

ORDINANCE O-4640

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE, APPROVAL OF A PRELIMINARY (AND FINAL) PUD AS APPLIED FOR BY GREG RAIRDON, RC 124<sup>th</sup> LLC IN THE PLANNING AND BUILDING DEPARTMENT FILE NO. ZON16-02288 AND SETTING FORTH CONDITIONS OF SAID APPROVAL.

1           WHEREAS, the Planning and Building ("Department") of the City  
2 of Kirkland ("City") has received an application, pursuant to Process IIB,  
3 for a Preliminary (and Final) Planned Unit Development (PUD) filed by  
4 Greg Rairdon on behalf of RC 124<sup>th</sup> LLC ("Applicant") as the Planning  
5 and Building Department File No. ZON16-02288 to construct a multi-  
6 level surface vehicle inventory storage area within a TL9A AND TL9B  
7 use zone as provided for in Sections 55.61.180 and 55.64.035 of the  
8 Kirkland Zoning Code ("KZC"); and  
9

10           WHEREAS, pursuant to the City of Kirkland's Concurrency  
11 Management System, KMC Title 25, of the Kirkland Municipal Code  
12 ("KMC") a concurrency application has been submitted to the City of  
13 Kirkland, which application has been reviewed by the responsible  
14 Department of Public Works official, the concurrency test passed, and a  
15 concurrency test notice issued; and  
16

17           WHEREAS, pursuant to the State Environmental Policy Act,  
18 Chapter 43.21C RCW, its Administrative Guidelines and the local  
19 ordinance adopted to implement it, an environmental checklist was  
20 submitted to the City of Kirkland, reviewed by the responsible official of  
21 the City of Kirkland, a mitigated determination of non-significance was  
22 issued on this action; and  
23

24           WHEREAS, said environmental checklist and determination  
25 have been available and accompanied the application through the entire  
26 review process; and  
27

28           WHEREAS, the application was submitted to the Kirkland  
29 Hearing Examiner who held a hearing on February 28, 2018; and  
30

31           WHEREAS, the Kirkland Hearing Examiner at her public hearing  
32 did consider the recommendations of the Department and thereafter did  
33 adopt certain Findings, Conclusions and Recommendations  
34 ("Recommendations") and did recommend approval of the Process IIB  
35 Permit subject to the specific conditions set forth in said  
36 Recommendations; and  
37

38           WHEREAS, the City Council, in regular meeting, did consider the  
39 environmental documents received from the responsible City official,  
40 together with the Recommendation of the Hearing Examiner; and  
41

42           WHEREAS, the Kirkland Zoning Code, Chapter 125 (PUD)  
43 requires approval of this application for PUD to be made by ordinance.  
44

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

47           Section 1. The Findings, Conclusions, and Recommendations of the  
48 Kirkland Hearing Examiner as signed by her and filed in the Planning  
49 and Building Department File No. ZON16-02288, are adopted by the  
50 Kirkland City Council as though fully set forth herein.  
51

52           Section 2. After completion of final review of the PUD, as  
53 established in KZC Sections 125.50 through 125.75, the Process IIB  
54 Permit shall be issued to the applicant subject to the conditions set forth  
55 in the Recommendations hereinabove adopted by the City Council.  
56

57           Section 3. Nothing in this ordinance shall be construed as  
58 excusing the Applicant from compliance with any federal, state or local  
59 statutes, ordinances or regulations applicable to this project, other than  
60 as expressly set forth herein.  
61

62           Section 4. Failure on the part of the Applicant to initially meet  
63 or maintain strict compliance with the standards and conditions to which  
64 the Process IIB Permit is subject shall be grounds for revocation in  
65 accordance with KZC Sections 125.50 through 125.75.  
66

67           Section 5. This ordinance shall be in full force and effect five  
68 (5) days from and after its passage by the City Council and publication  
69 pursuant to Kirkland Municipal Code 1.08.017, in the summary form  
70 attached to the original of this ordinance and by this reference approved  
71 by the City Council as required by law.  
72

73           Section 6. A complete copy of this ordinance, including the  
74 Findings, Conclusions and Recommendations herein adopted by  
75 reference, shall be certified by the City Clerk, who shall then forward  
76 the certified copy to the King County Department of Assessments.  
77

78           Section 7. A certified copy of this ordinance, together with the  
79 Findings, Conclusions, and Recommendations herein adopted shall be  
80 attached to and become a part of the Process IIB Permit or evidence  
81 thereof delivered to the Applicant.  
82

83           Passed by majority vote of the Kirkland City Council in open  
84 meeting this 20th day of March, 2018.  
85

86           Signed in authentication thereof on this 20th day of March,  
87 2018.

  
Amy Waleh, Mayor

Attest:

  
Kathi Anderson, City Clerk

Publication Date: March 26, 2018

Approved as to Form:

  
Kevin Raymond, City Attorney

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

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**APPLICANT:** Greg Rairdon of RC 124<sup>th</sup> LLC

**FILE NO:** ZON16-002288

**APPLICATION:**

Site Location: 13110 NE 126<sup>th</sup> Place and adjacent parcel to the north

Request: A Planned Unit Development, and wetland and stream buffer averaging, to construct a two-tiered surface parking area in conjunction with an existing vehicle service and storage business located on an adjacent parcel

Review Process: Process IIB, Hearing Examiner conducts a public hearing and makes a recommendation to the City Council, who makes a final decision

Key Issues:

1. Using the Planned Unit Development process in the Kirkland Zoning Code to comply with the TL 9B review process requirement, exceed critical area modification thresholds, and allow participation in the King County In-Lieu Fee (ILF) Mitigation Reserves Program (MRP) as compensatory mitigation, rather than requiring mitigation onsite or within the same drainage basin as the subject property as required by Code.
2. Compliance with the wetland and stream buffer averaging criteria in KZC Chapter 90 for the proposed encroachments into the southern portion of the buffer for Wetland B and Stream C.

**SUMMARY OF RECOMMENDATIONS:**

Planning and Building Department  
Hearing Examiner

Approve with conditions  
Approve with conditions

**PUBLIC HEARING:**

The Hearing Examiner held a public hearing on the application on February 28, 2018, 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 are available for public inspection in the Planning and Building Department. The Examiner visited the site in advance of the hearing.

**TESTIMONY**

The following people testified at the public hearing:

David Barnes, Project Planner

Brent Carson, attorney-at-law, on behalf of the applicant

David Van Skike, land use planner, on behalf of the applicant

The testimony is summarized in the hearing minutes. No members of the public attended the hearing.

## EXHIBITS

The following exhibits were entered into the record at the hearing:

- A. Planning and Building Department Staff Report including 27 attachments
- B. Comment letter dated February 15, 2018, from the Washington State Department of Fish and Wildlife
- C. Packet of correspondence between the applicant's and City's representatives concerning steps needed to vest the proposed project to then-current Code requirements
- D. Development Standards List for Rairdon PUD with annotations (highlighting) by the applicant

## FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

After reviewing the record and hearing the testimony of the parties, the Examiner finds as follows:

1. The Department's Advisory Report includes typographical errors, but most do not affect the substance of the Report contents. However, the errors in the following findings of fact are substantive and are corrected as shown:

A. Section II.A.1.a(3), p.5, first bullet point: "The TL9B use zone chart allows vehicle inventory storage under KZC Section 55.64.035 described as follows: A Retail Establishment providing vehicle or boat sales, repair, services, storage, or washing. This use requires a Planned Unit Development, Process IIB review process."

B. Section II.D.1.d(1)(g), p. 16: "g) Although not required, the applicant is proposing to enhance the buffer for Stream A and Wetland B as shown on the Mitigation Map (See Attachment 18). The applicant is proposing to enhance the buffer pursuant to KZC 90.60.2.a(2) and KZC 90.100.1(b). These code sections require the following components of an enhancement plan when considering wetland and stream buffer modification through enhancement:"

C. Section II.D.4.a(11), p. 24: "The applicant submitted a final biological report on February 6, 2018 titled "Critical Areas Report and Detailed Mitigation Plan for RC 124th LLC," prepared by Wetland Resources, Inc (see Attachment 7) which requests the off-site steam buffer modification and explains how the applicant does not comply with all aspects of the stream buffer modification requirements and how mitigation is being proposed.

D. Section II.E.1.a(3), p. 25: "Pursuant to KZC 55.61.180 (TL9A Use Zone), the applicant's proposal must comply with the following special regulations:

- Outdoor vehicle or boat storage areas must be buffered as required for parking area in KZC 95.45
- Vehicle or boat sales are permitted on parcels abutting 132nd Avenue NE only
- Lighting Regulations in KZC 115.85(2)

- No internal illumination of wall surfaces
- Outdoor loudspeaker systems are prohibited”

With the above revisions, the findings of fact set forth in the Advisory Report are accurate and supported by the record. The Examiner therefore adopts them by reference and adds the following findings:

A. The Department received a letter from the Washington State Department of Fish and Wildlife, (“DFW”) intended to inform the applicant that the DFW would have certain future requirements for the proposed project. The letter also conveys DFW’s concerns about the applicant’s proposal to pipe a stream on the property. However, in speaking with the letter’s author, the Project Planner determined that DFW was referring to an offsite stream, which is not under the applicant’s control. DFW has offered to meet with the applicant on the property to address the stream issue.

B. The applicant notes that certain parts of Attachment 3 to the Staff’s Advisory Report (Exhibit A), the Development Standards List, do not apply to the subject project. In Exhibit D, the applicant has highlighted the parts that the applicant believes do not apply and asks that they be stricken from Attachment 3 or, in the alternative, that all but the first sentence of Recommended Condition 2, which addresses Attachment 3, be stricken.

The Conclusions set forth in the Department’s Advisory Report are supported by the facts in the record, and are therefore adopted by reference. The Examiner adds the following conclusions:

A. DFW’s comment letter is not a constraining factor in the review of the application. The letter conveys concerns that are likely unrelated to subject property and, in any event, will be addressed by the applicant separately from the City’s decision on the application.

B. It is not necessary to strike parts of the conditions listed in Attachment 3 or parts of Recommended Condition 2. The applicant is correct that some of the development standards included in Attachment 3 may not apply to every application. As the first sentence of Recommended Condition 2 states, the application “is subject to the *applicable* requirements contained in the Kirkland Municipal Code ....” (Emphasis added.) Rather than striking parts of Attachment 3, which is a standard set of development regulations for most applications, or striking part of Recommended Condition 2, the Recommended Condition should be revised as follows (changes are shown in strike out and underline):

2. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations that may apply. This attachment does not include all ~~of the~~ additional regulations that may apply. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed (see Conclusion II.G).


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**Recommendation:**

Based upon the above findings of fact and conclusions, the Hearing Examiner recommends that the City Council approve the PUD application, subject to the conditions set forth at pages 3 through 5 of the Department's Advisory Report, with Condition 2 revised to read as follows:

2. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some additional development regulations that may apply. This attachment does not include all additional regulations that may apply. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed (see Conclusion II.G).

Entered this 7<sup>th</sup> day of March, 2018.

  
Sue A. Tanner  
Hearing Examiner

**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.

**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 and Building 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 and Building 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 and Building Department within seven (7) calendar days after the challenge letter was filed with the Planning Department and Building. 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 and Building 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**

KZC Section 152.115 requires that 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 nine (9) years after the final approval on the matter, or the decision becomes void.

### **PARTIES OF RECORD:**

Applicant  
Parties of Record  
Department of Planning and Building  
Department of Public Works

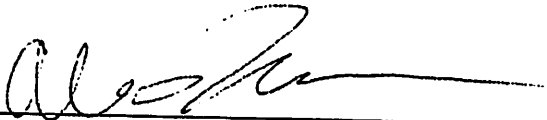
**BEFORE THE HEARING EXAMINER  
CITY OF KIRKLAND**

**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 Recommendation to each person listed below, or on the attached mailing list, in the matter of Greg Rairdon of RC 124<sup>th</sup> LLC, Hearing Examiner File: ZON16-002288, in the manner indicated.

Party	Method of Service
David Barnes City of Kirkland Planning and Building Dept. 123 Fifth Ave Kirkland, WA 98033 dbarnes@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: March 7, 2018

  
\_\_\_\_\_  
Alayna Johnson  
Legal Assistant



PUBLICATION SUMMARY  
OF ORDINANCE O-4640

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE, APPROVAL OF A PRELIMINARY (AND FINAL) PUD AS APPLIED FOR BY GREG RAIRDON, RC 124<sup>th</sup> LLC IN THE PLANNING AND BUILDING DEPARTMENT FILE NO. ZON16-02288 AND SETTING FORTH CONDITIONS OF SAID APPROVAL.

SECTION 1. Adopts the Findings, Conclusions and Recommendations ("Recommendations") of the Kirkland Hearing Examiner with conditions.

SECTION 2. Approves the application for a preliminary and final PUD subject to the Recommendations and conditions.

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 condition of approval for the Process IIB permit shall be grounds for revocation in accordance with the Kirkland Zoning Code, as amended.

SECTION 5. Authorizes the publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

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

SECTION 7. A certified copy of this ordinance shall become a part of the Process IIB Permit and will be delivered to the applicant.

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 20th day of March, 2018.

I certify that the foregoing is a summary of Ordinance O-4640 approved by the Kirkland City Council for summary publication.

  
\_\_\_\_\_  
Kathi Anderson, City Clerk