

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

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**APPLICANT:** Moira Haughian on behalf of Firwood Land LP

**FILE NO:** SUB15-01332 and SAR15-01336

**APPLICATION:**

1. Site Location: 12342 93<sup>rd</sup> Lane NE
2. Request: To subdivide a 3.49-acre parcel into 19 single-family lots. The applicant also requested approval of a stream buffer modification through enhancement of the buffer, and utilization of Low Impact Development provisions to reduce minimum lot size and increase allowable density in exchange for increased open space on the site.
3. Review Process: Process IIA, the Hearing Examiner conducts a public hearing and makes a final decision on the preliminary subdivision, stream buffer modification, and low impact development applications.
4. Key Issues: Compliance with subdivision criteria, stream buffer modification criteria, and Low Impact Development regulations.

**RECOMMENDATION:**

Planning and Building Department                      Approve with conditions

**PUBLIC HEARING:**

The Hearing Examiner held a public hearing on the preliminary subdivision application on January 6, 2016, 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 on January 9, 2016.

**TESTIMONY AND PUBLIC COMMENT:**

No public comments or comment letters were offered at the hearing. Tony Leavitt, Project Planner, testified on behalf of the Planning and Building Department. Ben Rutkowski 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 3.49 acres located in the South Juanita neighborhood. It is developed with 31 manufactured homes and associated accessory structures. All structures would be removed.
2. The site is zoned for single family residential use: RSX 7.2, with a minimum lot size of 7,200 square feet; and RSX 8.5, with a minimum lot size of 8,500 square feet.
3. There is a Class A stream on the western portion of the property, which is part of the Juanita Creek Basin. Under the Code, it requires a 75-foot buffer and a 10-foot buffer setback.
4. The site slopes down slightly from north to south, with a more significant slope on the west side due to the stream channel. The center of the site is paved for access, with a paved parking area on both sides, and includes little vegetation. The east and west sides of the site, along the property lines, are vegetated with shrubs and trees, including 74 significant trees.
5. The surrounding areas to the north and west are zoned RSX 7.2, and areas to the south and east are zoned RSX 8.5. Surrounding development is single-family residential.

#### Proposal

6. The applicant proposes to subdivide the parcel into 19 single-family lots using Low Impact Development. The lots vary in size from 3,600 to 10,742 square feet. Forty percent of the site will remain in open space.
7. The applicant seeks to reduce the stream buffer at some points and to enhance the buffer through removal of invasive species and installation of native plants. The buffer will be reduced to 50 feet at some of the building sites on the property. *See* Exhibit A, the Department's Advisory Report ("Staff Report") (Attachment 8) at 109-113.
8. The applicant is using an Integrated Development Plan rather than phased review as part of the application, and has submitted preliminary engineering plans for the project, and a tree retention plan and associated report prepared by a certified arborist. *See* Staff Report, Attachments 2 and 9.

9. In accordance with Code requirements, the proposal would include full half-street frontage improvements along NE 124<sup>th</sup> Street and an associated dedication, and dedication and construction of a new access street. *See* Staff Report (Attachment 3) at 33-34. In addition, 4 lots would be served by an access tract, Tract D. *See* Staff Report (Attachment 2) at 17.

10. The Staff Report includes a detailed analysis of the proposed subdivision's compliance with buffer modification requirements at 6-7, and it is adopted by reference.

11. The Staff Report includes a detailed analysis of the proposed subdivision's compliance with development regulations related to low impact development facilities to manage stormwater, maximum development potential, and general lot layout and site development standards at 8-10, and it is adopted by reference.

12. The Staff Report includes a detailed analysis of the proposed subdivision's compliance with development regulations related to vehicle access easements and bonds and securities at 10-11, and it is adopted by reference.

13. The Staff Report includes a detailed analysis of the proposed subdivision's compliance with development regulations related to the required sensitive area covenant, natural greenbelt protection easement, and stream buffer fence or barrier at 11-12, and it is adopted by reference.

14. The Staff Report includes a detailed analysis of the proposed subdivision's compliance with development regulations related to significant vegetation at 12-13, and it is adopted by reference.

#### Comprehensive Plan

15. The Comprehensive Plan designates the subject property for low density residential use, with a density of six and five dwelling units per acre.

#### State Environmental Policy Act and Concurrency

16. Pursuant to the State Environmental Policy Act (SEPA), the Department issued a Determination of Nonsignificance for the proposal on December 3, 2015, and the proposal passed traffic concurrency on May 19, 2015. Neither was appealed. The DNS and supporting documentation are included in Attachment 5 to the Staff Report.

#### Public Comment

17. The Department received two written public comments on the proposal during the initial comment period, which ran from August 12, to September 11, 2015. The comments are included as Attachment 4 to the Staff Report. One comment raised issues related to the proposal's impacts on affordable housing. Staff Report (Attachment 5) at 37-44. These issues were fully addressed during the SEPA process. *See* Staff Report

(Attachment 5) at 50-51 and Exhibit B. The second comment was a letter from the Muckleshoot Tribe seeking additional information on several aspects of the proposal. Staff Report (Attachment 5) at 45. The Department provided the additional information via several e-mail exchanges with the Tribe.

#### Applicable Law

18. 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."

19. 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.

20. 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. As represented in the attachments to the Staff Report, and with the conditions recommended in the Staff Report, the proposal is consistent with the Code requirements for a stream buffer modification.
4. The proposed lots meet minimum lot size requirements, and lots within the low impact development meet the design standards and guidelines and the approval criteria set forth in Chapter 114 of the Zoning Code.
5. As conditioned, the proposed vehicular access, Tract D, complies with the dimensional standards for such tracts found in KZC 105.110.
6. The proposed tree retention plan has been reviewed by the City's Arborist and complies with Code requirements. The proposed Integrated Development Plan should be approved subject to the additional conditions set forth in the Staff Report.

7. The proposed subdivision complies with KMC 22.12.230 and KZC 150.65. With the conditions recommended in the Staff Report, it would be 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 preliminary subdivision, stream buffer modification, and low impact development applications are approved, subject to the recommended conditions included in the Staff Report, at 2-4.

Entered this 11<sup>th</sup> day of January, 2016, 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 10  
Exhibit B Letter to Department from Vicki E. Orrico, attorney-at-law re letter from Northwest Justice Project

**PARTIES OF RECORD:**

Applicant  
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**

#### **Final Plat**

Under Section 22.20.370 of the Subdivision Ordinance, the final plat must be recorded with King County within five (5) 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 five years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the final plat.

#### **Buffer Modification**

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.