

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

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**APPLICANT:** Kit Klinker

**FILE NOS.:** SPL06-00001, ZON06-00034, ZON06-00035

**SITE LOCATION:** 10827 NE 108<sup>th</sup> Street

**APPLICATION:** Subdivide a developed 58,678 square foot site (1.4 acres) in the single family RS 8.5 zone into two single family lots. Proposed Lot 1 is 28,841 square feet, and Lot 2 would be 29,837 square feet. Applicant also seeks approval of a Type 2 Wetland Modification and a Type 2 Wetland Buffer Modification.

**REVIEW PROCESS:** Process IIA, Hearing Examiner conducts public hearing and makes decision on the Wetland Modification and Wetland Buffer Modification applications and the short plat proposal. Pursuant to KZC 145.10, because part of the proposal requires Process IIA review, the entire short plat proposal is subject to Process IIA review.

**MAJOR ISSUES:** The major issues are compliance with Development Regulations, removal of existing house that straddles the property line between the proposed lots, and compliance with applicable wetland and wetland buffer modification requirements and criteria.

**RECOMMENDATION:**

Department of Planning and Community Development: Approve with conditions

**PUBLIC HEARING:**

After reviewing the Department of Planning and Community Development Advisory Report, the Hearing Examiner held a public hearing on the application. The hearing commenced at 1:00 p.m., June 21, 2007, 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:

Ronald Hanson, Project Planner

From the Applicant:  
Kit Klinker, applicant

From the Community:  
No public testimony

**CORRESPONDENCE:**

The following persons submitted written comments on this application:

Steve and Pam Carbonetti  
Per-Ola Selander

**FINDINGS AND CONCLUSIONS**

After considering the evidence in the record and inspecting the site on June 21, 2007, the Hearing Examiner enters the following findings of fact and conclusions.

**A. Findings of Fact**

- 1.. The Findings of Fact set forth in Section II of the Advisory Report are adopted by reference herein.
2. The site is located at 10827 NE 108<sup>th</sup> Street, in the South Juanita Neighborhood, and is approximately 1.34 acres in size. The site is zoned Single Family Residential RS 8.5 zone (minimum lot size of 8,500 square feet.) The existing lot is developed with a single family house and a garage.
3. The lot is adjacent to NE 108<sup>th</sup> Street. The areas to the north, east and west are also zoned RS 8.5 and are developed with single family homes; to the south the zoning is PLA9 and the area is developed with the Park at Forbes Creek Apartments.
4. The property slopes slightly downward from north to south, with an average grade change of less than five percent. There are seven significant trees on the site, all of which are viable Type 1 or Type 2 trees.
5. The southern portion of the site contains a Type 2 wetland, which is part of the larger Forbes 1 Wetland system that extends off-site to the south, east and west, within the Forbes Creek Basin. The existing garage is located within the wetland buffer area. The wetland and wetland buffer located south of the garage is currently planted in lawn and is in a highly degraded condition.
6. The applicant proposes to subdivide the site into two lots. Proposed Lot 1 is 28,841 square feet, and Lot 2 is 29,837 square feet. The development potential at the site, pursuant to KZC Section 90.135, is five units.

7. The Comprehensive Plan designation for the property is low-density residential, with a maximum allowable density of five dwelling units per acre. The proposed density is 1.5 dwelling units per acre.

8. The applicant would remove the existing house, which straddles the proposed lot line. The existing garage would remain. The garage was constructed at its current location in 1993, pursuant to a City building permit. It is considered by the City to be a legally nonconforming structure.

9. The applicant has submitted a Tree Plan III. Based on a requirement of 30 tree credits per acre, the short plat site must provide a minimum of 40 tree credits. The applicant proposes to retain all viable trees as part of the short plat, and the Tree Plan shows a total of 64 tree credits to be provided. Tree removal may be required in conjunction with other required short plat improvements, and with the building permits on each new single family lot.

10. The applicant proposes to fill 635 square feet of wetland and create 635 square feet of new wetland (4.5 percent of the total wetland area on the site) as shown on Enclosure 2 of to Attachment 5 of the Advisory Report. The applicant is also proposing a one-third reduction of the required 75-foot wetland buffer, providing a 50-foot buffer except for the area immediately adjacent to the existing garage. The applicant requests a 10-foot wide buffer and 10-foot buffer setback along the south side of the garage. A 50-foot buffer around the garage would eliminate the access to this existing structure.

11. The applicant's wetland mitigation plan has been reviewed and analyzed by the City's wetland consultant. The consultant has determined that the plan addresses all the Code requirements for buffer modification, but has recommended certain changes to the plan to ensure that the buffer will function as intended.

12. The Department has determined that the consultant's recommended changes to the mitigation plan should be required, except for removal or relocation of the existing garage. The legal nonconforming status of the garage, and the fact that it takes access from the north side (which will in turn limit activity on the south side in the vicinity of the rest of the wetland and buffer) are considerations cited by the Department in its recommendation.

## **B. Conclusions**

1. The conclusions set forth in Section II of the Department's Advisory Report are adopted by reference herein.

2. The proposal is for a shot plat, as well as a Type 2 Wetland Modification and a Type 2 Wetland Buffer Modification. A short plat is normally reviewed through Process I, but under KZC 145.10, because the wetland and wetland buffer modifications are

subject to Process IIA review, the entire short plat proposal is subject to Process IIA review.

3. 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.

4. The proposal as conditioned would comply with all applicable development regulations, including maximum development potential, tree preservation requirements, wetland and wetland buffer/setback requirements, the Comprehensive Plan, and would be subject to all other applicable requirements of the City's Codes. The proposal would also be consistent with the public health, safety and welfare.

5. The proposal should be approved with the conditions recommended I Section I.B of the Advisory Report.

### **DECISION**

Based upon the foregoing findings of fact and conclusions, the application is approved, subject to the conditions set forth in the Advisory Report at Section I.B.

Entered this 29<sup>th</sup> day of June, 2007.

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Anne Watanabe  
Hearing Examiner

**EXHIBITS**

The following exhibits were offered and entered into the record:

**Planning and Community Development Staff Advisory Report**

Attachments:

1. Vicinity Map
2. Boundary and Topographic Survey
3. Development Standards
4. Public Comments
  - a. Letter from Per-Ola Selander
  - b. Letter from Steve and Pam Carbonetti
5. SEPA Documents
  - 5a. Determination of Non-Significance
  - 5b. Environmental Determination
    - Enc 1: Vicinity Map
    - Enc 2: Plat Map
    - Enc 3: Environmental Checklist
    - Enc 4: Wetland Report, August 22, 2006
    - Enc 5: Wetland Report, November 9, 2006
    - Enc 6: Wetland/Buffer Plan, October 18, 2006
    - Enc 7: Letter, Watershed Company, January 6, 2007
    - Enc 8: Public Comments
6. Public Handout – New Tree Regulations
7. Arborist Report, January 18, 2006
8. Arborist Report, August 16, 2006
9. Letter, Altmann Oliver Associates, May 7, 2007
10. Letter, Watershed Company, April 25, 2007
11. Letter, Klinker Corp., May 31, 2007
12. South Juanita Neighborhood Land Use Map

**PARTIES OF RECORD**

Applicant, Kit Klinker, P.O. Box 2668, Kirkland, WA 98083  
Per-Ola Selander, 10830 101<sup>st</sup> Avenue NE, Kirkland, WA 98033  
Steve and Pam Carbonetti, 10728 108<sup>th</sup> Avenue NE, Kirkland, WA 98033  
Department of Planning and Community Development  
Department of Public Works  
Department of Building and Fire Services

## **APPEALS 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.

### Appeal to City Council:

Under Section 150.80 of the Zoning Code, the Hearing Examiner's decision may 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 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 twenty-one (21) calendar days of the issuance of the final land use decision by the City.

## **LAPSE OF APPROVAL**

Under Section 150.135 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 150, 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 150.130, 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 150 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.