

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

THE HEARING EXAMINER OF THE CITY OF KIRKLAND

IN RE:  
  
Christopher and Jessica Comunale  
  
Appeal of Fire Code Official Determination  
  
BSF22-05206

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND FINAL DECISION

**OVERVIEW**

Christopher and Jessica Comunale appeal a determination made by the City of Kirkland Fire Marshal that a proposed 450 square foot addition to the Comunale home triggers a requirement for the entire home to be retrofitted with a sprinkler system because the home is served by both inadequate fire access and inadequate fire flow. The appeal is denied and the Fire Marshall’s determination sustained. The Comunales must sprinkler their home if they wish to proceed with construction of their proposed addition.

Retrofitting single-family homes with fire sprinklers brings up very difficult competing policy considerations regarding cost verses fire safety. Mr. Comunale could well persuade the City Council to clarify its code to make it clear that his nominal type of home addition should not trigger \$40,000-70,000 in retrofit requirements. However, the Examiner is limited to interpreting an ambiguous fire code provision with few aids to its construction except the compelling fire safety expertise of the Fire Marshal and the City Council’s intent to adopt relatively strict fire sprinkler requirements. Given this background, the record supports sustaining the Fire Marshal’s interpretation.

The determinative testimony in this proceeding was testimony by Fire Marshal Jung that a combination of substandard fire access road and inadequate fire flow created an unacceptable risk for firefighters and building occupants. The cumulative impact of both factors acting concurrently is fairly logical. As testified by Fire Marshal Jung,

1 narrow access routes lengthen response time and hence give more time for a fire to  
2 expand while inadequate fire flow increases the time it takes to control the fire. The  
3 access road to the Comunale residence meets the 20-foot width fire standard for access  
4 width, but the functional width is reduced by a couple car widths since parking is  
5 allowed on both sides of that road.

6 The significance of the cumulative impact of poor fire access and fire flow stems from  
7 an ambiguity in KMC 21.33.050a, the central code provision of this appeal. KMC  
8 21.33.040 requires single-family homes to be sprinklered if fire access or fire flow is  
9 inadequate. KMC 21.33.050a waives this requirement for additions up to 500 square  
10 feet for homes “*required to be sprinklered due to inadequate fire flow or fire*  
11 *department access.*” (emphasis added). The “or” term is the primary point of dispute in  
12 application of KMC 21.33.050. The Fire Marshal interprets the “or” as exclusive  
13 disjunctive, meaning that the waiver applies for inadequate fire flow or inadequate  
14 access, but not both. The Comunales interpret it as inclusive disjunctive, meaning that  
15 the inadequacies can be either one or both. Under the Comunale interpretation, they  
16 qualify for the KMC 21.33.050a because that interpretation allows the waiver for home  
17 having both inadequate fire flow and inadequate fire access.

18 The Fire Marshall’s testimony on cumulative impacts is determinative applying the  
19 “surrounding context” rule in case law submitted by the Comunales. As outlined in that  
20 case law, “[u]sually the intended meaning [of an “or”] is apparent from the  
21 surrounding context.” In the judicial opinion provided by the Comunales, the court  
22 determined from the surrounding context of the facts of that case that application of the  
23 “or” term in the disjunctive exclusive results in strained or unlikely consequences. For  
24 this reason, the court found the “or” qualified as disjunctive inclusive. No similar  
25 strained or unlikely consequences result from construing the “or” in KMC 21.33.050a  
26 as exclusive. As testified by the Fire Marshal, the cumulative impacts of inadequate fire  
27 flow added to inadequate fire access create a significantly greater fire hazard. It isn’t in  
28 the least bit strained or unlikely to posit that the City Council did not intend to allow  
29 such a combination of fire hazards in its adoption of KMC 21.33.050a.

30 The most instructive “surrounding context” of KMC 21.33.050a is the legislative  
history of the City’s sprinkler requirements, specifically a memo provided by the  
Comunales from the Fire Chief to the City Council (via City Manager) outlining the  
policy considerations in requiring sprinklers for single-family homes. As would be  
expected, the threshold levels for sprinkler requirements are based upon a balancing of  
costs to home construction verses prevention of risk. The Fire Marshal also testified  
along these lines. As previously noted, the Fire Marshal provided uncontested  
testimony that in his expert opinion the combination of poor fire access and inadequate  
fire floor creates “unacceptable” fire risk. The City Council has taken strict measures to  
require sprinkling of buildings to prevent fires that take the lives of 2,500 people

1 nationally every year. Within this context, it is reasonable to conclude that the City  
2 Council does not intend to create exceptions for circumstances in which its Fire Marshal  
3 believes creates unacceptable safety risks.

4 A secondary issue in the Comunale appeal is whether fire access is in fact inadequate.  
5 As outlined in the findings and conclusions below, fire access is found to be inadequate  
6 because it fails to meet fire access standards regarding grade, width and turn-around.

7 **TESTIMONY**

8 A computer-generated transcript has been prepared for the hearing to provide an  
9 overview of the hearing testimony. The transcript is provided for informational purposes  
10 only as Appendix A.

11 **EXHIBITS<sup>1</sup>**

- 12 Ex 1: City staff report along with attachments A through G  
13 Ex. 2: Appellant power point  
14 Ex. 3: Fire Sprinkler Exception Permits Summary – 12/28/12 to 6/1/23  
15 Ex. 4: May 19, 2016 memo to City Manager re residential fire sprinkler systems

16 **FINDINGS OF FACT<sup>2</sup>**

- 17 1. Appellants. The Appellants are Christopher J. Comunale and Jessica L.  
18 Comunale, 11811 NE 73<sup>rd</sup> St, Kirkland WA 98033.
- 19 2. Decision Under Appeal. The Comunales appeal a Fire Marshal determination in an  
20 approved construction permit, BSF22-05206. In that permit, Fire Marshal Jung  
21 determined that a 450 square foot single-family residence addition approved by the  
22 permit requires the fire sprinkler retrofitting of the entire residence.
- 23 3. Appeal. As outlined in the Overview to this decision, the Comunale appeal is  
24 based upon the assertion that the Fire Chief misconstrued the “or” term in KMC  
25 21.33.050a. The appeal also contests the Fire Marshal finding that the Comunale  
26 residence is served by inadequate fire access. The Comunales filed their appeal on  
27 July 21, 2023.

---

28 <sup>1</sup> The City’s staff report was formerly admitted without objection. Ex. 2 and 3 were presented without  
29 objection. Judicial notice is taken of Ex. 4 as legislative history. The conclusions arising from Ex. 4 can  
30 be taken without that document, as the Fire Chief testified that the sprinkler requirements are based upon  
a balancing of risk verses building cost.

<sup>2</sup> For purposes of clarity in organization, some findings of fact include conclusions of law and vice-versa.

1  
2 4. Unacceptable Risk. A combination of inadequate fire flow and inadequate fire  
3 access creates unacceptable risk to the safety of firefighters and building occupants.

4 The determination of risk was established by the testimony of Fire Marshal Jung,  
5 who testified as follows;

6 *In this case an addition, a modest addition to a home was seen by*  
7 *policymakers as being a reasonable request where some additional*  
8 *risks in the occupants to the city and to the firefighters who respond*  
9 *to emergencies in these structures would be acceptable because the*  
10 *cost is so high, the city is sensitive to that but want the hearing*  
11 *examiner to understand that the risk is one or the other. And where*  
12 *both exist, the risk becomes unacceptable. That fire flow reduces*  
13 *our ability to respond to a growing fire and fire department access*  
14 *has potential to delay our ability to efficiently and effectively*  
15 *respond to the threat of a growing fire even in a one or two family*  
16 *structure. And that together. To exacerbate an existing non-*  
17 *conforming situation by adding to a structure is unacceptable at*  
18 *risk to the occupants.*

16 Fire Marshal Jung qualifies as an expert in fire hazards and suppression. He  
17 has 31 years experience as a firefighter. He has been the City's Fire Marshal  
18 since 2016 and has served as a firefighter lieutenant and ladder captain before  
19 that.

20 As noted in the Overview, the Fire Marshal's opinion on combined risk  
21 resonates directly with the circumstances of the Comunale residence. It is  
22 easy to understand that a 20-foot wide road with parked vehicles on both sides  
23 taking up more than half that width would slow down a speeding fire truck.  
24 With time for the fire to grow in that added delay, the firefighters then only  
25 have a fire flow that is substantially less than half of the minimum required to  
26 combat the fire<sup>3</sup>.

27 The Comunales did not present any evidence contesting the fact that the  
28 combination of inadequate access and fire flow is unacceptable. Mr.  
29 Comunale instead presented statistics on the effectiveness of sprinkler

30 

---

<sup>3</sup> Mr. Comunale testified that his fire flow is 600-700 gallons per minute. Required fire flow is 1,750  
gallons per minute according to the staff report.

1 systems<sup>4</sup>. Mr. Comunale identified that the survival rate for fires in homes  
2 with no fire suppression system is 98.87%. Adding smoke detectors increases  
3 the survival rate by 50% and adding sprinklers increases the survival rate by  
4 80%, up to an overall survival rate of 99.77%. The fact that people survive  
5 the vast majority of home fires doesn't establish much on the issue of the  
6 effectiveness or need for fire sprinklers. Most fires do not kill people because  
7 most of them are likely easy to control. The vast majority of those fires could  
8 easily be small fires that are detected early and create more smoke damage  
9 than anything else. The fact that most people survive these fires with or  
10 without fire suppression is not surprising.

11 What is much more pertinent than the survival rate for all fires is the survival  
12 rate for fires that are not detected early and have the potential to be life  
13 threatening. The Fire Marshal testified that 2,500 people nationally die per  
14 year from fires, almost all of them from home fires. If chances of survival for  
15 those fires could have been improved by up to 80% or any other appreciable  
16 amount by sprinklers, there's no question that fire sprinklers would be  
17 considered effective in improving fire safety. The policy choice still remains  
18 whether those additional lives saved is worth the added construction cost, but  
19 the effectiveness of the sprinklers in saving lives doesn't appear disputable.

20 The probative value of the Fire Marshal's testimony is tempered by the fact  
21 that he is clearly an advocate for the safety of his fire fighters. Being  
22 personally responsible for that safety, his opinions on fire safety may well be  
23 on the conservative side. Fire Marshal Jung even testified that he disagrees  
24 with the KMC 21.33.050a sprinkler exception for small home additions for  
25 homes with poor fire access or fire flow, testifying "*[i]f I had my choice, I*  
26 *wouldn't allow either.*" Comments like this evidence that Mr. Jung takes a  
27 more conservative position than the City Council on what constitutes  
28 acceptable fire risks. It is also pertinent that the Council may not have  
29 appreciated the difference in cost between new construction and retrofitting,  
30 as detailed in Finding of Fact No. 5 below.

Ultimately however, the Kirkland City Council has itself been on the  
conservative side in adopting sprinkler requirements. Kirkland's residential  
sprinkler requirements are stricter than the minimum required by state  
building codes. See WAC 51-51-0313. As shown in Ex. 4 and acknowledged

---

<sup>4</sup> Mr. Comunale testified that the statistics were derived from a government website and he summarized them in his Power Point. Unfortunately, it appears that the Power Point Mr. Comunale submitted into the record is an earlier draft of what he presented. Most of the slide were blank or appeared to have incomplete information.

1 in the testimony from Mr. Comunale, the City's stricter position was taken in  
2 part from information and opinions provided by Fire Marshal Jung. On  
3 balance, it would appear that the level of risk acceptable to the City Council  
4 when it adopted the City's sprinkler requirements was in line with that of Fire  
5 Marshal Jung.

6 5. Costs. Mr. Comunale and his contractor testified that the costs of retrofitting  
7 his entire home with a sprinkler system would be \$40-50,000 and potentially  
8 as much as \$60-70,000. Those costs include installing the sprinkler lines,  
9 cutting out drywall, picking drilling holes through the joists and rafters, and  
10 installing the system, painting, cutting into the driveway for a larger water line  
11 and upgrading to a larger water meter. Mr. Jung testified that the City would  
12 not impose a capital facility charge for such an upgrade but otherwise did not  
13 dispute the costs involved. Mr. Comunale also noted that the Council's  
14 adoption of residential fire sprinkler requirements was based upon the costs  
15 involved in new construction, which cost substantially less than retrofits at  
16 about \$1.50 per square foot, just \$5,200 for a 3,500 square foot home.

17 6. Fire Access Dimensions. Pertinent fire access dimensions are found to be as  
18 follows:

19 A. Street Length. The Comunale residence is located at 11811 NE 73<sup>rd</sup> in  
20 Kirkland. NE 73 St. from where it adjoins the Comunale residence  
21 connects to 116<sup>th</sup> Ave on one end and has a dead end turnaround on the  
22 other end. It is uncontested that the total length of NE 73<sup>rd</sup> from 116<sup>th</sup>  
23 to its turnaround is greater than 150 feet.

24 B. Street Width. It is uncontested that the paved width of NE 73<sup>rd</sup> is  
25 approximately 20 feet. It is also uncontested that cars park on both sides  
26 of the NE 73<sup>rd</sup>, except near the turnaround where parking is prohibited.

27 C. Turnaround. The turn around has a depth (north-south length) of  
28 approximately 76 feet. Mr. Jung measured the distance by tape measure.  
29 As Fire Marshal Jung testified, his margin of error was well within 14  
30 feet. The turn around paved surface connects to additional paved surface  
on adjoining private property. If the private paved surface is considered to  
be part of the turnaround, the depth is over 90 feet.

D. Grade. It is uncontested that a small portion of NE 73<sup>rd</sup> street has a grade  
exceeding 10%. Fire Marshal Jung testified that the grade is 15%. Mr.  
Comunale testified that this 15% grade is only located across a short  
portion of NE 73<sup>rd</sup>.

1 **Conclusions of Law**

2 1. Authority of Hearing Examiner. KMC 21.20.030s provides that appeals of the fire  
3 code official that do not constitute code enforcement actions shall be heard by the  
4 hearing examiner.

5 2. “Or” of KMC 21.33.050a is Exclusive Disjunctive. The “or” term of KMC  
6 21.33.050a is disjunctive exclusive. Sprinkler retrofits are waived for small home  
7 additions where sprinklers are required because of either inadequate fire access or  
8 inadequate fire flow, but not for homes where sprinklers are required for a home  
9 because of both inadequate fire access and fire flow. The basis for this determination is  
10 detailed in the Overview section of this decision, adopted by this reference. The  
findings necessary to support this conclusion are in Finding of Fact No. 4.

11 The case law provided by the Comunales is very helpful in providing guidelines on how  
12 to interpret the “or” term of KMC 21.33.050a, but otherwise does not support their  
13 position that it is disjunctive inclusive. Mr. Comunale references *Hassan v. GCA Prod.*  
14 *Servs.*, 17 Wash. App. 2d 625 (2021) as supporting his position that the term is  
15 inclusive disjunctive. The *Hassan* court was faced with a local ordinance that required  
16 minimum wage for employees of a “transportation employer.” At issue was whether an  
17 “or” term in the “transportation employer” definition was inclusive or exclusive  
18 disjunctive. The definition identified that a transportation employer was defined as one  
19 who “operates or provides” rental car services. The court concluded the or term is  
20 inclusive, finding that if the “or” was an exclusive disjunctive this would mean that “*if a  
business provides rental car services, it cannot also operate a rental car services  
business.*” The court noted that it should “*avoid an interpretation that results in  
unlikely or strained consequences*” and for that reason held the “or” had to be inclusive  
21 disjunctive.

22 Although the holding of the *Hassan* court does not dictate an inclusive disjunctive  
23 reading of KMC 21.33.050a, it does provide a useful summary of the statutory  
construction guidelines that applies to “or” terms, quoted in relevant part as follows:

24 *We ... construe a municipal ordinance according to the rules of statutory*  
25 *interpretation. In statutory interpretation, our main objective is to ascertain*  
26 *and carry out the Legislature's intent....*

27 ...

28 *When used as an alternative, "or" is an inclusive disjunctive—one or more*  
29 *of the unlike things can be true." However, "or" also can mean a choice*  
30 *between alternative things, states, or courses,, creating an exclusive*



1            *disjunctive—one or the other can be true, but not both. We look to the*  
2            *surrounding context to determine which meaning is intended.*

3            *Hassan v. GCA Prod. Servs*, 17 Wash. App. 2d 637-41. (citations and internal  
4            quotation marks omitted).

5            Surrounding context supports the Fire Marshal’s interpretation of the “or” term. As  
6            identified in Finding of Fact No. 4 the City Council has elected to adopt fire sprinkler  
7            requirements stricter than those mandated by state law. This establishes a policy choice  
8            of placing greater weight on avoiding risk than avoiding construction cost. The City  
9            Council’s Fire Marshal also testified that interpreting the “or” in KMC 21.33.050a as an  
10           exclusive disjunctive would create “unacceptable risk.” As elaborated in Finding of  
11           Fact No. 4, the reasoning of the Fire Marshal’s opinion supports his finding that the  
12           cumulative risk impact from an inclusive application would increase safety risk. Given  
13           this context, it is concluded that “or” as exclusive disjunctive is most consistent with  
14           legislative intent.

15           The *Hassan* holding that its “or” term was inclusive disjunctive does not apply to this  
16           appeal. The *Hassan* court had to come to that conclusion because an exclusive  
17           application lead to unlikely and strained consequences. In this case, there are no  
18           strained or unlikely consequences from an exclusive application. In this case an  
19           exclusive application prevents additions that create unacceptable risks to fire fighters  
20           and building occupants. That is quite the opposite of strained or unlikely consequences.

21           3. Fire Access Inadequate. Fire access to the Comunale home does not meet fire  
22           code standards for the following reasons:

23           A. Width. The Comunale’s fire access road proposal fails to meet minimum  
24           width standards.

25           As discussed in further detail below, application of the City’s fire standards  
26           addressing width is complicated by the fact that they fail to expressly address  
27           width standards for the project site. In what appears to be an inadvertent  
28           omission or misunderstanding of what qualifies as a short subdivisions, the  
29           width standards only specify widths for short plat lots, multifamily  
30           development and commercial development. The Comunale lot is likely not  
31           part of a short plat so none of the express width standards apply to it. The  
32           minimum width for all of the types of development covered by the express  
33           width standards varies with the length of fire access roads and the type of  
34           development. However, the required widths are always either 16 feet or 20  
35           feet. Given that the proposal doesn’t even provide for 16 feet of accessible  
36           paved surface, it is concluded that the width of 73<sup>rd</sup> St. is not adequate for a



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

fire access road. The 20 foot width is also consistent with the minimum width requirements of the International Fire Code, which sets additional standards for fire access roads.

The staff report makes reference to Operating Policy No. 6D1b as governing fire access road width. KMC 21.20.070a governs fire access design standards. It adopts Operating Policy No. 6 for this purpose. Operating Policy No. 6D1b provides that paved surfaces shall be at least 20 feet in width. However, Operating Policy No. 6D1 is entitled “Residential Short Plats.” Tip Sheet No. 2, which illustrates some of the Policy No. 6D1 policy requirements, also makes specific references to short plats. Given this language, Policy No. 6D1 only applies to residential lots in short plats. KMC 22.08.220 defines a short subdivision<sup>5</sup> as a division of land into nine or fewer lots. There is nothing in the record to suggest that the Comunale lot was located in a short subdivision. Given that most lots are not created by short subdivision, it is unlikely that the Comunale lot is a short subdivision lot.

The remaining fire access road specifications listed in Operation Policy No. 6 are for multi-family and commercial development. Those standards are identified in Tip Sheet 3 and only apply to commercial and multifamily developments. In short, Operating Policy No. 6 doesn’t identify what width is required for fire access roads in long plat<sup>6</sup> roads.

Although Operating Policy No. 6 doesn’t expressly address fire access for long plat lots, the International Fire Code (IFC) still does. KMC 21.20.070a only replaces Section 503.1 of the IFC with Operation Policy No. 6. Except as amended by Chapter 21.20 KMC, KMC 21.20.010 adopts the entire IFC as required by state law. IFC 503.2.1 has not been amended by the KMC and remains in place. IFC 503.2.1 requires that fire apparatus access roads shall have an unobstructed width of not less than 20 feet, exclusive of shoulders. Consequently, even if Operating Policy No. 6 doesn’t apply to NE 73<sup>rd</sup>, the 20 foot requirement still applies under IFC 503.2.1.

If IFC 503.2.1 were not to apply, width is still an issue under KMC21.33.040, which requires single-family homes to be sprinklered if fire access is inadequate. The absence of any express width standard in Policy No. 6 cannot be reasonably interpreted as a policy directive that all fire access roads are adequate. Width clearly affects the safety and timeliness of fire apparatus response. In the absence of any specific express standard for width for long

---

<sup>5</sup> Short plats and short subdivisions are synonymous.  
<sup>6</sup> Long plats are subdivisions with more lots than short plats.

1 plat lots, Operating Policy No. 6 provides sound guidelines for what would be  
2 considered safe and effective access. Depending on the factors such as the  
3 length of the fire access road and the type of development it serves, all the  
4 Operating No. 6 policies require either 16 or 20 feet width. Given that 73<sup>rd</sup>  
5 street has just 20 feet of paved surface with parking on both sides, it is clear  
6 that 16 feet of paved surface will not be available when parking occurs on  
7 both sides of the road and probably not with parking on one side. In this  
8 regard, the Fire Marshal's determination that NE 73<sup>rd</sup> has inadequate road  
9 width is found to be correct.

10 The Comunales advocate a more plain meaning based construction of  
11 Operating Policy No. 6 guidelines, arguing that on-street parking areas should  
12 not be excluded from Policy No. 6 minimum width measurements. As  
13 previously identified, IFC 503.2.1 requires 20 feet of "unobstructed" width  
14 for fire access roads. Even just relying upon the Policy 6 guidelines, the  
15 Comunale interpretation leads to the type of unlikely and strained  
16 circumstances that are discouraged in statutory construction as discussed in  
17 Conclusion of Law No. 2. Under the Comunale interpretation, the travelled  
18 portion of a 20-foot paved surface could be too narrow to accommodate a fire  
19 truck due to sectioned off parking and bicycle lanes, yet still have to be  
20 regarded as providing adequate fire access. There is no functional difference  
21 in terms of fire access between a paved eight-foot surface with no on-street  
22 parking and a 20 foot paved surface with parking on both sides. The width of  
23 the travel lanes for both is the same. For these reasons, the Fire Marshal  
24 correctly excludes parking areas from required fire access width.

25 B. Turnaround. The Comunale's fire access road proposal does not meet  
26 minimum depth standards for its turnaround. Operating Policy No. 6D1b  
27 requires an approved turnaround for fire access roads exceeding 150 feet in  
28 length. It is uncontested that 73<sup>rd</sup> Avenue from its intersection of 116<sup>th</sup> Street  
29 to its dead end is longer than 150 feet. Operating Policy No. 6 Tip Sheet No.  
30 4 requires a turnaround depth of 90 feet. As determined in Finding of Fact  
No. 6C, the turnaround depth is only 76 feet. Mr. Comunale asserts that  
adjoining private paved surfaces should be included in the turn around  
measurement. Including the paved surface would meet the 90-foot depth  
requirement. However, as testified by Fire Marshal Jung, the City has no  
control over the private surface and it could be lost at any time. For this  
reason, Fire Marshal Jung correctly limited his measurements to public right  
of way and in so doing established that the turn around fails to meet minimum  
depth requirements.

1 C. Grade. The Comunale’s fire access road does not meet maximum grade  
2 standards. Operating Policy No. 6B3 requires that the maximum grade of all  
3 fire apparatus roads shall be limited to 10%. It is uncontested that a portion  
4 of NE 73<sup>rd</sup> has a grade of 15%. Mr. Comunale asserts that the 15% grade  
5 only occurs over a short distance. Policy No. 6 does not waive grade  
6 requirements based upon short distances. Fire Marshal Jung correctly found  
7 that NE 73<sup>rd</sup> doesn’t conform to the requirements of Policy No. 6B3.

8 D. NE 73<sup>rd</sup> Qualifies as Fire Access Road. Mr. Comunale questioned whether  
9 NE 73<sup>rd</sup> qualifies as a fire access road. Policy No. 6B defines a fire access  
10 road as “*any paved surface of required width, designed and maintained to*  
11 *support imposed loads of fire apparatus for the specific purpose of providing*  
12 *access to a building.*” Policy No. 6B1 further provides that such roads shall  
13 be provided to all buildings located more than 150 feet from fire apparatus  
14 access. NE 73<sup>rd</sup> clearly qualifies as a fire access road under the Policy No.  
15 6B definition. If it did not, then the Comunale home would fail to have a fire  
16 access road as required by Policy 6B1 and for that reason would fail to have  
17 adequate fire access under KMC 21.33.050a.

18 4. Comunale Addition Doesn’t Meet KMC 21.33.050a Sprinkler Exception. The  
19 Comunale addition doesn’t qualify for the KMC 21.33.050a sprinkler waiver.  
20 As determined in Conclusion of Law No. 2, to qualify for the exception, the  
21 Comunale home cannot suffer from both inadequate fire access and inadequate  
22 fire flow. It is uncontested that the home has inadequate fire flow. As  
23 determined in Conclusion of Law No. 3, the home also has inadequate fire  
24 access. For these reasons, the Comunale addition does not qualify for a KMC  
25 21.33.050a sprinkler waiver.

26 **Decision**

27 The requirement for fire sprinklers as started in BSF22-05206 is sustained. The  
28 Comunales must retrofit their home with a sprinkler system if they wish to add their  
29 proposed 450 square foot addition because the fire flow and fire access serving their  
30 home is inadequate.

ORDERED this 1<sup>st</sup> day of September 2023.

*Phil Olbrechts*  
\_\_\_\_\_  
City of Kirkland Hearing Examiner

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**Appeal and Valuation Notices**

KMC 21.20.030s provides provides that hearing examiner decisions on appeals of fire code official determinations are final subject to appeal to superior court as governed by the Land Use Petition Act (LUPA), Chapter 36.70 C RCW. LUPA requires judicial appeals to be filed and served within 21 days as specified in RCW 36.70C.040.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

## Appendix A

August 17, 2023 Hearing Transcript

Communale Fire Code Appeal; BSF22-05206

Note: *This is a computer generated transcript provided for informational purposes only. The reader should not take this document as 100% accurate or take offense at errors created by the limitations of the programming in transcribing speech. A recording of the hearing is available from the Planning Department should anyone need an accurate rendition of the hearing testimony.*

Examiner Olbrechts:(00:00:06):

Alright, for the record, it is August 17th, 2020 3, 9 30 6:00 AM I'm Phil Berg's hearing examiner recording in progress. Oh, I'll do that again. It's August 17th, 2020 3, 9 30 6:00 AM I'm Phil Berg's, hearing examiner for the City of Kirkland. We have a building permit appeal or actually a determination from the fire marshal on appeal today, B S F 22 dash 0 5 2 0 6. With me is Mark Jung, the fire marshal for the City of Kirkland. And make sure I pronounce this correctly. Is that Mr. Communal? Is that how to say your last name?

Mr. Comunale:(00:00:41):

That's great.

Examiner Olbrechts:(00:00:42):

Okay, perfect. And you're patching in from, was it the Czechoslovakia or something, is that correct?

Mr. Comunale:(00:00:48):

I am, yeah, sorry, I'm not in person I guess no one's in person, but yeah, I'm out in business in Prague.

Examiner Olbrechts:(00:00:54):

Wow, okay. What time is it out there right now?

Mr. Comunale:(00:00:58):

Heading back tomorrow? It is very hot and humid here.

Examiner Olbrechts:(00:01:01):

Ah, okay. Alright. And we also have Mike Tenon. Is that a witness of yours, Mr. Kunal? Is that correct?

Mr. Comunale:(00:01:12):

He's our contractor.

Examiner Olbrechts:(00:01:12):

Okay. Alright, great. Okay, well let me first off talk about the exhibits I've received in advance of the hearing. Mr. Comino by state law, I'm only allowed to consider evidence that you know about. I'm not

allowed to talk to staff about the hearing in advance or anything like that. It's just whatever's put into the record today. That's the only information I have about the case and Mr. Jung has sent me basically a packet that contains a bunch of exhibits. I'm trying to pull that up here. Where did I put that? Hold on a second. Oh, there it is. Okay, I'm going to share screen at this point. Okay. Can you all see that at this point it's a document entitled Response to Request for Appeal of Decision by the Fire Marshal. Is that showing up?

Mr. Comunale:(00:02:03):

We can see it. It's quite zoomed up. We can only see about a quarter of it.

Examiner Olbrechts:(00:02:07):

Oh, that's odd. How about now?

Mr. Comunale:(00:02:10):

Half of it,

Examiner Olbrechts:(00:02:12):

Huh? Okay. Well I just want to identify what the documents are. Mr. Comal, did you see this or get a copy of this packet here, which essentially has a response written by the fire marshal and then it has five exhibits attached to it I believe.

Mr. Comunale:(00:02:30):

I don't know that I got that document, but what did we get? We got that, the official letter we got was that P D F from Chief Jung, but I don't think it didn't have that information in it, I don't think. Is that right chief out? That should have been an email to you. Should have seen this in advance.

Examiner Olbrechts:(00:03:00):

Do you want to maybe Mr. Jung, can you share screen, maybe it'll show up better on your screen as opposed to mine and kind of scroll through it to make sure Mr.

Mr. Comunale:(00:03:08):

See if I can, I'm much more adept at sharing on Zoom or on

Examiner Olbrechts:(00:03:20):

Oh teams. On

Mr. Comunale:(00:03:22):

Teams.

Examiner Olbrechts:(00:03:22):

Yeah.

Mr. Comunale:(00:03:24):

How's that looking?

Examiner Olbrechts:(00:03:25):

Yeah, it looks pretty good. I can see, I see exhibit G to it. You're on one of the last pages there. I was

Mr. Comunale:(00:03:30):

Just counting. It's like 1, 2 3 A f G.

Examiner Olbrechts:(00:03:33):

Yeah.

Mr. Comunale:(00:03:36):

Okay. So you can see response to request for appeal decision by the firearm.

Examiner Olbrechts:(00:03:41):

Yeah. Yeah. And Mr. Al, you're saying you didn't receive that or

Mr. Comunale:(00:03:48):

Mark did you send this to me? I mean I got the other notice of appeal hearing which had the first purpose and scope and just a quick summary, but I don't think it's about this full document. I think this is the first I'm seeing the full document should have been emailed to you, Mr. And Mr as people in the involved in that.

Examiner Olbrechts:(00:04:17):

Well, let's see. Well Mr. Al, I mean especially if you're overseas, I can understand maybe there's some for odd reason it didn't patch through. I mean if you need time to look over this document, I guess we can continue for a week. If that doesn't create a big problem for anybody to give you time to look it over, it's just a two or three page document from what I call it. Right. Mr. Jung and then a bunch of information that Mr. Commonwealth probably already has after that. But

Mr. Comunale:(00:04:48):

Yeah, I'm familiar with the arguments that the fire department is raising,

Examiner Olbrechts:(00:04:52):

So I'm happy.

Mr. Comunale:(00:04:55):

Can I suggest Mr. Berg, I just email that document to

Examiner Olbrechts:(00:05:00):

Oh yeah, please do

Mr. Comunale:(00:05:02):

Now and maybe you can follow along as

Examiner Olbrechts:(00:05:05):



I

Mr. Comunale:(00:05:05):

Tend to go through

Examiner Olbrechts:(00:05:06):

It. Okay. Okay. Why don't you do that and then also if you could stop screen and then I can summarize the documents that are attached to it as well.

Mr. Comunale:(00:05:15):

How about that?

Examiner Olbrechts:(00:05:16):

Okay,

Mr. Comunale:(00:05:16):

I'll send that to you Chris, right now?

Examiner Olbrechts:(00:05:18):

No, I'm going to share screen again.

Mr. Comunale:(00:05:22):

I did have a question on that. I did, I put it together a PowerPoint. Am I able to share that as I respond to the allegations that the fire marshals?

Examiner Olbrechts:(00:05:35):

Yeah, I think so. Can he be enabled to share?

Mr. Comunale:(00:05:41):

I don't see a share option on my

Examiner Olbrechts:(00:05:43):

Zoom. Yeah, sometimes the city is host has to enable that for you as a panelist. I was curious if they could, yeah,

Mr. Comunale:(00:05:51):

Let me see if I can work on

Examiner Olbrechts:(00:05:52):

That. Okay. Alright. And while you're doing that, I'm going to share screen again. Okay. Hopefully this time you can kind of see, I put together an exhibit list. These are the attachments that Mr. Jung had put together. We have a letter dated August 20th, 2023 and the appeal filed by Mr. Comunal, the receipt that he paid for that, the notice of the appeal hearing. Then we have the building code sections

operating policy and the Kirkland provision. So Mr. Comunale, do you have any objections over entry of any of those documents or any problem with that being part of the record?

Mr. Comunale:(00:06:32):

No problem. Should I send, should I email, email my PowerPoint? Should that be part of the record or no?

Examiner Olbrechts:(00:06:39):

Yeah, yeah. Once it's your turn to speak, why don't you go ahead or, yeah, actually why don't you send that now let's see, what's the email address for the city he can use?

Mr. Comunale:(00:06:51):

Perhaps he can send it to Mark directly

Examiner Olbrechts:(00:06:54):

At

Mr. Comunale:(00:06:55):

MJung@kirklandlaw.gov. Okay. I just got what he sent to me so I'll respond to this email.

Examiner Olbrechts:(00:07:04):

Okay, perfect. Alright, so the staff report and attachments A through G are admitted into the record and okay, Mr. Jung, let me swear in, just raise your right hand. Do you swear affirm to tell the truth nothing but the truth in this proceeding?

Mr. Jung:(00:07:18):

I

Examiner Olbrechts:(00:07:18):

Do. Okay, great. Go ahead.

Mr. Jung:(00:07:23):

This is opening remarks, correct?

Examiner Olbrechts:(00:07:25):

Yes. Yeah,

Mr. Comunale:(00:07:26):

So I'll follow the, so just as a quick opening remark, that M C 21 3 0 5 A allows for the addition of above the 500 square feet to an existing non-performing one or two family structure where fire flow or and or will come into question in the argument fire flow or fire access deficiencies exist. The appellant does not dispute that fire flow deficiency exists. In this case. The appellant alleges that the fire department has incorrectly evaluated the access or the fire department. The fire department disagrees will show that Heather, this written statement, the fire access to does existant further alleges that the use of four NK

M c 21 33 0 5 0 current A in the exception appellant, argues that the use of or is inclusive. That would allow the 500 square foot addition exception to an existing non-conforming single family residence where fire flow and access deficiencies exist that that should be allowed. The fire department argues and will show that the use of or is exclusive. It's intended as exclusive in the code, has been applied uniformly as exclusive in practice and in policy. Finally, the appellate alleges that the fire department engaged in discrimination by not consistently applying this. The fire department vehemently denies this and would happily defend it in the proper venue. However, the question is outside the scope of this hearing and we would ask that the hearing examiner dismiss this at this time.

Examiner Olbrechts:(00:09:26):

Okay, thanks Mr. Jung and I should have shared this earlier, but for Mr. Kamal's benefit, in case he didn't see it, staff did send out the examiner rules of procedure and one of them is the format for the hearing and Mr. Jung just went over the opening statements there. As you can see, is that part B of the hearing? You have an option to make your opening statement now or I'll let you just do it when it's your turn to present if you want. Once we're done with the opening statements then Mr. Jung will present his case and then you'll have a chance to cross examine him. Mr. Cino, when he's done with his testimony, you can ask questions and I'll probably ask questions as well. And then once Mr. Jung's done, then you can make present your side of the case and you too will be subject to cross-examination by Mr.

(00:10:14):

Jung and I'll probably have questions as well. I don't think other than Mr. Tenon, we don't have any other potential witnesses today, is that correct? Yeah, I didn't see that we had that. And then a chance for rebuttal, that'll be Mr. Jung, after you present your evidence, Mr. Communal, Mr. Jung have a chance to present some rebuttal evidence and then Mr. Kane, you'll get a final right to present evidence and then the parties will have a chance to make closing arguments. So any questions about the process as it's put together in the rules? Yeah, it's pretty standard I think. So Mr. Communal, did you want to make an opening statement or do you want to reserve that for when it's your turn to present evidence?

Mr. Comunale:(00:10:56):

I can just briefly state. So I think Chief Jung marked our first argument pretty accurately. So what we're is we're arguing is for the wording of the term or within that exception text can be interpreted as either inclusive or exclusive. So exclusive would be something like either one or the other but not both. Inclusive would be either one or the other or both. And a public records request to the city of Kirkland, four exceptions that have been granted shows evidence that it appears that the OR doesn't appear. The city has granted exceptions to properties and building permits that had both fire access and fire flow issues. So that was our first argument. The reference to discrimination is actually in reference to that argument. We believe that the, in an inconsistent application that policy is discriminatory in nature. The second argument that we do have, regardless of the definition of or is we disagree with the city's judgment or the fire department's judgment of the fire access of Northeast 73rd Street. We believe it is a fire access road and I think that we've got some evidence here that would suggest that certainly it can be interpreted as a fire access road. And yeah, I think that those are our main arguments.

Examiner Olbrechts:(00:12:26):

Okay. Sounds good. Alright Mr. Jung, go ahead. Now you can present your testimony if you wish

Mr. Jung:(00:12:34):

It would be appropriate for me to share screen here. And I'm just going to go over, I'm just going to review on the record my response to appellant's allegations. So to review that T M C 21 33 0 5 0 8 does allow an exception for existing non-performing, one of two family dwellings that have either a print access deficiency, a fire department access deficiency or fire flow deficiency, the word or is in question. And whether that use of or is inclusive or exclusive, the fire department has, sorry, the fire department has implemented that as an exclusive meaning either fire access or fire, both fire flow deficiency

[\(00:13:58\)](#):

Is allowed, is allowed, but number both and we'll go into that but just as a review, this is really the crux of it is whether or is intended inclusive or exclusive as it applies to 21 33 0 5 0 a and the exception there that allows a 500 square foot addition to existing on conforming one two family dwelling. Mr. Common has applied for building permit and fire department has evaluated that fire flow is inadequate and deficient and that fire access is inadequate and deficient in the determination there requires that fire sprinklers be added throughout the entire structure according to the requirements of 2133. And so that's the consequence that's being appealed here. The appellant I think would stipulate that fire flows not in question. Fire flow is without question the efficiency. So then the question becomes did the fire department correctly interpret the fire access and what is the meaning of four in 21 33 0 5 0?

[\(00:15:31\)](#):

So did the fire department correctly evaluate the fire department access in item A Here I establish that policy operating policy six is the correct controlling document that the Washington State Fire Code does not adopt the access requirements and defers that to the local jurisdictions. The city of Kirkland is allowed under the state fire code to amend it as long as it doesn't reduce the overall performance of code. And that we have adopted in section of 5 0 3 of the Kirkland Fire Code operating policy number six as the document that determines fire access operating policy. Six is the controlling document there Northeast 73rd, I further define that Northeast 73rd is part of the fire department access, that it is a public road and that public roads are not by their nature adequate fire department access without deficiency. They're subject to the same requirements of as private roads and fire department access is not defined directly in operating policy six, but it is included reference, it is included by reference as part of the fire code and the fire apparatus access road definition exists in the fire code in chapter two is a road that provides fire apparatus access from fire station to a facility building a portion thereof.

[\(00:17:30\)](#):

That is generally that there is, this is a general term inclusive of all other terms such as fire lane, public street, private street, parking line, parking lot lane and access roadway. So I've established there that Northeast 73rd is in fact part of the fire department access and should be evaluated.

[\(00:17:54\)](#):

The access road is deficient. Northeast 73rd is actually deficient in freeways. Any one of which would lead to the conclusion that it is a deficiency see or the fire axis is deficient, it's a dead end road greater than 150 feet in length. It is between 20 and 24 feet wide of paved surface. But parking is allowed on both sides of that street. The street serves 30 parcels and that the potential for parking to obstruct fire department access in a road that serves that many occupants has potential to not meet the 20 foot standard. And that we conclude that it is deficient on width. The turnaround is required is a dead end road better than 150 feet. A turnaround is required. There is a turnaround at the end of Northeast 73rd on the east end of, well on the end northeast 73rd up here. And that the physical space of the existing turnaround meets the requirements.

[\(00:19:21\)](#):

It is approximate 76 feet in public space but there is an additional 14 feet that is used as the, that is the driveway for the last home on the south side of Northeast 73rd on the east end that is beyond the control of the city and it's beyond the control of the applicant, the appellant. And we cannot count on that continuing to be inadequate fire department access. Therefore we determined that it's not adequate access or it's not an adequate turnaround so it's not adequate access. And then finally Northeast 73rd has a section of steep slope that exceeds the 10% policy limit. There is a section prior to getting the subject property which is certain here in blue it's approximately 230 feet. It arises, it rises 36 feet and the map on that puts it at 15% grade in and increment weather. That could lead to a delay of access by growing unreasonably quickly and composing a greater risk of occupants in the city and firefighters who may be required to fire and to respond to a fire incident there. So on all three of those points, even though only one of 'em is required, all three of those points, fire department access is not, is deficient.

[\(00:21:13\):](#)

Allegation number two is this concept of four in 21 33 0 5 0 a and the exception whether it's inclusive or exclusive, the fire department has in practice through my tenure and as far as I can see back applied, this has exclusive, it is either fire flow deficiency or access deficiency, but not both. The reasoning behind that in policy is that existing non-conforming situations exist in the community and that we are sensitive to making retroactive requirements to existing situations. In this case an addition, a modest addition to a home was seen by policymakers as being a reasonable request where some additional risks in the occupants to the city and to the firefighters who respond to emergencies in these structures would be acceptable because the cost is so high, the city is sensitive to that but want the hearing examiner to understand that the risk is one or the other. And where both exist, the risk becomes unacceptable. That fire flow reduces our ability to respond to a growing fire and fire department access has potential to delay our ability to efficiently and effectively respond to the threat of a growing fire even in a one or two family structure. And that together

[\(00:23:19\):](#)

To exacerbate an existing non-conforming situation by adding to a structure is unacceptable at risk to the occupants. And the appellant will argue that that's his decision for himself and his family. And

[\(00:23:37\):](#)

I think that's perfectly appropriate to argue. But my role as fire Fire marshal is to represent the entire community, the risk of fire from spreading from home to home and the delay of our ability to respond to a growing fire because of fire flow or fire department access situation where a fire can spread from not just the appellant's structure but to adjacent structure. And my role as firefighter is to protect the working environment of firefighters who will be required to respond to that structure in the event of a fire and to give them every opportunity to control that fire in the interest of the appellant, the interest of community and the interest of their own safety. That is why we concluded that one or the app, but not both. Both is an unacceptable risk. Allegation number three I think doesn't require a lot of time.

[\(00:24:49\):](#)

We understand there was public records request where an independent review of our evaluation of these 21 3 3 0 5 0 exceptions was done. We've looked at them as well and we disagree that one of 'em, we think we got the one right of the two. The other one we recognize we made a mistake. We don't like to make mistakes. We try to learn from our mistakes, but we do make mistakes. It was an error. It is not practice that we make every effort in this office to evenly apply the code across every situation. These are fairly technical evaluations and my staff are expert at this, but I will not suggest that we don't ever make mistakes. We do a lot of 'em. And I would also point out that this is beyond the scope of this

hearing and section 1090.7 fire code indicates that this hearing is scope to limit whether the fire code officials decision or determination, lemme make sure I get this right, this is really tiny on the screen. The elements of the fire code and the fire officials decision or determination disputed by the coen discrimination is just outside of the scope of that. That's fire department's contention. That concludes my comments has been entered into the record and that's all I have. Thank.

Examiner Olbrechts:(00:26:47):

Okay, Mr. Communal, do you have any questions of Mr. Jung?

Mr. Comunale:(00:26:54):

Yeah, chief Jung. So you mentioned the three issues regarding fire access. One of those issues was width, street width. Can you tell me where in the fire code, what exactly is the fire code regarding street width? Is it not 20 feet? It is 20 feet of page surface. That's correct. So you mentioned that property policy number six, you mentioned that the property has three issues, one being street width. Can you tell me where on that street the width is less than 20 feet. I'm not aware of any length location where it's less than five feet. Okay. And you mentioned probably is but I'm not going to split hairs on that. It's 18, 19, 20 feet that's in compliance with the letter of the code. My opinion is that parking on one or both sides has potential to obstructed either in a 20 foot space, two legal vehicles, eight and a half feet wide, parked one foot off of the curb would take up essentially the entire space of the road.

(00:28:13):

I don't expect that people will do that, but it requires us to rely on people to use their good judgment not to block the road. There are no parking signs on that street. It is legal to park on both sides and it can obstruct the entire road. And that leads me to believe that there's not adequate fire access. Did you just, sorry, I missed the part of that. Did you just say that there was no fire lane on the street? There are no parking, there are no parking signs. There are no parking signs up at the very end where the turnaround is. But there are none between your property and the beginning of Northeast 73rd at 16th Avenue? That's correct. So the last 20% of the street actually is no parking correct. Including the turnaround. All of that is beyond, I will agree to that.

(00:29:17):

I haven't actually documented that. But all of that is beyond your parking? No. But for turnaround, right. That's a pretty important point that there's no parking in the turnaround area, is that correct? There are no parking signs up there, yes. Okay. And then so you mentioned the 20 feet and that is one of the three issues that restricts fire access or says that this is not a fire access road. Where in the policy does it say that the entire street has to have 20 feet of fire lane or 20 feet of non fire lane access?

(00:29:55):

The code just says 20 feet, you have paved surface. Is that correct? Yes. There are sections in the code that in the policy that indicate that the road needs to be 20 feet wide over its entire length, right? I think so. There's no portion of the road that we have documentation of being less than 20 feet, is that correct? That's correct. Okay. Regarding the turnaround, you mentioned the 76 feet public space. How many feet would you say is total accessible to turn around a vehicle up there? I don't know, but did you say I think there is 90 feet. Do you think there's 90 feet there? Yeah, there's 90 feet there. It's just not all in your control where there's control of the city. I'm trying to think if I have any questions about that. So you didn't, I mean I'm going to be bringing up the other exceptions that have been granted in my analysis. So I don't know that I really have questions about Chief Jung's interpretation of those properties.

Examiner Olbrechts:(00:31:19):

Okay. I just have a few questions myself then. Mr. Jung, you mentioned your concern about the parking was because the road served more than 30 parcels. Where does the 30 number come from? Is that an unofficial policy, the way it's been interpreted in the past or I was just curious where that standard is located.

Mr. Comunale:(00:31:40):

It is not, I'll openly say that it's not okay. When we talk about up to policy says up to four lots can be 16 feet wide, which suggests that less traffic requires less fire access space and that we have struggled to, we develop appropriate policy where parking is allowed on public streets and that parking has and does obstruct fire access. And we are balancing the needs of the city and the fire department where the density, and this is a relatively new issue, not new in our application, but relatively new we're density where we're doing cottage development and we're doing ADUs attached ADUs and detached ADUs and then eliminating the off street parking departments where those vehicles have no choice except to be parked out on Public street. And so we're seeing more and more vehicles parked on Public street. The intention of the fire code is to have 20 feet access clear and we're balancing the needs of the city to grow and respond to the housing crisis. And at some point we put our foot down and say we have to have fire sprinklers. We do that mostly in new money family dwelling a 24 foot street, again, not in policy but 24 foot street with parking lot on one side does not meet fire access and everybody gets fire sprinklers in construction.

Examiner Olbrechts:(00:33:44):

Okay. Yeah, and I will say just from a case law perspective, how the courts give deference to local jurisdictions interpretations of their code, they do say that no deference is due unless the interpretation is consistent with past practice. So your past interpretations of the code are actually relevant to how it should be interpreted now if you want the city to have any deference to your interpretation. So on the third 30 parcel issue, I mean has this come up before where you've essentially determined that even though that a road is 20 feet, since it's serving more than 30 parcels, you're not going to construe it as meeting the 20 foot requirement because of the parking issue. Has that come up before?

Mr. Comunale:(00:34:35):

Not on an addition. Not on the 21 33 0 5 a exception. It has come up and does routinely come up on new developments where 24 foot streets are constructed and parkings a lot on one

Examiner Olbrechts:(00:34:50):

Side. Oh, and in those cases you find that the road's not adequate and requires sprinkler systems, is that correct? We do. I mean how often does that come up? I mean, can you give a rough estimate? All the time. Okay. Often, pretty much

Mr. Jung:(00:35:03):

Every new development. Oh,

Examiner Olbrechts:(00:35:04):

Okay. Okay. Alright. And how was the turnaround measured? I mean did you go out with the tape measure? Did you just look on Google Maps or how did you get those? Yeah, I



Mr. Comunale:(00:35:14):

Went out with the laser measure

Examiner Olbrechts:(00:35:16):

And

Mr. Comunale:(00:35:17):

Measured it to the apparent property line.

Examiner Olbrechts:(00:35:20):

Okay. Okay. And then on the dysfunction of exclusive or inclusive issue related to a couple of questions ago that I had, how often has that issue come up and have you consistently interpreted as being exclusive where it's only one or the other? Not both.

Mr. Jung:(00:35:37):

Yes. It has been uniformly as a matter of policy in our office as a matter of training of our new fire and fire plan reviewers. But that is our policy, either exception, not both. And while apparently we have made an error, it's not our intention to make an error and that I was trained by a fire marshal who was here a long time. She trained our current primary one or two families weldings plan reviewer. And that is the training that has been handed down has been my policy as fire marshal, but that is the way that it would be done and we want to be consistent our application of these rules or it's not pan.

Examiner Olbrechts:(00:36:39):

Okay. I mean, can you just give a real rough estimate how many times this issue has come up for the time you've been with the city? More than 10 or 20 or

Mr. Jung:(00:36:53):

I'm just not that close to it. This is a fairly, these exceptions, we do three or four of 'em a year where one or the other is an issue because the policy requires that they're recorded. A few of them come by each year. But I think in a lot of cases the projects don't go forward or I don't know, if you send me with homework, I can give you some background, but there aren't a ton of these. I imagine Christopher knows better than I do. He did public records requests on a year of our work.

Examiner Olbrechts:(00:37:47):

Okay. And from what I gathered from your testimony, your opinion if you have both a fire flow problem and a fire access problem that's far more risky, dangerous to the occupants and the first responders than it is if it's one or the others. Is that correct?

Mr. Jung:(00:38:08):

Right. So if Bill knew this house would require fire sprinklers, they would be required. And the code says that if Bill knew and any addition would require fire sprinklers if required, they're essentially existing non-performance, it is an increased risk. Having fire flow is increased risk and having fire access deficiency is an increased risk, one is acceptable, was acceptable to policymakers. And I'm willing to accept that it is very expensive. I acknowledge it's very expensive to retroactively installed fire in the

same time as well. But I have to balance the risk to the occupants, to the community for fire strip risk and to the firefighters. And one of the other has been handed down from the city council, but not both.

Examiner Olbrechts:(00:39:17):

Okay.

Mr. Junf:(00:39:18):

If I had my choice, I wouldn't allow either.

Examiner Olbrechts:(00:39:23):

Okay. And Mr. Kamal's appeal, he asserts that the portion of the road that has the greater than I think it was 15% grade is relatively short. And so that shouldn't be a problem. In your opinion as a firefighter, I mean is that distance really a problem or not?

Mr. Jung:(00:39:45):

It is been fire from fire operations more than 20 years and I drove fire engines, I was an officer on fire engines in snow. That's one of it's over 10%, it's over 10% by a lot and it is one of the steepest roads in town. And going up that road even with chains is a challenge for fire apparatus.

Examiner Olbrechts:(00:40:16):

Okay. Snow and we get snow. Right, right. And I guess, yeah, because you are testifying as a little bit of an expert, I think you just mentioned you've been a firefighter for decades or something. I mean, can you give us a brief overview of your experience?

Mr. Comunale:(00:40:30):

Hired in 1992, went through the academy and was a driver operator until 1997. I was promoted lieutenant, worked for a dozen years on company 22, which is one primarily serves that parcel. Then ran the E m S division for correctly fire for a while. Four years was the ladder captain out from co lake supervised the ladder including technical rescue responsibilities and the elevated coasting requirements that are supplied by the ladder. In 2016 I was promoted to fire marshal role at health. Since then I'm certified fire marshal and I take pride in protecting the community and firefighters. That's what I do here.

Examiner Olbrechts:(00:41:33):

Oh great. Thank you sir. Alright, Mr. Communal, did you have any additional questions of Mr. Jung?

Mr. Comunale:(00:41:41):

I don't. Not at this

Examiner Olbrechts:(00:41:42):

Time. Okay. Alright Mr. Jung, did you have any other testimony you wanted to provide? Any other witnesses or evidence?

Mr. Jung:(00:41:49):

I do not. Thank you for that.

Examiner Olbrechts:(00:41:50):

Okay. Alright. Thank you sir. Alright, let's move on. Mr. Comal, now is your turn. Let me swear you in real quick. Just raise your right hand. Do you swear affirm tell the truth, nothing but the truth in this proceeding?

Mr. Comunale:(00:42:00):

I

Examiner Olbrechts:(00:42:00):

Do. Okay, great. Yeah, and you can provide testimony yourself as well as any witnesses you have for today.

Mr. Comunale:(00:42:07):

Okay. I'm going to do, I'm going to go old school here. I'm going to pull up the PowerPoint here.

Examiner Olbrechts:(00:42:12):

Okay.

Mr. Comunale:(00:42:13):

And I'm going to go through this and hopefully try to address each of these points against the property. So I wanted to start with just a little bit about us, about my family. We're Kirkland residents for 20 years, almost 20 years now. We've been in our current home for eight. And I don't know if you can tell by the pictures of the kids there, but our oldest is seven, seven years old. So when we moved into the house, my wife was pregnant with our first. So you can imagine that life's changed a little bit in the last seven and a half, eight years. And obviously what we're doing or what we're looking to do and have already started is making a modest expansion to an upstairs attic space, about four 50 square feet to add a couple of bedrooms and a bathroom to fit our growing family's needs. So important to note, since Chief Jung did mention costs, we are a single income family.

(00:43:19):

My wife who's on the line here in Seattle, hope the kids are okay. She did retire from her HR job eight years ago in order to take a much more important job of raising our three kids. Great news on that is that she's recently gotten back into the workforce a little bit now part-time at a great company, great organization called Little Bit Therapeutic Writing Center, a fantastic organization in the community, but we are not Facebook, Microsoft, Amazon two income families and the cost for retrofitting a house is somewhere in the area of 40 to \$50,000. That's an extraordinary cost. So I think let's get into our rebuttal I guess with the points that have been brought up. So I think that we've already, we've talked about the exception code. This is our primary argument and you can see obviously in bold here it's up to 500 square feet. Our addition is about 450 square feet and the word that's in question here is inadequate fire flow or fire department access. We believe there are two interpretations of that, if not specified otherwise. So you can either read that as an exclusive or one can be true or the other but not both. Or you can read it as an inclusive or one could be true or the other or both.

(00:44:52):

We think without the code specifying otherwise it's reasonable to interpret it either way. And as chief Jung alluded to, a public records request has indicated multiple instances, recent instances where the code has been interpreted as an inclusive war. So we believe very strongly that the inconsistency in how it's been applied is discriminatory against our particular application. So a couple of examples, we won't spend a lot of time on these, but this is what the public records request did pull up and what was just immediately noticeable. I should say there are probably more in that document. I can't submit that if you guys would prefer that. But these are the two properties. This one you can see issued very recently in March of 2023. You can kind of get your bearings here. This is Finn Hill area and I wanted to take the exact text from the fire department. You can see that they did grant the one-time exception access, they did Mark as inadequate. I don't know what, I'm sure there's some steep areas of Fin Hill as well. Fire flow has a thousand gallons per minute. I think that the standard is somewhere around 1500, so there're about two thirds. So fire flow and access issues, one time exception was granted in this case.

[\(00:46:23\):](#)

Second example, this is actually much closer to our property. You get your bearings here. This is kind of South Rose Hill bridal trails area. I forget what street this is, 68th Street or the street with the transfer station Deep Street as well. You can see there's actually three issues. I don't know Chief Jung will probably know whether, to my knowledge, I think size does not automatically require sprinklers, but over 5,000 square feet, which on a new construction would absolutely trigger sprinklers out of the gate flow and access is noted as well. They're about half, I think more than half, less than half the fire flow needed. Access is marked as inadequate. Again, a similar road, mountain or tree filled road. I don't know exactly. The documents don't specify what about the access is inadequate. But as you can see, a one-time exception was granted in this case as well.

[\(00:47:25\):](#)

And finally, I'm not a lawyer. We did consult with a lawyer and they agreed with our interpretation of that inclusive or and believe very strongly that there is legal precedent for it. I'm not going to read this, I'm not a lawyer. I don't have a judgment on this other than to say I think that there is legal precedent for interpreting that war without it specifying otherwise in the code as an inclusive war. And I think that it has been argued that way in the past. So that's our argument for as far as the exception texts and the definition of the word or I think that the two examples, I mean Chief Mark did allude that maybe a mistake was made. I don't have any comment on that. I mean I think that the line between potentially making an error on judgment versus discrimination is probably pretty thin. So I don't have any comment on that other than I think it's reasonable to interpret the code as an inclusive or given those two examples.

[\(00:48:43\):](#)

So moving on to fire access as the other. We also strongly believe that Northeast 73rd Street is a fire accessible road. It is a public street as Chief Jung alluded to getting your bearings here, this is kind of right in the middle of South Rose Hill. We're about 1.8 miles from Fire Station 26. We're 0.7 miles from Fire Station 22. There are marked no parking signs I guess. I don't know, maybe that's different from Fire Lane, but there's marked no parking signs at the far end of the street for at least probably a couple hundred feet. And so we definitely believe that this is a fire accessible road. So breaking down similar to what Chief Jung did, we kind of took each of those arguments and we wanted to illustrate what our thoughts were. The first argument, which I think is the first argument I guess I'll just speak to is street width.

[\(00:49:50\):](#)

I also went out with a tape measure. I didn't measure a single. I took multiple measurements at different areas. I can certainly pull those other areas up as well. I didn't want to attach them all. I thought that would be unnecessary, but I was not able to find a single area of the road that measured less than 20 feet. So a couple of interesting things to see here. One here is the fire lane or no parking sign. There's also one over here. You'll see a better one in the next picture. What I did with my kids here is I have my Jungest standing on the 20 foot line, so the bulk of the road is about 22 feet. There are sections that are a little bit wider and there are sections that are just a little bit shorter, but I was not able to find a single section of measured less than 20 feet. And again, the end of the street is fire lane turnaround. I think it's, I don't know, it's really frustrating to see an analysis of 76 feet. You can see the tape measure here. This is the 90 foot line right here.

[\(00:51:08\):](#)

I don't know exactly how you designate that as private or public. I know that this driveway, it serves two houses. So I would think that that would be some kind of easement and not purely a private drive, but in any case, the 76 foot measurement is based on an imaginary line on a map. And there's clearly far more than 76 feet. There's more than 90 feet. This is the 90 foot line that that driveway goes obviously all the way back to those two houses. So we think that this is a turnaround. There's also, I mean I guess the panorama shots don't really come out, don't really look great when you put 'em in a PowerPoint. But this is a fire lane or a no parking sign for this section of road. What would I say? I mean there actually has been fires on our street and we've seen firetrucks navigate the grade and the width and the turnaround just fine. We've seen multiple instances where firetruck have turned around here. So the code says 90 feet. We certainly have 90 feet. There's a turnaround at the end of our street. So it's frustrating to hear the fire department say that that's not applicable grade. This is a picture from, this is our driveway right here looking down at the street. Yeah, as chief Jung alluded to, there's a small section of the street that's over the 10% grade.

[\(00:52:52\):](#)

Our house in particular is not on that steep area of the street. I don't know what else to say about that. I think it's small. I don't think it warrants the extraordinary cost of fire sprinklers. So I did want to mention one thing about fire flow. As Chief Jung said, we're not disputing the fire flow issues. I think we're somewhere between six and 700 gallons per minute. Important note that there is a capital improvement project slated for this year to replace the water main on our street \$3.1 million improvement project. The interesting thing about this and somewhat frustrating thing about this, we've had multiple conversations with the city of Kirkland Utilities folks and the net output of those discussions is they don't think they're going to affect the fire flow even though they're replacing the water main. They think there may be modest improvements in fire flow, but probably not enough to get us to acceptable levels from a fire department perspective.

[\(00:54:07\):](#)

What's frustrating about that is that when asking the utilities folks, city of Kirkland folks, why they would not add that to the scope. There's 30, I think chief, chief Jung mentioned 30 on our street. All of those parcels have inadequate fire flow. And so it seems like if you are remodeling the water main, that's a perfect opportunity to improve the safety of the water mains and the pressure on our street. I believe the technology does exist. The common answer I got when they discussed why that would not be changing, why they would not be adding that to scope was cost. So it seems like for the city of Kirkland, cost does come into question when deciding whether or not to approve safety for the houses and the citizens on that street. So to say that I'll leave that there. I'll also say we've spent multiple hours in the city of Kirkland Annex building, and I pulled this from a 2016 document co-authored by Chief Jung, that city of Kirkland Annex Building was completely renovated in 2009, 2010, 2011.

[\(00:55:24\)](#):

And it was very ironic to be sitting in that annex building more than 5,000 square foot building and look around and see no fire sprinklers even though it was remodeled in the 2010 area. And I don't know exactly what the fire code was in 2010, but I just seen this from Chief Jung's document suggested that maybe 5,000 square foot would require a retrofit. And so I would guess that costs, perhaps the technology existed for fire sprinklers back then. I would guess the cost played a role in the reason why fire sprinklers aren't in that annex Bill.

[\(00:56:08\)](#):

Just summarizing, again, I think it's really frustrating as a homeowner and citizen to see this kind of an unequal application of the policy. I believe it's discriminatory. I just think it's also wrong. I don't think that's fair that two houses and issues, they have multiple issues, access and flow issues. They were granted the exception. We're asking for the exception and we're being told that we don't qualify for the exception. So I don't think that that makes sense. Beyond that, I don't think anyone can logically look at Northeast 73rd Street and say that this is not a fire axis road. I think that the comments by Chief Jung are greatly exaggerated.

[\(00:57:01\)](#):

Again, we've seen firetruck on the road, we've seen firetrucks turn around at the end of the road, so to say, it's not a fire access road. I don't think it's an accurate state. And then finally, and maybe I'll spend a little bit of time on this, no one's going to argue that fire sprinklers aren't going to increase the safety. No one's going to argue that. I'm not arguing that. My family's not arguing that. I think what it comes down to it for us is there's a cost benefit analysis that needs to be had here. And it seems like the city of Kirkland does that cost benefit analysis when they think about replacing water needs, when they think about remodeling the city of Kirkland Annex building cost seems to play a role in the decisions they make. I don't think that the incremental benefit gained from sprinklers justifies the extraordinary cost of 40 to 50 additional thousand dollars.

[\(00:58:00\)](#):

So I did some research here. It was actually find hard to find this data of just what's the likelihood of surviving a fire, a house fire. And what was this? A government website actually pointed me to this data. And so I just want to read a little bit of this out. So you're actually highly likely to survive a fire 98.87 if you have zero suppression, meaning no fire alarm, no smoke detector, or no sprinklers. 98.87. I understand I totally get at scale. That's still a significant number. Adding something very simple like a smoke detector increases your chances of survival by 50%. 50%. That's a significant increase from a percentage wise. That takes you from 98.87% chance of survival to 99.45. So that's a 50% increase in likelihood survival. By adding sprinklers, you go from 50% to 80%. So that would take you to 99.77% chance of survival.

[\(00:59:12\)](#):

I'm not arguing about the benefit without a doubt our house would be safer with sprinklers, but considering the cost, you've got smoke alarms which you can have in a house, which obviously will be in our house for \$25 per alarm. Every room in our upstairs area will have escape ladders. You can buy fire suppression equipment like extinguishers for extreme cheap. Does a \$50,000 or \$40,000 expense of sprinklers justify the increase in safety. That's the point that we're trying to make here. And I just want to close with this. This was a document co co-authored by Chief Jung in 2016. And in that document he was advocating for, I think, I don't want to speak for him, but I think he was advocating for stricter fire sprinkler code adjustments. And one of the arguments he made was the low cost. So note this, a dollar 50 per square foot, which puts a 3,500 square foot house at about \$5,200.

[\(01:00:28\)](#):

What is really frustrating about this, and I've looked up kind of these kinds of statistics as well. These statistics are based on new construction and nowhere in that document does Chief Jung ever talk about the Costa retrofit in existing structure, which is extraordinarily more expensive. So again, I think maybe concluding this, the argument that we're making here is we're not arguing the benefit of sprinklers we, that the fire code again allows for the exception based on that interpretation of the word or and the history of exceptions. Granted in that scenario, O, we believe that access policy, we believe that Northeast 73rd Street does support, it is a fire access road. And again, we don't think that the cost justifies the benefit.

Examiner Olbrechts:[\(01:01:31\)](#):

Okay, thank you Mr. Comal. Mr. Jung, did you have any questions of Mr. Comal?

Mr. Jung:[\(01:01:44\)](#):

I just have a couple because it's a point of interest. When you did your public records request, how many did you look at single family editions? Is that the criteria you used? I don't have it offhand. I can, I mean I can email you all that if you want to enter that in the record, in the results. I think it was single family homes, but I don't know if that's all that I got back. You identified two that you believe that we did incorrectly, is that right? I mean, I don't think I believe it. I think that according to the policy, if you are interpreting it as an exclusive or the statements made by the fire department assessor that wrote the document, they evaluated it incorrectly.

[\(01:02:51\)](#):

Okay. But you don't know how many out of those two, those we reviewed correctly or how many we reviewed? Well, let's assume that two of 'em are incorrect. All the rest are correct, but we don't know what the overall body number is. If you look at I actually don't, I don't know. So this is what's interesting about the data is that these were the two most obvious ones because I think they were both reviewed by, I think it was Mr. Anderson, and he was pretty consistent in the formatting of how he structured that there is a lot of exceptions that were granted where only one issue existed. So obviously they would also get an exception. There was a lot of items in that public records request where it was unclear, where it didn't actually state whether there was an access issue or what the flow was. And unfortunately the fire flow is not accessible to the public, so it's hard for a citizen to review each one. And are you familiar with the definition of floor area, gross floor area as it's defined in 2133? I am, yeah. Is that the method you use to determine square footage on these properties? On our addition or on the what? On the ones that you re-reviewed on R or not in your investigation? I didn't review square footage. That square footage is provided by the whoever. That's the exact text of the fire department assessment. Okay.

[\(01:04:53\)](#):

Do you know what the residential fire flow standard is for public works, for example, for planning purposes? Do you know what they're planning with their intended fire flow in residential areas is? I don't. Okay. Mr. Oberg, I'd be testifying if I told him. Right.

Examiner Olbrechts:[\(01:05:20\)](#):

Yeah. You get a chance to present that when we're done with his evidence. Yeah. Yeah, you can do that later.

Mr. Jung:[\(01:05:47\)](#):



Okay. And I don't have, I have an additional opportunity to provide rebuttal testimony for

Examiner Olbrechts:(01:05:53):

That. Okay. Alright. Mr. Communal, just, it's not clear in my mind. So in terms of the response to your public records request, did you see any denials based on the fact that they had circumstances where they had both fire flow and access issues at the same time?

Mr. Jung:(01:06:13):

I was actually just thinking about that in Chief Jung's when he was speaking. I didn't actually see in denials, but I honestly, to be fair and totally honest, I don't know if they included that in the public records response either.

Examiner Olbrechts:(01:06:29):

Oh, I see. Okay.

Mr. Jung:(01:06:31):

So from what I remember seeing, I think mine was the only one that just said fire sprinklers required and that was it.

Examiner Olbrechts:(01:06:40):

Okay.

Mr. Comunale:(01:06:41):

Again, I can submit that if you guys want to see the response

Examiner Olbrechts:(01:06:46):

For the results. Yeah, actually, yeah, Alicia, the response and the wording would be nice. Yeah, if you could email that and we'll put that in the record. Do you have any problem with that Mr. Jung? Not at all. Okay. So we will admit that in the record, if you can email that to Mr. Jung later. Then one other, just a quick question. You mentioned that the fire apparatus that you've seen at driving up and down your road, has that ever been under snow conditions though when there's snow on the road?

Mr. Comunale:(01:07:14):

It was not. I think it was about a year and a half ago, and it was actually our neighbors directly next to us on that 10% green section.

Examiner Olbrechts:(01:07:24):

It

Mr. Comunale:(01:07:24):

Was a electrical fire, firetruck got here, hooked up, put it out before it spread.

Examiner Olbrechts:(01:07:34):

Okay. Okay.

Mr. Comunale:(01:07:35):

I should note that house is sprinkled. It's a new construction and it is, and the sprinkler did not go

Examiner Olbrechts:(01:07:42):

Off. Okay. And also one more question about the record request, and I might have misheard you. I thought maybe you said that there were multiple exceptions granted when you had both conditions. Did I hear it correctly or is it just the two that you found? Is that

Mr. Comunale:(01:07:59):

Yeah, well, the two were the most obvious that I found. There were a number of exceptions that were granted regardless of your interpretation of or, so there were a number of exceptions that were granted clearly with one exception.

Examiner Olbrechts:(01:08:13):

Right. Oh, okay. One. Yeah. Yeah.

Mr. Comunale:(01:08:16):

And then there was a number of records in that request that it was unclear, right? It didn't specify by the flow or the access status.

Examiner Olbrechts:(01:08:25):

Okay. Alright. Gotcha. Mr. Jung, any other questions? I

Mr. Jung:(01:08:34):

No,

Examiner Olbrechts:(01:08:34):

Not. Okay. And Mr. Communal, did you have any other evidence or witnesses you wanted to present?

Mr. Comunale:(01:08:41):

I did want to ask Mike, I don't know if you have anything to add from a structure perspective

Examiner Olbrechts:(01:08:48):

On the house. Okay, Mr. Ensen, let me swear in. Just raise your right hand. Do you swear affirm tell the truth, nothing but the truth in this proceeding? I do. And you spell your last name, is it T E N H I Z E N? Is that correct?

Mr. Tenhulzen:(01:08:59):

I'm not sure why it's coming up that way. It's T E N H U L Z E N.

Examiner Olbrechts:(01:09:04):

Okay. Alright, great.

Mr. Tenhulzen:(01:09:06):

So it's pronounced 10 husen. 10 husen. I'm a general contractor, grew up in the business. My father started our company in 79. I bought it in 2008. I've been around the east side primarily Redmond, Kirkland, Bellevue, King County Remodeling homes primarily. And the fire sprinkler issue first came up in the city of Redmond is where I first testified against it. And it's not that we don't agree with it, it just becomes such a burden to existing structures in many cases. So we're in favor of some of these exemptions, some of the either or, and we've designed our additions for existing customers to comply with those restrictions and just aware of what those are. The thing that I find that's a struggle, just kind of as a side note, is that the fire exemption is either allowed or disallowed at the end of the review process.

[\(01:10:06\)](#):

And in many cases, builders and architects don't understand whether it's going to be allowable or not. And that's what happened in this case. We picked up the project after the Communal had already engaged in a architecture services with another architect that we do not know, that architect submitted the plans on their behalf and then left the project for whatever reason. So we were brought in as a design built firm to reassess a permit set that was over 500 square feet that did not meet any of the exceptions that came out with a stamp on it for fire suppression requirement and came up with a solution to meet the needs of their growing family for the additional two bedrooms under 500 square feet in anticipation of making this project move forward for them. So we're a little bit behind the eight ball right off the bat on this project. It's possible that it could have been ascertained with the fire department prior to, but I think the logic that Chris and Jessica put together does state a case that there isn't a possibility for an exception on this particular bill.

Examiner Olbrechts:[\(01:11:23\)](#):

Okay.

Mr. Tenhulzen:[\(01:11:24\)](#):

Does that answer your question,

Examiner Olbrechts:[\(01:11:28\)](#):

Mr. AI? That was your question.

Mr. Tenhulzen:[\(01:11:31\)](#):

Furthermore, I will state also that in order to retrofit an existing structure, fire flow requirements mandate that the existing three quarter inch meter, the water meter to the house, the upgraded either to a one inch or in some cases inch and a quarter, depending on the fire flow requirements, an additional backflow device. And then the line itself in this case goes under the driveway. So cost beyond installing, cutting out the drywall, picking out the installation, drilling holes through the joists and the rafters, and installing the system, putting in the rice or all that kind of stuff, putting it back together, painting those rooms is kind of 40 to 50,000. In this case, we budgeted higher for that because of removal of the driveway and extending the pipe and all of that. So it could be as high as 60 to 70, which were some of the numbers we were throwing around with Mr. Jung in our discussions with the city several months ago.

Examiner Olbrechts:[\(01:12:36\)](#):

Okay. Mr. Communal, do you have any other questions of your witness?

Mr. Comunale:(01:12:41):

I don't have any other

Examiner Olbrechts:(01:12:41):

Questions. Okay, Mr. Jung, any questions,

Mr. Jung:(01:12:49):

Mr. Sen? So in the upgrade of that meter, would there be a capital facility charge required for that or is it just the cost of the meter? My understanding is that meters all have a value and a three quarter inch meter gets purchased back by, in many cases by the city. And that the cost of the new meter would be the difference in the cost between the two. I guess I'll have to address that in. Okay.

Examiner Olbrechts:(01:13:33):

Okay. Alright. Thank you for your testimony Mr. Telephone. Appreciate it. Oh, is there something else you wanted to add?

Mr. Tenhulzen:(01:13:41):

Just also from the contractor standpoint and some of the discussions that we've had with Mr. Jung and in the presence of Mr. Camino, there are different systems that can be applied. There are the standard hard pipe systems and there's also a flow through that Mr. Jung suggested that we consider as a lesser cost. We have looked at that. The flow through basically takes your domestic water system and puts it through sprinkler heads with PEX piping. So it is a little bit more flexible, still requires the same amount of drywall cutting, same amount of drilling, all of that kind of stuff. So those costs are hard, but the actual piping itself can be a little less expensive. In doing so, it's also possible not to have to upgrade the pipe under the street, but certainly the meter and we've had some option from the sprinkler suppression company to put in a pump and a tank in the garage, which then becomes cumbersome and a problem and a maintenance issue as well. So there are alternate systems how this one best suits has to do with the calculation of the furthest away head from the meter and what the pressure distribution is at that point.

Examiner Olbrechts:(01:15:08):

Okay. Thank you sir. Alright, Mr. Comal, any other evidence testimony you want to present?

Mr. Comunale:(01:15:17):

No, you said there will be closing statements as

Examiner Olbrechts:(01:15:19):

Well. Yeah, and rebuttal evidence too. So Mr. Jung will now present rebuttal evidence and that you'll have a chance for rebuttal evidence and then we'll have closing argument as well with Mr. Jung doing final closing and you'll do it before him. Great, thanks. Okay. Alright Mr. Jung, any other evidence you want to present? Again, this is just rebuttal evidence, not closing argument. I think you wanted to testify about public work standards or something for fire sprinklers. Yeah, I'm

Mr. Jung:(01:15:48):

Looking at my list and so I want to point out that the cost of this system is beyond the scope of this hearing. I understand it's expensive, but the question here is whether the fire department correctly applied the code. We believe that we did, but the question of four is exclusive. We believe that, I guess I'm just retesting here, but we just want to say that this cost is beyond the scope. I am sympathetic to the cost, but there is increased risk. I will say that more than 2,500 people die in fires every year. Almost all of them are in residential studies where people sleep that because you have a smoke detector, because you have an bladder, because you have a portable extinguisher, does not mean that you will be successful and that fire sprinklers protect the most vulnerable in our society. Children, old people, people who are unable to angulate be able to get themselves out without assistance. Fire code in the fire code is looking after all of those people and that you don't see yourself as one of those people at this time or one of those people who will always change the battery in the smoke detector. Someone who will be able to climb down the second from the second story window on a fire ladder. That is not where the fire code is. The fire code recognizes that you are exacerbating existing non-con performance

[\(01:18:01\):](#)

In your home and that fire sprinkler are the only mitigation for access for fire flow in a new structure and in addition. So either of those cases is true in a new structure that's the only mitigation is fire spring. Otherwise that single family residence is too unsafe to be built. Incur. If you want to make an addition, we understand they're more expensive. I mean this is policy discussion would happen. It's more expensive and so we'll recognize the woods will have had some of that, but not all of it. In addition, over a hundred firefighters die in the line of duty every year. It's my job to protect them. It's over 179% of firefighter injuries happen in one or two family books.

[\(01:19:16\):](#)

I want to address the remodel of the annex. This is where I work. No one sleeps here, but that's really irrelevant. When the city remodeled the annex, there were no additional square feet happened. This building is no bigger today by the definition of ary gross than it was when it was constructed or prior to the remodel. The city applies the standard to itself as it does everyone else in the community. And that's why there's no fire sprinklers in this building. Would I like to have fire sprinklers in this building? Yes, but the code doesn't support that. So if it had been expanded by one square foot, one fire sprinklers would've been required. That is a standard for all occupancies over 5,000 square feet in Kirkland. If you add one square foot to it, retroactive fire sprinklers are required to deal with that many times each year. In commercial occupancies, it's something I'm quite familiar with.

[\(01:20:44\):](#)

I want to say about the capital facility charge per meter that we've worked with public works to reduce the cost. I know cost does have scope of this, but to reduce the cost, if you are required to upsize your meter for a fire sprinkler system, the capital facility charge, which can be quite expensive, is waived and is calculated based on the plumbing demands of your domestic supply. That is a rule on safe airplane that is frequently brought up by builders. And we correct that as often as we can because we want people to know it's like you don't have to pay for that bigger meter. You do have to buy the meter, which I understand costs less than a thousand dollars. And I'm not saying a thousand dollars isn't a lot of money, but it has to be installed. You probably would have to upgrade the size of the line from the meter to your house. But the capital facility charge is not, is waived by public works residential standard for five flows a thousand gallons a minute. The city is planned for a thousand gallons per minute. Knowi]ng that the fire flow requirement for most homes built in Kirkland today is far greater than that 1500, 1750 or 2000 gallons a minute those. But the city has recognized that to

[\(01:22:20\):](#)

Build infrastructure that supplies 2000 gallons a minute to residential areas is more expensive than installing fire sprinklers as we go. It is intentional. Most places in Kirkland we get 2000 gallons per minute. But there are places like this one where it's on the edge pressure zone and essentially you're looking at the dead end lines and you're replacing six inch AC asbestos concrete main with an eight inch ductile wire main, but you're not interconnecting and creating a loop system and creating much greater. So cities recognized in policy that fire sprinklers are the solution to or are the balance between investing deeply in the fire, the water network that provides fire flows over a thousand units cement. In commercial areas, it's different. We provide considerably more the plant consider for more commercial areas because of the size and the complexity of structures. I think that covers my rebuttal.

Examiner Olbrechts:(01:23:47):

Okay. Yeah, and this is just a question actually that came up from Mr. Communals testimony when he was kind of contesting the turnaround dimensions. I mean, how did you know where the line was between the public right of way and the private driveway there?

Mr. Jung:(01:24:04):

It's an estimate based on G I S data and where those lot lines land, those are unreliable. The end of the fence line, the end of the landscaping going there, it's definitely an estimate, but the margin error is 14 feet. I believe that my estimate is within the margin of error. If it's not 90 feet, it doesn't comply. I think that's part of what Mr. Con's point is, is like, well we're close and I don't operate my fire prevention division that way. Either you're in compliance or you're not. If it's 89 feet, it doesn't comply. If it's 11%, it doesn't comply. If it's 5,001 square feet, it requires fire sprinklers. We have to draw the line somewhere.

Examiner Olbrechts:(01:25:01):

So when you figured out where the line was, did you base that on a G I S S map and you looked at the landscape features? I mean or was there a difference in the pavement or I'm just curious how you were able to do that out in the field. Exactly.

Mr. Jung:(01:25:23):

Yeah, I mean consistent estimate. I mean, where's the end of the fence? Where's the end of the landscaping? Where's the end of the

Examiner Olbrechts:(01:25:30):

Pave? Okay, I got you. Yeah, where's

Mr. Jung:(01:25:32):

The end of the pavement coming up the street? Yeah, I know that's, it's just a large enough margin of error that somewhere that I'm pulling up on G I S but might be helpful. I don't know, 73rd surrendering. Now G i s is very dated datadriven. The nice thing is that we used to go out of the office all the time. Now we do a lot of this stuff just from

Examiner Olbrechts:(01:26:23):

The past. Right. Yeah, it makes it a lot easier.

Mr. Jung:(01:26:34):

You can see that screen.

Examiner Olbrechts:([01:26:35](#)):

Yes.

Mr. Jung:([01:26:36](#)):

Okay. So this is the end of northeast 73rd and this north end is pretty well defined and then down here. So this is kind of the process that my plan reviewer would start with. Let's say that's the beginning. This is the g i S line. So that's 76. The edge of the hard concrete is 83. The end of that fence is about where the again in 77, 78. Okay. The width of the road is way out here and we recognize that the street occupies a lot of people's yards. I understand that. But this is where we were at, was in this

Examiner Olbrechts:([01:27:43](#)):

Space. I see. Okay. Okay.

Mr. Jung:([01:27:44](#)):

We can also go to Google Maps and look at it from Google Maps. That's the process.

Examiner Olbrechts:([01:27:49](#)):

Okay. Alright, great. Thanks Ted. That clarifies it a lot. Thank you. Alright Mr. Kano, any questions of Mr. Jung?

Mr. Comunale:([01:27:57](#)):

Yeah, I'm just curious on that. On the 90 foot hammerhead in the text of the code, does it specify it has to be public street?

Mr. Jung:

It does not. It stands to reason that if you don't have control of it, that someone could put a gate there. If somebody came to me today and asked if they could get a permit to put a gate there at the end of that concrete on their property, I'd require 'em to show me a survey so that gate's located on their property. But then they can put up a hard gate right there. I'd make them put fire department access to it. But it's an example of an obstruction to the turnaround where I no longer have 76 feet or I no longer have 90 feet. I've got 76.

Mr. Comunale: ([01:28:56](#)):

So would you agree that there's 90 feet there with a combination of public and whatever you would call that easement or private property?

Mr. Jung:

I'm not sure which. There's 90 feet available to the fire department today. There is. Sure. I have to look out in the future and see what's what'll be there tomorrow or in 10 years. So your concern is a gate. I thought I read you're much more expert in the code than I am, but I thought I read that there was some kind of fire department standard for installing gates. Is there not something written in the code around installing gates? There is,

([01:29:41](#)):



But it doesn't have to be a gate. It could be any number. It could be an alteration to this. It could be an alteration to this arrangement where there's no longer 90 feet. They could make that their front yard, they could combine those two lots. I don't have control. The city doesn't have control and the applicant, the appellant doesn't have control. The people who have control of that are the people who own the property and anyone that they've granted an AM easement to the city is not a party to that and neither is a appellant.

Mr. Comunale:

Okay. Okay. So maybe back to my original question just one more time. So in the code there is no specification for saying it has to be public roadway in that hammerhead documentation?

Mr. Jung:

No, but I believe it's implied.

Mr. Comunale:

Regarding the remodel of the annex. Do you think the fact that the annex that did not add square footage, did that change the risk assessment of the annex?

Mr. Jung: [\(01:31:03\)](#):

I'm not sure I understand your question. Well, like you're saying, if they had added one square foot, they would've been required to add sprinklers. They didn't add a square foot.

Mr. Comunale:

But it sounds like the city of Kirkland gutted the building and remodeled the building. Is the risk profile of the annex building different because they didn't add square footage, but if they added one square foot, would that change the risk profile of the city of Kirkland Annex building than just remodeling the whole building?

Mr. Jung:

It changes the application with to code says if you add one square foot, you have to have fire. If you don't, if you don't, I wasn't involved. I was the e M S chief back then. I ran the medical services division of Kirk Fire, not fire prevention. Okay. But as I read the code padding square footage is what tripped that. I don't even know that the building was, I know that it was refurbished. That would be a building. The building department question.

Mr. Comunale:

I don't have any other questions. Okay.

Examiner Olbrechts:[\(01:32:34\)](#):

Alright, well now it's your turn Mr. Chromal for any rebuttal evidence you want to provide and you can combine that with any closing statements you want to make. And then after you're finished Mr. Jung, I'll have a chance to make a closing statement as well if he wants. Is there anything you wanted to add at this point?

Mr. Comunale:(01:32:50):

Yeah, I mean I don't have any other additional evidence. I do think, I mean, again, it's just the specification of the code. It does not specify public or private on the road and there is clearly more than 90 feet available in that hammerhead. And I mean, I don't know, it just seems like we're really splitting hairs when we're trying to anticipate unknown things that could happen in the future. I mean the city of Kirkland could rezone that area if they wanted to, could they not? Could probably. There could be any number of things that could change the status of that hammerhead in either direction. Actually the hammerhead itself I think is a street. It's not actually a hammerhead, it's a street that is supposed to go northbound from the center of the road. So the future might hold that becoming an official street as well. So I don't see how it's relevant to say we don't have control over their private property. The reality is that there's more than 90 feet available today. Some of that might exist on some kind of easement that's shared by two properties, but there's more than 90 feet available, much more than 90 feet. So I don't think that that's an argument. That argument doesn't compute to me.

(01:34:18):

I don't know, just the splitting hairs of the code. There are other examples. We have neighbors that have, I guess I don't want to bring that up. I don't think it is relevant to this, but it feels like we're not looking logically at this situation here. And that's incredibly frustrating to me. It's frustrating to see that the city's able to make their own decision about the water main and about the fire flow on the street as they're going to be remodeling and replacing the water main on that street. I think you alluded to this, I don't know the science behind this, but some kind of circular system that does increase water pressure. We're very lucky on our street that our neighbor is actually a director of public utilities for water and the city of Bellevue. So that discussion is actually not finished yet. We're still in conversations with the city. I think that she's now getting involved as well because again, the technology does exist to improve the pressure on that street. And it's incredible to me that the city can tell me that I have to retrofit a house at great expense when the city can also, while they're doing this work, retrofit the water main at expense as well. But they're choosing not to probably because of costs. So that's just incredibly irritating as a homeowner and citizen.

(01:35:56):

Again, I think maybe, do you want me to go right into closing

Examiner Olbrechts:(01:35:59):

Argument? Yeah, if you want. Yeah, yeah, now's your chance.

Mr. Comunale:(01:36:05):

I don't know if Mark had questions about that.

Examiner Olbrechts:(01:36:07):

Oh, I'm sorry. Yeah, that's a good point. Mr. Jung, did you have any questions over Mr. Kamal's testimony? No. Okay. Alright, go ahead Mr. Kamal.

Mr. Comunale:(01:36:18):

Yeah, I mean think I can't express how much I disagree with the application of this code. I think every, anytime you write a code, there's always going to be exceptions. I think that the reason why the city included an exception section for the code was exactly this experience is exactly this scenario. I don't think the goal of the city is to displace its citizens and the reality is putting a burden of perhaps on a new construction where it's a dollar, a dollar 50 a square foot, maybe that's a reasonable cost, but I don't see how it can be reasonable for the city to say to a family that you need to pay \$50,000, you need to pay \$40,000 to replace something when the code itself does specify that there is an exception available. And again, I think legally, I think any interpretation of that, I think you could probably argue either way. You could argue that it's an inclusive or you could argue that it's an exclusive. And I very strongly believe that the reason why the city included that exception, the ability to grant an exception was to not displace families and not displace homeowners. And I think that the effect of this policy and reading it to the letter of reading it in such an extreme manner, I think the effect is it displaces citizens, it displaces families and that's incredibly disappointing as someone who's lived here for 20 years.

(01:38:11):

I guess I'll close with that. I think the code itself, I think you read the exception text and I think that there is an argument that would permit the exception. I also, again, I very strongly disagree with the fire department's assessment of Northeast 73rd Street. I think anyone that drives that road, there's actually, there's a fire lane at the end or there's no parking at the end. There's no parking at the turnaround. The turnaround does have 90 feet of access. I guess maybe one more point that I'll make my closing statements. The initial response from the fire department from our initial permit described the access issue as turnaround alone. And it was only after that the multiple other issues were presented to us. And perhaps that's like perhaps Mr. Anderson was kind of shorthanding his assessment, but it kind of feels from a citizen's perspective, it feels like we ruffled the wrong feathers when we submitted this and asked for the appeal. And as a result we got kind of the full weight of the fire department finding every possible thing that could be wrong with our stream. And again, I don't think it's right. I don't think it's fair and I'm asking the city to interpret the code as it's written, which is if you've got fire flow and or access issues inclusive and a onetime exception is available and possible and we're asking for that exception. So I'll close with that. Okay.

Examiner Olbrechts: (01:39:52):

Thank you Mr. Comal. Alright, Mr. Jung,

Mr. Jung:(01:40:03):

In closing, I would just say that scope of this hearing needs to be confined to the fire department's application of the code that is the limit of the scope of the hearing that we're sensitive to the expense. The question of four has been evenly applied over my tenure and I believe prior to my tenure, so more than seven years

(01:40:35):

That I had my staff do a little bit of research while we were here, we reviewed about 120 building to family additions annually in 2022. The last full year that we have dated for we granted 11 exceptions. We believe that all of those exceptions were for either fire access or fire flow, none of them for vote. That was our intention. If we did not apply it that way, it was by terror and not by intention that we believe that the interpretation of four is exclusive, allowing one or the other, not both. And that the intent of the policymakers when the policy was adopted in the current municipal code was that one of those risks was acceptable but not both.

[\(01:41:36\)](#):

We believe that we correctly, we correctly evaluated fire department access on Northeast 73rd, both on all three elements with turnaround and grade. The grade is undeniable. It is prior to it does affect access to the subject property and it's, it's 15% far in excess of the policy limit. We don't have control of that turnaround. We don't know what happens. There's a street public street that goes through there, but it is not developed and that public street could be abandoned and it could be used for future development in some other way. I don't have control. I can't just say that a vacant lot is a turnaround and then somebody comes to build a building on it and now I don't have turnaround anymore. And I've granted all these exceptions on a fire access road, it's out of control of the city.

[\(01:42:49\)](#):

We believe the fire access is inadequate and because fire access is inadequate, nobody disputes the inadequacy of the fire flow and therefore both are deficient and we can't grant the acceptance. That's why we acted the way that we did. There has been no discrimination. We have not filed on, we review. I spent a lot of time hearing from Mr. Common and Mrs. About how terrible I've been and I don't guided them to the appropriate solution which is here. And I hope that I've been helpful. It has been my attention to be helpful and I am doing my job, which is to protect the community, the occupants of all structures incurred from them, the firefighters. That's all I have.

Examiner Olbrechts:[\(01:44:03\)](#):

Okay. Thank you. Mr. Jung and Mr. Communo. Mr. Jung did introduce a little bit of significant new evidence about the number of reviews and exceptions granted, did you have any questions about that?

Mr. Comunale:[\(01:44:18\)](#):

Specifically about the number of reviews

Examiner Olbrechts:[\(01:44:19\)](#):

Or Yeah, yeah. I think he mentioned seven exceptions. Granted, I don't know if you wanted, like it said, it's a material piece of new evidence.

Mr. Comunale:[\(01:44:28\)](#):

Yeah, thank you. To what extent, I guess I'd be curious how many they did not grant. Because I think the vast majority of exceptions that are granted, at least from the public records requests that I saw are they have single issues. The two that I saw with both fire flow and access issues, I put in my link or in my testimony. So there may be more, again, I don't know because the public records didn't have enough information, but it sounds reasonable that most of the cases in the city of Kirkland would probably have one of the two issues and they should of course get the exception. I think the question here is it seems like there are instances where there have been both fire flow and access issues and exceptions have been granted.

Examiner Olbrechts:[\(01:45:20\)](#):

Yeah. So Mr. Aaron, can you answer that question or?

Mr. Comunale:[\(01:45:29\)](#):

We agree all of the exceptions we believe, and that was 2022 in 2023 is the one that Mr. Garino brought up. We disagree with that. We disagree with his fire flow number. It's the number that's in the case, but it's not the right number. I'd like to be perfect. We're not.

Examiner Olbrechts:(01:45:57):

Okay. I think he's asking, I mean how many,

Mr. Comunale:(01:46:01):

And we disagree on the other,

Examiner Olbrechts:(01:46:03):

Were there any denials there where both conditions were present? Inadequate fire flow, inadequate access?

Mr. Comunale:(01:46:11):

Yeah, question for me?

Examiner Olbrechts:(01:46:12):

No, that's for Mr. Jung. I am kind of repeating. I think part what part of your question was actually yeah,

Mr. Junf:(01:46:19):

We don't specifically track that. We reviewed. We granted 11 exceptions. 11 exceptions. In 2022 we reviewed from 1 1 22 to 3 31 23. So 15 months, 142 single family additions, 11 exceptions were granted in 2022. So we're not totally apples and apples, but

Examiner Olbrechts:(01:46:57):

Essentially

Mr. Comunale:(01:46:59):

We are granting exceptions for one time. So we did 11 in 2022. I think we agree. One of the ones that Mr. Commons brought up in his testimony, we got wrong. The other one we disagree. The fire flow actually does meet the fire flow is not, and we re-reviewed both of these and the fire flow and access and one of 'em right one's wrong. We think we got one out of the 142 votes.

Examiner Olbrechts:(01:47:34):

Okay, great.

Mr. Comunale:(01:47:35):

Alright. And I don't know how many exceptions we had both and we just denied it. They just get denied and they go down as being because is denied. Okay. I think the design committee has a pretty good handle on this too. And there's Don even get presented in some cases it's like well can be done.

Examiner Olbrechts:(01:47:58):

Okay. Alright. Thank you. Yeah, I think we've covered this as much as we possibly can at this point. Both parties did a really great job, Mr. Ka. I don't think he could have done any better hiring a \$500 an hour lawyer. So you saved yourself a bunch of money there. At least that's a good thing. It's a really tough issue. I can't imagine from the homeowner standpoint, they finally get the funds and plans together to build their house and all of a sudden there's this huge additional charge that's really tough. But it's also, it's a public safety issue and that is the courts are pretty strict about imposing those. I think as Mr. Jung says, it's an issue of application of the law here. I mean, Mr. Commun, you raised some good fiscal policy issues and good policy issues in general, but I think as you understand, my job is just to figure out what the code requires.

[\(01:48:53\)](#):

And so I'm going to have to go back and look at the code really closely. It's about the road access efficiency and how to interpret that or clause and probably look up some case law as well. And I appreciate you, the case law that you gave me, that gives me a good starting point. But it's some tough issues and I'm going to look at this really closely and issue a very detailed decision. So exactly where I'm coming from and we'll get that out in a couple of weeks. But again, I appreciate how both of you've addressed this very civilly and professionally and presented me with the information I need. I look forward to seeing the record request. You're going to submit that, right Mr. Communal to Mr. Jung. And like I said, I'll get that decision out in a couple. So thank you all for your participation this morning and we're adjourned for today. So have a good day.