

RESOLUTION R-5326

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE SUBDIVISION AND FINAL PLAT OF THE BRIDGES (FORMERLY SCRIVANICH), PLANNING AND BUILDING DEPARTMENT FILE NO. SUB15-02157, AND SETTING FORTH CONDITIONS TO WHICH SUCH SUBDIVISION AND FINAL PLAT SHALL BE SUBJECT.

1 WHEREAS, a subdivision and preliminary plat of The Bridges
2 (formerly Scrivanich) Subdivision was approved by the Hearing
3 Examiner on November 14th 2016; and
4

5 WHEREAS, thereafter the Planning and Building Department
6 received an application for approval of subdivision and final plat, said
7 application having been made by Larry Scrivanich (Little Lion LLC), the
8 owner of the real property described in said application, which property
9 is within a Residential Single Family RS 8.5 zone; and
10

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

17 WHEREAS, pursuant to the State Environmental Policy Act, RCW
18 43.21C and the Administrative Guideline and local ordinance adopted to
19 implement it, an environmental checklist has been submitted to the City
20 of Kirkland, reviewed by the responsible official of the City of Kirkland,
21 and a negative determination reached; and
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23 WHEREAS, said environmental checklist and determination have
24 been made available and accompanied the application throughout the
25 entire review process; and
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27 WHEREAS, the Director of the Planning and Building Department
28 did make certain Findings, Conclusions and Recommendations and did
29 recommend approval of the subdivision and the final plat, subject to
30 specific conditions set forth in said recommendation.
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32 WHEREAS, the City Council, in regular meeting, did consider the
33 environmental documents received from the responsible official,
34 together with the recommendation of the Planning Commission, and
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36 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of
37 Kirkland as follows:
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39 Section 1. The Findings, Conclusions and Recommendations of
40 the Director of the Planning and Building Department, filed in Planning
41 and Building Department File No. SUB15-02157, a copy of which is
42 attached to this Resolution as Exhibit A are hereby adopted by the
43 Kirkland City Council as though fully set forth herein.
44

45 Section 2. Approval of the subdivision and the final plat of The
46 Bridges (formerly Scrivanich) Subdivision is subject to the applicant's

47 compliance with the conditions set forth in the recommendations
48 hereinabove adopted by the City Council and further conditioned upon
49 the following:

50
51 (a) A Plat Bond or other approved security performance
52 undertaking in an amount determined by the Director of Public Works
53 in accordance with the requirements therefor in Ordinance No. 2178 shall
54 be deposited with the City of Kirkland and be conditioned upon the
55 completion and acceptance by the City of all conditions of approval,
56 including public improvements, within one year from the date of
57 passage of this Resolution. No City official, including the Chairperson of
58 the Planning Commission, the Mayor, or the City Engineer, shall affix his
59 signature to the final plat drawing until such time as the plat bond or
60 other approved performance security undertaking herein required has
61 been deposited with the City and approved by the Director of Public
62 Works as to amount and form.


63
64 Section 3. Nothing in this resolution shall be construed as
65 excusing the applicant from compliance with all federal, state or local
66 statutes, ordinances or regulations applicable to this subdivision, other
67 than as expressly set forth herein.

68
69 Section 4. A copy of this resolution, along with the Findings,
70 Conclusions and Recommendations hereinabove adopted shall be
71 delivered to the applicant.

72
73 Section 5. A completed copy of this resolution, including Findings,
74 Conclusions and Recommendations adopted by reference, shall be
75 certified by the City Clerk who shall then forward the certified copy to
76 the King County Department of Assessments.

77
78 Passed in open meeting of the Kirkland City Council on the
79 6th day of August, 2018.

80
81 SIGNED IN AUTHENTICATION thereof this 6th day of August,
82 2018.


Mayor

Attest:


City Clerk

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

APPLICANT: Scrivanich/Little Lion, LLC

FILE NO: SUB 15-02157/ZON15-02162

APPLICATION:

1. Site Location: 11421 NE 116th Street
2. Requests: The applicant requests approval of a preliminary subdivision and planned unit development, and wetland buffer modification as follows:
 - a. Preliminary Subdivision – Proposal to subdivide five parcels totaling 5.16 acres into 27 separate lots located at 11421 and 11431 NE 116th Street, including two adjacent undeveloped parcels: 322605-9135, 322605-9113 and property at 11406 NE 112th Street.

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 – A request for a preliminary and final Planned Unit Development (“PUD”) with an increase in base density for the upper portion of development from 5 to 7 dwelling units per acre (five additional lots would be created) and a 10% density bonus (one additional lot would be created) for the lower portion of the development and modification of the following Zoning Code and Municipal Code requirements:
 - (1) Provide smaller lot sizes than the minimum lot size of 8,500 square feet in the RS 8.5 Zone for 22 of the 27 lots with an average lot size of 5,384 square feet.
 - (2) Provide lot widths less than the minimum 50 feet as measured from the back of the required front yard.
 - (3) Reduce the minimum front yard setback for residences to 15 feet, excluding garages.
 - (4) Request to calculate the total Floor Area Ratio over the entire site less roadway driving surfaces.
 - (5) Request that the building height calculation for the new homes on Lots 1, 2, 3, 4, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 be based on finished grade elevations for the purposes of calculating Average Building Elevation.

- (6) Request to calculate lot coverage over the entire site less roadway driving surfaces.
- (7) Request that all side yard setbacks be reduced to 5 feet.

Wetland Buffer Modification – The applicant has proposed to reduce and enhance the buffer for the onsite Type III Wetland in order to accommodate the stormwater detention vault, retaining walls, public pedestrian trail, and level spreaders to disperse stormwater into the wetland buffer.

Review Process: Process IIB, the Hearing Examiner conducts a public hearing and makes a recommendation to the City Council, which makes a final decision. The wetland buffer modification is approved using Process IIA Kirkland Zoning Code Chapter 150, which provides that if a “Process IIA is part of a proposal that requires additional approval through Process IIB, the entire proposal will be decided upon using that other process.” Kirkland Zoning Code Chapter 150.10.

4. Key Issues:

- Compliance with subdivision criteria
- Compliance with PUD approval criteria
- Compliance with wetland buffer modification 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 November 3, 2016, at 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 Hearing 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:

In the introduction to the Department's Advisory Report (Exhibit A) the applicant is listed as Steven Anderson, LDC Inc. This is corrected to read Scrivanich/Little Lion, LLC.

A. Site Description

The Department's Advisory Report on page 9 indicates that to the west are RS 8.5, Detached Single Family homes. This is true for a portion of the west side, adjacent to lots 12-18. However, there are higher densities west of the project site, adjacent to lots 1-8 and north of lots 10-12. This is the Garden Park development, which is RS 8.5 Attached Housing (PUD). With this correction, 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.

Additional Facts:

1. One additional written public comment was submitted in advance of the public hearing. Exhibit B.
2. Three additional written public comments were submitted at the hearing. Exhibits C, D, and E.
3. The applicant submitted a copy of its testimony at the hearing. Exhibit F.
4. Residents of the adjacent Place One Sixteen expressed concern about Road A in the northern portion of the project. These comments raised concerns regarding: (1) the placement of the road immediately adjacent to the eastern property line; (2) the height and proximity to the property line of a retaining wall proposed to support the road; (3) light impacts; and (4) noise impacts. These concerns mirror many of the comments received in advance of the hearing.

5. Comments expressed concern that the applicant was only providing a 40 foot landscape buffer along a single portion of the property line for the project, and was relying on existing landscape buffers on adjacent properties to buffer the project.
6. One comment expressed concern about the proximity of the detention pond in relation to the wetlands, and concern with the potential for flooding of the adjacent property.
7. Several commenters expressed concern that the public would be unaware that the open space areas on Tract A and Tract D were dedicated to public use, and that Tract D is located too far within the development for the public to utilize the proposed children's play area.
8. The applicant confirmed, that in addition to other amenities described for the project benches for public use will be installed on Tract A and benches and a children's play structure shall be installed on Tract D, and that these will be maintained as separate lots accessible for use by the public.
9. A Place One Sixteen representative also expressed concerns regarding potential impacts to trees on the Place One Sixteen property adjacent to the proposed Road A.

Conclusions:

10. As indicated at the hearing, and in Exhibit A, the proposed road location is required by City engineering standards in order to maintain an adequate distance between the entrance to this project and other residential project entrances in the area. Staff explained at the hearing that the height of the retaining wall was addressed in a separate permit process. *See* Exhibit A Attachment 21. In addition, the City engineer and applicant's engineer indicated that the elevation of the road is necessary to maintain access to several of the proposed lots and for safety purposes. No alternative engineering analysis was provided. The State Environmental Policy Act ("SEPA") Mitigated Determination of Non-Significance ("MDNS") conditioned the project to include a dense evergreen tree planting along the eastern property line to mitigate light intrusion from vehicle headlights. Nothing aside from normal residential noise levels was identified in the comments, and the SEPA MDNS was not appealed.
11. The 40 foot landscape buffer is required to "separate slightly higher density development from adjacent single-family residences." The proposed 40 foot landscape buffer will be located in the only portion of the project wherein the project is of higher density than adjacent lower density single-family residences. The existing 40-foot landscape buffers that are located on the Place One Sixteen property and the Garden Park property were applied to these

properties when they were developed as higher density projects than the subject property, and were intended to buffer the subject property from those higher density developments. Thus, the project is providing a landscape buffer in the only area where it is required.

12. KZC 90.45.3 requires the surface discharge of storm water through wetland buffers and buffer setbacks. However, in this case, a storm water outfall is proposed. The storm water outfall is allowed, and should address neighbor concerns in this case. Based on a report by a qualified professional under contract to the City, both the City Public Works and Planning Officials have determined that along with meeting other criteria (1) surface discharge of storm water through the buffer would clearly pose a threat to slope stability, and (2) the outfall will not be materially detrimental to any other property in the area.
13. Tract A and Tract D will be open space with amenities available for public use. This is a benefit of the PUD to the public as such provisions are not otherwise required. Tract D is located at the center of the property, and may not be visible to members of the public wishing to utilize this resource. Proper signage should be placed to inform users of the public nature of Tract A and Tract D.

C. State Environmental Policy Act and Concurrency

There was no appeal of the City's SEPA MDNS, or Concurrency determination. 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.

Additional Facts:

1. In this instance where the applicant seeks slightly higher density than the five unit per acre maximum for the subject property, the City of Kirkland Comprehensive Plan North/South Juanita Neighborhood Plan requires the following:

Visual buffering by a landscaped setback (normally 40 feet) should separate the slightly higher density development from adjacent single-family residences.

2. The Department's Advisory Report includes the following recommended condition:

A 40-foot landscape easement shall be placed at the rear of Lots 12-18 prior to recording the subdivision along with appropriate Landscape Green Belt Easement (LGBE) language which shall include provisions to allow minor improvements to encroach 10 feet into the 40 foot landscape easement.

3. The applicant has requested that the Department's condition be modified to read "a 40-foot visual landscape setback shall be maintained at the rear of Lots 12-18."¹ The applicant further indicated at the hearing that the condition language identified by the Department "goes beyond what the applicant was proposing and was not discussed with the applicant."
4. Place One Sixteen representatives testified regarding potential impacts to trees on the Place One Sixteen property adjacent to the proposed Road A. An arborist report submitted by Place One Sixteen indicated that critical root zones of mature trees along the shared property line between Place One Sixteen and the project run onto the project site. Exhibit G. The City's Arborist also expressed concern about tree protection of two trees in this same area. Finally, the City's Arborist commented on the arborist report submitted by Place One Sixteen, and recommended additional risk assessment. Exhibit H.
5. Both the applicant and City staff have identified the 40 foot landscape buffer as a benefit of the PUD proposal for purposes of satisfying the criteria for PUD approval in KZC 125.35 (3). The landscape buffer is required by the Kirkland Comprehensive Plan, and while the buffer would not be required but for the PUD application, this is not a benefit being offered by the applicant to the City, but is a City requirement for any PUD application for this area. A PUD "is intended to allow developments which benefit the City more than would a development which complies with the specific requirements of this code." KZC 125.05.
6. In this case the applicant is providing for the purchase and installation of a Rectangular Rapid Flashing Beacon. At the hearing, and in its project narrative, the applicant has identified the additional benefit of providing open space tracts that are available to the public and include amenities such as benches and a children's play area.

Conclusions:

7. While the Comprehensive Plan requirement for a landscape buffer does not specifically call for a greenbelt easement, this provision also does not preclude

¹ In this case the area in question has been variously referred to as 40-foot visual landscape setback, landscape buffer, landscape easement, and greenbelt. For purposes of consistency only, this recommendation uses the term "landscape buffer."

such a restriction. The City's interpretation of this requirement is reasonable, and has been consistently applied in other projects under similar conditions.

8. The applicant's statement that the landscape buffer easement was not discussed with the applicant is not supported by other elements of the record including the applicant's project narrative which consistently refers to the landscape buffer as a "landscape easement," (Exhibit A Attachment 3), and that the applicant negotiated for easement terms that allow minor improvements in the first ten feet of the landscape buffer.
9. Additional analysis is necessary concerning the potential impacts to trees on the Place One Sixteen property.
10. The proposed PUD is providing the following benefits to the City as part of the proposal, which are public facilities that could not be required by the City for development of the subject property without a PUD:
 - a. Rectangular Rapid Flashing Beacon for pedestrian safety.
 - b. Passive and active recreation open spaces available for public use.
11. The proposed subdivision will create infill residential development and is consistent with the Comprehensive Plan's goals and density designation for the subject property.
12. 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 applications for the subdivision and PUD are 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. The application for the modification of a Type III Wetland Buffer is consistent with all applicable development regulations, and it is 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, and the wetland buffer modification subject to the conditions set forth at Section I.B of the Staff Report, and the following additional conditions:

1. The applicant shall retain a certified arborist to complete an impact report of the proposed road and retaining wall development on the trees located on the adjacent Place One Sixteen property. The report shall recommend measures to minimize, and if feasible mitigate, impacts to the trees arising from the development project. The report shall be submitted in conjunction with the land surface modification permit. The report shall include in its recommendations a plan for monitoring the trees for increased risk during construction, including the potential for compromise of any of the trees' root zones and proposed risk reduction measures if a tree faces risk of negative impacts. The impact report and its recommendations, shall be reviewed, and commented on by the City Arborist, and if necessary the City Arborist may add additional measures for minimizing or mitigating impacts. The trees subject to this review shall include, but not be limited to 220, 221, 228, 231, 232, 271, 289, 290, 291, 293, 294, 295, 298, 312, 316, 343, and 353 as identified in the Integrated Development Plan Exhibit A Attachment 2.
2. Prior to occupancy and building permits: Benches for public use shall be installed on Tract A, and benches and a children's play structure shall be installed on Tract D. Signs shall be installed on Tract A and Tract D identifying these as public open spaces, and a sign shall be placed at the north entrance to the project near NE 116th Street directing the public to Tract D as a public park/open space area.

Entered this 14th day of November, 2016.


 Ryan Vancil
 Hearing Examiner

EXHIBITS:

The following exhibit was entered into the record:

- Exhibit A Department's Advisory Report with Attachments 1 through 21;
- Exhibit B October 31, 2016 e-mail exchange between David Barnes and Supriya Kelkar;
- Exhibit C September 26, 2016 e-mail exchange between David Barnes and Jan Sanford;
- Exhibit D Letter from Kelly and Mike Hershberger;
- Exhibit E Letter from Cheryl Churdyle;
- Exhibit F Copy of comments made by applicant at hearing;
- Exhibit G Place One Sixteen arborist report; and
- Exhibit H Comment from City Arborist Tom Early

PARTIES OF RECORD:

Scrivanich/Little Lion LLC, applicant
 Larry Crawford
 John Klevins
 Sandeep Mitra
 Gildas Cheung
 Ken Chang
 Planning and Building Department
 Department of Public Works

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., November 23, 2016, 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.