c, and that the Board's decision to the contrary is in error. The Appellants argue that the south façade of Buildings C includes no modulation, "yet it faces much smaller and more highly modulated residential buildings to the south," and that Building D presents a near blank wall to the Continental Plaza and Emerald Buildings to the south. Appellants' Closing Argument at 10. Again, the issue is not whether Building C is larger than, or includes more or less modulation than a residential building to the south. The Council has established that the development context within CBD 5A is different than the context outside the zone. Further, the evidence shows that the south façade of Building C includes modulation in the form of a protruding masonry grid, a contrasting gasket feature, varied window treatments and a variation between the base and upper floors. *See Exhibit A, Attachment 4 at 89.*

12. The record shows that, in addition to a garage entrance, the south side of Building D includes an eight-to ten-foot-deep colonnade feature, as well as pedestrian canopies, at the base; retail use that wraps from the west façade around to part of the south façade; a contrasting gasket feature that projects several feet from the building and wraps around all façades; and a projection that encompasses parts of five floors and reflects the rectilinear design of the Continental Plaza Building. In addition, the proposed landscaping will effectively add another layer of modulation and screen the entry to the adjacent building. The Appellants have not demonstrated that the Board's decision is clearly in error as to Guideline 2.c.

13. The Appellants contend that the Board erred in concluding that the proposal is consistent with Guideline 2.h, which relates to building modulation and how it should be employed to break up long façades and create visual interest unique to each building. The Appellants note that five of the six buildings within the proposal will be the largest buildings in the City and point to Chapter 92 KZC which, they claim, would require a scale of modulation greater than what is included in the proposal. However, the modulation required by Chapter 92 KZC, which is applied through the more prescriptive administrative review process to proposals located outside the CBD 5A zone, is not relevant. That regulation does not apply to Kirkland Parkplace, and nothing in the Master Plan or Guidelines indicates that the Board is to consider it when interpreting and

Hearing Examiner Decision
Files. APL11-00001 & DRC09-00002
Page 10 of 13

applying the Guidelines. Guideline 2.h states that the type of modulation used "should be determined by the overall design concept of each building".

14. The Appellants assert that the south façades of Buildings C and D "include virtually no modulation above the ground floor". That issue is addressed under Conclusions 11 and 12 above. The Appellants also argue that east façades of Buildings A, B and C lack "significant modulation". However the east façade of Building A is rich in modulation and articulation using, among other techniques, a colonnade, which erodes the base of the building, and a projection, differentiated by color, material and window treatment, that wraps the corner of the building. See Exhibit A, Attachment 4 at 62-70. The east façades of Buildings B and C include the projecting masonry grid, discussed above, that provides context and reduces scale, and 30 feet of additional setback between the buildings that allows for views from the east into an active pedestrian way with colonnades, multiple building projections, and contrasts in materials and window treatment. See Exhibit A, Attachment 4 at 72-89. The Appellants have not demonstrated that the Board's decision is clearly in error as to Guideline 2.h.

15. The Appellants assert that the Board erred in concluding that Building E, located in the southernmost portion of the site, provides generous and substantial modulation in response to neighboring buildings and thus, was consistent with Central Retail Hub Building Design Guideline 4 (Guideline 4). The Appellants claim that Building E "does not provide generous and substantial modulation, neither in an absolute sense nor relative to modulation generally provided for buildings in the CBD and surrounding areas. The modulation is insufficient to create visual interest or break up long façades and is not emphasized or reinforced in the manner required." Clarification at 3.

16. In its decision document, the Board addressed Building E, noting that it had had many discussions relating to the design of the building and stating as a "key point," the fact that the design "was revised during the DRB review to provide additional step backs from the building base to the main (north-south) block of the building to further moderate massing from adjacent buildings to the south and southeast. The DRB concluded that these massing changes provide generous and substantial modulation in response to neighboring buildings." Exhibit A, Attachment 3 at 26.

17. The Appellants concede that the lower four stories of Building E provide voluntary setbacks and upper level step backs on the south, east and west, and that there is a four-foot-deep reveal at the fifth floor which separates the upper levels of the building from the lower levels. See Exhibit A, Attachment 4 at 113² and 117. However, the Appellants argue that these setbacks and step backs are not sufficiently scaled to the size of the building and would not meet the requirements of what the Appellants' architect described as the "ordinary modulation" that would apply throughout the rest of the City under Chapter 92 KZC.

² The details of this page of the attachment are not clearly legible. The Examiner relied on the oversized copy of the attachment.

18. Again, the Appellants' reliance on prescriptive modulation requirements applicable elsewhere is misplaced. The Board decided early in the process that the Council had provided a completely new context for Kirkland Parkplace. Thus, the Board interpreted Guideline 4, including the phrase, "generous and substantial modulation" within that context. This is consistent with applicable rules of statutory construction. See *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d, 228 (2007); *City of Olympia v. Drebeck*, 156 Wn.2d 289, 295, 126 P.3d 802 (2006).

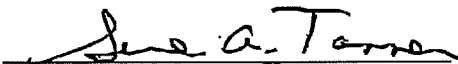
19. In addition to the increased setbacks and step backs, which include an additional 40-foot upper level step back on the east façade, adjacent to the Emerald Building, Building E includes five different layers of modulation on the east façade, which is west of the Emerald Building and faces the Continental Plaza Building across a large, existing parking lot. See Exhibit A, Attachment 4 at 118; testimony of Howard Fitzpatrick, March 28 at minute count 1:16:35. These different layers break up the facade of the building into smaller and varied parts and create visual interest, as required by Guideline 2.h which addresses modulation in all districts. The Appellants have not shown that the Board committed clear error when it determined that the added requirement of Guideline 4 for "generous and substantial modulation" was met by the massing changes achieved through the additional setbacks and step backs in Building E.

21. The Appellants have shown a clear difference of professional opinion between their architect and the design professionals on the Board. Nonetheless, considering all the evidence in light of the Comprehensive Plan, the Master Plan and the Guidelines, the Examiner concludes that the Board did not make a mistake.

Decision

The Design Review Board's decision approving the Parkplace mixed use proposal at 457 Central Way is AFFIRMED.

Entered this 19th day of April, 2011.


Sue A. Tanner
Hearing Examiner

Exhibits

The following exhibits were entered into the record:

Exhibit A Planning and Community Development Department's Staff Report with 11 attachments

Hearing Examiner Decision
 Files. APL11-00001 & DRC09-00002
 Page 12 of 13

- Exhibit B Compact disk containing "DRB Meeting Minutes," and "DRB Memo, Attachments, and Submittals" ("DRB Final Submittal" and "DRB Final Decision Dec 2010" on the same disk are located elsewhere in the record and were not admitted as part of this exhibit.)
- Exhibit H Digital presentation of Parkplace Design Guidelines, Parkplace buildings and surrounding environment and neighboring buildings
- Exhibit I Resume of Rick Grimes
- Exhibit J Ordinance 4170
- Exhibit K Ordinance 4171
- Exhibit L Ordinance 4172
- Exhibit M Ordinance 4175
- Exhibit N Ordinance 4257
- Exhibit O DRB Presentation Packets: 2/2/09; 4/6/09; 5/18/09; 6/29/09; 8/25/09; 9/21/09; 10/19/09; 11/16/09; 12/7/09; and 1/4/10
- Exhibit P DRB Presentation Packets: 3/1/10; 3/15/10; 4/5/10; 4/19/10; 5/3/10; 5/17/10; Bldg, E Sections; 6/7/10; 6/28/10; 7/19/10; 8/9/10; 8/30/10; 9/8/10; 9/20/10; 10/4/10; and 12/13/10
- Exhibit Q Resume of Walt W. Niehoff, Jr.
- Exhibit R Table of Public Meetings on Project
- Exhibit S List of DRB Submittals
- Exhibit T Selections from Exhibits O and P
- Exhibit U Resume of Howard William Fitzpatrick

The following exhibits are not admitted part of the record but were submitted by the Appellants as an offer of proof:

- Exhibit C Memo, City Manager to City Council, December 15 2008 with amendments to Design Guidelines
- Exhibit D Staff proposed amendment to Design Guideline 13d, paragraph 4
- Exhibit E Minutes, City Council Meeting of December 16, 2008
- Exhibit F Excerpts from video of City Council Meeting of December 16, 2008
- Exhibit G Partial Transcript of City Council Meeting of December 16, 2008

PARTIES OF RECORD:

Appellants: Davidson Serles and Assoc. and TR Continental Plaza Corp., c/o Jeffrey M. Eustis, 722 Third Avenue, Suite 2112, Seattle, WA 98104

Applicant: Touchtone Corp., c/o G. Richard Hill, 701 Fifth Avenue, Suite 7220 Seattle, WA 98104

Design Review Board: c/o Robin S. Jenkinson, 123 Fifth Avenue, Kirkland, WA 98033

Concerning Further Review

KMC 142.40 provides that the Hearing Examiner's decision may be appealed in accordance with the judicial review procedures of Chapter 145 KZC. KZC 145.110 provides that the decision may be "reviewed pursuant to the standards set forth in RCW 36.70C.130 in the King County Superior Court. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the City. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW."

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**DAVIDSON SERLES & ASSOCS. and
T.R. CONTINENTAL PLAZA CORP.**


from a decision by the Design Review Board

**ORDER ON APPLICANT'S
MOTION TO STRIKE**

After the Examiner issued an order granting a motion by the Applicant to exclude certain testimony, the Appellants filed a "Memorandum Regarding Admissibility of Legislative History and Expert Opinion". The Applicant filed a motion to strike the memorandum.

The Hearing Examiner determined at the prehearing conference in this matter that there would be no prehearing memoranda filed, and the case schedule included no provision for such memoranda. Further, the memorandum was filed and served one day prior to the scheduled hearing, allowing no time for the other parties to respond. Accordingly, the motion to strike is GRANTED, and the memorandum is STRICKEN.

Entered this 20th day of April, 2011.


Sue A. Tanner
Hearing Examiner
City of Kirkland