

ORDINANCE NO. 3227

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE, APPROVAL OF A PRELIMINARY AND FINAL PUD AS APPLIED FOR BY JAMES MILLER IN DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. IIB-90-44 AND SETTING FORTH CONDITIONS OF SAID APPROVAL.

WHEREAS, the Department of Planning and Community Development has received an application, pursuant to Process IIB, for a Preliminary and Final Planned Unit Development (PUD) filed by James Miller as Department of Planning and Community Development File No. IIB-90-44 to construct a 5-unit condominium within a RM 3.6 zone; and

WHEREAS, the application was submitted to the Kirkland Hearing Examiner who held hearing thereon at his regular meeting of July 26, 1990; and

WHEREAS, pursuant to the State Environmental Policy Act, RCW 43.21C, and the Administrative Guideline and local ordinance adopted to implement it, an environmental checklist was submitted to the City of Kirkland, reviewed by the responsible official of the City of Kirkland, and a negative determination reached; and

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

WHEREAS, the Kirkland Hearing Examiner after his public hearing and consideration of the recommendations of the Department of Planning and Community Development did adopt certain Findings, Conclusions and Recommendations and did recommend approval of the Process IIB Permit subject to the specific conditions set forth in said recommendations; and

WHEREAS, the City Council, in regular meeting, did consider the environmental documents received from the responsible official, together with the recommendation of the Hearing Examiner; and

WHEREAS, the Kirkland Zoning Ordinance requires approval of this application for PUD to be made by ordinance.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Kirkland as follows:

Section 1. The Findings, Conclusions, and Recommendations of the Kirkland Hearing Examiner as signed by him and filed in the Department of Planning and Community Development File No. IIB-90-44 are adopted by the Kirkland City Council as though fully set forth herein.

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 2740, 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. 2740, as amended, the Kirkland Zoning Ordinance.

Section 5. This ordinance shall be in full force and effect five (5) days from and after its passage by the Kirkland City Council and publication, pursuant to Section 1.08.010.


Section 6. A certified copy of this ordinance, together with the Findings, Conclusions, and Recommendations herein adopted shall be attached to and become a part of the Process IIB Permit or evidence thereof delivered to the permittee.

Section 7. Certified or conformed copies of this ordinance shall be delivered to the following:

- (a) Department of Planning and Community Development of the City of Kirkland
- (b) Fire and Building Departments of the City of Kirkland
- (c) Public Works Department of the City of Kirkland
- (d) The City Clerk for the City of Kirkland.

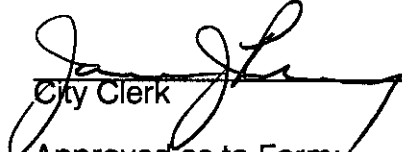
PASSED by majority vote of the Kirkland City Council in regular, open meeting this 4th day of September, 1990.

SIGNED IN AUTHENTICATION THEREOF on this
4th day of September, 19 90



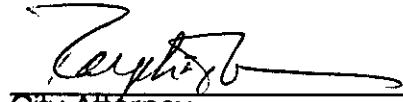
Mayor

Attest:



City Clerk

Approved as to Form:



City Attorney

ORD90-44.AUG/JLB:rk

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

APPLICANT: James Miller

FILE NO. IIB-90-44

APPLICATION:

1. Request: Application to rezone the property from RS 8.5 to RM 3.6 and for preliminary and final planned unit development to enable construction of a 5-unit condominium with 11 underground parking stalls. Since the density desired exceeds that which is allowed in both the RS 8.5 or RM 3.6 zones, both a PUD and rezone are required (see Exhibit A, Attachment 2b-2e).
2. Review Process: Process IIB, Hearing Examiner conducts public hearing and makes recommendation; City Council makes final decision.
3. Major Issues:
 - a. Compliance with Planned Unit Development criteria.
 - b. Compliance with Quasi-Judicial Project Rezone criteria.

SUMMARY OF RECOMMENDATIONS:

Department of Planning and Community Development: Approve with conditions.

Hearing Examiner: Approve with conditions.

PUBLIC HEARING:

After reviewing the official file which included the Department of Planning and Community Development Advisory Report and after visiting the site, the Hearing Examiner conducted a public hearing on the application. The hearing on the James Miller application was opened at 9:32 a.m., July 26, 1990, in the Council Chamber, City Hall, 123 Fifth Avenue, Kirkland, Washington, and was closed at 10:53 a.m. Participants at the public hearing and the exhibits offered and entered are listed in this report. 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.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

Having considered the entire record in this matter, the Hearing Examiner now makes and enters the following:

I. FINDINGS:

- A. The findings of fact recommended on pages 5 to 16 of the Department of Planning and Community Development Advisory Report (Hearing Examiner Exhibit A) are found by the Hearing Examiner to be supported by the evidence presented during the hearing and, by this reference, are adopted as part of the Hearing Examiner's findings of fact.
- B. Six persons expressed concerns about the proposal at the hearing. One of those who spoke, an attorney for an adjacent property owner, also submitted a written statement in opposition to the rezone request (Exhibit G). Three letters which expressed concerns were also received (Exhibits B, C and D).

Concerns expressed included the following:

1. The proposed building would obstruct the views from the apartment buildings to the south and east.
 2. The proposal would increase the already heavy traffic flow and would impact the already limited parking in the area.
 3. Another multi-family building on 10th Street South would increase congestion, destroy the otherwise peaceful neighborhood and would have a negative impact on house values.
 4. The rezone and PUD criteria have not been met and the project should not be approved.
 5. Due to the impacts this proposal will have on the neighborhood, the DNS should be withdrawn and an environmental impact statement should be prepared.
- C. The applicant responded to the concerns expressed and said the proposal:
1. Would only result in a net increase of one dwelling unit on the subject property.
 2. Would provide a net increase of nine off-street parking places.
 3. Would only be one to two stories high while the adjacent apartments are both three stories high. In addition, the apartments to the east are on higher ground and therefore the views will not be significantly affected.

II. CONCLUSIONS:

- A. The conclusions recommended by the Department of Planning and Community Development, as set forth on pages 5 to 17 of the Department's Advisory Report (Exhibit A), accurately set forth the conclusions of the Hearing Examiner and, by this reference, are adopted as part of the Hearing Examiner's conclusions.
- B. The proposal will have minimal impact on the surrounding neighborhood. The applicant has proposed one story adjacent to the single-family residence to the west, and two stories adjacent to the three-story apartments to the south & east. The proposed building would have an average height of 25 feet - the same height which would be allowed for a new single-family house. There would only be an increase of one dwelling unit on the site, however, there would be an increase of nine off-street parking places. That should help alleviate the parking problem in the neighborhood. The proposed building meets all of the setback requirements and exceeds the open space requirements.

The proposal provides a reasonable transition between the nearby apartments and single-family houses and should be approved.

III. RECOMMENDATIONS:

Based upon the foregoing findings of fact and conclusions, approval of this application is recommended subject to the following conditions:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Exhibit A, Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Exhibit A, Attachment 3, the condition of approval shall be followed.
2. Prior to adoption of the ordinance that makes the change to the zone classification on the Zoning Map, occupancy must be approved by the City (see Exhibit A, Conclusion II.D.9.b).
3. The Department of Planning and Community Development shall be authorized to approve minor modifications to the approved site plan, provided that:
 - a. The change will not result in reducing the landscaped area, buffering areas, or the amount of open space on the project;
 - b. The change will not result in increasing the residential density or gross floor area of the project;

- c. The change will not result in any structure, or vehicular circulation or parking area being moved more than 10 feet in any direction and will not reduce any required yard;
 - d. The change will not result in any increase in height of any structure; and
 - e. The City determines that the change will not increase any adverse impacts or undesirable effects of the project and that the change in no way significantly alters the project (see Exhibit A, Conclusion II.D.11.b).
4. As part of the application for a Building Permit the applicant shall submit:
- a. Plans for a permanent and construction phase storm water control system to be approved by the Department of Public Works (see Exhibit A, Conclusion II.D.5.b).
 - b. Revised site and landscape plans indicating
 - 1) A 5-foot wide Type 3 landscape buffer planted to meet the specifications of Section 95.25.3 along the north and west property lines and deletion of the existing paved parking area in the northwest corner of the subject property
 - 2) A common recreational open space area meeting the dimensional specifications of Section 20.10.a, Special Regulation No. 3, and
 - 3) The types and sizes of landscape materials being used in this project to be approved by the Department of Planning and Community Development (see Exhibit A, Conclusion II.D.3.b and 4.b).
 - d. Plans for installing the following half-street improvements in the 10th Avenue South right-of-way bordering the subject property: Street trees planted 30 feet on center along the property line to be approved by the Department of Public Works (see Exhibit A, Conclusion II.D.6.b.(2)).
 - e. A signed and notarized concomitant agreement, as set forth in Exhibit A, Attachment 4, to underground all existing utility lines bordering the subject property within the 10th Avenue South right-of-way to be approved by the Department of Planning and Community Development and recorded with the King County Records and Elections Division (see Exhibit A, Conclusion II.D.6.b.(4)).

5. Prior to occupancy, the applicant shall:
 - a. Complete all site improvements indicated on the site plan approved by the Department of Planning and Community Development at the time of application for a Building Permit (see Exhibit A, Conclusion II.D.13.b).
 - b. Complete the installation of the following half-street improvements within the 10th Avenue South right-of-way bordering the subject property: Street trees planted 30 feet on center along the property line (See Exhibit A, Conclusion II.D.13.b).
 - c. Submit for approval by the Department of Planning and Community Development a signed and notarized agreement, as set forth in Attachment 5, to maintain the landscaping within the 10th Avenue South right-of-way to be recorded with the King County Records and Elections Division (see Exhibit A, Conclusion II.D.6.b.(3)).
 - d. Install a fully operational permanent storm water control system (see Exhibit A, Conclusion II.D.5.b).
 - e. Install clustered mail box structures for units in a location approved by the U.S. Postal Service (see Exhibit A, Conclusion II.D.6.b.(5)).
 - f. Submit to the Department of Planning and Community Development a security device to ensure maintenance of landscaping, the permanent storm water retention system, and other site improvements (see Exhibit A, Conclusion II.D.14.b).
 - g. In lieu of completing any required improvements, a security device to cover the cost of installing the improvements may be submitted if the criteria in Zoning Code Section 175.10.2 are met (see Exhibit A, Conclusion II.D.13.b).
6. Within seven (7) calendar days after the final public hearing, the applicant shall remove all public notice signs and return them to the Department of Planning and Community Development. The signs shall be disassembled with the posts, bolts, washer, and nuts separated from the sign board (see Exhibit A, Conclusion II.D.12.b).

EXHIBITS:

The following exhibits were offered and entered into the record:


- A. Department of Planning and Community Development Staff Advisory Report
- B. Letter from Marilyn Thomson, dated 7/19/90
- C. Letter from Mr. and Mrs. James Kremer, dated 7/18/90
- D. Letter from Peter Billcliffe, dated 7/23/90

- E. Three photos of site
- F. One photo of 10th South
- G. Statement in opposition submitted by Rhys Sterling, dated 7/26/90

PARTIES OF RECORD:

James Miller, 11220 NE 90th, Kirkland, WA 98033
Gene Martenson, 9750 NE 120th, Kirkland, WA 98034
Ralph Harris, 100 10th Avenue So., Kirkland, WA 98033
Rhys Sterling, 800 Bellevue Way NE, #376, Bellevue, WA 98004
Pat Finley, 833 Lk. Washington Blvd. So, Seattle, WA 98144
Camille Pfeifer, 10918 SE 25th Street, Bellevue, WA 98004
Steve Wickes, 303 10th Avenue So., Kirkland, WA 98033
Brian Romanick, 13626 NE Seventh, #F-10, Bellevue, WA 98005
Marilyn Thomson, 303 10th Avenue So., #301, Kirkland, WA 98033
Mr. & Mrs. James A. Kremer, 303 10th Avenue So., Kirkland, WA 98033
Peter Billecliffe, 10212 NE 68th, #B-203, Kirkland, WA 98033
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

Entered this 9th day of August, 1990, per authority granted by Section 152.70, Ordinance 2740 of the Zoning Code. This recommendation is final unless a request for reconsideration is filed within five (5) working days as specified below. A final decision on this application will be made by the City Council. My recommendation may be challenged to the City Council within ten (10) working days as specified below.


Ronald L. McConnell
Hearing Examiner

RECONSIDERATIONS, APPEALS, CHALLENGES AND JUDICIAL REVIEW

The following is a summary of the deadline and procedures for filing reconsiderations and challenges. Any person wishing to file or respond to a recommendation or challenge should contact the Planning Department for further procedural information.

A. REQUEST FOR RECONSIDERATION

Section 152.80 of the Zoning Code allows the applicant or any person who submitted written or oral testimony to the Hearing Examiner to request that the Hearing Examiner reconsider his/her recommendation. The request must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department within five (5) working days following the postmarked date when the Hearing Examiner's written recommendation was distributed (by August 17, 1990). Within this same time period, the person making the

request for reconsideration must also mail or personally deliver to the applicant and all other people who submitted testimony to the Hearing Examiner a copy of the request letter together with notice of the deadline and procedures for responding to the request.

Any response to the request for reconsideration must be delivered to the Planning Department within five (5) working days after the request letter was filed with the Planning Department. Within the same time period, the person making the response must also mail or personally deliver a copy of the response to the applicant and all other people who submitted testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, attached to the request and response letters, and delivered to the Planning Department. The affidavit form is available from the Planning Department.

B. 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 testimony to the Hearing Examiner. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by August 24, 1990 ten (10) working days following the postmarked date of 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 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 five (5) working 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 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.

C. JUDICIAL REVIEW (FOR ZONING PERMIT ONLY)

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 30 days following the postmarked date when the City's final decision was distributed.

If issues under RCW 43.21C (the State Environmental Policy Act--SEPA) are to be raised in the judicial appeal, the "SEPA" appeal must be filed with the King County Superior Court within 30 days following the postmarked date when the City's final decision was distributed.

IV. LAPSE OF APPROVAL

ZONING PERMIT

Under Section 152.115.1 of the Zoning Code, the applicant must submit to the City a complete building permit application within one year after the final decision on the matter, or the decision becomes void. In the event that judicial review proceedings are initiated pursuant to Section 152.110, the decision would be void one year after the termination of judicial review proceedings. Furthermore, the applicant must substantially complete construction of the development activity, use of land, or other actions approved under Chapter 152 and complete the applicable conditions listed on the Notice of Approval within five (5) years after the final decision on the matter, or the decision becomes void. Application and appeal procedures for a time extension are described in Section 152.115.2 and 152.115.3.

X

CITY OF KIRKLAND

123 FIFTH AVENUE KIRKLAND, WASHINGTON 98033-6189 (206) 828-1257

**DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
ADVISORY REPORT
FINDINGS, CONCLUSION, AND RECOMMENDATIONS**

To: Ron McConnell, Hearing Examiner

From: Nancy Carlson for Joan Lieberman-Brill, Project
Planner

[Signature] Joseph Tovar, Planning Director

Date: July 11, 1990

File: IIB-90-44, Miller Rezone and PUD

Hearing Date, Time, and Place: July 26, 1990, 9 a.m.
City Hall Council Chamber
123 Fifth Avenue, Kirkland

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EXHIBIT <u> A </u>
FILE NO. <u> IIB-90-44 </u>

I. INTRODUCTION

A. APPLICATION

1. Applicant: James Miller
2. Site Location: 249-251 10th Avenue South (see Attachment 1)
3. Request: Application to rezone the property from RS 8.5 to RM 3.6 and for preliminary and final planned unit development to enable construction of a 5-unit condominium with 11 underground parking stalls. Since the density desired exceeds that which is allowed in both the RS 8.5 or RM 3.6 zones, both a PUD and rezone are required (see Attachment 2b-2e).
4. Review Process: Process IIB, Hearing Examiner conducts public hearing and makes recommendation; City Council makes final decision.
5. Major Issues:
 - a. Compliance with Planned Unit Development criteria.
 - b. Compliance with Quasi-Judicial Project Rezone criteria.

B. RECOMMENDATIONS

Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, we recommend approval of this application subject to the following conditions:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, 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. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed.
2. Prior to adoption of the ordinance that makes the change to the zone classification on the Zoning Map, occupancy must be approved by the City (see Conclusion II.D.9.b).

3. The Department of Planning and Community Development shall be authorized to approve minor modifications to the approved site plan, provided that:
 - a. The change will not result in reducing the landscaped area, buffering areas, or the amount of open space on the project;
 - b. The change will not result in increasing the residential density or gross floor area of the project;
 - c. The change will not result in any structure, or vehicular circulation or parking area being moved more than 10 feet in any direction and will not reduce any required yard;
 - d. The change will not result in any increase in height of any structure; and
 - e. The City determines that the change will not increase any adverse impacts or undesirable effects of the project and that the change in no way significantly alters the project (see Conclusion II.D.11.b).
4. As part of the application for a Building Permit the applicant shall submit:
 - a. Plans for a permanent and construction phase storm water control system to be approved by the Department of Public Works (see Conclusion II.D.5.b).
 - b. Revised site and landscape plans indicating
 - 1) A 5-foot wide Type 3 landscape buffer planted to meet the specifications of Section 95.25.3 along the north and west property lines and deletion of the existing paved parking area in the northwest corner of the subject property
 - 2) A common recreational open space area meeting the dimensional specifications of Section 20.10.a, Special Regulation No. 3, and
 - 3) The types and sizes of landscape materials being used in this project to be approved by the Department of Planning and Community Development (see Conclusion II.D.3.b and 4.b).

- d. Plans for installing the following half-street improvements in the 10th Avenue South right-of-way bordering the subject property: Street trees planted 30 feet on center along the property line to be approved by the Department of Public Works (see Conclusion II.D.6.b.(2)).
 - e. A signed and notarized concomitant agreement, as set forth in Attachment 4, to underground all existing utility lines bordering the subject property within the 10th Avenue South right-of-way to be approved by the Department of Planning and Community Development and recorded with the King County Records and Elections Division (see Conclusion II.D.6.b.(4)).
5. Prior to occupancy, the applicant shall:
- a. Complete all site improvements indicated on the site plan approved by the Department of Planning and Community Development at the time of application for a Building Permit (see Conclusion II.D.13.b).
 - b. Complete the installation of the following half-street improvements within the 10th Avenue South right-of-way bordering the subject property: Street trees planted 30 feet on center along the property line (See Conclusion II.D.13.b).
 - c. Submit for approval by the Department of Planning and Community Development a signed and notarized agreement, as set forth in Attachment 5, to maintain the landscaping within the 10th Avenue South right-of-way to be recorded with the King County Records and Elections Division (see Conclusion II.D.6.b.(3)).
 - d. Install a fully operational permanent storm water control system (see Conclusion II.D.5.b).
 - e. Install clustered mail box structures for units in a location approved by the U.S. Postal Service (see Conclusion II.D.6.b.(5)).
 - f. Submit to the Department of Planning and Community Development a security device to ensure maintenance of landscaping, the permanent storm water retention system, and other site improvements (see Conclusion II.D.14.b).

- g. In lieu of completing any required improvements, a security device to cover the cost of installing the improvements may be submitted if the criteria in Zoning Code Section 175.10.2 are met (see Conclusion II.D.13.b).
6. Within seven (7) calendar days after the final public hearing, the applicant shall remove all public notice signs and return them to the Department of Planning and Community Development. The signs shall be disassembled with the posts, bolts, washer, and nuts separated from the sign board (see Conclusion II.D.12.b).

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:

a. Facts:

- (1) Size: The subject property is 16,500 square feet in area (see Attachment 2.b).
- (2) Land Use: The existing land use is single-family residential. Currently, there are two lots, each developed with one home. The applicant proposes to move or demolish both homes (see Attachment 2.a).
- (3) Zoning: There is split zoning on the subject property. The western portion of the site is zoned RS 8.5 (a portion of Lot 23, and Lots 24-28 and a portion of Lot 29), while the eastern half of the eastern lot (the eastern portion of Lot 29) is zoned RM 3.6 (see Attachment 1 and 2a).
- (4) Terrain and Vegetation: The property slopes from east to west at about a 12 percent grade. There is existing landscaping typical of residential development on the site (see Attachment 2.a).

- b. Conclusions: These are not constraining factors in this application.

2. Neighboring Development and Zoning:

a. Facts:

- (1) North: The site to the north across 10th Avenue South is zoned RS 8.5 and is developed with single-family homes.
- (2) South: The site to the south is zoned RM 3.6, and development consists of existing apartments.
- (3) East: The site to the east is zoned RM 3.6, and development consists of apartments.
- (4) West: The site to the west is zoned RS 8.5, and development is single-family residential.

b. Conclusion: This application is consistent with neighboring development and zoning.

B. HISTORY

1. a. Fact: No development actions have been noted for the subject property.
- b. Conclusion: This is not a constraining factor in this application.

C. STATE ENVIRONMENTAL POLICIES ACT (SEPA)

1. a. Fact: A Determination of Nonsignificance (DNS) was issued on April 17, 1990. The Environmental Checklist, Determination, and additional Environmental Information are included as Attachment 6.
- b. Conclusion: The applicant and the City have satisfied the requirements of SEPA. The applicant must fulfill the conditions set forth in the Determination of Nonsignificance.

D. ZONING CODE COMPLIANCE

1. a. Fact: Pursuant to Section 125.20, the City may not modify any provisions of the PUD chapter. Section 125.30 states that the maximum permitted residential density that the City can approve is the greater of that recommended by the LUPP or 110 percent of that permitted in the zone in which the PUD is located. Section 125.30.4 states that surface vehicular

circulation and parking areas will be subtracted from the area actually used to calculate the number of dwelling units potentially permitted.

The subject property is 16,500 square feet. The surface circulation area is 400 square feet. The difference equals 16,100 square feet. The recommended density set forth by the Land Use Policy Plan is 12 dwelling units per acre, which is comparable to RM 3,600 zoning. Thus, 16,100 divided by 3,600 equals 4.47 dwelling units. Section 115.125 states that when the fraction of the whole number is at least .66, the number of dwelling units permitted shall be rounded up to the next whole number. Conversely, if the fraction of the whole number is less than .66, the number of permitted dwelling units is rounded down. Therefore, the maximum number of dwelling units allowed by Section 125.30 is 4 units, using the recommended LUPP density of 12 dwelling units per acre.

A rezone is necessary to permit, through the PUD process, the applicant to propose an increase of density not greater than 110 percent of that permitted in the RM 3.6 zone. Ten percent of 3,600 square feet equals 360 square feet. Subtracting 360 square feet from 3,600 square feet equals 3,240 square feet. The total lot area of 16,100 square feet divided by 3,240 square feet equals 4.96 dwelling units which can be rounded up to 5 units. Therefore, if the rezone is approved, a theoretical maximum of 5 units could be developed on the subject property through the PUD process.

- b. Conclusion: In order for the PUD to be allowed, a rezone to RM 3.6 must be approved for the subject property.
- 2. a. Fact: Since the underlying zoning would be RM 3.6 if the rezone is approved and since the applicant wishes to develop multifamily on this property, the use zone chart that is used to set forth development standards is the Multifamily Residential (RM 3.6) regulations in Section 20.10.a (see Attachment 7).
- b. Conclusion: The proposal complies with the regulations for the RM 3.6 zone as set forth in Section 20.10.a, except as discussed below.

3. a. Fact: Section 20.10.a requires stacked dwelling units in an RM 3.6 zone to not exceed the maximum structure height of 25 feet above average building elevation if adjoining a low density zone other than RSX. The subject property adjoins a low density zone (RS 8.5) to the north and west. The applicant intends to construct a new stacked dwelling unit on the site. The applicant has submitted information showing the proposed footprint and setbacks for this future structure and specific information concerning the height of the structure. The proposal, as submitted by the applicant, calls for a building which will be 25 feet above average building elevation.
- b. Conclusion: In order to accurately determine the topography of the site prior to any development activity, for the purposes of calculating the average building elevation, the building permit application should be reviewed, using the as-built topographic survey of the site.
3. a. Fact: Section 20.10.a requires stacked dwelling units in an RM zone to comply with Landscape Category D. Section 95.10 lists the applicable regulations for Landscape Category D. Because the subject property is adjacent to single-family development to the north and west, the applicant must comply with Section 25.3. Buffering Standard 3 requires that the applicant plant one row of trees 8-10 feet on center and shrubs 18-inches high planted to attain a coverage of at least 60 percent of the buffer area within two years along the entire length of the 5-foot buffer along the north and west property lines (see Attachment 2.e).
- b. Conclusion: Pursuant to Section 95.10 and 95.25.3, the applicant should revise the landscape plan to meet the requirements of establishing a 5-foot wide buffer along the perimeter property line adjoining the north boundary and extend the 5-foot wide buffer along the west boundary to the north property line. The plan should be revised to indicate that within the buffer strips, trees 8-10 feet on center, and shrubs 18 inches high to attain at least a 60 percent lot coverage within two years should be planted. Specific landscape materials should be called out. The pavement

located in the northwest corner of the property should be removed.

4. a. Fact: Special Regulation No. 3 of Section 20.10.a requires the applicant to provide 200 square feet per unit of common recreational open space usable for many activities. Therefore, the minimum required area for 5 units is 1,000 square feet. The minimum dimensions for five units is a minimum of 800 square feet per piece and having a length and width of at least 25 feet. The required common recreational open space may be reduced to 150 square feet per unit if permanent outdoor furniture, pool, cooking facilities, playground equipment and/or a recreation building are provided in the common open space. The City shall determine if these outdoor provisions provide comparable recreational opportunities as would the open space that is reduced. The site plan indicates the location of the common recreational open space near the southwest portion of the subject property. The landscape plan shows trees and shrubs encroaching into the common recreational open space of at least 1,000 square feet in size or in the alternative, a reduced area providing permanent outdoor amenities as described above.
- b. Conclusion: Pursuant to Special Regulation 3.a, the landscape plan should be revised to delete trees and shrubs and other landscape materials other than grass to meet the minimum criteria for establishing a common recreational open space of at least 1,000 square feet in size or in the alternative, a reduced area providing permanent outdoor amenities as described above.
5. a. Fact: Chapter 107 sets forth requirements for both construction phase and permanent storm water control.
- b. Conclusion: Pursuant to Chapter 107, the applicant must submit plans and undertake improvements for construction phase and permanent storm water control.
6. a. Facts: Chapter 110 establishes right-of-way improvement requirements:
 - (1) Sections 110.10 and 110.25 require the applicant to make half street improvements in rights-of-way abutting the subject

property. The subject property abuts 10th Avenue South which is shown on the City Right-of-Way Designation Map as a Neighborhood Collector. Section 110.40 establishes that a Neighborhood Collector must be improved with 60 feet of right-of-way width, 36 feet of pavement centered in the right-of-way, vertical curb and underground storm sewer with through curb inlets and bicycle grates, 4½-foot wide landscape strip adjacent to curb, trees planted 30-feet on center in the landscape strip, a 5-foot wide concrete sidewalk between the landscape strip and utility strip, and a minimum 2-foot wide utility strip adjacent to the property line. All excess right-of-way must be in this utility strip. Tenth Avenue South is currently improved with pavement and a concrete sidewalk adjacent to the curb .

- (2) Section 110.70 establishes the authority of the City to require or grant a modification, deferment, or waiver of normal right-of-way requirements (see Attachment 8).

The applicant has not requested a modification/deferment/waiver to requirements of Section 110.40 for 10th Avenue South.

- (3) Sections 110.60.4 and .5 require the owners of property abutting a right-of-way to submit for recording an agreement, which runs with the property, to maintain landscaping within the landscape strip and landscape island portions of the right-of-way.
- (4) Section 110.60.9 establishes the requirement that existing utility and transmission (power, telephone, etc.) lines on-site and in rights-of-way adjacent to the site must be undergrounded. The Public Works Director may determine undergrounding transmission lines adjacent to the right-of-way is infeasible. If undergrounding is not feasible, the applicant is required to sign a concomitant agreement to underground the overhead lines at a future date.

Tenth Avenue South, abutting the subject property, currently has overhead lines on the south side of the street.

- (5) Section 110.60.6 requires the applicant to group mail boxes to the maximum extent possible, to serve units in the development. The applicant has not indicated the location of clustered mail box structures on his/her plans in a location approved by the U.S. Postal Service Growth Management Representative (Telephone #822-2292).

b. Conclusion:

- (1) The applicant meets the criteria for a modification of the right-of-way improvement requirements for 10th Avenue South. Pursuant to Section 110.70.3.a, a modification is justified to allow the placement of the sidewalk adjacent to the curb, because the sidewalk on either side of the subject property is adjacent to the curb. Therefore, the improvement, as required, would not match the existing improvements.
- (2) Pursuant to Sections 110.10, 110.25, and 110.40, the applicant must install street trees along the property line 30 feet on center.
- (3) Pursuant to Sections 110.60.4 and .5, the owner(s) of the subject property should sign an agreement to continually maintain the landscaping within the 10th Avenue South right-of-way (see Attachment 4).
- (4) Pursuant to Section 110.60.9.b, undergrounding of existing overhead utility lines on 10th Avenue South is infeasible, because the subject property is only 165 feet wide, and the adjoining utility lines are all above ground. Consequently, the applicant should sign a concomitant agreement to underground the utility lines adjacent to the right-of-way (see Attachment 5). All on-site utility lines and overhead transmission lines must be underground.

(5) Pursuant to Section 110.60.6, the applicant should group clustered mail box structures within the development to the greatest extent possible and in a location approved by the U.S. Postal Service.

7. a. Fact: Section 130.60 states that a quasi-judicial project rezone may be approved only if:

(1) The proposed rezone is consistent with the Comprehensive Plan; and

(2) The proposed rezone bears a substantial relation to public health, safety, or welfare; and

(3) The proposed rezone is in the best interest of the residents of Kirkland; and

(4) The proposed rezone is necessary because either:

(a) Conditions in the immediate vicinity have so markedly changed that a rezone is required in the public interest; or

(b) The rezone will correct a zone classification or zone boundary that was inappropriate when established; or

(c) The rezone is to place or remove an overlay zoning designation on the Zoning Map and the proposal meets the applicable designation criteria of Chapter 70 through 80 of this Code.

(5) The proposed project complies with this Code in all respects; and

(6) The site plan of the proposed project is designed to minimize all adverse impacts on existing land use in the immediate vicinity of the subject property.

The applicant's response to the criteria is shown in Attachment 9.

b. Conclusion: The proposed rezone is consistent with the criteria set forth in Section 130.60:

- (1) It is consistent with the Land Use Policies Plan (see Conclusion II.G below).
- (2) It bears a substantial relation to public health, safety, or welfare and is in the best interest of Kirkland residents, because it allows an addition to the multifamily housing stock in the community and will allow development in accordance with all City planning and building codes.
- (3) It is appropriate because the Land Use policies Plan has designated this area for 12 dwelling units/acre, and developing the property at this density is appropriate given the fact that the site abuts multifamily development on two sides (south and east).
- (4) If modified as suggested in Conclusions II.D.3-14, it will comply with the Code in all respects and will not result in adverse impacts.

8. a. Fact: Section 130.70 permits minor modifications to the site plan approved for a quasi-judicial project rezone if:

- (1) The change will not result in reducing the landscaped area, buffering areas, or the amount of open space on the project; and
- (2) The change will not result in increasing the residential density or gross floor area of the project; and
- (3) The change will not result in any structure, or vehicular circulation or parking area being moved more than 10 feet in any direction and will not reduce any required yard; and
- (4) The change will not result in any increase in height of any structure; and
- (5) The City determines that the change will not increase any adverse impacts or undesirable effects of the project and that the change in no way significantly alters the project.

b. Conclusion: Minor modifications to the proposal should be permitted pursuant to the above criteria.

9. a. Fact: Pursuant to Section 130.65.2, the City will make the zone boundary or zone classification change on the Zoning Map if the applicant completes the development of the subject property in conformity with the Resolution of Intent to Rezone.

Conclusion: Pursuant to Section 130.65.2, the map zone change should occur only after occupancy is approved.

10. a. Fact: Since the applicant requests to increase density by 10% over RM 3.6 zoning, a PUD is required (16,100 + 5 = 3,220 square feet, 3,220 + 3,600 = 90%).

- b. Conclusion: In order to increase density, a PUD must be approved by the City.

11. a. Fact: Section 125.35 stats that a PUD may be approved only if all of the following requirements are met:

(1) The proposed PUD meets the requirements of the PUD Chapter.

(2) Any adverse impacts or undesirable effects of the proposed PUD are clearly outweighed by specifically identified benefits to the residents of the City.

(3) The applicant is providing one or more of the following benefits to the City as part of the proposed PUD:

(a) The applicant is providing public facilities that could not be required by the City for development of the subject property without a PUD.

(b) The proposed PUD will preserve, enhance, or rehabilitate natural features of the subject property such as significant woodlands, wildlife habitats, or streams that the City could not require the applicant to preserve, enhance, or rehabilitate through development of the subject property without a PUD.

(c) The design of the PUD incorporates active or passive solar energy systems.

(d) The design of the proposed PUD is superior in one or more of the following ways to the design that would result from development of the subject property without a PUD:

- i. Increased provision of open space or recreational facilities.
- ii. Superior circulation patterns or location or screening of parking facilities.
- iii. Superior landscaping, buffering, or screening in or around the proposed PUD.
- iv. Superior architectural design, placement, relationship, or orientation of structure.
- v. Minimum use of impervious surfacing materials.

(4) Any PUD which is proposed as special needs housing shall be reviewed for its proximity to existing or planned services (i.e., shopping centers, medical centers, churches, parks, entertainment, senior centers, public transit, etc.) The applicant's response to the criteria is shown in Attachment 10.

b. Conclusion: The proposal meets the requirements of this chapter as set forth in Section II.D.1 above. Any adverse or undesirable effects of the proposed PUD are outweighed by the increased open space and undergrounding of parking. The design of the PUD is superior to a design that would result from development of the property without a PUD because of increased provision for open space. The applicant is providing 12 percent more open space than is required. Without the PUD, while only 4 dwelling units would be allowed on the property, parking could be above ground and less open space would result.

12. a. Fact: Section 155.30 requires that the applicant remove the public notice sign(s) within seven (7) calendar days after the final public hearing.

- b. Conclusion: The applicant should remove all public notice signs pursuant to Section 155.30.
- 13. a. Fact: Section 175.10.2 establishes the circumstances under which the City may consider the use of performance bonds in lieu of completion of certain site work prior to occupancy. The City may consider a performance bond only if: the inability to complete work is due to unavoidable circumstances beyond the control of the applicant; there is certainty that the work can be completed in a reasonable period of time; and occupancy prior to completion will not be materially detrimental to the City or properties adjacent to the subject site.
 - b. Conclusion: In order to ensure timely completion of all required site and right-of-way improvements, such improvements should be completed prior to occupancy, unless the applicant can demonstrate compliance with the criteria in Section 175.10.2.
- 14. a. Fact: Sections 95.40, 105.105, 107.90.3, and 175.10.1 allow the City to require a maintenance bond to ensure continued compliance with code requirements.
 - b. Conclusion: Pursuant to Sections 95.40, 105.105, 107.90, and 175.10.1, a maintenance bond should be required to ensure that landscaping and parking areas are maintained in good condition for a period of two years following initial occupancy of the site.

F. TECHNICAL COMMITTEE

- 1. a. Fact: Comments and requirements placed on the project by other departments are found on the Development Standards Sheet, Attachment 3.
 - b. Conclusion: The applicant must follow the requirements of other Departments set forth in Attachment 3.

G. LAND USE POLICIES PLAN (LUPP)

- 1. Fact: Figure C-1 on page C-1 designates the subject property for medium density residential development at 12 dwelling units per acre (see Attachment 11).

2. Conclusion: The proposal is consistent with the recommended LUPP density.

III. RECONSIDERATIONS, CHALLENGES, AND JUDICIAL REVIEW

The following is a summary of the deadline and procedures for filing reconsiderations and challenges. Any person wishing to file or respond to a reconsideration or challenge should contact the Planning Department for further procedural information.

A. REQUEST FOR RECONSIDERATION

Section 152.80 of the Zoning Code allows the applicant or any person who submitted written or oral testimony to the Hearing Examiner to request that the Hearing Examiner reconsider his/her recommendation. The request must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department within five (5) working days following the postmarked date when the Hearing Examiner's written recommendation was distributed (by _____). Within this same time period, the person making the request for reconsideration must also mail or personally deliver to the applicant and all other people who submitted testimony to the Hearing Examiner a copy of the request letter together with notice of the deadline and procedures for responding to the request.

Any response to the request for reconsideration must be delivered to the Planning Department within five (5) working days after the request letter was filed with the Planning Department. Within the same time period, the person making the response must also mail or personally deliver a copy of the response to the applicant and all other people who submitted testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, attached to the request and response letters, and delivered to the Planning Department. The affidavit form is available from the Planning Department.

B. 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 testimony to the Hearing Examiner. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by _____, ten (10) working days following the postmarked date of distribution of the Hearing Examiner's written recommendation on the application or decision on a Request for Reconsideration. 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 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 five (5) working 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 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.

C. 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 30 days following the postmarked date when the City's final decision was distributed.

If issues under RCW 43.21C (the State Environmental Policy Act--SEPA) are to be raised in the judicial appeal, the "SEPA" appeal must be filed with the King County Superior Court within 30 days following the postmarked date when the City's final decision was distributed.

IV. LAPSE OF APPROVAL

Under Section 152.115.1 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 152, within one year after the final decision on the matter, or the decision becomes void. Furthermore, the applicant must substantially complete construction approved under Chapter 152 and complete the applicable conditions listed on the Notice of Approval within five (5) years after the final decision on the matter, or the decision becomes void. Application and appeal procedures for a time extension are described in Section 152.115.2 and 152.115.3.

"Final Decision" means the final decision of the City of Kirkland, or the termination of judicial review proceedings if such proceedings were initiated pursuant to Section 152.110.

V. APPENDICES

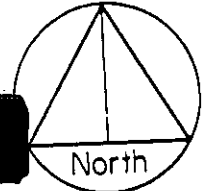
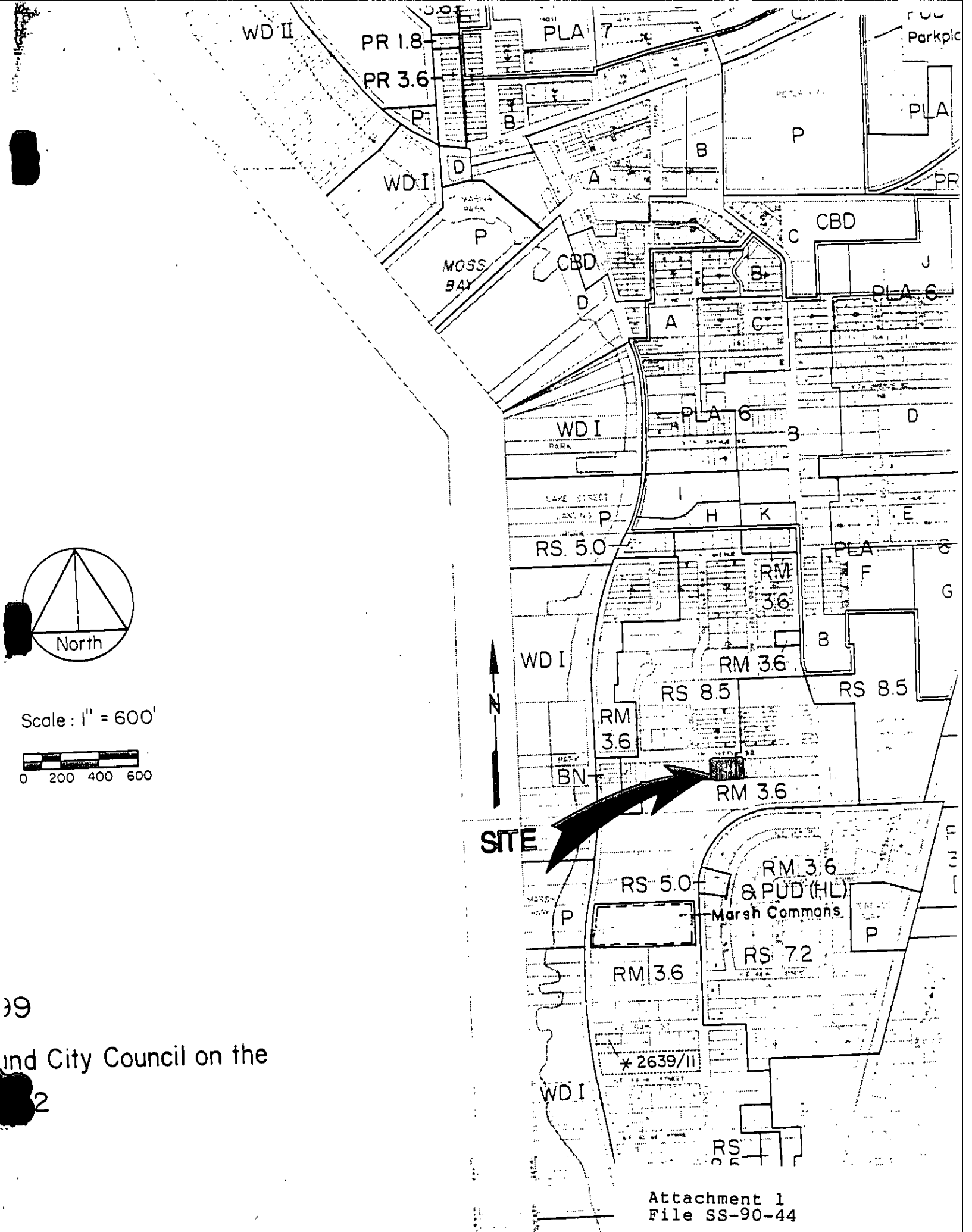
Attachments 1 through 11 are attached.

1. Zoning/Vicinity Map
- 2a. Survey Submitted by Applicant
- 2b. Site Plan Submitted by Applicant
- 2c. Elevations Submitted by Applicant
- 2d. Garage Plan Submitted by Applicant
- 2e. Landscape Plan Submitted by Applicant
3. Development Standards
4. Maintenance Agreement - Landscape Strip
5. Concomitant Agreement Undergrounding
6. SEPA Determination, Checklist, and Other Environmental Information
7. Use Zone Chart Section 20.10.a
8. Modification/Deferment/Waiver Evaluation Form
9. Criteria Sheet Submitted by Applicant for Quasi-judicial Project Rezone
10. Criteria Sheet Submitted by Applicant for PUD
11. LUPP Map

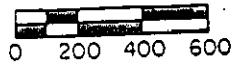
VI. PARTIES OF RECORD

Applicant
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

A written recommendation will be issued by the Hearing Examiner within two weeks of the close of the public hearing. If you have any questions about the timing or content of the report, contact Hearing Examiner Ron McConnell at 827-6550.



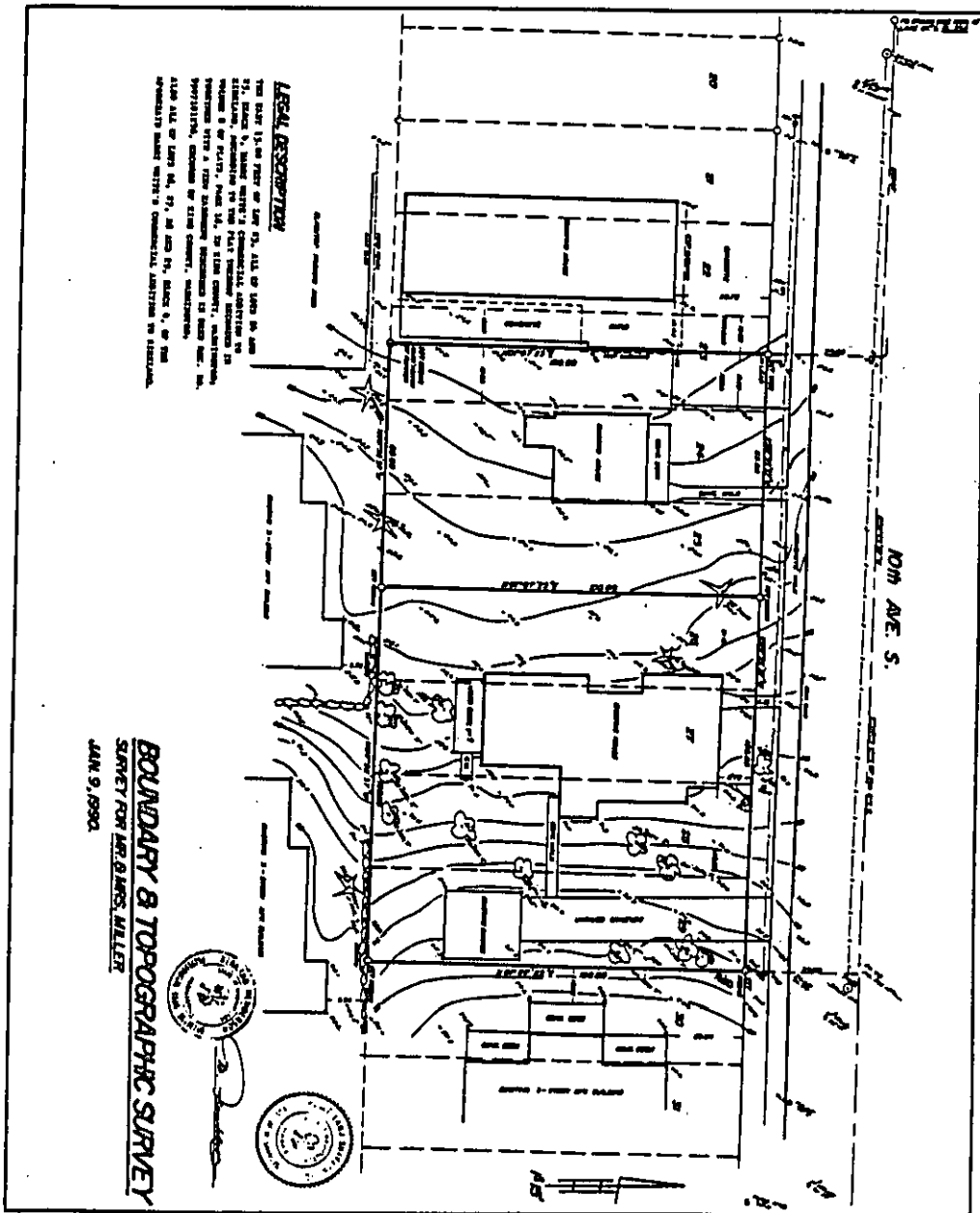
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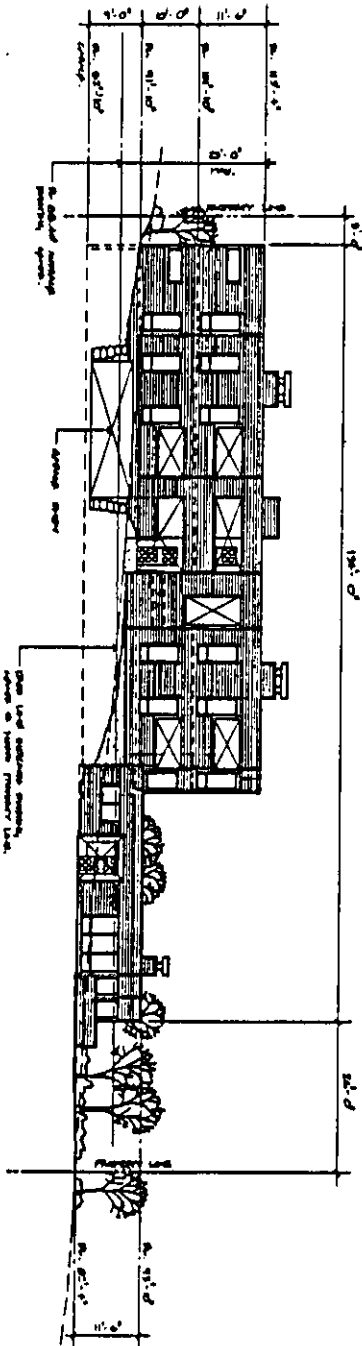
and City Council on the

2



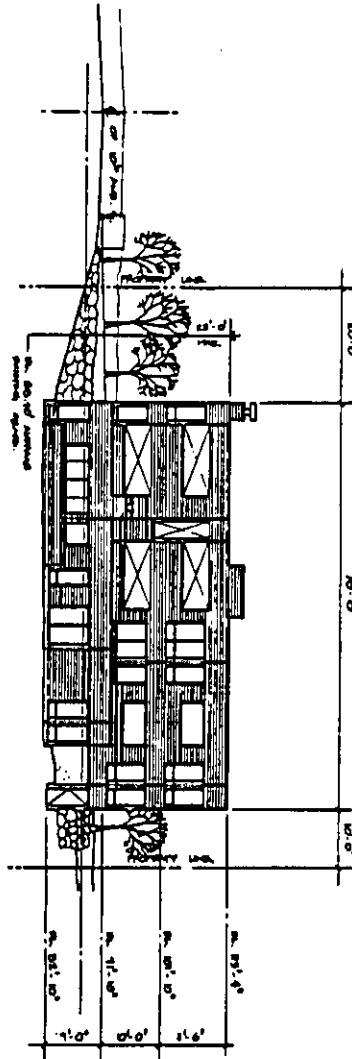
NORTH ELEVATION

Scale: 1/8" = 1'-0"



WEST ELEVATION

Scale: 1/8" = 1'-0"



MCA ARCHITECTS

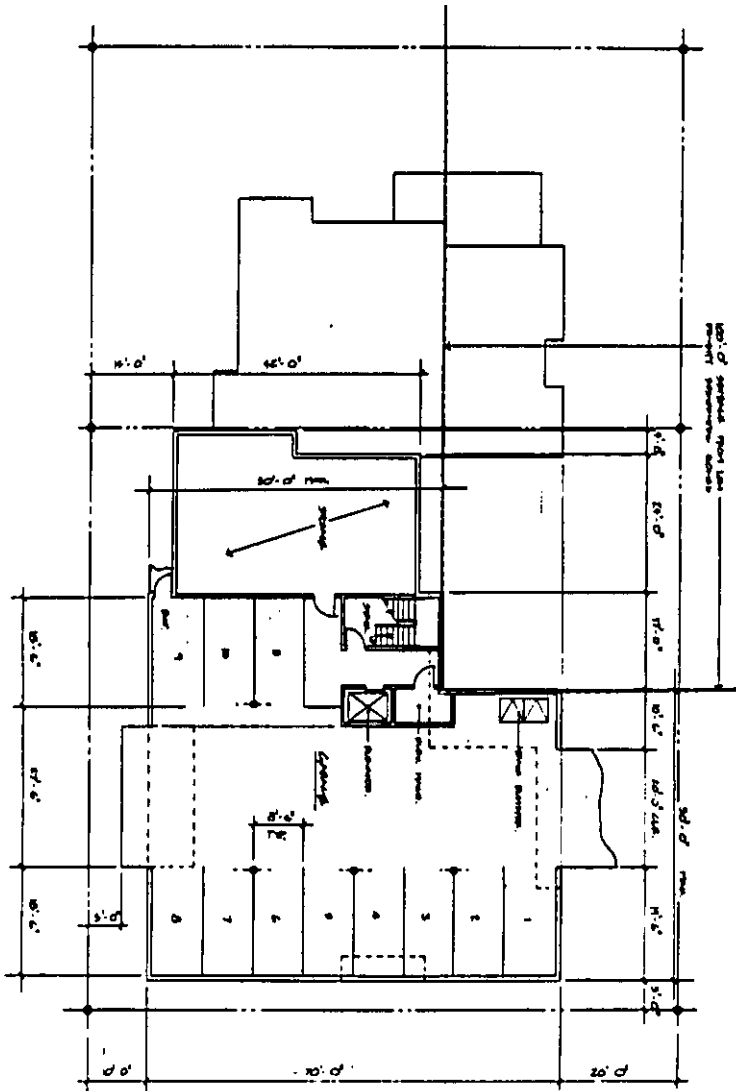
PROPOSED FIVE UNIT CONDOMINIUM
FOR MR. & MRS. JAMES MILLER



Attachment 2c
File SS-90-44



GARAGE LEVEL PLAN



MCA ARCHITECTS

PROPOSED FIVE UNIT CONDOMINIUM
FOR MR. & MRS. JAMES MILLER

Attachment 2d
File SS-90-44

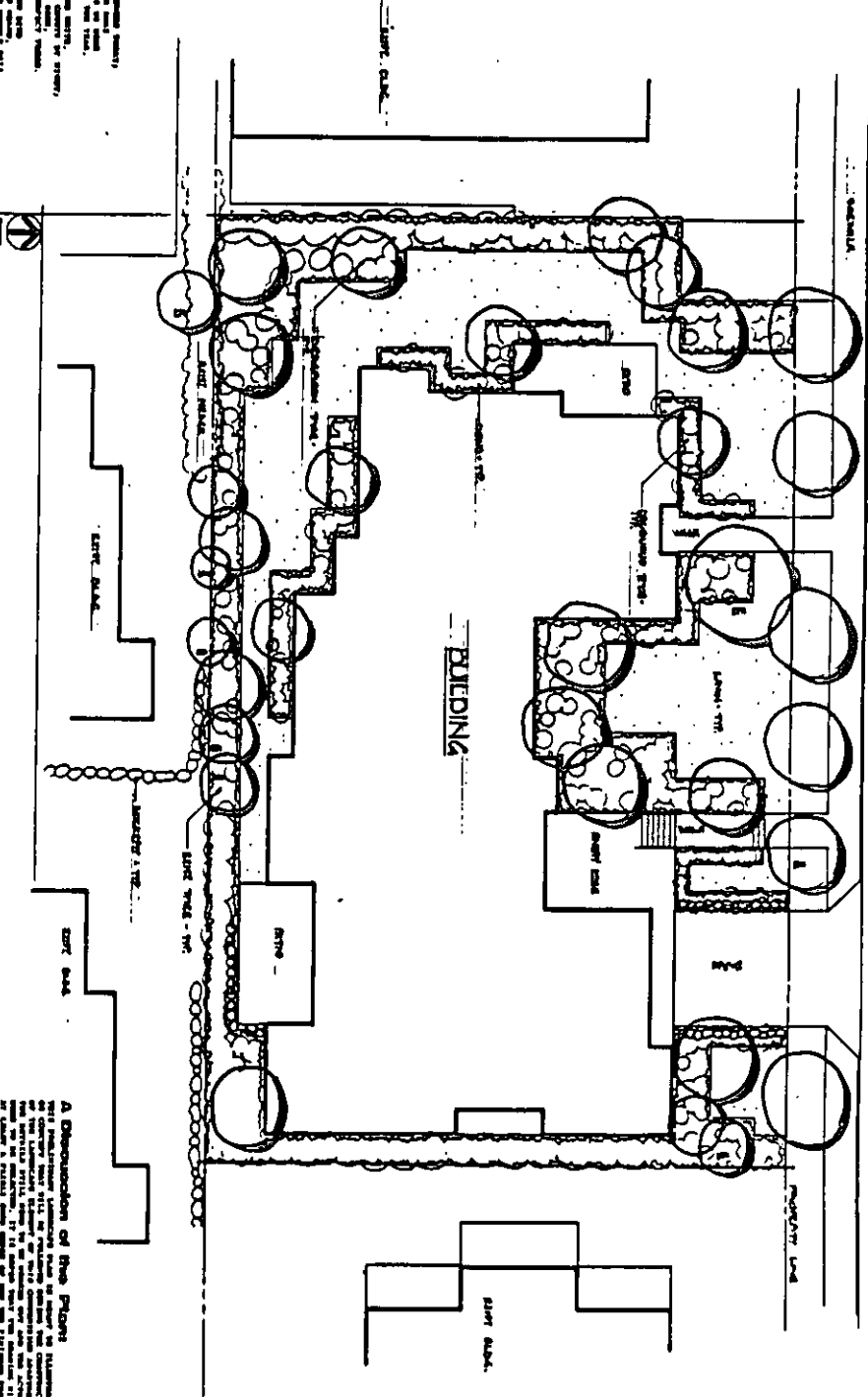
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DOUGLAS L. JACKSON L.L.C.
LANDSCAPE ARCHITECTURE
 1111 W. 10TH AVE., SUITE 100
 DENVER, CO 80202
 TEL: 303.733.1111
 FAX: 303.733.1112

A Review is made of the site plan and the proposed building and landscape plan. The site plan shows the location of the building and the proposed landscape plan. The landscape plan shows the location of the building and the proposed landscape plan. The site plan shows the location of the building and the proposed landscape plan.

Preliminary Landscape Plan



A Description of the Plans:
 This preliminary landscape plan is a plan to illustrate the general appearance of the proposed building and the proposed landscape plan. The site plan shows the location of the building and the proposed landscape plan. The landscape plan shows the location of the building and the proposed landscape plan.

Site Plan:
 The site plan shows the location of the building and the proposed landscape plan. The site plan shows the location of the building and the proposed landscape plan. The site plan shows the location of the building and the proposed landscape plan.

DEVELOPMENT STANDARDS

James Miller/Gene Martinson, File No. IIB-90-44

A. Department of Planning and Community Development

1. Zoning Code:
 - a) Chapter 107; Storm Water Control
 - b) Chapter 110; Required Public Improvements

B. Department of Public Works

1. a) Sanitary Sewer:
 - 1) Existing sanitary sewer main and stub adequate.
 - 2) Install sewer stubs for each property.
- b) Authority: K.M.C. Title 15
2. a) Domestic Water: Existing adequate.
- b) Authority: K.M.C. Title 15
3. a) Storm Water:
 - 1) Provide detention per City of Kirkland standards.
 - 2) Provide storm drainage connection for each lot.
 - 3) Storm detention calculations required.
 - 4) Provide for right-of-way storm drainage.
 - 5) All roof drainage must be tight lines to storm system.
 - 6) Downstream analysis required.
 - 7) Storm basin analysis required.
- b) Authority: Zoning Code Chapter 107
4. a) Right-of-Way Improvements: Existing adequate, replace existing curb cut and any broken sidewalk or curb.
- b) Authority: Zoning Code Chapter 110
5. a) Transmission Lines:
 - 1) Underground all on-site utility lines.
 - 2) Defer with concomitant agreement for off-site, no new poles.

b) Authority: Zoning Code Chapter 110

C. Building Department

1. a) Relevant Building Code Requirements: Building shall be not less than one-hour fire resistive construction throughout.
- b) Other: KMC 21.08.080

D. Fire Department

F.D. Ref. #D4-11

1. Emergency Access:

- a) Fire Lanes (UFC 10.207): Access required within 150 feet of all points on first story of building. Additional access provisions required #2.
 - b) Turn-around (UFC 10.207): N/A
 - c) Grade (UFC 10.207(j)): Not to exceed 15 percent.
2. Fire Hydrants (UFC 10.301): 330 foot spacing required. Not enough information to determine existing dimensions.
 3. Fire Alarm Systems (KMC 21.08.213): Required #1
 4. Fire Extinguishers (UFC 10.301): Required #1
 5. Key Box (UFC 10.209): Required #1
 6. Sprinkler System (UFC 10.309): Required #1
 7. Vertical Standpipe (UFC 10.312): N/A
 8. Horizontal Standpipe (UFC 2.102): N/A
 9. Fire Flow Information (UFC 10.301): 1500 GPM Required #2

MAINTENANCE AGREEMENT - LANDSCAPE STRIP

Parcel Data File: 249-251 10th Avenue South, Kirkland

Project Planner: Joan Lieberman-Brill

This agreement is entered into between each of the undersigned owners of real property and the City of Kirkland in consideration of approval by the City of a land use permit under City of Kirkland File/Permit No. IIB-90-44 for the hereinafter described real property in Kirkland, King County, Washington and Section 110.60.4, Kirkland Ordinance 2740. For the purposes of this agreement, the phrase "Landscape Strip" shall mean that portion of the public right-of-way fronting the hereinafter described real property. For this file, the specific right-of-way is 10th Avenue South.

Each undersigned owner hereby agrees to plant the Landscape Strip abutting the lot or lots owned by such owner when required by the City with vegetation approved by the City and to install root deflectors for any street trees therein planted as may be required by Sections 110.30, 110.35, 110.40, 110.45 or 110.50, Ordinance 2740. Each undersigned owner further agrees to maintain such vegetation and, in the meantime, to maintain the vegetation presently within the Landscape Strip.

Each of the undersigned owners agree to defend, pay, and save harmless the City of Kirkland, its officers, agents, and employees from any and all claims of every nature whatsoever, real or imaginary, which may be made against the City, its officers, agents, or employees for any damage to property or injury to any person arising out of the maintenance of said Landscape Strips abutting said owner's property or the actions of the undersigned owners in carrying out the responsibilities under this agreement, excepting therefrom only such claims as may arise solely out of the gross negligence of the City of Kirkland, its officers, agents, or employees.

This Agreement shall be binding upon the heirs, successors and assigns of each of the undersigned owners and shall run with the land. This Agreement shall, at the expense of the undersigned owners, be recorded by the City of Kirkland with the King County Department of Elections and Records.

The real property owned by the undersigned and the subject property of this Agreement is situated in Kirkland, King County, Washington and described as follows:

The east 15 feet of Lot 23, all of Lots 24 and 25, Block 4, Harry Wight's commercial addition to Kirkland according to the plat thereof recorded in Volume XIII of Plats, page 16, in King County, Washington, together with a view easement described in Deed Restriction No. 8907181286, Records of King County, Washington. Also, all of Lots 26, 27, 28 and 29, Block 4 of the aforesaid Harry Wight's commercial addition to Kirkland.

DATED this _____ day of _____, 19____.

(Partnerships Only)

OWNER(S) OF REAL PROPERTY

(Name of Partnership or Joint Venture)

By General Partner _____

By General Partner _____

By General Partner _____

STATE OF WASHINGTON }
County of King } SS.

On this _____ day of _____, 19____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____,

_____ and _____ to me, known to be general partners of _____,

_____ the partnership that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of each personally and of said partnership, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument.

(Corporations Only)

OWNER(S) OF REAL PROPERTY

(Name of Corporation)

By President _____

By Secretary _____

STATE OF WASHINGTON }
County of King } SS.

On this _____ day of _____, 19____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____ to me, known to be the President and Secretary, respectively, of _____,

_____ the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

(Individuals Only)

OWNER(S) OF REAL PROPERTY
(INCLUDING SPOUSE)

STATE OF WASHINGTON }
County of King } SS.

On this day personally appeared before me _____ and _____ to me known to be the individual(s) described herein and who executed the within and foregoing instrument, and acknowledged that _____ signed the same as _____ free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the
State of Washington
Residing at: _____
My commission expires: _____

The foregoing Agreement is accepted by the City of Kirkland this _____ day of _____, 19____.

CITY OF KIRKLAND

BY: _____

**CONCOMITANT AGREEMENT RELATING TO CONSTRUCTION
OR INSTALLATION OF PUBLIC IMPROVEMENTS**

Parcel Data File: 249-251 10th Avenue South

Planner: Joan Lieberman-Brill

THE UNDERSIGNED acknowledge that application has been made to the City of Kirkland for:

Subdivision Approval File No.: IIB-90-44
Project Name: Miller Rezone and PUD
Project Address: 249-251 10th Avenue South

for proposed development of the hereinafter described real property, which development, alone or in conjunction with existing and/or future developments, makes necessary certain public improvements and that such additional public improvements will benefit said real property.

THE UNDERSIGNED warrant to the City of Kirkland that they are all the owners of the real property hereinafter described with full power to enter into agreements and/or covenants which will run with the land.

In lieu of actual construction of required public improvements at this time, and to also provide for mitigation of the impacts of the proposed development, THE UNDERSIGNED agree to immediately install or pay for, as instructed by the City of Kirkland in written notice given within fifteen (15) years from the date of this Agreement, the proportionate share of the cost of undergrounding overhead utility lines adjacent to the property frontage within the 10th Avenue South right-of-way.

Any money paid by THE UNDERSIGNED to be used by the City toward the cost of a public improvement shall be subject to the repayment provisions of RCW 82.02.020 unless the basis for requiring the payment is the mitigation of an adverse environmental impact required by RCW 43.21C or Chapter 24.02 Kirkland Municipal Code, in which case RCW 82.02.020 shall not apply.

THE UNDERSIGNED agree to be responsible for the full performance of this agreement until the City actually accepts the improvement and hereby secure this performance as binding upon all of the owners of the real property hereinafter described and their heirs, successors and assigns and agrees that this agreement shall run with the land described as follows:

The east 15 feet of Lot 23, all of Lots 24 and 25, Block 4, Harry Wight's commercial addition to Kirkland according to the plat thereof recorded in Volume XIII of Plats, page 16, in King County, Washington, together with a view easement described in Deed Restriction No. 8907181286, Records of King County, Washington. Also, all of Lots 26, 27, 28 and 29, Block 4 of the aforesaid Harry Wight's commercial addition to Kirkland.

DATED this _____ day of _____, 19____.

(Partnerships Only)

(Corporations Only)

(Individuals Only)

OWNER(S) OF REAL PROPERTY

OWNER(S) OF REAL PROPERTY

OWNER(S) OF REAL PROPERTY
(INCLUDING SPOUSE)

(Name of Partnership or Joint Venture)

(Name of Corporation)

By General Partner

By President

By General Partner

By General Partner

STATE OF WASHINGTON }
County of King } SS.

STATE OF WASHINGTON }
County of King } SS.

STATE OF WASHINGTON }
County of King } SS.

On this _____ day of _____, 19____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____,

_____ and _____ to me, known to be general partners of _____,

_____ the partnership that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of each personally and of said partnership, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument.

On this _____ day of _____, 19____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____ to me, known to be the President and Secretary, respectively, of _____,

_____ the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

On this day personally appeared before me _____ and _____ to me known to be the individual(s) described herein and who executed the within and foregoing instrument, and acknowledged that _____ signed the same as _____ free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the
State of Washington
Residing at: _____
My commission expires: _____

The foregoing Agreement is accepted by the City of Kirkland this
_____ day of _____, 19____.

CITY OF KIRKLAND

BY: _____

The provisions of this agreement may be enforced by civil action commenced by either party for specific performance, civil damages, equitable relief, or declaratory judgment. Provided, however, that in any action commenced to enforce this agreement, the validity or appropriateness of the payment for or installation of the specified public improvements by THE UNDERSIGNED shall not be raised as an issue, since opportunity to raise such issue has been available. The prevailing party in any enforcement action upon this Agreement shall be entitled to reasonable attorneys' fees.

CITY OF KIRKLAND

123 FIFTH AVENUE KIRKLAND, WASHINGTON 98033-6189 (206) 828-1257

RCW 197-11-970 Determination of nonsignificance (DNS).

DETERMINATION OF NONSIGNIFICANCE

Description of proposal Preliminary + final PUD permit for 5 unit condominium with 11 underground parking stalls

Proponent Mr + Mrs James H. Miller

Location of proposal, including street address, if any 249-251 10th Ave S.

Lead agency CITY OF KIRKLAND

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

- X There is no comment period for this DNS.
This DNS is issued under 197-11-340(2); the lead agency will not act on this proposal for 15 days from the date below. Comments must be submitted by

Responsible Official Joseph W. Tovar

Position/Title Director, Department of Planning and Community Development
Phone 828-1257

Address City of Kirkland, 123 Fifth Avenue, Kirkland, WA 98033-6189

Date 4/17/90 Signature

- X You may appeal this determination to Nancy L. Carlson at Kirkland City Hall, 123 Fifth Avenue, Kirkland, no later than (date) 4/24/90 by WRITTEN NOTICE OF APPEAL

You should be prepared to make specific factual objections. Contact Nancy L. Carlson to read or ask about the procedures for SEPA appeals.

Distribute to "Checked" Agencies on Reverse side of this form along with a copy of the Checklist.
Publish in the Daily Journal American, Date:

Mailed to the following along with Environmental Checklist:

— Department of Ecology, Environmental Review Section,
Mail Stop PV-11, Olympia, WA 98504-8711

— Department of Fisheries,
115 General Administration Building, Olympia, WA 98504-8711

— Department of Wildlife,
16018 Mill Creek Boulevard, Mill Creek, WA 98012

— Seattle District, U.S. Army Corps of Engineers,
P. O. Box C-3755, Seattle, WA 98124

— Rose Hill Water District
P. O. Box 539, Kirkland, WA 98033

— NE Lake Washington Water and Sewer District
P. O. Box 489, Kenmore, WA 98028

X Applicant/Agent James + Paula Miller, 10th Ave Properties,
11200 NE 90th Street, Kirkland, WA 98033.

cc: Planning & Community Development File No. 11B-90-44.
Building Department (Permit No. _____)

— Mitigating Measures Incorporated into the Proposal: