

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

In the Matter of an appeal of the Finn)
Hill 8 Short Plat Decision,)
)
IRENE GIUSTINA,)
)
Appellant)
CITY OF KIRKLAND,)
Respondent,)
LEGACY GROUP CAPITAL,)
Applicant/Respondent)
_____)

Permit File No. SUB24-00319

DECISION ON APPEAL

I. SUMMARY OF DECISION.

The appeal is GRANTED IN PART and otherwise DENIED. The March 24, 2026 Director’s Decision approving the Finn Hill 8 Short Plat, assigned File No. SUB24-00319, is AFFIRMED subject to the modifications addressed in this Decision. Appellant has not established that the approved driveway must be relocated, that the short plat must be denied because individual Portuguese Laurels were not measured for diameter at breast height (DBH), or that the approval should otherwise be reversed. The appeal is granted in part to incorporate the parties’ agreement concerning sight distance and to correct the screening requirement applicable to the access easement or tract running along the boundary of the appellant’s property under KZC 105.10(2)(g).

This Decision is deliberately narrow. Appellant correctly identified that the approved plan depicts screening only at the widened pullout areas even though the Code requires screening along the applicable access easement or tract outside the required front yard. (*See Ex. A6, Sheet C05; Ex. A4 at 2; Appellant’s Closing Brief, Figs. 2-3 at 16-17*). That deficiency can be corrected by modifying the approval; it does not require reversal of the

1 short plat. With credit and commendation to the parties and their counsel, during the appeal
2 hearing, the parties resolved the sight-distance dispute addressed in the appeal by written
3 agreement, a copy of which is included as part of the record. The remaining arguments raised
4 by the appellant, focused upon the western Portuguese Laurel hedge and potential that
regulated trees may be included as part of such hedge do not establish that the Director's
decision to approve the Finn Hill 8 short plat was in error based on evidence – and lack
thereof – in this record.

5 II. RECORD.

6 Copies of all documents introduced into evidence and a digital audio recording of the
7 appeal hearing are included as part of the record and shall be maintained by the City. The
8 Examiner considered the Department's Short Plat approval that is on appeal and the
9 underlying application materials, the written appeal, the Department's Staff Report, the
written materials submitted by the parties, and the testimony and exhibits received during the
two-day open-record appeal hearing.

10 The undersigned Hearing Examiner conducted an open record appeal hearing for this
11 matter on July 15 and 17, 2026, in a hybrid format allowing in-person and remote
12 participation. The City of Kirkland Planning and Building Department was represented by
13 Stephanie Kroll and Ryan Gompertz of the City Attorney's Office. Appellant Irene Giustina
was represented by Brian Telegin. Applicant Legacy Group Capital was represented by
Brandon Gribben and Raymond Lappin of Helsell Fetterman.

14 The Examiner considered the admitted documentary exhibits, sworn testimony,
15 motions and orders, arguments of counsel, and post-hearing submissions. The record includes
16 the Director's March 24, 2026 approval and attachments; the amended statement of appeal;
17 the July 2, 2026 Order on Motion for Partial Dismissal; pre-hearing submissions; the parties'
18 CR2A agreement concerning sight distance; the parties' July 28, 2026 closing briefs, with
copies of some exhibits entered into evidence during hearing testimony; Applicant's
proposed findings and conclusions; and all testimony and exhibits presented during the two-
day hearing.

19 Witnesses included City staff and expert witnesses, including Thang Nguyen, City
20 Transportation Engineer; Tim Coye, City Arborist; Adam Weinstein, Planning and Building
21 Director; Gavin Oak, surveyor called by Appellant; Katie Hogan, arborist called by
22 Appellant; Mark Haines, transportation engineer called by Appellant; Appellant Irene
23 Giustina; and Spencer Stegman, Applicant representative. All witnesses were sworn and
subject to cross examination by counsel for all other parties. Witness testimony focused on
the access easement, driveway geometry, sight distance, the western hedge, KZC Chapter 95
(the City's "tree code"), passing areas, and the narrowing of issues during the hearing.

III. FINDINGS OF FACT.

Background and Short Plat

1. The Finn Hill 8 Short Plat involves a property at 8230 Northeast 117th Street in Kirkland's Finn Hill neighborhood. The challenged short plat approval allows the approximately 0.7-acre parcel to be divided into four residential lots. Legacy Group Capital is the Applicant.

2. The appeal was originally filed by Irene Giustina and the Overlook at Finn Hill Homeowners Association. The Overlook at Finn Hill Homeowners Association subsequently withdrew from the appeal, leaving Irene Giustina as the sole remaining Appellant. (*See Applicant's Reply in Support of Partial Motion to Dismiss at 1 n.1; Applicant's Pre-Hearing Brief at 1*).

3. Ms. Giustina owns the neighboring property immediately east of the proposed access route.

4. Vehicular access extends north from Northeast 117th Street through an approximately 15-foot-wide panhandle associated with Lot 1 in the challenged short plat and an access easement serving the lots created by the short plat. The approved driveway provides approximately 10 feet of unobstructed pavement along much of its length, with widened locations providing approximately 15 feet of pavement for vehicle passing. *See Ex. A6, Sheet C05; Ex. A4 at 2*.

5. The western boundary of Appellant's property is bordered by an established Portuguese Laurel hedge. Portions of the hedge have grown across the property line into the area of the proposed access. The possible effect of trimming or construction on that hedge became a principal focus of the appeal. Several witnesses provided testimony and opinions regarding whether the laurels should be treated as trees or hedge vegetation, possible root and branch impacts, and application of KZC Chapter 95. (*Testimony of Katie Hogan, Tim Coye, and Adam Weinstein*).

Procedural History and Issues No Longer Pursued

6. Appellant initially raised numerous objections to the short plat, including issues concerning access, traffic, road conditions, parking, drainage, neighborhood character, construction impacts, vegetation, tree retention, and potential future development. Applicant moved for partial dismissal, and the City joined in that motion.

7. On July 2, 2026, the Examiner issued an Order on Motion for Partial Dismissal granting the motion in part. By agreement of Appellant, the issue concerning potential illegal

1 use of adjacent property during construction was dismissed. Also by agreement, the challenge
2 alleging failure to cure defects identified in the prior SUB22-00036 Hearing Examiner
3 decision was dismissed except to the extent properly preserved issues concerning traffic and
4 pedestrian safety remained. Claims based upon future accessory dwelling units, future
5 modifications, or other speculative future development were dismissed. Claims seeking
6 adjudication of private timber trespass, waste, damages, or other private-property tort
7 remedies were dismissed as outside the Examiner's jurisdiction. (*See July 2, 2026 Order on*
8 *Motion for Partial Dismissal*).

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10 8. Applicant's proposed findings identify additional appeal issues as having been
11 withdrawn during the hearing, including issues concerning access width, traffic concerns,
12 road conditions, street parking, waste receptacles, neighborhood disruption, drainage,
13 neighborhood character, compliance with KZC Chapter 110, and the remaining issue
14 premised upon the prior Hearing Examiner decision. The hearing record is consistent with
15 Applicant's characterization that those matters were no longer being pursued by the
16 conclusion of the evidentiary hearing.

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18 9. In any event, the record does not establish by a preponderance of the evidence that
19 the Director's decision was erroneous on any of those grounds. Appellant bears the burden
20 of establishing that the Director's decision was in error. To the extent evidence touching
21 upon any of those matters was presented, it does not establish a basis for reversing or
22 modifying the short plat approval on those grounds.

23 10. Appellant's post-hearing Closing Brief independently confirms the substantial
24 narrowing of the appeal. The Closing Brief does not ask the Examiner to grant the appeal on
25 any of the foregoing issues; does not argue or establish that Appellant satisfied her burden of
26 proof as to any of them; and does not identify those matters as an independent basis for
reversal or modification. Instead, Appellant's closing argument focuses on the narrower
disputes addressed below. Accordingly, whether characterized as withdrawn, abandoned, or
simply not proven, none of the foregoing issues provides a basis for granting the appeal, and
no further findings concerning their individual merits are necessary.

11. Appellant's Closing Brief also acknowledges the Examiner's prior ruling that this
proceeding does not adjudicate whether trimming vegetation at or near the property line
would violate Appellant's private property rights. This Decision therefore determines only
issues within the Examiner's land-use jurisdiction and does not adjudicate ownership,
trespass, waste, damages, or other private-law remedies that the appellant or other parties
may someday choose to pursue in a forum with jurisdiction over such matters.

Sight Distance and the Parties' Agreement

12. The Director's original approval relied upon a sight-distance analysis using a higher
assumed speed and contemplated vegetation removal or alteration near the driveway

entrance. (See Director's Decision at 13; Ex. A6, Sheet C05; Ex. A12). During the appeal, the parties resolved disagreements concerning the speed used to calculate required sight distance.

13. The parties agreed under Civil Rule 2A (CR2A) that the measured 85th-percentile speed on Northeast 117th Street is 20 miles per hour and that the corresponding required sight distance is 105 feet. The agreement further addresses maintenance of the sight-distance triangle so that landscaping or other obstructions do not exceed three feet in height above grade within the applicable triangle. (See CR2A Agreement; see also Ex. A15 at 5; Ex. A18 at 6; Ex. A27 at 1, as cited by Appellant in closing).

14. The agreement resolves the sight-distance issue and is incorporated into the modified conditions below. No further adjudication or discussion of the parties' earlier competing sight-distance positions and witness testimony on the topic is necessary.

Screening Under KZC 105.10(2)(g)

15. KZC 105.10(2)(g) requires screening along the applicable access easement or tract outside the required front yard. The precise text of this code provision reads as follows:

KZC 105.10(2)(g) – An easement or tract that has a paved area greater than 10 feet in width must be screened from any adjacent property that does not receive access from that easement or tract. The screening shall be:

- 1) A minimum five-foot-high sight-obscuring fence; or
- 2) Vegetation that will provide comparable screening to a five-foot fence within two years of planting; and
- 3) Along the entire easement or tract outside the required front yard.
(Emphasis added by the Examiner).

16. Because the access easement has paved areas approximately 15 feet in width, it has a paved area greater than 10 feet in width within the meaning of KZC 105.10(2)(g). Once that threshold is met, subsection (3) (highlighted above) requires screening along the entire easement or tract outside the required front yard, rather than only along the widened pullout areas. The approved site plan does not depict screening continuously along the full applicable length of the access easement. Rather, the plan depicts screening at the widened 15-foot pullout areas. (See Ex. A6, Sheet C05).

17. Appellant's Closing Brief helpfully illustrates this discrepancy. Figure 2 on page 16 of her closing brief, derived from Ex. A4 at 2, depicts the access easement extending substantially along the panhandle adjacent to Appellant's property. Figure 3 on page 17, derived from Ex. A6, Sheet C05, depicts the approved screening treatment only at the

widened portions. Those exhibits make the narrow compliance issue apparent: the easement extends farther than the portions for which screening is presently shown.

18. Appellant therefore established error on this issue. The appropriate remedy is not denial of the short plat or relocation of the access. Instead, the approval is modified to require screening along the full portion of the access easement or tract to which KZC 105.10(2)(g) applies, rather than only at the widened pullout areas. The City may determine during subsequent permit review the particular compliant screening treatment, subject to the Code and the limitations stated below concerning work on property not controlled by Applicant.

19. The existing Portuguese laurel hedge may provide substantial visual screening, but the approval should not rely exclusively upon vegetation located on Appellant's property to satisfy a continuing code obligation. Ms. Hogan testified that substantial cutting could seriously damage portions of the hedge. Nothing in this Decision requires Appellant to permit work, planting, or maintenance on her property. Nothing prevents the parties from mutually agreeing to an alternative compliant screening arrangement, including replacement or supplemental vegetation on Appellant's property at Applicant's expense, if Appellant voluntarily agrees and the Director finds the arrangement code-compliant.

Portuguese Laurel Hedge and KZC Chapter 95

20. A central remaining dispute concerns whether one or more individual Portuguese laurels within the western hedge are regulated trees under KZC Chapter 95, commonly known as the City's Tree Code. Appellant's arborist, Ms. Hogan, credibly testified concerning the hedge and the possibility that individual stems or specimens may satisfy the dimensional threshold for regulated-tree treatment. Under questioning, Ms. Hogan confirmed that none of the individual laurels in Ms. Giustina's hedge had been measured to determine their specific size, particularly their "DBH" (diameter at breast height).

21. The record does not establish that any particular Portuguese laurel affected by the proposal has a DBH of six inches or more. No witness or written report generated by a qualified professional who provided sworn testimony during the appeal hearing provided evidence or testimony confirming the DBH measurement of an identified individual laurel in the appellant's hedge. Ms. Hogan's testimony established, at most, that one or more specimens might qualify depending upon actual measurement and application of the Code. However, a possibility is not proof by a preponderance of the evidence that a regulated tree exists.

22. Appellant's Closing Brief argues, in substance, that because neither Applicant nor the City measured the individual laurels to determine whether any specimen met the six-inch DBH threshold, the required tree inventory was incomplete and the short plat could not lawfully be approved. The Examiner respectfully rejects that interpretation. The absence of

a measurement is not affirmative evidence of what the measurement would show. Failure to investigate whether a fact exists does not, without more, establish that the fact exists.

23. Appellant bears the burden under KZC 145.95 to establish that the Director's decision was incorrect. On this issue, that required proof of the factual premise upon which the claimed Chapter 95 error depends: that an individual specimen omitted from the analysis actually met the Code's threshold for regulated-tree treatment. The evidence did not establish that premise. An argument that measurement might reveal a qualifying tree cannot substitute for proof that a qualifying tree was present.

24. Appellant's contrary interpretation would effectively reverse the burden of proof. Under that approach, an approval could be denied or remanded whenever an appellant identifies unmeasured vegetation and asserts that measurement might reveal a regulated tree. Nothing in the cited provisions of KZC Chapter 95 or in the appeal burden imposed by KZC 145.95 supports that result. The question in this appeal is whether Appellant proved the Director's approval erroneous, not whether additional investigation might conceivably produce evidence supporting a different result.

25. This finding and conclusion does not adopt the broader proposition advanced during parts of the appeal hearing that Portuguese Laurel maintained in hedge form should be considered categorically outside the Code's regulation of trees. (*Testimony of Mr. Weinstein*). The Code language controls. Portuguese Laurel can grow in forms that may present factual questions under the Code. If the City believes Chapter 95 should categorically exclude Portuguese laurel maintained as a hedge or shrub, that distinction is more appropriately made through a code amendment than through an unwritten categorical exception applied in an individual appeal.

26. The narrower holding here is sufficient: Appellant did not establish that any particular Portuguese laurel affected by the proposal satisfies the applicable six-inch DBH threshold. Accordingly, Appellant did not prove that the Director's approval was erroneous because such a tree was omitted from the inventory or analysis.

27. Regulated-tree status also does not automatically dictate the remedy Appellant seeks. KZC 95.30(2)(b), as relied upon by the City, provides that tree-retention efforts are not required where they would preclude required access or utility connections to a development proposal. Thus, even if a qualifying regulated tree is identified at a later permit stage, that fact alone would not compel denial of the short plat or relocation of required access. Chapter 95 may be applied at subsequent permit stages to facts then established, consistent with the Code and this Decision.

28. The Examiner expresses no opinion on the parties' private rights concerning entry onto Appellant's property or liability for damage to vegetation. Those questions are outside the Examiner's jurisdiction and are not decided here.

1 29. Appellant has not established by a preponderance of the evidence that the Director's
2 approval must be reversed, that the approved driveway must be relocated, or that the short
3 plat must be denied because of the western hedge or the possibility of unmeasured regulated
4 trees.

5 30. Appellant has established a discrete deficiency in the approved screening treatment
6 under KZC 105.10(2)(g), and the parties have resolved the sight-distance dispute by
7 agreement. Those matters are appropriately addressed through targeted modifications to the
8 approval rather than reversal of the short plat.

9 IV. CONCLUSIONS OF LAW.

10 1. The Examiner has jurisdiction over this appeal pursuant to applicable provisions of
11 the Kirkland Zoning Code and Kirkland Municipal Code governing appeals from the
12 Director's land-use decision.

13 2. Appellant bears the burden of proving that the Director's decision was incorrect. KZC
14 145.95.

15 3. Except as expressly stated below concerning sight distance and screening, Appellant
16 has not met that burden. In particular, the record does not establish that any identified
17 Portuguese laurel affected by the proposal satisfies the six-inch DBH threshold relied upon
18 by Appellant, and the absence of a DBH measurement does not itself establish Director error.

19 4. Appellant established that the approved screening treatment must be modified to
20 comply with KZC 105.10(2)(g), and the parties' CR2A agreement resolves the sight-distance
21 issue. Those matters warrant modification, not reversal, of the approval.

22 5. The Examiner lacks jurisdiction in this proceeding to adjudicate private property
23 rights or award civil remedies for alleged trespass, waste, or vegetation damage.

24 V. DECISION.

25 The appeal is GRANTED IN PART and otherwise DENIED. The Director's March
26 24, 2026 approval of the Finn Hill 8 Short Plat, File No. SUB24-00319, is AFFIRMED
subject to the following modifications and clarifications:

1. Sight Distance. Consistent with the parties' CR2A agreement, the required sight
distance at the driveway entrance shall be based upon the agreed 20-mile-per-hour
85th-percentile speed, resulting in a required sight distance of 105 feet. Landscaping
and other obstructions within the applicable sight-distance triangle shall be

maintained consistent with the parties' agreement, including the agreed three-foot maximum obstruction height above grade.

2. Screening. The approval is modified to require screening along the full portion of the access easement or tract to which KZC 105.10(2)(g) applies, rather than only at the widened pullout areas. The City shall determine during subsequent permit review the specific screening treatment that satisfies the Code. Compliance shall not depend upon Applicant performing work on Appellant's property without Appellant's consent or other lawful authority. The parties may voluntarily agree upon an alternative compliant screening arrangement, subject to City approval.

3. Chapter 95. Nothing in this Decision creates a categorical exemption from KZC Chapter 95 for Portuguese laurel maintained in hedge form. Nothing in this Decision precludes application of Chapter 95 in a later permit review phase if facts then established demonstrate the presence of a regulated tree. Any such later application shall be consistent with the Code, including KZC 95.30(2)(b), and with the determinations made in this Decision.

4. Remaining Conditions. Except as modified above, all other conditions and requirements of the Director's March 24, 2026 short plat approval remain in full force and effect.

ISSUED this 2nd day of October, 2026



Gary N. McLean
Hearing Examiner

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NOTICE OF RIGHT TO APPEAL

Appeal to Superior Court – As explained in KZC 145.110, the City’s final land use decision may be reviewed in King County Superior Court pursuant to Chapter 36.70C RCW, the Land Use Petition Act. A land use petition must be filed within 21 calendar days of issuance of the final land use decision by the City. See KZC 145.110; Chapter 36.70C RCW.