

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

APPLICANT: Hans Christiansen on behalf of Toll WA LP

FILE NO: SUB15-00615

APPLICATION:

1. Site Location: 7922 NE 125th Street, 12432 Juanita Drive NE, and a vacant parcel, number 3840700758
2. Request: To subdivide 3 parcels, totaling 3.36 acres in size, into 20 single-family lots. 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, right-of-way improvements, 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 November 5, 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 Planning and Building Department. The Examiner reviewed the site in advance of the hearing.

TESTIMONY AND PUBLIC COMMENT:

No public comments or comment letters were offered at the hearing. Susan Lauinger, Associate Planner, testified on behalf of the Planning and Building Department. Hans Christiansen testified on behalf of the Applicant.

FINDINGS AND CONCLUSIONS:

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

Findings of Fact:

Site and Vicinity

1. The site consists of three parcels located in the Finn Hill neighborhood. They total 3.36 acres in area and are addressed as 7922 NE 125th Street, 12432 Juanita Drive NE, and parcel number 3840700758. The addressed parcels are each developed with one single-family residence.
2. The site is zoned RSA 8, a single-family residential zone that allows 8 dwelling units per acre and a minimum lot size of 3,800 square feet.
3. The site slopes gently down from east to west. The City's sensitive area maps do not show that it includes unstable slopes, and no environmentally sensitive areas were found on the property. The property is heavily treed with the exception of the areas immediately surrounding the single-family homes and a wide driveway in the middle of the property.
4. The surrounding areas to the north, south and east are also zoned RSA 8. Properties to the south and east are developed with single family homes. The property to the north includes one single family home and could be further subdivided. To the west is Juanita Drive, property zoned RSA 4 and developed with single family homes, and Big Finn Hill Park.

Proposal

5. The applicant proposes to subdivide the three parcels into 20 single-family lots, varying in size between 4,421 and 7,950 square feet, with an average lot size of approximately 5,000 square feet. The staff report includes an analysis of lot layout and site development standards at 11-12, which is adopted by reference.
6. The existing residence at 12432 Juanita Drive will be demolished. Access to the subdivision will be provided from NE 125th Street and 80th Avenue NE, and two internal access roads will be constructed. Both will dead-end near the north property line. The road through the western part of the subdivision will be located within a private access tract; the one through the eastern part will be constructed as dedicated right-of-way.
7. The applicant has submitted an application for a lot line adjustment that will separate the residence at 7922 NE 125th Street from the proposed subdivision. Although the square footage of the residence lot has not been included in the total area for the

subdivision, the lot line alteration will not be recorded until after the preliminary plat has been approved. Consequently the residence lot remains part of the preliminary plat under the Code's definitions.

8. The applicant is requesting approval of an Integrated Development Plan rather than phased review as part of the application, and has submitted preliminary engineering plans for the project, an integrated tree plan and associated report prepared by a certified arborist, and a geotechnical report. *See* Exhibit A, the Department's Advisory Report ("staff report"), Attachments 2, 4 and 5.

9. The staff report includes a detailed analysis of the subdivision's compliance with development regulations related to provision for public and semi-public land, right-of-way improvements, and vehicular access easements/tracts at 8-11, and it is adopted by reference.

10. The staff report includes a detailed analysis of the subdivision's compliance with development regulations related to significant vegetation/tree management at 12-14, and it is adopted by reference. The City's Urban Forester has assessed the trees on the site, and the City Arborist has reviewed the applicant's arborist report and included recommendations within the Development Standards List, Attachment 3 to the staff report.

Comprehensive Plan

11. The Comprehensive Plan designates the subject property for low density residential use, with a density of eight to nine dwelling units per acre.

State Environmental Policy Act

12. Pursuant to the State Environmental Policy Act (SEPA), the Department issued a Determination of Nonsignificance for the proposal on August 20, 2015, which was not appealed.

13. The supporting documentation for the DNS is included in Attachment 7 to the staff report and includes: the DNS and supporting analysis, the Environmental Checklist; the geotechnical report and log results; the sensitive areas report; an addendum to a Phase I environmental assessment of the site; the traffic impact analysis ("TIA"); the Public Works Department's response to public comments on construction traffic access, street width, and issues related to the underground stormwater vault; the City transportation engineer's comments on the TIA and response to public comments on traffic and transportation; and a response from the school district indicating that it expects the subdivision to generate approximately one to two new students for every 10 residences constructed.

Concurrency

14. The Public Works Department reviewed the application for concurrency. It passed a concurrency test for water, sewer and traffic on January 15, 2015.

Public Comment

15. The Department received eight written public comments on the proposal, which are included as Attachment 6 to the staff report. The comments raised concerns about the subdivision's density, traffic and transportation issues, screening for the stormwater detention vault, tree retention, and the potential impact on schools. The issues of traffic and transportation impacts, stormwater impacts, and school impacts were addressed during the SEPA process. The staff report fully responds to the comments concerning density and tree retention.

Applicable Law

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. The proposed subdivision is consistent with the site's zoning, which is consistent with the Comprehensive Plan's designation for the site.

2. SEPA and Traffic Concurrency requirements have been satisfied.

3. Trees are an important factor in this application, and tree retention and replacement have been fully addressed. The proposed Integrated Development Plan should be approved subject to the additional conditions noted in the staff report.

4. The proposed subdivision will create infill residential development within the City.

5. 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 recommended conditions included in the staff report at 1-4.

Entered this 9th day of November, 2015, pursuant to authority granted by KZC 150.65 and KMC 22.12.230.

Sue A. Tanner
Hearing Examiner

EXHIBITS:

The following exhibits were entered into the record:

- Exhibit A Department's Advisory Report, with Attachments 1 through 8
- Exhibit B Corrected Determination of Nonsignificance
- Exhibit C Applicant's PowerPoint presentation
- Exhibit D Resumes for Maher A. Joudi, Mike Swenson, Brian K. Gilles, and Kurt D. Merriman
- Exhibit E Department's PowerPoint presentation

PARTIES OF RECORD:

Hans Christiansen, Toll WA LP
Public Comment authors
Planning and Building Department
Department of Public Works

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.

APPEALS

Appeal to 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.

LAPSE OF APPROVAL

Under KZC 150.135:

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 150.130, 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 nine (9) years after the final approval on the matter, or the decision becomes void.

Under KMC 22.16.010 Final Plat – Submittal – Time limits:

If the Final Plat is not submitted to the City Council within the time limits set forth in RCW 58.17.140 it shall be void.