

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

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**APPLICANT:** Ryan Green, Laurel Hills Partners, LLC

**FILE NO:** PSB08-00001

**APPLICATION:**

1. Site Location: 8325 and 8333 132<sup>nd</sup> Avenue NE, and 12873 NE 84<sup>th</sup> Street
2. Request: To subdivide four lots containing 2.46 acres, and located in the single-family RSX 7.2 zone, into 12 single-family lots.
3. Review Process: Process IIA, Hearing Examiner conducts a public hearing and makes a final decision on the preliminary subdivision.
4. Key Issues: Compliance with applicable subdivision criteria and applicable development regulations including right-of-way dedication and improvement.

**RECOMMENDATION:**

Department of Planning and Development

Approve with conditions

**PUBLIC HEARING:**

The Hearing Examiner held a public hearing on the preliminary subdivision application on November 20, 2008, 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 and the exhibits are available for public inspection in the Department of Planning and Community Development. The Examiner visited the site prior to the hearing.

**TESTIMONY AND PUBLIC COMMENT:**

No public comments or comment letters were offered at the hearing. The applicant was represented by Duana Kolousková. Ronald Hanson, Project Planner, testified on behalf of the Department of Planning and Community Development.

**FINDINGS AND CONCLUSIONS:**

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 located in the South Rose Hill neighborhood and is addressed as 8325 and 8333 132<sup>nd</sup> Avenue NE and 12873 NE 84<sup>th</sup> Street. It consists of four lots, three of which are developed with single-family residences. The site is zoned RSX 7.2, a single-family residential zone with a minimum lot size of 7,200 square feet.
2. The site is 107,293 square feet, or 2.46 acres in size. The area would be reduced to 88,364 square feet after dedication of right-of-way in conjunction with the subdivision.
3. The site slopes up gently from east to west and includes a total of 148 significant trees (6 inches or more diameter at breast height), as well as smaller trees, undergrowth and some residential landscaping. There are no environmentally sensitive areas on the site or in the vicinity.
4. The surrounding areas to the north, south and west are zoned RSX 7.2. To the east is 132<sup>nd</sup> Avenue NE and the City of Redmond. NE 84<sup>th</sup> Street terminates at the western edge of the site. Development to the north includes a church on the northwest parcel and single family homes on the northeast parcel. A 12-unit cottage development is currently under review for the northeast parcel. Development to the south, west and east consists of single-family homes.

### Proposal

5. The applicant proposes to divide the four existing lots into 12 single-family lots ranging in size from 7,200 to 9,023 square feet and to remove all existing single-family structures. The proposed density is 4.88 dwelling units per acre.
6. The subdivision will be accessed from 132<sup>nd</sup> Avenue NE via a new dedicated and constructed extension of NE 84<sup>th</sup> Street, and associated storm drainage, curb, gutter and sidewalk, along the north property line that will align with the existing NE 84<sup>th</sup> Street to the west of the subdivision.
7. In compliance with a Public Works Department recommendation to eliminate cut-through traffic, the new NE 84<sup>th</sup> Street will end in a 20-foot wide public emergency access and pedestrian easement across the western-most subdivision lot rather than connecting to the existing NE 84<sup>th</sup> Street. The easement will be improved with a five-foot concrete sidewalk and paving surface to allow pedestrian and emergency vehicle access between the existing and the new segments of NE 84<sup>th</sup> Street. Bollards or other devices will be installed to impede general vehicle access over the easement.
8. Because emergency vehicle access will be provided via the access easement, the Public Works Department has recommended that the applicant construct a hammerhead rather than a cul-de-sac vehicle turnaround.

9. To reduce the number of driveway aprons and retain the maximum amount of on-street parking along the new segment of NE 84th Street, the Public Works Department has recommended shared driveway aprons for some of the proposed lots. The Department has also recommended that for safety reasons, access to lot 12 be provided via an easement across lot 11.

10. The applicant submitted a geotechnical report for the site from an engineering geologist. The report concluded that soil and groundwater conditions are suitable for the intended development so long as the report's recommendations for site preparation and construction are followed.

11. The applicant submitted a Tree Plan III, which was prepared by a certified arborist and reviewed by the City's Arborist. The arborist's report provides specific information on tree density on-site and the viability of each tree. (Attachment 7 to Exhibit A.) The City's Arborist has provided recommendations on trees in Attachment 3 to Exhibit A, "Development Standards," including the requirement for a five-year tree maintenance agreement.

#### Comprehensive Plan

12. The NE 85<sup>th</sup> Street Subarea Land Use Map designates the subject property for low density residential use, with a density of six dwelling units per acre.

#### Public Comment

13. The Department received three public comment letters on the proposal, which are included as attachments 5a through 5c to Exhibit A, the Department's Advisory Report. One comment noted the writer's opposition to a development of large, expensive homes on the site rather than smaller, affordable cottages built to "green" standards. The second comment expressed concerns about the number of homes proposed on the site and the potential loss of privacy if vegetation is removed along the site's south property line. The final comment stated the writer's desire that NE 84<sup>th</sup> Street not be extended as a through street between 128<sup>th</sup> and 132<sup>nd</sup> Avenues NE, as well as concerns about the design and location of the emergency access and vehicle turn-around, and potential impacts of new homes on owners of adjacent lots.

#### State Environmental Policy Act

14. Pursuant to the State Environmental Policy Act, the Department issued a Determination of Nonsignificance for the proposal on July 11, 2008, which was not appealed. (See Attachment 6 to Exhibit A.)

#### Applicable Law

15. KMC 22.28.090 requires that the applicant comply with the requirements of KZC Chapter 110 concerning dedication and improvement of adjacent right-of-way. KZC

110.60 provides that if “a right-of-way abutting the subject property is not wide enough to contain the required improvements, the applicant shall dedicate as right-of-way a strip of land adjacent to the existing right-of-way wide enough to encompass the required half-street improvements. The Public Works Director may require the applicant to make land available, by dedication, for new rights-of-way and utility infrastructure if this is reasonably necessary as a result of the development activity.”

16. Comprehensive Plan Policy T-4.4 states that the City should minimize the amount of cut-through traffic, and the impacts of cut-through traffic, by use of traffic calming techniques.

17. KZC 110.35 states that a dead end public street over 200 feet in length shall be constructed to “R-24 Neighborhood Access Street” standards, including a cul-de-sac for turnaround traffic, but provides that a hammerhead turnaround is allowed for dead end streets under 200 feet in length. Under KZC 110.70.3.c, “Modifications,” the City may “require or grant a modification to the nature or extent of any required improvement ... if ... unusual circumstances preclude the construction of the improvements as required.”

18. Under KMC 22.28.110, “if vehicular access within the plat will be provided by means other than rights-of-way, the plat must establish easements or tracts which will provide the legal right of access to each of the lots served. The city may require that the legal right of access be granted to other adjoining properties in order to provide a safe and efficient circulation system within the city.”

19. 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.

20. KMC 22.28.220 provides that the City must require a mechanism to ensure the preservation of natural vegetation.

21. Attachment 3 to Exhibit A includes other development standards and requirements for the project.

22. 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.”

23. 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.

24. 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, neighboring zoning and development, land use, and terrain and vegetation 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 right-of-way dedication and improvements recommended for the subdivision by the Public Works Department, including the emergency vehicle and pedestrian access easements, meet the requirements of KMC 22.28.090 and KZC 110.60, and Comprehensive Plan Policy T-4.4. They also address the concerns about connection of the new and existing segments of NE 84<sup>th</sup> Street that were expressed in one of the public comment letters.

4. The hammerhead turnaround recommended by the Public Works Department meets the requirements of KCZ 110.70.3.c and is consistent with KZC 110.35.

5. The shared driveways and the driveway location for lot 12 recommended by the Public Works Department meet the requirements of KMC 22.28.110.

6. 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 and Community Department. This will meet the requirements of Chapter 95 KZC for tree retention and the requirements of KMC 22.28.220 for preservation of natural vegetation. It should also allay some of the neighbor's concerns about loss of privacy screening.

7. The proposed subdivision will create infill residential development and is consistent with Comprehensive Plan goals for area in which the subdivision is located.

8. The number of residences that may be constructed on the site, as well as their size and location, is governed by City Code requirements and will be determined at a later date. This application concerns the subdivision of the site into legal lots in accordance with the Kirkland Municipal Code and Kirkland Zoning Code.

9. 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 following conditions:

1. Attachment 3, "Development Standards," is provided by the Planning and Community Development Department to familiarize the applicant with some of the development regulations that supplement these conditions of approval. The applicant shall comply with all requirements and recommendations included in Attachment 3. The applicant shall also ensure that the subdivision complies with all applicable requirements of the Kirkland Municipal Code, Kirkland Zoning Code, and Kirkland Building and Fire Code. When a condition of approval conflicts with a development regulation included in Attachment 3, the condition of approval shall be followed.
2. Trees shall not be removed or altered following plat approval, except as approved by the Planning and Community Development Department.
3. Prior to recording the final plat with King County, the applicant shall obtain a demolition permit from the City of Kirkland and remove all existing structures on the site.
4. The applicant shall follow the recommendations of the geotechnical report during all phases of development on the site.
5. The applicant shall show the shared driveway easements/access easement on the recorded plat.

Entered this 24<sup>th</sup> day of November, 2008, pursuant to authority granted by KZC 150.65 and KMC 22.12.230.

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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

**PARTIES OF RECORD:**

Ryan Green, Laurel Hill Partners, LLC, 14410 Bel-Red Road, Bellevue, WA 98007  
Duana Kolousková, Johns Monroe Mitsunaga PLLC, 1500 114<sup>th</sup> Avenue SE, Suite 102, Bellevue, WA 98052  
Erica Spellman, 13011 NE 83<sup>rd</sup> Street, Kirkland, WA 98033  
Bonnie Kosmyna, 13026 NE 83<sup>rd</sup> Street, Kirkland, WA 98033  
Steve Tindall, 12859 NE 84<sup>th</sup> 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 appeals. Any person wishing to file or respond to an appeal should contact the Planning Department for further procedural information.

**APPEAL TO THE CITY COUNCIL**

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.