

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

APPLICANT: Josh Lysen of Merit Homes, Inc. for Eva Stewart

FILE NO: PSB12-00001

APPLICATION:

1. Site Location: 10611 Slater Avenue NE
2. Request: To subdivide a 159,429 square foot parcel into 18 lots with access provided via a new access road from Slater Avenue NE. The applicant also requested approval of an Integrated Development Plan to address tree retention on the site.
3. Review Process: Process IIA, the Hearing Examiner conducts a public hearing and makes a final decision on the Integrated Development Plan and preliminary subdivision.
4. Key Issues: Tree retention as part of the Integrated Development Plan and compliance with applicable subdivision criteria and development regulations.

RECOMMENDATION:

Department of Planning and Development

Approve with conditions

PUBLIC HEARING:

The Hearing Examiner held a public hearing on the preliminary subdivision application on September 20, 2012, 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 following the hearing.

TESTIMONY AND PUBLIC COMMENT:

No public comments or comment letters were offered at the hearing. Tony Leavitt, 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 North Rose Hill neighborhood and is addressed as 10611 Slater Avenue NE. It is 159,429 square feet (3.66 acres) in area and is developed with one single-family residence.
2. The site is zoned RSX 7.2, a single-family residential zone with a minimum lot size of 7,200 square feet.
3. The site slopes up steeply from Slater Avenue on the east and slopes gently down toward the west and south. It includes a substantial amount of vegetation in places and 222 significant trees (6 inches or more diameter at breast height).
4. The surrounding areas to the north, south and east are also zoned RSX 7.2 and are developed with single-family residences. To the west is the Interstate 405 freeway.

Proposal

5. The applicant proposes to remove the existing single-family residence and divide the existing parcel into 18 single-family lots, ranging in size from 7,200 to 9,000 square feet in size, with access from Slater Avenue NE.
6. The applicant is requesting approval of an Integrated Development Plan rather than phased review as part of the application, and submitted detailed engineering plans for the project, including utility locations, finished topographic details, proposed residence footprints, and a final tree retention plan and associated report prepared by a certified arborist. *See* Exhibit A, the Department's Advisory Report, Attachments 2 and 7.
7. The applicant is proposing retention of all viable significant trees in the northwest and southwest corners of the parcel along I-405.
7. The City Arborist reviewed the final plans and report and recommended approval of the final plan with some revisions to tree protection fencing. The recommendations are included in the Development Standards List, Attachment 3 to Exhibit A.
8. Tree density calculations for each lot are included in Attachment 3 to Exhibit A.

Comprehensive Plan

9. The North Rose Hill Neighborhood Land Use Map in the Comprehensive Plan designates the subject property for low density residential use, with a density of six dwelling units per acre.

Public Comment

10. The Department received one public comment letter on the proposal during the initial public comment period for the application, which ran from May 18, to June 14, 2012. The comment is included as Attachment 4 to Exhibit A, and the applicant's response to the comment is included as Attachment 5 to Exhibit A. The comment letter raised concerns about retention of trees along I-405, which help reduce freeway noise, and sight distance at the intersection of the proposed access road to the subdivision and Slater Avenue NE.

State Environmental Policy Act

11. Pursuant to the State Environmental Policy Act (SEPA), the Department issued a Determination of Nonsignificance for the proposal on August 21, 2012, which was not appealed. *See* Exhibit A, Attachment 9.

Traffic Impacts

12. The application passed Traffic Concurrency on February 15, 2012. The traffic impact analysis for the proposal is included in Attachment 6 to Exhibit A. The Public Works Department concluded that the proposal would not create significant traffic impacts that would require off-site traffic mitigation, but recommended several conditions that address road impact fees, spacing between driveways within the site, spacing between driveways and Slater Avenue NE, and sight distance at the intersection of the project driveway and Slater Avenue NE.

Applicable Law

13. KZC 95.33 includes tree density requirements. For individual lots in a subdivision with an approved Tree Retention Plan, tree density is calculated for each lot and for the entire site. The tree density calculation may include existing trees "pursuant to the tree's retention value, supplemental trees or a combination of existing and supplemental trees". KZC 95.33 prescribes the method for calculating tree density.

14. KZC 95.30.6 includes additional tree retention plan standards for subdivisions, including tree retention plan modification requirements.

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

16. 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."

17. 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.

18. In a 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, and terrain 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. SEPA and Traffic Concurrency requirements have been satisfied. The issue of maintaining a safe site distance at the intersection of Slater Avenue NE and the access road to the subdivision is addressed in the Public Works portion of the Development Standards List by the street improvements required on the west side of Slater Avenue together with a condition prohibiting visual obstructions within the site distance triangle.

4. The proposed Integrated Development Plan should be approved subject to the additional conditions noted in Attachment 3 to Exhibit A, and the applicant should retain all trees identified in the final tree retention plan.

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

6. 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. The subdivision 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 in these Codes. Attachment 3 to Exhibit A, "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. Attachment 3 does not include all of the additional regulations. The applicant shall comply with all requirements and recommendations included in Attachment 3 and with all other applicable regulations. When a condition of approval conflicts with a development regulation included in Attachment 3, the condition of approval shall be followed.
2. The proposed Integrated Development Plan is approved subject to the additional conditions noted in Attachment 3 to Exhibit A. The applicant shall retain all trees identified in the final tree retention plans. Modifications of the approved tree retention plan are subject to the requirements of KZC 95.30.6.b.
3. As part of the building permit for each lot, the applicant shall meet the tree density requirements of KZC 95.33.

Entered this 26th day of September, 2012, pursuant to authority granted by KZC 150.65 and KMC 22.12.230.

Sue A. Tanner
Hearing Examiner

EXHIBITS:

The following exhibit was entered into the record: Exhibit A, the Department's Advisory Report with Attachments 1 through 8.

PARTIES OF RECORD:

Josh Lysen of Merit Homes, Applicant
Yuanshun Chan
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.

SUBSEQUENT MODIFICATIONS

Modifications to the approval may be requested and reviewed pursuant to the applicable modification procedures and criteria in effect at the time of the requested modification.

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.