

ORDINANCE O-4552

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE, APPROVAL OF A PRELIMINARY AND FINAL PUD AND PRELIMINARY SUBDIVISION AS APPLIED FOR BY GGM INVESTMENT, LLC IN DEPARTMENT OF PLANNING AND BUILDING (FILE NO. ZON16-00927/SUB16-00921) AND SETTING FORTH CONDITIONS OF SAID APPROVAL.

1 WHEREAS, the Department of Planning and Building has
2 received an application, pursuant to Process IIB, for a Preliminary and
3 Final Planned Unit Development (PUD) and filed by GGM INVESTMENT,
4 LLC as Department of Planning and Community Development File No.
5 ZON16-00927/SUB16-00921 to construct a 28 lot planned unit
6 development and preliminary subdivision within a RSA 6 zone; and
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8 WHEREAS, pursuant to the City of Kirkland's Concurrency
9 Management System, KMC Title 25, a concurrency application has been
10 submitted to the City of Kirkland, reviewed by the responsible Public
11 Works official, the concurrency test has been passed, and a concurrency
12 test notice issued; and
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14 WHEREAS, pursuant to the State Environmental Policy Act,
15 RCW Chapter 43.21C, and the Administrative Guideline and local
16 ordinance adopted to implement it, an environmental checklist was
17 submitted to the City of Kirkland, reviewed by the responsible official of
18 the City of Kirkland, and a Determination of Non-Significance (DNS) was
19 issued; and
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21 WHEREAS, the DNS has not been appealed; and
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23 WHEREAS, said environmental checklist and DNS have been
24 available and accompanied the application through the entire review
25 process; and
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27 WHEREAS, the application was submitted to the Kirkland
28 Hearing Examiner who held an open record hearing on October 27,
29 2016; and
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31 WHEREAS, the Kirkland Hearing Examiner, after her public
32 hearing and consideration of the recommendations of the Department
33 of Planning and Building, did adopt certain Findings, Conclusions and
34 Recommendations and did recommend approval of the Process IIB
35 Permit subject to the specific conditions set forth in said
36 recommendations; and
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38 WHEREAS, the City Council, in open meeting, did consider the
39 entire matter on the record before the Hearing Examiner, including
40 environmental documents received from the responsible official,
41 together with the recommendation of the Hearing Examiner; and
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43 WHEREAS, the Kirkland Zoning Code requires approval of this
44 application for PUD to be made by ordinance.

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NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. The Findings, Conclusions, and Recommendations of the Kirkland Hearing Examiner as signed by her and filed in the Department of Planning and Building File No. ZON16-00927/SUB16-00921, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, are adopted by the Kirkland City Council.

Section 2. After completion of final review of the PUD, as established in Sections 125.50 through 125.75 (inclusive) of the Kirkland Zoning Code, Ordinance 3719, as amended, the Process IIB Permit shall be issued to the applicant subject to the conditions set forth in the Recommendations hereinabove adopted by the City Council.

Section 3. Nothing in this ordinance shall be construed as excusing the applicant from compliance with any federal, state or local statutes, ordinances or regulations applicable to this project, other than expressly set forth herein.

Section 4. Failure on the part of the holder of the permit to initially meet or maintain strict compliance with the standards and conditions to which the Process IIB Permit is subject shall be grounds for revocation in accordance with Ordinance No. 3719, as amended, the Kirkland Zoning Code.


Section 5. This ordinance shall be in full force and effect five (5) days from and after its passage by the City Council and publication pursuant to Kirkland Municipal Code 1.08.017, in the summary form attached to the original of this ordinance and by this reference approved by the City Council as required by law.

Section 6. A complete copy of this ordinance, including the Hearing Examiner's Findings, Conclusions and Recommendations adopted by reference in Section 1 above, shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.

Section 7. A certified copy of this ordinance, together with the Hearing Examiner's Findings, Conclusions, and Recommendations herein adopted by reference in Section 1 above, shall be attached to and become a part of the Process IIB Permit or evidence thereof delivered to the permittee.

Passed by majority vote of the Kirkland City Council in open meeting this 13th day of December, 2016.

Signed in authentication thereof on this 13th day of December, 2016.


MAYOR

Attest:

Nathaniel Anderson
City Clerk

Publication Date: December 19, 2016

Approved as to Form:

Kevin Raymond
City Attorney

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

APPLICANT: Carol Rozday on behalf of American Classic Homes

FILE NO: SUB16-00921/ZON16-00927

APPLICATION:

1. Site Location: 13224, 13236 and 13240 136th Avenue NE, and two adjacent parcels

2. Requests: The applicant requests approval of a 28-lot preliminary subdivision and planned unit development ("PUD") as follows:

- a. Preliminary Subdivision - Proposal to subdivide five parcels totaling 320,097 gross square feet (7.35 acres) into 28 lots. Three homes and outbuildings would be demolished. Lots will range in size from the smallest at 5,113 sq. ft. (Lot 1) to largest at 33,589 sq. ft. (Lot 28).

Access to the lots will be from 136th Avenue NE to a new dedicated public right of way 45 feet in width, with 5-foot sidewalks and a landscape strip with street trees planted on both sides. A 21-foot-wide Tract A will provide private vehicular access to Lots 27 and 28. An underground storm water detention vault will be installed at the end of the cul-de-sac street. Net development area (gross minus access track and right-of-way) is 281,519 square feet.

The applicant is proposing an Integrated Development Plan ("IDP") tree retention/removal plan rather than a phased tree retention plan. The IDP shows the location of proposed right-of-way improvements, grading plan, building footprints, utilities, and access tracks with the zoning permit.

- b. PUD - Request for a preliminary and final PUD and modification of the following Zoning Code requirements:

- (1) Reduce minimum required 20-foot front yard setbacks for structures to 10 feet. Garages will be set back a minimum 20 feet from the front property line to allow for parking of vehicles.
- (2) Calculate average building elevation for the houses based on finished grade rather than pre-development grade on Lots 1, 2, 10, 11, 12, 13, 14, 19, 20, 21, 22 and 28.
- (3) Calculate maximum lot coverage at 50% on a net development area (total lot area minus public rights of way) rather than per lot.

- (4) Calculate maximum floor area ratio of 50% on a net development area (total lot area minus public rights of way) rather than per lot.
- (5) Retaining walls to exceed 4 feet height limit (KZC 115.115.g) to 6 foot tall along the south property line and along internal property lines due to the grading on site.

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

Contribution of \$266,000 toward public construction of a round-about traffic circle at the intersection of NE 132nd Street/136th Avenue NE. This transportation improvement is identified on the City's six-year Capital Improvement Program list as a high priority to improve safety and traffic operation in the Kingsgate neighborhood. Attachment 4 to the Staff Report is a conceptual design and cost estimate for the round-about.

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 October 27, 2016, in the Peter Kirk Room, 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

The Facts and Conclusions on this matter set forth at Subsections II.B 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. (The omitted cross reference in the staff response to Mr. Hopwood's letter is "Section II.D.2".)

Five additional written public comments were submitted in advance of the public hearing. Exhibit B. The comment letter from Cascade Ridge Homeowner's Association was withdrawn following the Applicant's presentation at the hearing.

The written comments and many of the public comments at the hearing were similar to those raised in Mr. Hopwood's June 2 comment letter found at Attachment 6 to the Staff Report. Most commenters were concerned that there would be too many residences constructed in the proposed subdivision, causing it to resemble "townhouses". However, at 28 lots, the proposal is well within the Code's density requirements, which would allow 43 lots.

Another common concern was the additional traffic that the development would contribute to 136th Avenue NE and NE 132nd Street. As noted in Section II.C of the Staff Report, the proposal passed concurrency requirements, and neither the City's concurrency determination nor the DNS issued pursuant to SEPA was appealed. Commenters frequently listed the vehicle parking along 136th Avenue NE and NE 132nd Street as a problem. The Examiner has heard the same concern expressed in hearings on other subdivisions in the area. Regardless of the merits of the concern, existing parking is not an impact of a subdivision not yet constructed.

Some comments questioned the value of a round-about being constructed at the intersection of 136th Avenue NE and NE 132nd Street and expressed a preference for a three-way stop. Mr. Miller, a resident of Vintners Ridge, explained in his

comment letter that those who live north of the intersection have difficulty merging into traffic at the intersection during commute times and believes that a traffic circle will not resolve that problem. This is not an issue for the Examiner to address in recommending a decision on a subdivision/PUD, but is included for informational purposes.

Some residents of Vintners Ridge, which is located south of the proposed development, expressed concern about the lower grade of their lots relative to the grade of adjoining lots in the new development. See Attachment 3 to Staff Report, p. 40, second full paragraph. The record shows that in most cases, grades will be the same or similar, but for one or two lots, the difference in grade is greater due to the need for the street that provides access to the subdivision to meet the grade of 136th Avenue NE. Although the grade difference is not a matter addressed in Code requirements, the developer's representatives agreed to meet with owners of the affected lots to review options.

C. State Environmental Policy Act and Concurrency

The Facts and Conclusions on this matter set forth at Subsection 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.

D. Approval Criteria

The Facts and Conclusions on this matter set forth at Subsection II.D 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.

The proposed subdivision will create infill residential development and is consistent with the Comprehensive Plan's goals and density designation for the subject property.

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 the Staff Report 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 the Staff Report 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 the Staff Report are accurate and supported by the record, and therefore are adopted by reference as the Hearing Examiner's Findings and Conclusions.

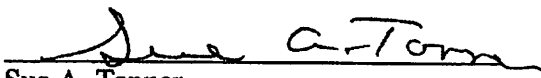
H. Process IIB Decisional Criteria

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 at Section I.B of the Staff Report.

Entered this 1st day of November, 2016.


Sue A. Tanner
Hearing Examiner

EXHIBITS:

The following exhibit was entered into the record:

- Exhibit A Department's Advisory Report with Attachments 1 through 14;
- Exhibit B Four public comment letters on the proposal. (A fifth letter, from Ross Woods on behalf of Cascade Ridge HOA, was withdrawn at the hearing.)

PARTIES OF RECORD:

Carol Rozday, Applicant
Mehar Joudi, Applicant
Matthew Tillman
Sarah Brophy
Paul Topping
Laura Boswell

Hearing Examiner Recommendation
Files: SUB16-00921/ZON16-00927
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Darrell Cox
Joyce Romano
Planning and Building Department
Department of Public Works
Fire Department

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 and Building 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 KMC 22.16.010,, the owner must submit a final plat application to the Planning and Building Department that meets the requirements of the Subdivision Ordinance and the preliminary plat approval, and submit the final plat for recording, within seven 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 four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the plat.

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.

**BEFORE THE HEARING EXAMINER
CITY OF KIRKLAND**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings, Conclusions, and Decision and Order** to each person listed below, or on the attached mailing list, in the matter of **American Classic Homes**, Hearing Examiner File: **SUB16-00921/ZON16-00927**, in the manner indicated.

Party	Method of Service
Janice Coogan City of Kirkland Planning and Building Dept 123 Fifth Ave Kirkland, WA 98033 jcoogan@kirklandwa.gov Planning and Building Admin pbadmin@kirklandwa.gov	<input checked="" type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: November 1, 2016

TIC

Tiffany Ku
Legal Assistant

PUBLICATION SUMMARY
OF ORDINANCE O-4552

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE APPROVAL OF A PRELIMINARY AND FINAL PUD AND PRELIMINARY SUBDIVISION AS APPLIED FOR BY GGM INVESTMENT, LLC IN DEPARTMENT OF PLANNING AND BUILDING (FILE NO. ZON16-00927/SUB16-00921) AND SETTING FORTH CONDITIONS OF SAID APPROVAL.

SECTION 1. Adopts the Findings, Conclusions and Recommendations of the Kirkland Hearing Examiner.

SECTION 2. Provides that after completion of final review of the preliminary PUD the Process IIB Permit shall be issued and subject to the adopted Recommendations in Section 1 of the Ordinance.

SECTION 3. The applicant must comply with any federal, state or local statutes, ordinance or regulations applicable to the project.

SECTION 4. Provides that failure to comply with the conditions of approval for the Process IIB permit shall be grounds for revocation in accordance with Kirkland Zoning Ordinance, as amended.

SECTION 5. Provides that the ordinance shall be in full force and in effect five (5) days from and after its passage by the City Council and publication.

SECTION 6. Directs the City Clerk to certify and forward a complete certified copy of this ordinance to the King County Department of Assessments.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 13th day of December, 2016.

I certify that the foregoing is a summary of Ordinance O-4552 approved by the Kirkland City Council for summary publication.



City Clerk