

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

APPLICANT: Hamish Anderson

FILE NO.: PSB07-00002, APL08-00002

SITE LOCATION: 11240 and 11406 NE 112th Street and Parcel 322605-9101

APPLICATION: Proposal to combine three parcels (totaling 3.30 acres) and subdivide them into 11 single family lots in an RS 8.5 zone.

REVIEW PROCESS: Preliminary Subdivision process pursuant to Chapter 22.12. KMC and Process IIA; Hearing Examiner holds public hearing and makes final decision on preliminary plat. An Appeal of the Director's SEPA determination is decided by the Hearing Examiner in accordance with KMC 24.02.105.

MAJOR ISSUES: The major issues are compliance with applicable subdivision criteria, including the applicable development regulations. A SEPA appeal was filed by Tom Smith.

RECOMMENDATION:

Department of Planning and Community Development: Approve with conditions

PUBLIC HEARING:

After reviewing the Department of Planning and Community Development (Department) Advisory Report, the Hearing Examiner held a public hearing on the SEPA appeal and the preliminary subdivision application. The hearing commenced at 9 a.m., March 20, 2008, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. A verbatim recording of the hearing is available in the City Clerk's Office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development. The appellant, Tom Smith, did not appear in person at the hearing.

The following persons spoke at the public hearing:

From the City: David Barnes, Project Planner
Rob Jammerman, Public Works

From the Applicant: Mark Rigos, Concept Engineering

From the Community: Cyril Hylton

CORRESPONDENCE:

Several letters were submitted to the Department during the comment period for this proposal. The letters are included as attachments to the Department's Advisory Report.

FINDINGS AND CONCLUSIONS

After considering the evidence in the record and inspecting the site on March 20, 2008, the Hearing Examiner enters the following findings of fact and conclusions.

A. Findings of Fact

1. The site is located at 11240 and 11406 NE 112th Street and parcel 322605-9101.
2. The site consists of three parcels totaling 3.30 acres, or 143,649 square feet. The site is developed with two single family dwelling units, one detached garage and several accessory structures. The parcels are zoned RS 8.5, Residential Single Family with a minimum lot size of 8,500 square feet.
3. The site is located within the South Juanita neighborhood. The Comprehensive Plan designates the site as low-density residential (5 dwelling units per acre).
4. The property is generally flat, except for the west side, which slopes gently to the east. The site contains 173 significant trees (Advisory Report, Attachment 4). The City's Urban Forester has noted that only two of the trees are considered Type I trees. There are three open watercourses on the site, which provide drainage.
5. The zoning in the immediate vicinity is RS 8.5. The properties to the north and south and east are developed with single family residences. A Type 3 wetland lies to the east of the property, and Alexander Graham Bell Elementary School is located west of the site.
6. Three separate parcels have been combined to create this subdivision proposal. Two of the parcels have existing single family residences, and the third parcel has never been developed.

7. The proposal is to subdivide the site into 11 single family lots, with lot sizes ranging from 8,506 square feet to 10,635 square feet, with an average density of 3.33 dwelling units per acre.

8. The property is currently accessed by two easement roads that connect the site with NE 112th Street. The easement road to the east is paved and serves 11406 NE 112th Street and seven other residences. The subject property is 25 feet wide where it connects to the subject property.

9. The easement road to the west is gravel and serves 11240 NE 112th Street, an adjacent unaddressed parcel, and six other residences. It is 30 feet wide. The western 15 feet of the easement area is part of the parcel that contains 11240 NE 112th Street. The Public Works Department has recommended that the strip of land be dedicated to the City for potential future right-of-way. Following dedication, the City anticipates that the area would not be altered or actively maintained by the City until such time as the area was utilized as City right-of-way.

10. The proposed access for the project is by way of a fully dedicated 25-foot wide right-of-way which will be accessed from NE 112th Street, and will run north and loop around to the west, terminating with a fire department turnaround (see Attachment 2, Advisory Report).

11. The applicant has proposed an 8-foot wide public pedestrian walkway, as depicted on the plans (Attachment 2, Advisory Report) within a 10-foot wide utility easement across Lot 5 to the north property line. The pedestrian walkway will connect the proposed right-of-way to the property located north of Lot 5. The City anticipates that this pedestrian walkway will in the future be extended as properties to the north are developed.

12. The site is adjacent to an offsite Type 3 wetland. The wetland edge is at the east property line of proposed Lot 5, and its buffer extends 50 feet onto the eastern side of proposed Lot 5. The proposed right-of-way encroaches into the western edge of the required 50-foot wetland buffer area. The Planning Official approved a modification to the buffer pursuant to KZC 90.60 (see Attachment 6 to Advisory Report). The modification approval allows the buffer to be reduced from 50 feet to 33.3 feet.

13. The City's consultant, The Watershed Company, evaluated the three watercourses at the site and determined that they are not "streams" as defined by Chapter 90 of the Kirkland Zoning Code.

14. The applicant proposes to place the watercourses into underground pipes and connect all three directly to the stormwater catchment basin located at NE 112th Street.

15. The applicant has submitted a Tree Plan III, prepared by a certified arborist (see Attachment 4 to Advisory Report).
16. The Public Works Department reviewed the application for concurrency; the concurrency test was passed for water, sewer and traffic on July 19, 2007.
17. The Director of DCD, as Responsible Official, reviewed the proposal pursuant to the State Environmental Policy Act (SEPA) and issued a Determination of Nonsignificance (DNS) on February 13, 2008.
18. The Director recommended conditional approval of the preliminary subdivision, and recommends the conditions set forth in Section I.C of the Advisory Report.

Public Comments

19. The initial public comment period on this proposal ran from October 4, 2007 until October 22, 2007. The Department received four comment letters during that time. The letters, and the Department's responses to them, are set forth at pages 4-7 at the Advisory Report. The applicant responded to the public comments with letters which are set forth in Attachment 7 to the Advisory Report.
20. At the public hearing, Cyril Hylton, who resides along the west easement, offered comments on the proposal, which included: concerns about the appearance of the barricade or signage near his property; maintenance of the gravel easement; concerns about encroachment onto his property; loss of privacy; and concerns about increased use of the gravel easement by drivers seeking to access the subdivision. The City and the applicant testified in response to these comments. The City has indicated it has various options, including more attractive signage or use of landscaping to address concerns regarding appearance and that it does not intend to do anything with the dedicated area until such time as it actually will be using the dedicated portion of the easement. The applicant commented that its intention is that drivers will use the paved road to access the new lots, and that it could install a gate or place signage or take other measures to discourage vehicles from using the gravel easement road.
21. Tom Smith appealed the DNS. Mr. Smith resides at 11414 NE 112TH Street, which is located near the southeast corner of the site (see map, Attachment 7 to the Advisory Report). His house is located at least 20 feet from his east property line.
22. The Appeal Statement is set forth in Attachment 6 to the Advisory Report. No other information regarding the SEPA appeal was submitted by Mr. Smith, who did not appear at the appeal hearing. His appeal letter stated that the new roadway would reduce his driveway and asked: whether the storm drain storage tank would be under the roadway, and why it wasn't designed to support existing houses along the road; whether the road would affect his ability to remodel his house; who would pay to change relocate

the utilities to underground, and to move a water meter; and inquired as to whether the project needed a stub for future sewer/storm drain connection to the existing housing.

23. KMC 22.12.230 states that the Hearing Examiner may approve a preliminary plat 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.*”

24. KZC 150.65 provides that the Hearing Examiner may approve a preliminary plat if it is consistent with all applicable development regulations, and in the absence of applicable development regulations, the Comprehensive Plan.

25. Applicable development regulations in this case include KMC 22.28.020, concerning dedication; KMC 22.28.170, concerning pedestrian walkways; KMZ 22.28.180 and 200, concerning preservation of and sensitivity toward streams, lakes and wetlands and other natural features; Chapter 90 of the Zoning Code, regarding wetlands and watercourses, and Chapter 95, regarding tree preservation; KMC 22.32.080 regarding bonds in lieu of improvements; and KZC 175.10.2 regarding performance securities.

B. Conclusions

Preliminary subdivision

1. The proposed preliminary subdivision, as conditioned by the requirements set out in Attachment 3 to the Advisory Report, would meet all applicable development regulations and be consistent with the applicable portions of the Comprehensive Plan.
2. The preliminary subdivision will make adequate provisions for open space, drainage ways, rights-of-way, easements, water supplied, sanitary waste, power service, parks, playgrounds and schools, will serve the public use and interest, and will be consistent with the public health, safety and welfare.
3. The proposed subdivision as conditioned meets the criteria of KMC 22.12.230 and KZC 150.65, and should be approved subject to the recommended conditions in the Advisory Report.

SEPA Appeal

4. KMZ 24.02.105 provides for an administrative appeal of a DNS. The hearing examiner shall either affirm or change the findings and conclusions of the responsible official that were appealed, and shall affirm, reverse or modify the DNS.

5. No errors were shown in the DNS, and the findings and conclusions of the Director are affirmed. The new roadway would not affect the appellant's required east yard, and the proposed subdivision will meet the new lots' needs for storm drainage, sewer, and utilities. The appeal should therefore be denied. The Appellant's questions about costs and requests to share in future services provided for the new subdivision, are not SEPA issues, but it appears that he can obtain additional information from the Department and the applicant about the availability and costs of services for his property.

DECISION

Preliminary Subdivision: Based upon the foregoing findings of fact and conclusions, the preliminary subdivision application is approved subject to the conditions identified in Section I.C of the Advisory Report.

SEPA Appeal: The appeal is denied, and the DNS is affirmed.

Entered this 24th day of March, 2008.

Anne Watanabe
Hearing Examiner

EXHIBITS

The following exhibits were offered and entered into the record:

Planning and Community Development Staff Advisory Report

Attachments:

1. Vicinity Map
2. Applicant's Development Proposal
3. Development Standards
4. Tree Plan III, prepared by International Forestry Consultants, Inc.
5. Urban Forester Comments
6. Buffer Modification request and Planning Official decision
7. Public comment letters
 - a. Curtis and Vivian Horn
 - b. Jane and Cyril Hylton and response letter from Mark Rigos, Concept Engineering
 - c. Reyes Canales III, and response letter from Mark Rigos, Concept Engineering
 - d. Tom Smith and response letter from Mark Rigos, Concept Engineering
8. SEPA Determination of Non-Significance
9. SEPA Appeal letter from Tom Smith and response from Mark Rigos, Concept Engineering
10. Watershed Stream determination letter dated October 31, 2007
11. South Juanita Land Use Plan on page XV.1-6.1, Figure J-2b

PARTIES OF RECORD

Applicant, Hamish Anderson, PO Box 340, Kirkland, WA 98083
Curtis and Vivian Horn, 11438 NE 112th Street, Kirkland, WA 98033
Jane and Cyril Hylton, 11250 NE 112th Street, Kirkland, WA 98033
Reyes Canales III, 11226 110th Avenue, Kirkland, WA 98033
Tom Smith, 11414 NE 112th Street, Kirkland, WA 98033
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

APPEALS AND JUDICIAL REVIEW

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

Preliminary subdivision

Under Section 150.80 of the Zoning Code, the Hearing Examiner's decision on a preliminary plat may 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 p.m. _____, fourteen (14) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

SEPA decision

The hearing examiner's decision on an appeal of a SEPA threshold determination is the final decision for the City.

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 twenty-one (21) calendar days of the issuance of the final land use decision by the City.

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 (4) 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. "Date of approval" means the date of approval by the City of Kirkland, or the termination of review proceedings if such proceedings were initiated pursuant to RCW 90.58.180 and WAC 173-27-220.