

**CITY OF KIRKLAND
HEARING EXAMINER FINDINGS,
CONCLUSIONS AND DECISION**

APPLICANT: Geoffrey Thomas of Phoenix Development, Inc.

FILE NO: PSB07-00001

APPLICATION:

1. Site Location: 11215 and 11219 NE 132nd Street
2. Request: To subdivide two lots containing 4.58 acres, and located in the single-family RSX 7.2 zone, into 24 single-family lots. An existing church, parsonage and daycare will be demolished.
3. Review Process: Process IIA, Hearing Examiner conducts a public hearing and makes a final decision on the preliminary subdivision.

SUMMARY OF RECOMMENDATION/DECISION:

Department of Planning and Development
Hearing Examiner:

Approve with conditions
Approve with conditions

PUBLIC HEARING:

The Hearing Examiner held a public hearing on the application on December 10, 2007, in the Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. A verbatim recording of the hearing is available at the City Clerk's office. The minutes of the hearing are available for public inspection in the Department of Community Development. The record closed following the Examiner's site visit on December 15, 2007.

PUBLIC COMMENT:

Comments offered at the hearing are summarized in the minutes of the hearing. The following persons offered comments:

From the City:

Susan Greene, Project Planner
Rob Jammerman, Development
Engineering Manager,
Dept. of Public Works

From the Community:

William Alford
Candice Bartleson
Elaine Cummins
Troy Ryno

From the Applicant

Geoffrey Thomas,
Project Manager
Brian Darrow, P.E.

Susan Patton

CORRESPONDENCE:

Nine letters were submitted to the Department during the public comment period and are included as attachments to Exhibit A. One comment letter was submitted at the hearing and is included in the exhibit list at the end of this Decision.

FINDINGS, CONCLUSIONS AND DECISION

Having considered the evidence in the record and inspected the site, the Hearing Examiner enters the following:

FINDINGS OF FACT:

Site and Vicinity

1. The site is addressed as 11215 and 11219 NE 132nd Street and is located in the North Juanita neighborhood. It is zoned RSX 7.2, a residential single-family zone with a minimum lot size of 7,200 square feet. It is 4.5 acres in size, flat, and includes a total of 144 significant trees.
2. The site is presently developed with a church, a single-family home, a daycare facility, and a mobile home.
3. Development to the north includes single-family homes and a fire station, all located in unincorporated King County. To the south is an undeveloped property owned by the City of Kirkland. To the east is a townhouse development on property zoned RM 3.6, a multifamily zoning designation that allows 3,600 square feet per unit. To the west is a single-family neighborhood zoned RSX 7.2.

Proposal

4. The applicant proposes to divide the site into 24 single-family lots using lot averaging, with the proposed lots ranging in size from 6,770 square feet to 7,913 square feet, and an average lot size of 7,200 square feet. Sixteen percent of the lots (4) will have areas less than the required minimum 7,200 square feet.
5. The subdivision will be accessed from NE 132nd Street via a new, dedicated, public right-of-way, 112th Avenue NE.
6. In response to a recommendation by the Public Works Department, the applicant is proposing a public pedestrian easement that would consist of a 5-foot-wide paved sidewalk within a 10-foot-wide easement roughly parallel to the new 112th Ave NE right-of-way and across lots 1 through 11, connecting to the City open space at the south end of the subdivision. (See Exhibit B)

7. The applicant proposes to control stormwater in the subdivision by using porous concrete, a system of "rain gardens" along both sides of the 112th Ave NE right-of-way, and on-site infiltration systems. (Exhibit C)

8. At the request of the Washington State Department of Transportation (WSDOT), the applicant will be required to dedicate frontage along NE 132nd Street varying in width from 5 feet to 17 feet. (Exhibit B)

9. The applicant has submitted a Tree Plan III prepared by a certified arborist (Attachment 4 to Exhibit A). Attachment 3 to Exhibit A, "Development Standards," provides specific information on tree density on-site and the viability of each tree. Attachment 5 to Exhibit A, a memo from the City's Urban Forester, includes specific recommendations concerning the applicant's tree plan.

Comprehensive Plan

10. The North Juanita Neighborhood Land Use Map designates the subject property for low density residential use, with a density of six units per acre.

Public Comment

11. The Department received nine public comment letters on the proposal. (Exhibit A, Attachment 6, Enclosures 9 through 17). Some of the letters objected to the proposed density of the development and potential drainage impacts on adjacent properties. Others raised concerns about mature, "landmark" trees being removed from the site. Several also mentioned the City open space to the south, asking that it be developed as a public park. Others asked that the City purchase the subject site and develop it as a park. One stated that eagles had been seen hunting and nesting on the subject property, although they were not observed on staff site visits, and no eagle nests are included on state Department of Fish and Wildlife maps. Other letters raised concerns about the impacts of additional traffic on existing streets, particularly NE 132nd Street.

12. Some of those who sent in comments also testified at the public hearing. The testimony was similar in content to the letters, but included additional elaboration. One neighboring property owner who had not submitted written comment testified about concerns with visual and privacy impacts.

13. A comment letter from WSDOT advised that a future funded WSDOT project will construct a half diamond interchange at NE 132nd Street to and from the north, which will also require widening on NE 132nd Street for additional capacity.

State Environmental Policy Act

14. Pursuant to the State Environmental Policy Act, the Department issued a Determination of Nonsignificance for the proposal on October 12, 2007, which was not appealed. (*See* Attachment 6 to Exhibit A)

Traffic and Drainage

15. The City's traffic concurrency test and Level of Service (LOS) tests are used to ensure that the City's transportation infrastructure can accommodate future development.

16. The Public Works Department reviewed the proposal and determined that it will not cause LOS standards to be exceeded, and that it passed traffic concurrency. (Attachments 6 and 9 to Exhibit A)

17. The present, temporary closure of 116th Way NE has generated an unusual backup on NE 132nd Street, and cut-through traffic on neighborhood streets. The cut-through traffic is expected to decline with the re-opening of 116th Way NE.

18. In addition to the WSDOT funded project for a half-diamond interchange at NE 132nd Street, which will include widening of NE 132nd Street, the City also has plans for improving the NE 132nd Street corridor. These projects are expected to improve the capacity of NE 132nd Street.

19. Although the Public Works Department initially believed the proposal would be responsible for payment of traffic impact mitigation fees, the applicant has been given credit for dedication of right-of-way, and no impact fees are required.

20. The proposal will be required to meet King County Drainage Manual requirements.

Parks/Open Space

21. The North Juanita neighborhood in the vicinity of the proposal does not meet the City's desired level of service, which is a park within a quarter-mile radius of each City household.

22. The Parks Department noted that in 2000 and 2001, the City worked with the neighborhood to determine how the open space to the south of the proposed subdivision could be improved. The planning effort was terminated due to neighborhood concerns, and the Parks Department did not pursue development of the site. (Attachment 7 to Exhibit A)

23. The Parks Department noted the desirability of eventually developing a park at or near this open space, but also stated that no funding or timeline has been established.

Applicable Law

24. Under KMC 22.28.030, all lots within a subdivision must meet established minimum size requirements unless they qualify for lot averaging under KMC 22.28.040. KMC 22.28.040(a) provides that a subdivision will be deemed to have met the minimum lot area if the average lot area is not less than the required minimum lot area, no more than 20% of the lots contain an area less than the required minimum, and all lots have an area at least 90% of the required minimum.

25. KMC 22.28.170 and KZC 110.60 allow the City to require installation of pedestrian walkways through dedication if the walkway is reasonably necessary as a result of the development activity.

26. KMC 22.32.080 provides that in lieu of installing all required improvements and components as part of the subdivision, the applicant may post a bond to ensure completion of the requirements within a year of the decision approving the subdivision, with a possibility of a one-year extension.

27. KCC 175.10.2 states the circumstances under which the City may consider use of a performance security in lieu of completion of certain site work prior to occupancy: if the inability to complete the work is due to an unavoidable circumstance beyond the control of the applicant; it is reasonably certain that the work will be completed in a reasonable period of time; and occupancy prior to completion will not be materially detrimental to the City or properties adjacent to the subject site.

28. Under Chapter 95 KZC, the applicant must retain all viable trees on the site following subdivision approval. Tree removal may be considered at future stages of development. As part of the building permit approval, the City may require minor alterations to the arrangement of structures on each lot and elements in the proposed development in order to achieve maximum retention of significant trees.

29. KMC 22.28.220 provides that the City “shall require open space or drainage easements or other similar mechanisms to ensure compliance with” the preservation of natural vegetation.

30. Attachment 3 to Exhibit A includes other development standards and requirements recommended for the project through the Development Review Committee.

31. KZC 150.65.3 provides that the Hearing Examiner may approve a Process IIA application only if it is "consistent with all applicable development regulations, and to the extent there is no applicable development regulation, the Comprehensive Plan," and is “consistent with the public health, safety and welfare.”

32. KMC 22.12.230 provides that the Hearing Examiner may approve a proposed subdivision only if

- (1) There are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds and schools, and

(2) It will serve the public use and interest and is consistent with the public health, safety and welfare. The Hearing Examiner shall be guided by the policy and standards and may exercise the powers and authority set forth in RCW 58.17.

33. Under Process IIA, the applicant bears the burden of convincing the Hearing Examiner that the applicant is entitled to the requested decision. KZC 150.50.

CONCLUSIONS:

1. Parcel size, zoning, terrain and vegetation, and neighboring zoning and development are not constraining factors in the review of this subdivision application.
2. The proposed subdivision is consistent with the site's zoning, which is consistent with the Comprehensive Plan's designation for the site.
3. The proposed subdivision meets the requirements of KMC 22.28.040 for lot averaging. The average lot area is equal to the required minimum lot size of 7,200 square feet, just 16% of the lots contain an area less than the required minimum, and all lots have an area at least 90% of the required minimum (6,480 square feet).
4. Dedication of the pedestrian easements and installation of associated improvements in accordance with Public Works Department requirements will meet the requirements of KMC 22.28.170 and KCC 110.60 for pedestrian walkways.
5. In accordance with KMC 22.32.080 and KZC 175.10.2, site and right-of-way improvements required for the subdivision will be completed prior to recording unless appropriate security devices are proposed and accepted by the City.
6. The Urban Forester's recommendations on the applicant's Tree Plan III will require retention of all viable trees on-site during future construction of the subdivision, and trees will not be removed or altered following subdivision approval except as approved by the Planning Department. This will meet the requirements of Chapter 95 KZC for tree retention.
7. The record shows no City plans to develop a park on the City open space to the south of the subdivision at this time and no evidence of a City intent to condemn the project site for park use, as desired by some members of the public.
8. The applicant is voluntarily proposing a combination of Low Impact Development drainage techniques, and the proposal will be conditioned to meet all applicable drainage, erosion, and sediment control requirements.
9. The record shows that the proposal meets all traffic requirements.

10. The proposed subdivision will create infill residential development and is consistent with Comprehensive Plan goals for the North Juanita neighborhood.

11. The proposed subdivision complies with KMC 22.12.230 and KZC 150.65. As conditioned, it is consistent with zoning and subdivision regulations and makes adequate provision for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools. The proposed subdivision will serve the public use and interest and is consistent with the public health, safety and welfare.

DECISION:

Based on the foregoing findings and conclusions, the application for a preliminary subdivision is approved, subject to the conditions set forth in the Department's Advisory Report, Exhibit A, at Section I.B.

Entered this 17th day of December, 2007, pursuant to authority granted by KZC 150.65 and KMC 22.12.230.

Sue A. Tanner
Hearing Examiner

EXHIBITS:

The following exhibits were entered into the record:

- Exhibit A Department's Advisory Report with Attachments 1 through 9
- Exhibit B November 29, 2007 Site Plan
- Exhibit C November 29, 2007 Preliminary Utility Plan
- Exhibit D Email correspondence from Tom Rovegno to Susan Greene

PARTIES OF RECORD:

Geoffrey Thomas, Phoenix Development Inc.
Brian Darrow, The Blueline Group, 25 Central Way, Suite 400, Kirkland, WA 98033
Wendy Taylor, Contract Manager for Washington State Department of Transportation, 600-108th Ave NE Suite 405, Bellevue, WA 98004
Elaine Cummins, 13118 114th Lane NE, Kirkland, WA 98034
William Alford, 13012 111th Place NE Kirkland, WA 98034
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Candice Bartleson, 12932 111th Place NE, Kirkland, WA 98034
Tom Rovegno, 12935 111th Place NE, Kirkland, WA 98034
Department of Planning and Community Development
Department of Public Works

Department of Building and Fire Services
Department of Parks, City of Kirkland

APPEALS AND JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for appeals. Any person wishing to file or respond to an appeal should contact the Planning Department for further procedural information.

APPEALS

Section 150.80 of the Zoning Code allows the Hearing Examiner's decision to be appealed by the applicant and any person who submitted written or oral testimony or comments to the Hearing Examiner. A party who signed a petition may not appeal unless such party also submitted independent written comments or information. The appeal must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., _____, fourteen (14) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

JUDICIAL REVIEW

Section 150.130 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within 21 calendar days of the issuance of the final land use decision by the City.

MINOR MODIFICATIONS

Minor modifications to the approved site plan may be authorized as provided in KZC 150.145.

LAPSE OF APPROVAL

Under Section 22.16.130 of the Subdivision Ordinance, the owner must submit a final plat application to the Planning Department, meeting the requirements of the Subdivision Ordinance and the preliminary plat approval, and submit the final plat for recording, within four years following the date the preliminary plat was approved or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 22.16.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the plat.