

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF KIRKLAND**

2 Phil Olbrechts, Hearing Examiner

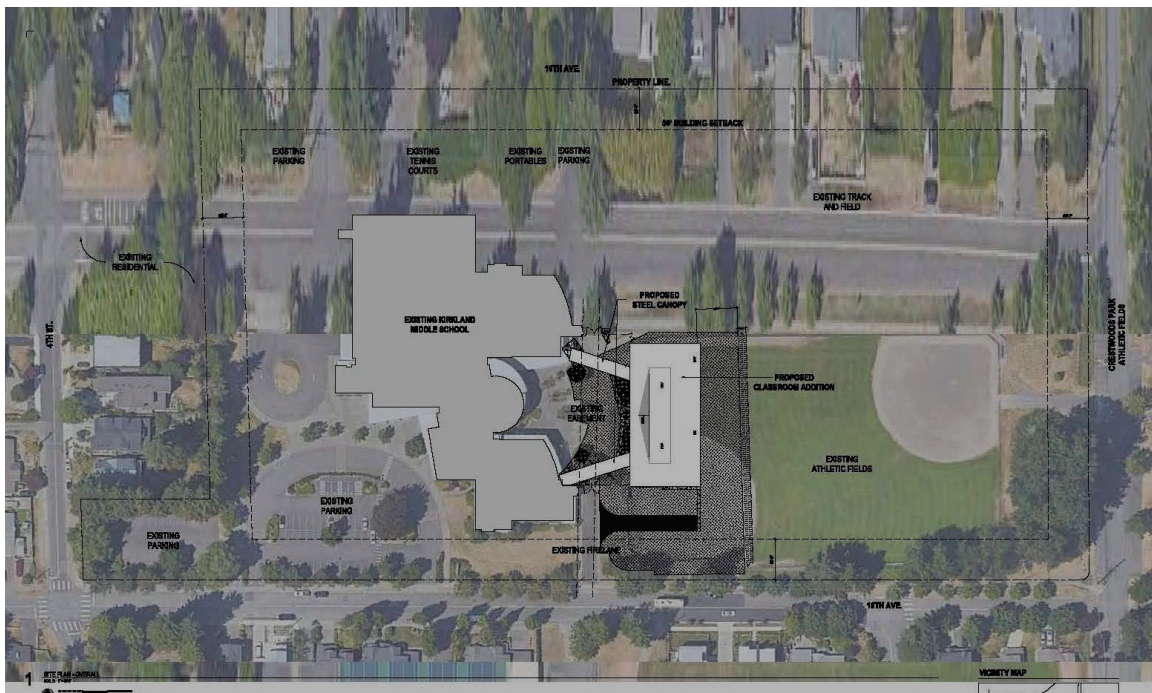
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4 RE: Kirkland Middle School Master Plan Amendment  6 ZON22-00800	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION.</b>
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7 **INTRODUCTION**

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9 The Lake Washington School District has requested approval of a master plan  
10 amendment to the Master Plan for the Kirkland Middle School for an eight-classroom  
11 addition to the east of the existing middle school for a total addition of 13,656 square  
12 feet. It is recommended that the City Council approve the requested amendment.

13 The proposed addition is depicted in the site plan below, Figure 1<sup>1</sup>:



1<sup>1</sup> Figure 1 is copied from Attachment 8, the Applicant’s parking demand study.

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A hearing was held on the application on May 4, 2023. The proposal generated several public comment letters. Only the Applicant and staff testified at the hearing. The comment letters expressed concern over traffic, parking, loss of privacy and loss of recreational space. Finding of Fact No. 5 below addresses all those concerns in detail. Overall, the development standards that the City Council adopted mitigates all of neighbor concerns, to the extent that the City has the authority to address those concerns. The proposal meets the Council’s development standards as pertinent to this level of permit review.

**ORAL TESTIMONY**

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

**EXHIBITS**

The April 27, 2023 staff report and attachments 1-12 were admitted during the hearing as Exhibit 1.

**FINDINGS OF FACT**

**Procedural:**

1. Applicant. The Applicant is the Lake Washington School District, represented by Timothy Hanlon of Integrus Architecture,
2. Hearing. A virtual Zoom hearing was held on the application on May 4, 2023 at 9:30 am, Meeting ID 824 5278 1942.

**Substantive:**

3. Site/Proposal Description. The Lake Washington School District has requested approval of a master plan amendment to the Master Plan for the Kirkland Middle School for an eight-classroom addition to the east of the existing middle school for a total addition of 13,656 square feet and a height of 21.83 feet. The addition will add teaching and learning spaces that will support and additional 200 students. The proposed one-story building is positioned to create a secure courtyard adjacent to the existing building (see Attachment 2). The master plan under review was originally approved in 2002 as a complete redevelopment of the school.

The middle school site is 15.22 acres in size. The site is relatively flat with a slight upward grade change from east to west.

1 4. Characteristics of the Area. Neighboring properties to the north, west and  
2 south are zoned RS 7.2 and developed with single-family residences. The property to  
the east is zoned Park and developed as Crestwoods Park.

3 5. Adverse Impacts<sup>2</sup>. No adverse impacts are anticipated from the proposal.  
4 A Determination of Non- significance (DNS) was issued by the Lake Washington  
5 School District on March 3, 2023. Pertinent<sup>3</sup> impacts are more specifically addressed  
as follows:

6 A. Traffic. The proposal has been adequately designed to prevent neighborhood  
7 traffic congestion.

8 Neighbors expressed concerns about existing vehicle drop-offs and pick-ups  
9 on the neighboring streets. One neighbor commented that during pick up/drop  
10 off times the access road was so congested it wasn't possible to "transit" the  
11 street. The Applicant's traffic report addressed this situation and the City's  
12 transportation engineer, Rochelle Starret, helped clarify the report for the  
13 examiner during the public hearing. Ms. Starret testified that according to the  
traffic report, 95% or more of the time during AM peak hour the traffic que  
for leaving the school site was limited to 75 feet, which is three or less  
vehicles. Ms. Starret testified that the ques involved with drop-off/pick-up are  
within the range found acceptable under traffic engineering standards.

14 The Public Works Department has reviewed the application for concurrency.  
15 A concurrency test was passed for traffic on November 4, 2022 (see  
16 Attachment 7). Passage of concurrency signifies that the proposal is  
consistent with the City's traffic congestion standards.

17 B. Parking. The proposal provides for adequate parking. Parking was another  
18 concern of neighbors.

19 KZC Section 15.40.130 does not establish a required parking ratio for school  
20 uses. Instead, it defers to KZC Section 105.25, which authorizes the Planning  
21 Official to establish required parking on a case-by-case basis. The Applicant  
submitted a Parking Demand Study for Staff Review (see Attachment 8). The

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22 <sup>2</sup> This finding contains mixed findings of fact and conclusions of law. Adequacy of  
23 mitigation to project impacts is often based on conformance to City development  
24 standards that address those impacts. In the absence of any evidence or indication to  
the contrary, findings of compliance with those standards is largely based upon staff  
findings of compliance in the staff report.

25 <sup>3</sup> A public comment concern not addressed in this recommendation was skepticism  
over the need for the addition. As that issue is beyond the scope of permit review, it  
is not addressed in this recommendation.

1 City's Transportation Engineer has concluded that the required parking ratio  
2 should be 0.10 parking spaces per student (see Attachment 9). Based on the  
3 maximum capacity of 885 students, the required number of parking stalls is 89  
4 stalls. The site currently contains 136 parking stalls. The parking study noted  
5 that there is adequate onsite parking supply for school staff and visitors.  
6 Additionally, the study notes that there were no vehicles observed to be  
7 parked off-site or in adjacent neighborhoods that were clearly associated with  
8 the school at the time of the weekday parking demand study.

9 The parking study did not address parking demand created by special school  
10 events, such as athletic events. Staff clarified at the hearing that special  
11 events are not assessed because they are hosted infrequently by the middle  
12 school and sufficient neighborhood parking is available to accommodate those  
13 events.

- 14 C. Privacy. The proposal provides for adequate privacy protection to adjoining  
15 neighbors.

16 One of the project neighbors to the south expressed concern over the addition  
17 of classrooms with windows facing her home. However, there are street trees  
18 located between the proposed addition and homes located to the south as  
19 depicted in Figure 1. The Applicant also testified that additional trees will be  
20 planted to add to the buffering. The addition is also setback 99.75 feet from  
21 the south property line of the project site. Given these trees and the extensive  
22 separation between the addition and the homes to the south, which includes  
23 18<sup>th</sup> Ave., the proposal is found to provide for adequate privacy for homes to  
24 the south. A condition of approval encourages the placement of required  
25 landscaping trees as reasonably necessary to protect neighborhood privacy.

- 17 D. Parks/Open Space. The proposal does not create any obligation on the part of  
18 the Applicant to provide for additional parks and open space.

19 Neighbors have concerns regarding the project impacts on the school's open  
20 space and playfields. The proposal will result in the loss of a baseball field.  
21 To mitigate against this loss, the Applicant is working with City of Kirkland  
22 Parks Department on enhancements to the remaining field to maximize  
23 utilization for recreation activities. Additionally, the school no longer provides  
24 baseball and softball at the middle school level and these sports are not  
25 required for physical education purposes. The campus will continue to have an  
open athletic field and track area for student and community use.

Ultimately, there is nothing in the record to suggest that the City has any legal  
authority to require the Applicant to compensate for the loss of recreational  
space that it voluntarily provides to the community. Developers can only be  
made to mitigate against impacts they create. *See Burton v. Clark County*, 91  
Wn. App. 505 (1998). The loss of an amenity that a developer voluntarily

1 provides to a community likely does not qualify as an impact subject to permit  
2 mitigation. In addition, case law on mitigation for open space places the  
3 burden of proof on the City to establish the need for the mitigation. *See Isla*  
4 *Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wash.2d 740, 755-56 (2002).  
In the absence of any evidence to the contrary presented at the hearing, it must  
be concluded that the Applicant's choices regarding management of open  
space is a policy choice left to the discretion of the Applicant.

5 E. Cultural Resources. The proposal is adequately mitigated for potential  
6 impacts to cultural resources. A letter submitted by the Duwamish Tribe  
7 requests that the Applicant put in place an inadvertent discovery plan if  
8 excavation cuts occur below fill and that if any archaeological work or  
9 monitoring is performed that they be notified. The Applicant has reviewed  
10 the letter and has agreed to as part of the building permit to incorporate an  
inadvertent discovery plan if excavation cuts occur below fill. Additionally, if  
any archaeological work or monitoring is performed the Applicant will notify  
the Duwamish Tribe.

11 F. Lighting. As conditioned, the proposal adequately mitigates against lighting  
12 impacts.

13 KZC Section 115.85 requires that the Applicant use energy efficient light  
14 sources, comply with the Washington Energy Code with respect to the  
15 selection and regulation of light sources, and select, place, and direct light  
16 sources both directable and nondirectable so that glare produced by any light  
17 source, to the maximum extent possible, does not extend to adjacent  
18 properties or to the right-of-way. The current submittal does not contain a  
19 detailed lighting plan that would show the location, height, fixture type, and  
20 wattage of proposed lights. A condition of approval requires that as part of its  
21 building permit application, the Applicant should provide a lighting plan  
22 showing the location, height, fixture type and wattage of all proposed exterior  
23 lights. The lighting plan shall be consistent with the requirements in KZC  
24 Section 115.85.

25 G. Tree Retention. The proposal adequately mitigates for the loss of trees.

Chapter 95 KZC regulates the retention of trees. The Applicant is required to  
retain all trees with a moderate retention value to the extent feasible and those  
with high retention value to the maximum extent possible. The Applicant has  
submitted an arborist report prepared by a certified arborist (see Attachment  
11) and a tree retention plan (see Attachment 2, Sheet TP100). Tree removal  
is concentrated in the interior of the site near the existing building. The City's  
Urban Forester reviewed the report and concluded that the none of the 4  
viable trees are high retention value or landmark trees. A condition of

1 approval requires that as part of building permit application, the Applicant  
2 should submit the final tree retention plan as approved with this permit.

3 **CONCLUSIONS OF LAW**

4 **Procedural:**

5 1. Authority of Hearing Examiner. Chapter KZC 152 provides that Process  
6 IIA applications shall be subject to hearing and recommendation by the Hearing  
7 Examiner. The hearing examiner’s recommendation is made to the City Council for  
8 final approval.

9 **Substantive:**

10 2. Zoning Designation. The property is zoned RS 7.2.

11 3. Review Criteria and Application. KZC 15.20.130, Permitted Use Special  
12 Regulation No. 2, requires that a school use with a property size of five acres or more  
13 receive Master Plan approval through a Process IIB review. KZC 152.70.3 governs  
14 the review criteria for Process IIB reviews. Applicable criteria are quoted in italics  
15 below and applied via associated conclusions of law.

16 **KMC 152.70.3a:** *Decisional Criteria – The Hearing Examiner shall use the criteria  
17 listed in the provision of this code describing the requested decision in making a  
18 recommendation to City Council on the application. In addition, the Hearing Examiner  
19 may recommend approval of the application only if:*

20 *a. It is consistent with all applicable development regulations and, to the extent  
21 there is no applicable development regulation, the Comprehensive Plan; and*

22 4. Criterion met. The proposal conforms to the City’s development regulations.  
23 School use is an allowed use in the RS 7.2 zone; the proposed 22-foot building height  
24 meets the 25 maximum building height for the RS 7.2 zone; and the proposed 99.75 foot  
25 setback meets the 50 foot setback of the RS 7.2 zone. As outlined in Finding of Fact No.  
26 5, staff have found that the proposal complies with the City’s other development  
27 standards as applicable to the master plan stage of review. More specific compliance will  
28 be enforced during building permit review, such as ensuring that the fencing requirement  
29 of KZC 15.20.130 is enforced, which requires six-foot fencing along school play areas.

30 **KMC 152.70.3b:** *It is consistent with the public health, safety and welfare.*

31 5. Criterion met. All significant adverse impacts of the proposal are adequately  
32 mitigated as determined in Finding of Fact No. 5. For these reasons the proposal is found  
33 to be consistent with the public health, safety and welfare.

## RECOMMENDATION

The proposed Kirkland Middle School Master Plan amendment, ZON22-00800, is consistent with all applicable criteria as outlined in the Conclusions of Law above and for that reason is recommended for approval, subject to the following conditions:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed. The conditions of approval should not otherwise be construed as waiving or reducing any requirements that apply during building permit review.
2. The School Administration shall continue to discourage offsite parking by staff (via internal communications) to minimize potential impacts on the surrounding neighborhood.
3. As part of the building permit application, the applicant shall:
  - a. Provide a lighting plan showing the location, height, fixture type and wattage of all proposed exterior lights. The lighting plan shall be consistent with the requirements in KZC Section 115.85.
  - b. Submit the final tree retention plan as approved with this permit.
  - c. Submit plans to replace any required play area fencing impacted by the project.
  - d. Incorporate an inadvertent discovery plan if excavation cuts occur below fill. Additionally, if any archaeological work or monitoring is performed the applicant shall notify the Duwamish Tribe.
4. The Applicant is encouraged to position required landscaping trees as reasonably necessary to protect the privacy of neighboring residences.

Dated this 15th day of May 2023.

  
City of Kirkland Hearing Examiner

## Challenge to Recommendation

ZMC 152.85 governs the criteria for a challenge to a hearing examiner recommendation, quoted in its entirety as follows:

1. *Who May Challenge* – *The recommendation of the Hearing Examiner may be challenged by:*
  - a. *The Applicant; and*

- 1 b. Any person who submitted written or oral testimony to the Hearing Examiner on the application. A  
party who signed a petition may not challenge unless such party also submitted independent written  
2 comments or information.
- 3 2. Contents of a Challenge – The challenge must be in writing and contain a statement of the factual  
findings and conclusions made by the Hearing Examiner that are contested. The challenge will be  
4 considered only on the record developed in the hearing before the Hearing Examiner.
- 5 3. How and When To File a Challenge
- 6 a. The challenge may be filed by delivering it to the Planning and Building Department, together with  
the fee established by ordinance, within seven (7) calendar days of the date of distribution of the  
7 Hearing Examiner’s recommendation on the application; provided, that if the seventh day falls on a  
Saturday, Sunday, or legal holiday, the seventh day of the challenge period shall be extended through  
8 the next day on which the City is open for business.
- 9 b. Prior to delivery under subsection (3)(a) of this section, the person filing the challenge shall mail,  
via postal service or electronically, or personally deliver a copy of the challenge and a notice of the  
10 deadline for responding to the challenge as established in subsection (3)(c) of this section to  
those persons described in subsection (1) of this section. Proof of delivery shall be by affidavit attached  
11 to the copy of the challenge letter filed with the Planning and Building Department pursuant to  
subsection (3)(a) of this section.
- 12 c. Any person receiving a copy of the challenge letter, pursuant to subsection (3)(b) of this section,  
may file a written response to the challenge. Such response shall be submitted to the Planning and  
13 Building Department within seven (7) calendar days after the day the challenge letter was filed with the  
Planning and Building Department.
- 14 d. Any person filing a response pursuant to this section shall mail, via postal service or electronically,  
or personally deliver a copy of the response to those persons described in subsection (1) of this section.  
15 Proof of delivery shall be by affidavit attached to the copy of the response to the challenge letter filed  
16 with the Planning and Building Department pursuant to subsection (3)(a) of this section.
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