

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

APPLICANT: Ken Brown, Tudor Homes, LLC

FILE NO.: SPL07-00021

SITE LOCATION: 10808 104th Avenue NE

APPLICATION: Subdivide one developed 34,210 square foot site (.78 acres) located in the single family RS 8.5 zone into three single-family lots. Proposed Lot 1 is 10,297 square feet; Lot 2 is 10,301 square feet; and Lot 3 is 13,612 square feet. The applicant proposes to remove the existing house on proposed Lot 3.

REVIEW PROCESS: Pursuant to KZC Section 90.55.2, Process IIA, Hearing Examiner conducts public hearing and makes final decision on Type I Wetland Buffer Modifications. Under KZC Section 145.10, the short plat proposal is considered together with the buffer modification proposal under Process IIA.

KEY ISSUES: Key issues are: compliance with applicable development regulations, improvements to the 104th Avenue NE right-of-way, compliance with applicable wetland buffer modification requirements. Planning and Community Development Department recommends approval with conditions.

PUBLIC HEARING:

The Hearing Examiner held a public hearing on the application on March 27, 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 following persons spoke at the public hearing:

From the City: Ron Hanson, Project Planner

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From the Applicant: Ken Brown, Tudor Homes, LLC

From the Community: Diane Young
Nicole Hightower
Shirley Young
James Roberts
Cherice Kruger
Ivan Fletter

CORRESPONDENCE:

Five letters and a petition signed by 32 people were submitted to the Department during the comment period for this proposal. The letters are included as attachments to the Department's Advisory Report. At the public hearing, a comment letter signed by Diane and G.N. Young was submitted to the Hearing Examiner.

FINDINGS AND CONCLUSIONS

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

A. Findings of Fact

Site Development and Zoning/Comprehensive Plan Designation

1. The site is located at 10808 104th Avenue NE. The site is approximately 34,210 square feet (.78 acres) and is developed with a single family home with an enclosed garage. The site is zoned RS 8.5, Residential Single Family, with a minimum lot size of 8,500 square feet. As currently developed, the site meets the RS 8.5 requirements for setbacks, lot coverage and Floor Area Ratio.
2. The site is located within the South Juanita Neighborhood. The Land Use Plan designates this site for low-density residential, five dwelling units per acre. Advisory Report, Attachment 10. The proposed density is for 3.8 dwelling units per acre.
3. Proposed Lot 1 is 10,297 square feet, propose Lot 2 is 10,301 square feet, and proposed Lot 3 is 13,612 square feet. All proposed lots would meet the minimum lot size requirement for the zone. Because the lots abut a public right-of-way, 104th Avenue NE/NE 108th Street, the area of the proposed access easement is included in the total site area and the area of the individual lots.
4. The site slopes down from north to the south and southeast from an elevation of approximately 90 feet to an elevation of 60 feet on undeveloped Lots 1 and 2. The average grade across this portion of the site is approximately 26 percent. The average

grade across developed Lot 3 is approximately 14 percent (See Advisory Report, Attachments 2a-c).

5. The City's Sensitive Area Maps indicate that the site is located in a Moderate Landslide Hazard Area. For this reason, the applicant was required to submit a Geotechnical Report with the short plat application. The applicant submitted a Geotechnical Report prepared by Cornerstone Geotechnical, Inc. dated October 29, 2007 (See Advisory Report, Attachment 4). The report addresses general surface and subsurface site conditions, hydrologic conditions, and landslide, erosion, and seismic hazards. The report concludes that the site is compatible with the proposed development provided that the recommended conditions in the report are followed.

6. There are 77 significant trees on the site. Other vegetation consists of trees of less than significant size, undergrowth, lawn and other residential landscaping (See Advisory Report, Attachments 2 a-c, Attachment 3, Development Standards, Attachment 9, and Section II.G.1).

7. The applicant has submitted a Tree Plan III, prepared by a certified arborist. Chapter 95 of the Kirkland Zoning Code requires the retention of all viable trees on the site following the approval of a short plat. The removal and replacement of trees are considered at the time an applicant seeks to develop a site, and will be subject to all applicable provisions of Chapter 95.

8. There are no wetlands on the site. However, there is a Type 1 Wetland located on the City-owned Juanita Bay Park property to the south. The site is located in the Forbes Creek Basin, which is a Primary Basin. A 100-foot wide buffer, with a 10-foot building setback from the buffer edge, is required for a Type 1 Wetland in a Primary Basin.

9. The required 100-foot buffer includes an area at the southwestern corner of the subject site. Because of the site's topography and the location of the 104th Avenue NE right-of-way, the building area for Lot 1 would intrude into a portion of the existing wetland buffer. As allowed by KZC 90.60, the applicant proposes to modify the required buffer as through buffer averaging. The modification would allow the applicant to reduce the required buffer area on Lot 1 while increasing the buffer by the same square footage on Lot 2. The proposed wetland modification and the Department's recommendations are described in Sections II.F and G of the staff Advisory Report.

10. The application also includes the installation of a public trail and stairway within the unimproved portion of the 104th Avenue NE right-of-way, as recommended by the City. Any disturbance to the wetland buffer which occurs as part of this installation would be required to be replanted.

11. KZC Section 90.135 provides that the maximum potential number of dwelling units for a site which contains a wetland, stream, minor lake, or their buffers shall be the

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buildable area in square feet divided by the minimum lot area per unit as specified by KZC Chapters 15 through 60, plus the area of the required sensitive area buffer in square feet divided by the minimum lot area per unit as specified in KZC Chapters 15 through 60, multiplied by the development factor derived from Subsection 2 of KZC Section 90.135.

12. The gross site area of the subject site is 34,210 square feet. The net site area, minus the 3,507 square foot wetland buffer is 30,703 square feet of buildable area. The maximum potential number of units allowed based on the buildable area only is 3.61 dwelling units. The site contains 3,507 square feet (10.25% of site) within the required sensitive area buffer. Based on KZC Section 90.135, Subsection 2, the allowable development factor is 90%. The maximum potential number of units allowed based on the wetland buffer area only is .37 units. The total maximum potential number of units allowed is 3.98 units.

13. Kirkland Municipal Code Section 22.28.110 requires that if vehicular access within a plat is provided by means other than rights-of-way, the plat must establish easements or tracts that 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. For an access road over 150 feet in length serving no more than 2 detached dwelling units, Kirkland Zoning Code Section 105.10.1.2).b).ii, requires 20 feet of pavement in a 25 foot wide access easement or tract with no Fire Department turn-around, as shown on Attachments 2a-b to the Advisory Report. Due to the general access, fire flow, and fire hydrant issues, the Fire Department recommended that any new house and garage on any of the three lots be sprinklered.

Neighborhood Development and Zoning

14. The site is surrounded by single family homes to the east, west and north. The zoning to the north and east is RS 8.5, and to the west, the zoning is RS 12.5. To the south is the NE 108th Street unimproved right-of-way and Juanita Bay Park. An existing pedestrian trail is located in the right-of-way.

History

15. The site is legally described as part of Lot 1, Block 4, of the plat of Juanita Park Tracts, unrecorded. As noted above, the site was developed with a single family house with garage and paved driveway areas.

Public Comments

16. The Department received five letters and the petition signed by 32 people concerning the proposal. The issues identified by those comments and the Department's response, are described in Section II.C of the Advisory Report.

17. At hearing, several people testified, and a comment letter was submitted. Comments included: objections based on the proposal's impacts on trees, wildlife habitat, wetland buffer and open space; that the City had promised to preserve the site; and loss of privacy. Comments also raised questions about construction hours and traffic; the pedestrian trail; the marking of trees by the arborist; and whether the applicant could reduce the size of the proposal to avoid the requirement for a wetland buffer modification. Staff and the applicant also provided responses to the questions and comments.

Department Review

18. The Department determined that the proposed short plat and wetland buffer modification were categorically exempt actions under SEPA. The Department therefore reviewed to the plat and the buffer modification in light of the applicable Code provisions.

19. The Department's wetland consultant reviewed the proposal and the wetland report submitted by the applicant. The Department, in light of that report, has concluded that the proposed buffer modification, as conditioned, would meet the criteria contained in KZC Section 90.60.2. The Department has noted that the proposed new wetland buffer area on Lot 2 would have greater physical connection to the wetland and existing buffer, because of the more gradual slope on Lot 2.

20. The Department has recommended a number of conditions with regard to the wetland buffer modification. These include requiring the applicant to enhance the proposed new wetland buffer area by: removing asphalt, old building materials and invasive vegetation; installing new plantings; and taking other actions as described in the Advisory Report. During construction, the wetland buffer areas on the site would be fenced off from the upland portion of the site. Following construction, a permanent fence or other barrier would be installed to separate the upland portion of the site from the wetland buffer. The wetland buffer area on the site would also be subject to a Native Growth Protection Easement. The applicant will also be required to install a five-foot wide pedestrian pathway and stairway from the edge of the 104th Avenue NE street improvements to the existing path in the NE 108th Street right-of-way.

21. The Department recommends approval of the application subject to the conditions set forth in the Advisory Report at Section I.B.

22. KMC 22.20.140 provides that a short subdivision is to be approved if (a) there are adequate provisions for open spaces, drainageways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds and schools; and (b) the short plat will serve the public use and interest and is consistent with the public health, safety and welfare.

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23. The application is subject to Process IIA review. Under KZC 150.65.3, a Process IIA application may be approved if:

- a. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
- b. It is consistent with the public health, safety and welfare.

B. Conclusions

1. The proposed short subdivision as conditioned would meet the applicable development regulations, including Chapters 90 and 95. As conditioned, the application for the three-lot subdivision makes adequate provisions for the features identified in KMC 22.20.140, and would be consistent with the Comprehensive Plan, which designates this site for residential development at a higher density than is being proposed. As conditioned, the short plat is consistent with the public health, safety and welfare.

2. Size and vegetation are not constraining factors in this application. Land use and terrain are not constraining factors provided the recommended conditions are met. Neighborhood development and zoning are not constraining factors in the proposed short plat.

3. Public comments expressed opposition to the development of the vacant portions of this site. It is understandable that neighbors wish to preserve all undeveloped portions of the site, which they value as wildlife habitat and open space. But the site has not been designated as a park or other publicly-owned property. The short plat and wetland buffer modification as conditioned would meet all applicable Code requirements. Under these circumstances, there is no basis upon which to deny the application.

4. The application for the short plat and the wetland buffer modification as conditioned meets all applicable criteria and should be approved.

DECISION

The application is hereby approved with all conditions set out at Section I.B of the Advisory Report.

Entered this 4th day of April, 2008.

Anne Watanabe
Hearing Examiner

EXHIBITS

The following exhibits were offered and entered into the record:

- A. Planning and Community Development Staff Advisory Report Attachments 1 through 10.
1. Vicinity Map
 2. Boundary and Topographic Survey
 3. Development Standards
 4. Geotechnical Report prepared by Cornerstone Geotechnical, Inc.
 5. Public Comments
 - 5a- Letter from Robert Osrowske
 - 5b- Letter from Per-Ola Selander
 - 5c- Letter from Nathan Weinberger
 - 5d- Letter from Marlys Aaltonen
 - 5e – Letter from Judi Selset
 - 5f - Petition signed by 32 people
 6. Wetland Delineation Report prepared by Evergreen Aquatic Resource Consultants
 7. Wetland Buffer Modification Report prepared by Evergreen Aquatic Resource Consultants
 8. Wetland Report prepared by The Watershed Company
 9. Arborist Report prepared by Arboricultural Consulting
 10. South Juanita Neighborhood Land Use Plan on Page XV.I-6, Figure J.2b
- B. Comment letter from Guy and Diane Young

PARTIES OF RECORD

Ken Brown, Tudor Homes, LLC, 10808 104th Avenue NE, Kirkland, Wa. 98033
Robert Osrowske, 10411 NE 110th Street, Kirkland, Wa. 98033
Per-Ola-Selander, 10830 101st Avenue NE, Kirkland, Wa. 98033
Nathan Weinberger, 10530 NE 108th Street, Kirkland, Wa. 98033
Marlys Aaltonen, 10912 104th Avenue NE, Kirkland, Wa. 98033
Judi Selset, 10816 104th Avenue NE, Kirkland, Wa. 98033
Guy and Diane Young, 10417 NE 109th, Kirkland, WA 98033
Nicole Hightower, 10407 NE 109th, Kirkland, WA 98033
Shirley Young, 10417 NE Kirkland, WA 98033
James Roberts, 10815 104th Avenue NE, Kirkland, WA 98033
Cherice Kruger, 10819 106th Ct. NE, Kirkland, WA 98033
Ivan Fletter, 10816 104th Avenue NE, Kirkland, WA 98033
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Department of Public Works
Department of Building and Fire Services

SUBSEQUENT MODIFICATIONS

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

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 CITY COUNCIL

Section 150.80 of the Zoning Code allows the Hearing Examiner's decision to be appealed by the applicant or any person who submitted written comments or oral testimony to the Hearing Examiner on the application. A party who signed a petition may not appeal unless the 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 Director's decision.

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.

LAPSE OF APPROVAL

Under Section 22.20.370 of the Subdivision Ordinance, the short plat must be recorded with King County within four (4) years following the date of approval, or the decision becomes void; provided, however, that in the event judicial review is initiated, 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 short plat.