

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

APPLICANT: Pulte Group

FILE NO: SUB14-01891/ZON14-01888

APPLICATION:

1. Site Location: 12860 and 13030 136th Avenue NE

2. Requests: The applicant requests approval of a preliminary subdivision and planned unit development (PUD) as follows:
 - a. Preliminary Subdivision: A proposal to subdivide five parcels totaling 8.58 acres into 48 separate lots with access via a new access road off of 136th Avenue NE, and a new connection to the existing 137th Place NE right-of-way to the north of the subject property. See Exhibit A, Staff Advisory Report and Recommendation (Staff Report), Attachment 2, Sheet CS-01.
 - b. PUD: A request for a preliminary and final Planned Unit Development (PUD) and modification of the following Zoning Code and Municipal Code requirements:
 - (1) Provide smaller lot sizes than the minimum lot size of 5,100 square feet in the RSA 8 Zone for 33 of the 48 lots, with an average lot size of 4,935 square feet.
 - (2) Provide lot widths less than the minimum 50' as measured from the back of the required front yard for 28 of the lots.
 - (3) Reduce minimum required front yards to 10 feet and provide a garage setback of 20 feet as measured from the front property line.
 - (4) Calculate the 50% floor area ratio (FAR) maximum based on the net development area (total lot area minus public rights-of-way) rather than on an individual lot basis.
 - (5) Calculate the 50% lot coverage maximum based on the net development area (total lot area minus public rights-of-way) rather than on an individual lot basis.
 - (6) Calculate building height based on finished grade instead of predevelopment grades.

Pursuant to Chapter 125 KZC, the proposal includes the following proposed benefits to the City beyond the improvements to address potential impacts or undesirable effects of the PUD and provide benefits to the community that typically would not be required for a subdivision under City Code and implementing regulations:

- (1) Increased open space, onsite recreation and landscaping. Common open space is planned in Tracts B and D. Tract B is 1.5 acres in size and has an underground storm water detention vault. On the surface, the applicant proposes a grass play area, bocce ball court, picnic area with bench seating, and landscaping and trees. Tract D is .2 acres in size and is

proposed for a play lawn, play structure, concrete sitting wall, picnic table seating, and landscaping and trees. Both recreation areas would be available for use by the public as well as by residents of the subdivision.

- (2) Offstreet right-of-way improvements. The applicant proposes to extend construction of frontage improvements, including a sidewalk, along the tax parcel that is being retained by the current property owner, which fronts on 136th Avenue NE. *See* Staff Report, Attachment 2, Sheet CS-01. This would connect the sidewalks being installed as part of the subdivision and the existing sidewalk to the north. The applicant also proposes to install a Rectangular Rapid Flash Beacon cross walk across 132nd Avenue NE at its intersection with NE 134th Place.

3. Review Process: Process IIB, the Hearing Examiner conducts a public hearing and makes a recommendation to the City Council, which makes a final decision.

4. Key Issues:

- Compliance with subdivision criteria
- Compliance with PUD approval criteria
- Compliance with applicable development regulations
- Compliance with Process IIB Zoning Permit approval criteria

SUMMARY OF RECOMMENDATIONS:

Department	Approve with conditions
Hearing Examiner	Approve with conditions

PUBLIC HEARING:

The Hearing Examiner held a public hearing on the applications on June 22, 2015, 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:

A list of those who testified at the public hearing, and a list of the exhibits offered at the hearing are included at the end of this Recommendation. The testimony is summarized in the hearing minutes.

For purposes of this recommendation, all section numbers refer to the Kirkland Zoning Code (KZC or Code) unless otherwise indicated.

FINDINGS, CONCLUSIONS AND RECOMMENDATION

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

Findings of Fact and Conclusions:

A. Site Description

The Facts and Conclusions on this matter set forth at Subsection II.A of the Staff Report are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

B. Public Comment

C. State Environmental Policy Act and Concurrency

The Facts and Conclusions on this application set forth at Subsections II.B and II.C of the Staff Report are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

Public comments at the hearing reiterated some of the concerns expressed in the comment letters included in the record as Attachment 6 to the Staff Report, particularly those expressing opposition to the proposed connection to 137th Place NE and associated impacts of a potential increase in cut-through traffic, and the need for improvements to traffic flow on 136th Avenue NE in light of increasing traffic volumes. Commenters wondered whether the traffic studies for each new development in the area take into account the additional traffic generated by projects currently being constructed, and there was a general consensus that numerous improvements are needed to 136th Avenue NE. Two speakers thought the Rectangular Rapid Flash Beacon should be located closer to the proposal to safeguard children crossing 136th Street to reach the sidewalk that will be constructed.

Other public comments at the hearing included concerns about storm water issues in light of the area's topography, and the fact that the open space and recreational facilities on Tracts B and D will be available to the public. Homeowners in nearby subdivisions fear that this will draw the public to the open spaces and amenities in their subdivisions, creating safety issues and a need to increase insurance coverage on those spaces.

As noted in the Staff Report, the Public Works Director has recommended the 137th Place road connection pursuant to KZC 150.65 and two Comprehensive Plan Policies:

Policy T-4.3 states that the City should "maintain a system of arterials, collectors, and local access streets that forms an interconnected network for vehicular circulation." Under this policy, the Plan explains that "[t]raffic spread over a 'grid' of streets, which is designed appropriate to neighborhood and system needs, flows smoothly. Kirkland has a number of existing cul-de-sacs, which help to create quiet and private residential areas. At the same time, however, cul de sacs and dead ends result in uneven traffic distribution and benefit some at the expense of others." Comprehensive Plan at IX-13.

Policy T-4.5 states that the City should "maintain and improve convenient access for emergency vehicles," and that "an interconnected street network is the best way to achieve direct access." *Id.*

A Traffic Impact Analysis ("TIA") was required for the proposal. Exhibit A, Attachment 6. Traffic volume forecasts in the TIA use the City's traffic model forecasts, which does account for pipeline development and a background traffic growth rate. *Id.* at 125. Also, as noted in Subsection C of the Staff Report, the proposal passed concurrency review and was not appealed. Localized transportation impacts of the proposal, as addressed in the TIA, are reviewed pursuant to SEPA, and the SEPA Determination of Nonsignificance issued for the proposal also was not appealed. As stated by the Department at the hearing, at the request of the School District, the Rectangular Rapid Flash Beacon is to be located on a school walk route at an existing crosswalk.

As noted above, the applicant will be constructing an underground storm water detention vault on Tract B. And as noted in the Staff Report, comments on storm water concerns have been forwarded to the Public Works Department for consideration, and full drainage review will be required.

As noted in Subsection D of the Staff Report, the provision of open space and recreational facilities to residents in the subdivision is considered a public benefit, in that it goes beyond what is required by City codes. The fact that the proposed open space and recreation facilities in this subdivision also will be open to the public provides an added public benefit.

D. Approval Criteria

The Facts and Conclusions on this matter set forth at Subsection II.D of Exhibit A are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions. The proposed subdivision complies with KMC 22.12.230 and KZC 150.65. With the proposed PUD, and as conditioned, the subdivision 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.

E. Development Regulations

The Facts and Conclusions on this matter set forth at Subsection II.E of Exhibit A are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

F. Comprehensive Plan

The Facts and Conclusions on this matter set forth at Subsection II.F of Exhibit A are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

G. Development Standards

The Facts and Conclusions on this matter set forth at Subsection II.G of Exhibit A are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

H. Process IIB Decisional Criteria

The application for the subdivision and PUD is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, with the Comprehensive Plan. As noted above, it is also consistent with the public health, safety and welfare.

Recommendation:

Based upon the foregoing findings of fact and conclusions, the Hearing Examiner recommends that the City Council approve the Preliminary Subdivision and PUD subject to the conditions set forth in Section I.B of the Staff Report.

Entered this 24th day of June, 2015.

Sue A. Tanner
Hearing Examiner

EXHIBITS:

The following exhibit was entered into the record:

- Exhibit A Department's Advisory Report with Attachments 1 through 11;
- Exhibit B Email dated June 2, 2015 to Tony Leavitt from Sara Bray re: File No. SUB14-01891
- Exhibit C Email dated May 28, 2015 to Tony Leavitt from Sharon Sato re: Marinwood Development
- Exhibit D Email dated June 19, 2015 to Tony Leavitt from Mark Hamburg re: Marinwood comments
- Exhibit E PowerPoint presentation by the applicant
- Exhibit F Map showing location of proposed rectangular rapid flash beacon
- Exhibit G Photographs of typical rectangular rapid flash beacon
- Exhibit H Site plan showing location of proposed off-site sidewalk
- Exhibit I Applicant's cost estimates

PARTIES OF RECORD:

Mike Behn, Pulte Group
Scott Borgesen, Pulte Group
Steve Anderson, LDC, Inc.
Darrell Mitsunaga, Johns, Monroe, Mitsunaga Kolouskova, PLLC
Christopher Kringel
Matthew Tillman
Larry Miller
Sara Bray
Parties of Record prior to hearing
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

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.

CHALLENGES 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.

CHALLENGE

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., _____, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

JUDICIAL REVIEW

Section 152.110 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

PUD

The applicant must begin construction or submit to the City a complete building permit application for the development activity, use of land or other actions approved under this chapter within five (5) years after the final approval of the City of Kirkland on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per KZC 152.110, the running of the five (5) years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. The applicant must substantially complete construction for the development activity, use of land, or other actions approved under this chapter and complete the applicable conditions listed on the notice of decision within seven (7) years after the final approval on the matter, or the decision becomes void.

Final Plat

Under Section 22.16.010 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 five 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 five years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the plat.