

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

APPLICANTS: Jeff and Barb Hindle

FILE NO.: ZON05-00011

SITE LOCATION: 96xx 38th Avenue NE

APPLICATION: A request for approval of a reasonable use permit to allow construction of one single-family residence with an Accessory Dwelling Unit in the basement within a wetland buffer. The proposal includes impact to approximately 5,000 square feet of Type I wetland buffer. The subject property is zoned RS 12.5 and contains 27,547 square feet. A reduction of the required 20 foot front setback adjacent to NE 38th Street and 97th Avenue NE has been incorporated into the proposal to reduce wetland and wetland buffer impacts (see Attachment 2, Sheet C-1). The applicant has proposed restoring 7,366 square feet of the wetland and wetland buffer south of the proposed residence.

REVIEW PROCESS: Process IIB, Hearing Examiner and Houghton Community Council conduct public hearing and make recommendation; City Council makes final decision.

SUMMARY OF KEY ISSUES: Compliance with reasonable use and zoning code decisional criteria (see Exhibit A, Section II.E).

SUMMARY OF RECOMMENDATIONS:

Department of Planning and Community Development:	Approve with conditions
Houghton Community Council:	Approve with conditions
Hearing Examiner:	Approve with conditions

PUBLIC HEARING:

After reviewing the Department of Planning and Community Development Advisory Report, the Hearing Examiner and the Houghton Community Council held a public hearing on the application. The hearing commenced at 7 p.m. on March 27, 2006, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. The record was

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held open to receive Exhibits C and D (photocopies of the PowerPoint presentations given by staff and the applicants, respectively, at the hearing) and Exhibit E (the speaker sign-in sheet) and to receive the recommendations of the Houghton Community Council on this application. The Community Council submitted a recommendation on the proposal to Hearing Examiner on April 3, 2006

The following persons spoke at the public hearing:

From the City:

Desiree Goble, Project Planner

From the Applicant:

Jeff Hindle, Applicant

Barb Hindle, Applicant

Donna Frostholt, Applicants' wetland consultant, Adolfson and Associates

Rick Jones, Applicants' architect, Nash Jones Anderson architects

Diana Kircheim, Applicants' attorney, Groen, Stephens and Klinge

From the Community:

Philip C. Irvin

Ted Barr

Krista Rave-Perkins

FINDINGS AND CONCLUSIONS

Having considered the entire record in this matter, and the recommendation of the Houghton Community Council, the Hearing Examiner now makes and enters the following:

A. Site Description:

1. Site Development and Zoning:

a. Facts:

(1) Size: 27,547 square feet (0.63 acres) according to King County Records.

(2) Land Use: There are no improvements located on the subject property.

(3) Zoning: RS 12.5, a single-family, low density residential zone with a minimum lot size of 12,500 square feet.

(4) Shoreline Designation: The shoreline map indicates that Lake Washington extends southward into an area identified as Yarrow Bay (see SEPA Attachment 3 to Attachment 5). The

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shaded area identified as Conservancy 2 Environment (C-2) on the shoreline map indicates that the area is within the shorelines jurisdiction. Shorelines jurisdiction applies to the water and submerged lands of Lake Washington as well as the wetland areas associated with the Lake.

(5) **Terrain:** The subject property slopes downward to the east from the western property line, the overall grade change is approximately 17% within the proposed building pad. There is a ridge close to the northwest property corner that would be within the construction zone. The sensitive areas maps indicate that the property is located within a moderate landslide hazard area. A geotechnical report addressing the ability of the subject property to support the proposal was submitted (Exhibit A, Attachment 5, SEPA Attachment 5).

(6) **Vegetation:** The northern part of the property, Lot 10, is largely covered with Himalayan blackberry, reed canarygrass, red alder, salmonberry, large-leaf avens, and sword fern. Much of the southern part of the property, Lots 11 and 12, is covered by Himalayan blackberry.

(7) **Hydrology:** The subject property is completely covered by a Type 1 wetland or its associated buffer. The Type 1 wetland extends westward from Yarrow Bay. There are three finger like projections extending westward onto the property (See Exhibit A, Attachment 2).

- b. **Conclusions:** The combination of the hydrology, terrain, and vegetation on the subject property are relevant factors in this reasonable use permit application. Because the sensitive areas and buffers cover 100 percent of the subject property, no buildable area exists on the subject property without allowing disturbance of a portion of the wetland buffer. The wetland on the subject property is contiguous with Lake Washington and is located within a Conservancy 2 Environment.

2. **Neighboring Development and Zoning:**

- a. **Facts:** All of the adjoining properties to the east, south, and west are zoned RS 12.5 and are unimproved. An application for one single-family residence on the property to the south has been proposed and is proceeding through the review process. As proposed, the house would be completely outside of the wetland and its associated buffer. Access to that property would be from

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NE Points Drive. The property located on the northeast corner of the property is zoned Park/Public Use (see Attachment 1) and is unimproved. The property directly north of the subject property is zoned RS 12.5 and is developed with a single-family residence.

- b. Conclusion: The proposed single-family residence is compatible with development to the north.

B. Site History

1. Facts: The subject property is comprised of Lots 10-12, Block 2, Yarrow Bay Apartment, Division 1 which was recorded on June 23, 1959, when the property was within the jurisdiction of the Town of Houghton. This is the first development permit for the subject property that has been submitted since the Town of Houghton and the City of Kirkland consolidated on July 3, 1968.
2. Conclusion: The subject property is a legal building site which was created on June 23, 1959. The applicant must meet all of the criteria of the current zoning, environmental, and shoreline regulations which came into effect after the creation of the lots. History is not a constraining factor in the consideration of this application.

C. Public Comment

The initial public comment period ran from June 30, 2005 to July 22, 2005. One letter of support (see Exhibit A, Attachment 4) was received during this time frame.

At the public hearing, testimony from the community included comments from: Philip Irvin, who owns property nearby and supports the proposal; Tedd Barr, who lives near the site and is president of a homeowners' association of nearby residences, and opposes the proposal because of the reduced setback, and Krista Rave-Perkins, who opposes the proposal because it is within a wetland buffer and is near a wetland.

D. State Environmental Policy Act

1. Facts: A Mitigated Determination of Nonsignificance (DNS) was issued on March 3, 2006. The Environmental Checklist, Determination, and additional environmental information are included as Attachment 5.
2. Conclusion: The applicant and the City have satisfied the requirements of SEPA. The applicant must fulfill the conditions set forth in the Mitigated Determination of Nonsignificance.

E. Reasonable Use Criteria

Facts:

1. Zoning Code Section 90.140 identifies decisional criteria by which the decision maker shall determine whether or not application of Chapter 90 will deny reasonable use of the property, and whether the proposed use and activities are a reasonable use of the property. The criteria include:
 - a. There is no permitted type of land use for the property with less impact on the sensitive area and the buffer is feasible and reasonable;
 - b. No on-site alternative to the proposal is feasible and reasonable, considering possible changes in site layout, reductions in density and similar factors; and
 - c. The proposal, as conditioned, will result in minimum feasible alteration of or impairment to the functional characteristics of the sensitive areas, and their existing contours, vegetation, fish and wildlife resources, and hydrological conditions; and will not cause significant degradation of groundwater or surface-water quality;
2. Under KZC 90.140, the applicant must submit a report prepared by a qualified professional which describes how the proposal would or would not comply with the above three criteria.
3. Two other criteria are to be considered in determining whether the application of Chapter 90.140 would deny reasonable use of the property:
 - a. The inability to derive reasonable use is the result of the applicant's actions, such as segregating or dividing property and creating the undevelopable condition, or taking actions in violation of any local, state, or federal law or regulation; and
 - b. The land use and environmental regulations which prevent reasonable use of the property were in effect at the time of the purchase of the property by the applicant.
4. The subject property is located within the RS 12.5 zone. This is a low density residential zone that allows the following land uses to be considered on the subject property, providing that all criteria (process, setbacks, special and general regulations, etc.) are met: detached dwelling

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unit, church, school or daycare center, mini school or day care center, golf course, public utility, government or community facility, or public park (see Exhibit A, Attachment 8).

5. The zoning requires a minimum lot size of 12,500 square feet per lot. The subject property is comprised of three platted lots with a total size of 27,547 square feet. When only considering lot area, there is sufficient land area for two building sites. Development of a second lot would require an intrusion into the wetland to access an area for construction.
6. The applicants entered into a purchase agreement in August 2004 with the current owner of the property. The applicants submitted an initial proposal to the Department that included approximately 1000 square feet more interior space than the current application, and also located the house approximately 60 feet back from the northern property line, so that a portion of the house would be within the wetland.
7. In December 2004, a pre-submittal meeting between the City and the applicants occurred, and the City suggested that the house be moved closer to the road to move the house away from the wetland. The applicants submitted revised plans and studies in support of their reasonable use request (Exhibit A, Attachment 5, April 2005 Statement of Compliance).
8. The City's wetland consultant, The Watershed Company, reviewed and commented on the Applicant's response to the approval criteria (Exhibit A, Attachment 5, July 21, 2005 letter from Hugh Mortensen).
9. The applicants subsequently submitted a revised Statement of Compliance (Exhibit A, Attachment 6a) dated January, 2006, which was reviewed by The Watershed Company. The Watershed Company submitted a letter to the Department describing the results of its review (Exhibit A, Attachment 7), indicating that the revised proposal had reduced the impacts on the wetlands because of the reduction in the house size and landscaped area, the avoidance of wetland areas, and the reduction in overall site grading. The Watershed Company noted that most of its earlier recommendations had also been adequately addressed by the revised proposal, but three recommendations had only been partially met: (1) the statement of compliance was unclear as to the figures for impervious surfaces and treatment of the garage and driveway; (2) additional information was still needed regarding the fencing or equivalent barrier plantings; and (3) the statement did not address handling of water from perimeter or foundation drains.
10. The current proposal is for construction of one single-family residence with an accessory dwelling unit (mother-in-law apartment) in the

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basement. The site plan indicates that there is a minimum five-foot setback from the edge of the wetland; the house is now located completely outside of the wetland. The staff has concluded that this distance should provide adequate maintenance access to the house without encroaching into the wetland.

11. The footprint of the proposed house would be 2,265 square feet, including a 794 square foot three-stall garage, and a 95 square foot covered porch (see Attachment 2, Sheet C-1). The overall shape of the house is an ell configuration. The main portion of the ell that extends closest to NE 38th Street right-of-way will be setback five feet from the front (north) property line. A fireplace shaft would extend 18-inches further into the five-foot setback. The distance between the property line and the front façade of the garage is 19.5 feet.
12. The house extends a maximum of 42 feet south of NE 38th Avenue (the north property line). There is a second story deck off of the master suite that extends a maximum nine feet further south along the southwest corner of the house. Along the southeast side of the house is another second story deck that projects approximately six feet further south.
13. A second-story deck is proposed along the east side of the house. The deck is approximately 12 feet wide and would extend to the property line (a front property line) fronting along 97th Avenue NE, an unopened right-of-way. The proposed house would encroach eight feet into the front setback yard along 97th Avenue NE. The City has no plans to improve the right-of-way given the location of the wetland.
14. The proposed impervious area of the house, covered porch, driveway, and walkways is approximately 2,900 square feet. The area underneath the three second story decks is pervious and is not included in lot coverage.
15. Floor area ratio (FAR) does not apply within the Houghton Community Council disapproval jurisdiction. However, if the property was located within an area to which FAR applied, the maximum size house allowed within the RS 12.5 zone could not exceed 35 percent of the lot size. The maximum gross FAR allowed for a 27,547 square foot lot is 9,641 square feet. The elevation drawings indicate that only a portion of the proposed basement would count in FAR. There appears to be approximately 4,294 square feet that would be included in a FAR calculation translating to 16 percent FAR (4,294/27,547), well below the 35 percent. This figure includes the wall widths, which are typically excluded, so the actual percentage is slightly lower than the estimated 16 percent.

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16. The total square footage of the proposed house excluding the basement is 3,802 square feet. The average square footage of all of the homes that access from 96th Ave NE and NE Points Drive is 4,345 square feet, excluding any basement area (see Exhibit A, Attachment 9). These numbers include the square footage first floor, second floor, and garage.
17. The proposed house is similar in size to neighboring houses. The total square footage of the proposed house is 5,056 square feet. The average square footage of all of the homes that access from 96th Ave NE and NE Points Drive is 4,699 square feet (see Exhibit A, Attachment 9). These numbers include the square footage of the house (all floors) and garage. The average property size of these properties is 13,264 square feet. The size of the subject property is 27,547 square feet.
18. The survey indicates that the property line is approximately one-half foot behind the existing curb in NE 38th Street. The proposed garage would be located 20 feet behind the curb.
19. Public Works conditions indicate that NE 38th Street was improved by the Southbay Development approximately seven years ago. The existing street improvements consist of storm drainage, curb and gutter along both sides of the street, and a sidewalk and landscape strip along the north side of the street. Due to the sensitive environmental features adjacent to this right-of-way, Public Works has determined that the existing street improvements are adequate and the standard for this street should be modified such that a sidewalk is only required on one side of the street. This modification is being recommended as allowed by KZC 110.70.3(b & c). Under this recommended modification, no further street improvements will be required along the south side of NE 38th Street with this project.
20. 97th Avenue NE is currently unimproved. Due to the sensitive areas that encompass most of this right-of-way, Public Works has waived the requirement to improve this right-of-way, with this project, per KZC 110.70.5.
21. Since this wetland is associated with Lake Washington, it is also regulated by the City's Shoreline Master Program (SMP). Any grading or construction of a residence that is located within the wetland would require a Shoreline Conditional Use Permit under the SMP (see Attachment 10). Shorelines jurisdiction only applies to the wetland and not to the wetland buffer.
22. The applicant is proposing to restore sections of the wetland and wetland buffer. The restoration is intended to increase the existing wetland

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functions and values on the subject property. The intention of the restoration plan is to increase the structural and vegetative diversity of the wetland habitat over time and increase the connectivity of the degraded habitats on the property with the higher quality habitats immediately south of the property. The plan also calls for the removal of non-native plants and replacement with native trees and shrubs within the restoration area.

23. The restoration proposal also calls for the installation of bird boxes for songbirds and swallows, and downed woody material. These features will provide additional habitat value for birds and additional habitat for small animals.
24. The total impervious area is approximately 2,900 square feet (walkways, driveway, landings, and the house). As proposed, the three uncovered second story decks are exempt from lot coverage calculations providing that the surface below the decks is pervious. Impervious area on the subject property is 11 percent (2,900 square feet/27,547 square feet). Impervious area could be further reduced if the applicant were to utilize pervious concrete on the exterior of the house.
25. The Geotechnical Report indicates that the soils on the western portion of the subject property are cohesionless sands, contain zones of ground water seepage, and will not support vertical excavations for rockery construction. The report also states that a reinforced earth rockery will require ten feet or more excavation distance from the back of the rocks to allow for construction of the reinforced fill zone and sloping of the temporary cut. The report also states that a cantilevered concrete wall can be utilized instead of the rockery.
26. The elevation drawings indicate that the finished floor elevation of the main floor of the house is 71 feet; however, the site plan indicates that the elevation of the driveway close to the northwest corner of the garage is 74 feet. No retaining walls are proposed along the southern portion of the garage; however, the elevation in that vicinity will be lowered approximately eight feet along the back side of the garage and there is no indication how the slope will be protected.
27. The geotechnical report recommends installing a continuous drain along the outside lower edge of the perimeter building foundations. The Watershed Company has recommended that any water collected through perimeter or curtain foundation drains, sump pumps to dewater sub-grade areas are directed towards dispersal systems that outlet towards the wetland.

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28. The Statement of Compliance submitted by the applicant states that the “Applicants are proposing to construct on only one of the lots” and “none of Lots 11 and 12 will be used by the property owner” (see Attachment 6). The Watershed Company has indicated that preservation of existing resources is a legitimate mitigation strategy when combined with enhancement (see Exhibit A, Attachment 7).
29. Zoning Code Section 90.150 provides the means of requiring the applicant to dedicate development rights, air space, or grant a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers.
30. As noted in section B above, the lots were created in 1959; the subdivision of Yarrow Bay Apartment, Division 1 was recorded on June 23, 1959.
31. The Highwood Company, the current property owner, purchased the property on August 3, 1990. At the time of purchase a different set of regulations were in place. These regulations required a 50-foot buffer from the edge of the wetland; under those regulations, an applicant could propose a modification of a wetland and or wetland buffer providing that they met the established criteria.
32. The applicants do not own the property, but have an agreement with the property’s owner to purchase the property, contingent on approval of their reasonable use request.
33. The Houghton Community Council, after considering the record presented at the public hearing, recommended that the application be approved with one additional condition. The additional condition is intended to address concerns that were expressed by the neighbors and Community Council members about the mass and bulk of the house given its five-foot setback from the north property line. The condition is: “The applicant shall install superior landscaping to mitigate the impacts of the five foot setback between the house and north property line prior to final inspection.”

Conclusions:

1. There is no other permitted type of land use for the property that would have a lesser impact on the wetland and its associated buffer than the proposed single family use. Other uses allowed by the zoning, e.g., institutions such as churches, daycare centers or schools, were not shown to be feasible or to have less impact on the wetland and wetland buffers, than would the proposed single family use.

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2. No on-site alternative to the proposal was shown to be feasible and reasonable. The applicants have moved the house as close to the north (front) property line as possible while leaving a reasonable parking pad depth of 20 feet behind the existing curb. The footprint could not be shifted further north, south or west, nor could it achieve a greater height, given the height limits.
3. The only area into which the applicants could shift the proposed building would be toward the east, which would bring it closer to the wetland. While there was public testimony urging that the house actually be placed in the wetland so that the house would be further from the street and other residences, this would not meet the requirements of 90.140, and would result in greater impacts to the wetland than the current proposal. However, the additional landscaping recommended by the Houghton Community Council will help to address some of the visual impacts of the reduced front setback.
4. The size of the house is reasonable, given the fact that the subject property is comprised of three platted lots with sufficient area for two buildable lots, when only considering lot size. The house has less (non-basement) square footage than the average of houses in the vicinity, although its proposed footprint size and square footage would be compatible with those of other homes in the neighborhood. The house and deck setbacks from the wetland will provide adequate space for maintenance of the proposed residence.
5. The application, with the conditions recommended by the Department (Exhibit A, Section I.B. and Attachment 3), would result in the minimum feasible alteration of or impairment to the functional characteristics of the sensitive areas and their existing contours, vegetation, fish and wildlife resources, and hydrological conditions, and will not cause significant degradation of groundwater or surface-water quality. The proposal and the conditions set forth in the Department's advisory report and attachments, will result in the minimum feasible alteration and impairment the sensitive areas and the related resources and conditions.
6. The inability to derive a reasonable use of the property is not the result of any action taken by the property owner. The lots were created prior to the property owner's purchase of them, and the constraints on the property were not created by the owner. The wetlands regulations preventing the reasonable use of the property were not in effect at the time of the purchase of the property in 1990. At that time, the applicable regulations set a 50-foot wide wetland buffer, rather than a 100-foot wide buffer.

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7. The grant of the requested reasonable use exception would be consistent with the criteria set forth in KZC 90.140.

F. Shoreline Master Program (SMP)

Fact: The applicant has not requested approval of a Shoreline Conditional Use Permit. The proposal does not require a substantial development permit if no land surface modification or single-family construction occurs within the wetland associated with Shoreline jurisdiction (see Exhibit A, Attachment 10).

Conclusion: To ensure that proposal complies with the SMP, the following conditions should be placed on the application: All construction activity should be located outside of the wetland. The restoration of the wetland and its associated buffer should be done manually. No mechanical equipment should be allowed south of the wetland boundary immediately south of the proposed house.

G. Comprehensive Plan

1. Facts:

- a. The subject property is located within the Lakeview neighborhood. Figure L-1 on page XV.A-2 designates the subject property for low density residential, with a density of 3-5 dwelling units per acre (see Exhibit A, Attachment 11).
- b. The Natural Environment section of the Lakeview Neighborhood plan supports housing configurations that minimize disruptions to natural systems and urges special care to minimize adverse impacts to the wetland during and after construction.
- c. Zoning Code Section 90.50 requires installation of a silt fence and a protective six-foot high chain link fence at the edge of the wetland during and along the east and west property lines of the construction area. The Watershed Company has recommended that all on-site storm drainage be collected and dispersed back to the wetland.
- d. The following policies are listed in the Natural Environment Element of the Comprehensive Plan:
 - (1) Policy NE-1.6: Strive to minimize human impacts on habitat areas.
This policy is addressed by Zoning Code Section 90.50 requiring that the applicant install a barrier (split rail fence or vegetative barrier) at the edge of the wetland. The

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applicant has proposed a vegetation barrier instead of a fence to be located at the edge of the wetland. The Watershed Company has stated that the vegetative buffer consisting of snowberry alone is not equivalent to a split rail fence. Snowberry is a dense shrub, that is low growing and has no thorns. They recommend that the *Rosa gymnocarpa* shrub be mixed in evenly with the snowberry (see Exhibit A, Attachment 7).

Zoning Code Section 90.150 further addresses Policy NE 1.6 by requiring dedication of development rights, air space, or grant a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers. The City typically receives a NGPE restricting activities that may occur within the wetland and wetland buffer (see Exhibit A, Attachment 12).

- (2) Policy NE-2.2: Protect surface water functions by preserving and enhancing natural drainage systems wherever possible.

Negative impacts to the storm water facilities can be reduced by minimizing new impervious surfaces. This can be accomplished by utilizing pervious concrete on all driveways and outdoor pathways. One way to preserve the natural drainage system, as recommended by the wetlands biologists, would be to collect all drainage from the footing and roof drains and diverting this water back to the wetland.

2. Conclusions: The proposed residence is consistent with the neighborhood plan. With the inclusion of a protective barrier at the wetland edge south of the house, recording a NGPE across the remaining portion of the property south of the house, collection of the roof and footing drains and diversion of this water back to the wetland the proposal would be consistent with the natural environment element of the Comprehensive Plan. The proposed protective barrier should mix the *Rosa gymnocarpa* shrub in evenly with the snowberry to provide a barrier equivalent to split rail fence.

H. General Zoning Code Criteria

1. Fact: Zoning Code section 152.70.3 states that a Process IIB application may be approved if: it is consistent with all applicable development regulations and, to the extent there is no applicable development

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regulation, the Comprehensive Plan; and it is consistent with the public health, safety, and welfare.

2. Conclusion: The proposal as conditioned complies with the criteria in section 152.70.3. It is consistent with all applicable development regulations, as well as the Comprehensive Plan. In addition, it is consistent with the public health, safety, and welfare because it will allow reasonable use of a property, while protecting the wetland on the subject property, which is of value to the community as a whole.

I. Development Review Committee

Fact: Additional comments and requirements placed on the project are found on the Development Standards Sheet, Exhibit A, Attachment 3.

Conclusion: The comments and requirements are supported by the record and should be applied to this proposal.

J. 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.

RECOMMENDATION:

Based upon the foregoing findings of fact and conclusions, approval of the application is recommended, along with the conditions set forth in Exhibit A and Exhibit F.

Entered this 4th day of April, 2006, per authority granted by KZC 152.70. A final decision on this application will be made by the City Council.

Anne Watanabe
Hearing Examiner

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EXHIBITS

The following exhibits were offered and entered into the record:

Exhibit A: Department of Planning and Community Development Staff Advisory Report

Attachments:

1. Vicinity/Zoning Map
2. Site Plans
3. Development Standards
4. Correspondence from Philip Irvin
5. Environmental Determination and supporting documents
 - SEPA 1 Site Map
 - SEPA 2 Map from the Kirkland's Streams, Wetlands and Wildlife Study
 - SEPA 3 Shoreline Map
 - SEPA 4 Environmental Checklist
 - SEPA 5 Geotechnical Report
 - SEPA 6 Adolfson and Associates Statement Of Compliance with KZC 90.140 dated July 2005
 - SEPA 7 The Watershed Company review of Adolfson's compliance statement
6. Information from Adolfson and Associates
 - a. Statement Of Compliance with KZC 90.140, dated January 2006
 - b. Wetland Buffer Enhancement Plan dated January 2006
 - c. letter from Dave Carlton
7. The Watershed Company review of Adolfson's revised compliance statement
Shoreline Use Chart dated March 7, 2006
8. RS 12.5 Use Zone Chart
9. House Size for all Properties Accessing From 96th Ave NE and NE Points Drive
10. Shoreline Use Chart
11. Comprehensive Plan Map for the Lakeview Neighborhood
12. Natural Greenbelt Protective Easement (NGPE)
13. Slope Covenant
14. Sensitive Area Covenant

Exhibit B: Department Corrections to Advisory Report

Exhibit C: Photocopy of Department Powerpoint Presentation

Exhibit D: Photocopy of Applicants' Powerpoint Presentation

Exhibit E: Sign-in Sheet, March 27, 2006 public hearing

Exhibit F: Houghton Community Council Recommendation to the Hearing Examiner

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PARTIES OF RECORD

Jeff and Barbara Hindle, 202 1st Street #402, Kirkland, WA 98033

Philip Irvin, 7704 Mary Ave NW, Seattle, WA 98117

Diana Kirchheim, 11100 NE 8th Street, Suite 750, Bellevue, WA 98004

Rick Jones, 11644 NE 80th Street, Kirkland, WA 98033

Donna Frosthalm, 5309 Shilshole Avenue, #200, Seattle, WA 98107

Ted Barr, 9610 NE 38th Street, Kirkland, WA 98033

Phil Irvin, 7704 Mary Avenue NW, Seattle, WA 98117

Krista Rave-Perkins, 12403 NE 25th Street, Bellevue, WA 98005

Department of Planning and Community Development

Department of Public Works

Department of Building and Fire Services

CHALLENGES AND JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for challenges. Any person wishing to file or respond to a challenge 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

Under Section 152.115 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 152, within four (4) years after the final approval on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 152.110, 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 required development activity, use of land, or other actions. Furthermore, the applicant must substantially complete construction approved under Chapter 152 and complete the applicable conditions listed on the Notice of Approval within six (6) years after the final approval on the matter, or the decision becomes void.