

ORDINANCE NO. 3762

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE, APPROVAL OF A PROCESS IIB ZONING PERMIT AND A PRELIMINARY AND FINAL PUD AS APPLIED FOR BY WEST WATER REAL ESTATE SERVICES IN DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. IIB-99-61 AND SETTING FORTH CONDITIONS OF WHICH THE PROCESS IIB PERMIT AND FINAL PUD SHALL BE SUBJECT.

WHEREAS, the Department of Planning and Community Development received an application, pursuant to Process IIB, for a Preliminary and Final Planned Unit Development (PUD) filed by West Water Real Estate Services representing owner Newkirk Properties, LLC as Department of Planning and Community Development File No. IIB-99-61 to construct an office and retail project within a CBD-5 zone; and

WHEREAS, pursuant to the City of Kirkland's Concurrency Management System, KMC Title 25, a concurrency application was submitted to the City of Kirkland, reviewed by the responsible Public Works official, and the concurrency test has been passed; and

WHEREAS, pursuant to the State Environmental Policy Act, RCW 43.21C, and the Administrative Guidelines and the City's 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 mitigated Determination of Non-Significance (MDNS) was issued for this action; and

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

WHEREAS, an appeal to the SEPA MDNS was filed by Jeff Eustis on behalf of Davidson, Serles Associates on July 25, 2000; and

WHEREAS, the project application and SEPA appeal were submitted to the Kirkland Hearing Examiner who held a hearing on September 6, 2000, which was continued to September 7, 2000. Closing legal arguments were submitted in writing on September 19, 2000; and

WHEREAS, the Kirkland Hearing Examiner after a public hearing and consideration of the entire record and the argument of the parties adopted certain Findings, Conclusions and Recommendations and recommended approval of the Process IIB Permit and PUD subject to the specific conditions set forth in said recommendations and denied the SEPA appeal; and

WHEREAS, a challenge to the Hearing Examiner's Findings, Conclusions and Recommendation on the Process IIB and PUD was filed by Jeff Eustis on behalf of Davidson, Serles Associates was filed on October 26, 2000; and

WHEREAS, the City Council, in a regular meeting, considered the entire record on the matter, the recommendation and decision of the Hearing Examiner, the timely filed challenge of the Hearing Examiner's recommendations the response to the challenge there to and the argument of the parties; and

WHEREAS, the Kirkland Zoning Ordinance Section 125.75 requires approval of this application for PUD and Section 152.90 for the process IIB permit 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 dated October 9, 2000 ("Findings and Recommendation") which are attached hereto as Exhibit I, and incorporated by reference as if set forth in full, are hereby adopted by the City Council.

Section 2. Based upon the record and the Findings and Recommendations adopted in Section 1 of this Ordinance, the City Council finds that the applicant has met all of the criteria required for the approval of the Process IIB Permit and Final PUD. The City Council hereby grants the Process IIB Permit and the Final PUD Permit, subject to the conditions set forth in the Findings and Recommendations attached in Exhibit 1, and the SEPA and MDNS conditions incorporated therein.

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 and PUD are 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 1.09.010.

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

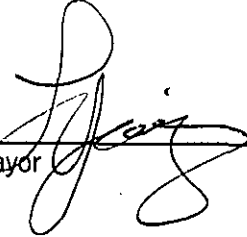
Section 7. A certified copy of this ordinance, together with the Findings and Recommendations herein adopted shall be attached to and become a part of the Process IIB Permit or evidence thereof delivered to the permittee.

Section 8. 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.

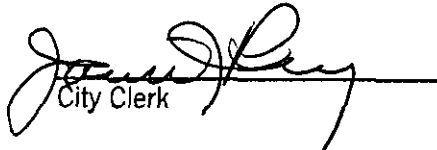
PASSED by majority vote of the Kirkland City Council in regular, open meeting this 7th day of November, 2000.

SIGNED IN AUTHENTICATION THEREOF on this 7th day of November, 2000.



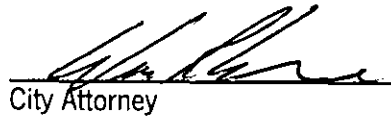
Mayor

Attest:



City Clerk

Approved as to Form:



City Attorney

Exhibit 1

EXHIBITS & ATTACHMENTS ARE LOCATED IN FILE
IIB-99-61 IN THE KIRKLAND PLANNING
DEPARTMENT. FOR COPIES OR QUESTIONS,
CONTACT JANICE SOLOFF AT (425) 828-1274.

CITY OF KIRKLAND HEARING EXAMINER FINDINGS, CONCLUSIONS, AND RECOMMENDATION

APPLICANT: West Water Real Estate Services for Newkirk Property LLC

FILE NO: IIB-99-61

LOCATION: 424 Kirkland Way

APPLICATION: The applicant requests approval of a Process IIB zoning permit to construct a 5 story 137,120 square feet of gross floor area project with office (117,815 SF) above ground floor retail (19,305 SF) and 392 parking stalls. The proposal includes a request for a Planned Unit Development (PUD) to modify Zoning Code Section 50.30.g, Special Regulation #3, to allow a portion of the 4th and 5th floors (4,090 S.F. of gross floor area) to exceed the 3 story height limit within 100' from Peter Kirk Park (See Exhibit B, Attachment 1 for project description).

REVIEW PROCESS:

Process IIB Zoning Permit: Hearing Examiner conducts public hearing on the proposed project and makes a recommendation to City Council for final decision. Section 125.10 establishes that the preliminary and final PUD may be reviewed concurrently. The preliminary and final PUD process review for this proposal were combined. The application is vested under the CBD-5 regulations in effect under O-3609 (Section 50.30.d./g./h.; now known as 50.37, See Exhibit A, Attachment 3).

CBD-5 Section 50.30.d./g./h. establishes that for structures exceeding 2 stories, a Process IIB zoning permit is required. The applicant must demonstrate compliance with the Design Regulations of Section 50.65 and policies of the Downtown Plan Chapter of the Comprehensive Plan. Staff's analysis of compliance with Design Regulations is found in Exhibit B.

SUMMARY OF KEY ISSUES:

Key issues for the proposal are compliance with the following decisional criteria:

- Downtown Plan Chapter of the Comprehensive Plan. Does the project comply with specific policies for new development outlined in the Downtown Plan? The City Council will ultimately decide the discretionary aspects of the proposal such as has the proposal adequately met the building massing and terracing policies and does

the proposal preserve the sense of openness within and the perimeter of District 5 (See Exhibit A, pages 13 and 14)?

- PUD criteria of Chapter 125. Do the public benefits proposed outweigh any adverse impacts caused by the modification request and does the proposal meet the approval criteria?
- Design Regulations of Section 50.65. Does the project comply with these regulations?

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 concurrent public hearing on the IIB application and on a SEPA appeal by Davidson, Serles, and Associates. The hearing on the West Water application and Davidson, Serles, and Associates appeal was opened at 7:05 p.m., September 6, 2000, in the Council Chamber, City Hall, 123 Fifth Avenue, Kirkland, Washington, and at 9:45 p.m. was continued to 7:30 p.m. on September 7, 2000. The hearing was reopened at 7:30 p.m. on September 7, 2000 and was closed for oral testimony at 12:11 a.m. on September 8, 2000. The hearing was held open administratively through close of business on September 19, 2000 to allow closing arguments to be prepared and submitted. At the hearing, the applicant's attorney acknowledged that due to the volume of materials submitted and due to the complexity of the case the Hearing Examiner may take more than the prescribed eight calendar days in which to render a decision. 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.

PUBLIC TESTIMONY/LEGAL ARGUMENT:

Testimony and legal arguments offered at the hearing are accurately summarized in the minutes of the hearing. The following persons testified or offered legal arguments at the hearing:

From the City:

Janice Soloff, Project Planner

Eric Shields, Director of Planning and Community Development

Dawn Findlay, Attorney

Tan Nguyen, Transportation Engineer

From the Applicant:

Brian Brand, Architect
Katherine Casseday, Transportation Engineer
Tayloe Washburn, Attorney
Keith Maehlum, West Water Real Estate

From the SEPA Appellants:

Jeff Eustis, Attorney
Rick Grimes, Architect
Robert Bernstein, Transportation Engineer
Ken Davidson, Appellant

From the Community:

Dwight Altenburg	Mark Shinstrom
Robert Cornish	Robin Vogle
D. K. Hong	Mildred Johnson
Harriette Dorkin	Derrick Arnold

FINDINGS, CONCLUSIONS, AND RECOMMENDATION:

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

I. FINDINGS OF FACT AND CONCLUSIONS

Facts:

A. SITE DESCRIPTION

1. Site Development: The 73,911-sq. ft. site currently contains a 22,000-sq. ft. retail hardware store with surface parking for 65 cars. Access to the site is provided via a driveway from the vehicular access easement located on the west property line and one driveway along Kirkland Way (see Exhibit B, Attachment 2, Plan Sheet A5).
2. Terrain and Vegetation: No significant trees are located on the subject property. A row of significant trees is located along the west property line on the adjacent City owned property. The site is partially level with a gentle slope up from the west to east property line.
3. Site Zoning: CBD-5. The proposal is vested under Ordinance 3609, Zoning Code Section 50.30.d./g./h. in effect when the application became complete (See Exhibit A, Attachment 3). Special Regulation #12 requires that structures exceeding two stories be reviewed through a Process IIB zoning permit and states that the City will use Process IIB to determine compliance with Design Regulations. The proposal is vested under the Design Regulations in effect prior to creation of the Design Review Board. Staff's analysis and

recommendations on compliance with Design Regulations are included in Exhibit B along with the project plans.

4. Surrounding Land Use and Zoning:

North: Park Place Shopping Center in CBD-5. Buildings range from 1-5 stories in height.

South: Kirkland Way and 2 story office uses in PR 3.6.

East: The 4 story Emerald Office Building in CBD-5.

West: Peter Kirk Park containing the Kirkland Performance Center (three stories), Senior Center and future Teen Center (one story), in P zone.

Conclusions: The existing site development and adjacent zoning are not constraining factors in this application. To protect the existing significant trees located along the west property line, tree protective fencing should be installed around trees during construction. Replacement landscaping should be installed prior to certificate of occupancy if it is determined that one or more trees need to be removed.

B. HISTORY

1. Facts:

- a. The original application and environmental checklist were submitted on April 5, 1999 and became complete on June 30, 1999. The application is vested under Zoning Code amendments of Ordinance 3609, for Section 50.30.d. /g. /h. and Comprehensive Plan Amendments of Ordinance 3608, adopted on January 23, 1998. These amendments were adopted with respect to the Downtown height moratorium.
- b. City Council adopted changes to the regulations on July 1, 1999 (Ordinance 3683A). The most substantial changes were elimination of the Process IIB review and establishment of a Design Review Board process, reduced front yard setback if retail or restaurant use at ground floor along Kirkland Way, and within the 20' front yard setback the maximum height was reduced from 3 stories to 2 stories.
- c. The most recent plans were submitted on June 9, 2000 (see Exhibit B, Attachment 2). To clarify several of the comments received during the notice of application stage of the process, the application has changed from the original submittal in the following ways:
 - 1) the applicant is no longer requesting a reduction in the number of parking stalls provided;
 - 2) two access driveways are proposed not one;
 - 3) no round-a-bout within the Kirkland Way at the entrance is proposed;
 - 4) in addition to the 4th floor, a portion of the 5th floor is being requested to extend into the 100 feet setback from Peter Kirk Park; and

- 5) pursuant to Sections 115.60 and 50.62.4, the applicant seeks administrative approval for a 12' tall mechanical unit to be located on the roof, exceeding the maximum height limit and to exceed the 4 ft. limit for rooftop appurtenances.
- d. A SEPA appeal was filed on July 25, 2000 by Davidson, Serles and Associates appealing the City's issuance of the DNS. See Section I.E of this report for more discussion.
2. Conclusion: The application must comply with the Zoning Code regulations in effect at the time the application was determined to be complete and the Downtown Plan Chapter of the Comprehensive Plan. The SEPA appeal hearing will be combined with the public hearing for the project.

C. PUBLIC COMMENT AND CORRESPONDENCE

Facts: Approximately 90 people submitted written comments on the project as of the completion of the hearing. The majority of the letters were received during the notice of application period. A petition letter signed by 42 people (of which 24 are not Kirkland residents) oppose the project's size as out of scale with the Kirkland Performance Center and other buildings along Kirkland Way, express concerns regarding potential parking problems, potential "gridlock" in Park Place and the reduction of on street parking on Kirkland Way (See Exhibit D, which includes over 80 letters, and Exhibits H, I, J, N, O, T, and AA for public comment letters). Davidson, Serles and Associates representing the adjoining property to the east submitted several letters and materials including Attachments to Exhibit C, and Exhibits P, Q, R, S, U, V, W X, and RR. Letters, materials and legal briefs from the applicants and their attorney, Tayloe Washburn, were submitted to responded concerns raised. They include Attachments to Exhibits A, B and C, and Exhibits E, F, G, K, L, M, Y, Z, BB, CC, DD, EE, HH, NN and SS.

Following is a summarized list of the public comments with a brief response where necessary shown in *Italics*.

Summary of Public Comment Issues:

Loss of Hardware Store-Several people expressed support for keeping the hardware store in the downtown (*while the City's economic development policies support business retention, other policies support this area as an important employment center. Relocating the Hardware Store is a decision that the business owner and property owner ultimately makes*).

West Water Real Estate Company Practices- Concerns were expressed from residents' past experience with other West Water developments such as overbuilding on their other sites, not addressing repeated requests to turn off fluorescent office lights during weekend and nights, and not providing adequate landscaping or maintaining the landscaping provided in some of their projects.

Impacts to and loss of Views-

- Concerns were expressed from owners of nearby properties that views of Lake Washington will be lost. (*The Comprehensive Plan discusses views of Lake*

Washington looking west down the Kirkland Way street right of way corridor; not across the subject property. There are no adopted City regulations that protect private views).

- The City needs to be more cognizant of the mature size of trees it allows to be planted as "street" or perimeter trees as they can block views (*This is a City policy issue and not directly related to the subject project*).

PUD Issues

- Several people felt the maximum building height should be only 3 stories (*The Comprehensive Plan and Zoning Code indicate that buildings of up to 5 stories in height can be allowed on the property, subject to City review and approval*).
- Several letters opposed the request for variance from code provisions for an additional story in combination with parking reduction because less parking will be available to residents and businesses in the area. (*The applicant is not requesting an exception from the Code for an additional story for the entire building, but rather than only for a portion of the building within the 100' from the west property line. That request was submitted in response to a recommendation of the City's Design Review Board. The Zoning Code allows up to 5 stories elsewhere on site. The applicant has also agreed to meet the parking requirements and is no longer seeking a reduction from the parking standards*).
- There is no justification for a variance to allow encroachment into the setback area. The so called "benefits" so much verbiage without substance (*See discussion in Section I.J of this report*).

Design of Project-

- Several people felt the architectural mass and bulk is out of scale with nearby properties along Kirkland Way and the Performance Center (*See analysis of compliance with the Zoning Code and Downtown Plan policies in Sections I.F and I.I of this report*).
- Some people felt the design of east façade of building does not comply with City regulations (*The applicant has revised the façade design per design regulations*).

Parking-

- Several letters were opposed to the request for a reduction in the required number of parking stalls. Many noted that parking is already a problem in Park Place and in the surrounding area (*A reduction from the parking requirements is no longer proposed by applicant. Parking for the project will comply with city standards*).
- Some people felt that reduced parking along Kirkland Way will cause overflow parking onto adjacent properties and would create parking congestion. (*Elimination of parking along street is a public safety issue. See traffic report and staff memo contained in environmental information Exhibit C*).

Traffic Issues - (*Note: traffic impact issues have been addressed through the SEPA review process*).

- Several letters opposed the project because of traffic impacts in surrounding area (*See traffic impact analysis and mitigation measures contained in the environmental review information*).
- Concerns were expressed with queuing of vehicles along Main Street onto Kirkland Way. The proposal to limit the speed of vehicles going through the project by use of diagonal parking will limit the natural flow of incoming and outgoing auto traffic, and will impact the general circulation in and out of Park Place (*This concern was expressed prior to addition of second access drive for the project by the applicant*).
- Support has been expressed for realignment of the intersection of Kirkland Avenue and Kirkland Way to the west and installing speed bumps on Kirkland Avenue between Kirkland Way and 6th Street to discourage bypassing the 6th Street intersection (*The realignment of the intersection will be incorporated into the project as a SEPA mitigation measure*).

Design Review Board Comments-

- The application is vested under old regulations in place prior to creation of the Design Review Board. (*However, the DRB did do a cursory review of the project and forwarded favorable comments on the proposed building design. See Exhibit D*).

Shulman Company L.L.C (owners of Park Place)- They expressed concern that the project would be built over two access easements that serve Park Place (*The Comprehensive Plan supports a vehicular/pedestrian connection to Central Way through site and integration of properties within District 5 and this report recommends a condition, that requires the applicant to keep access open between properties*).

Davidson Serles and Associates (owners of the Emerald Building) expressed several concerns and argued that the proposal violates the zoning criteria, is inconsistent with the Comprehensive Plan, exceeds the maximum building height allowed, does not preserve a sense of openness, does not provide adequate through access and fails to comply with the PUD criteria. Specific arguments and concerns can be found in attachments to Exhibit C and in Exhibits W and RR. They include the following:

- The project does not comply with City codes and approval criteria (*See Hearing Examiner report on SEPA appeal and sections I.F through I. J of this report*).
- The sense of openness policy has not been complied with. The bulk of building blocks all existing views of Park and territorial views along Kirkland Way. The project should be reduced in height to 3 stories to provide a better transition to Park (*See Hearing Examiner report on SEPA appeal and sections I.F through I.J of this report*).

- Building turns its back on the Park. Minimal pedestrian links have been provided between the Park and Performing Arts Center. Proposal does not comply with vertical definition along the south façade of the eastern wing of the building. *(City staff concluded and the Examiner concurs that the project is in compliance with Design Regulations (see Exhibit B)).*
- Site lighting should be analyzed *(Site lighting will be analyzed by staff as part of the review process).*
- Special regulation #8 requiring integration of entire zone is not met *(See Hearing Examiner report on SEPA appeal and sections F through J of this report).*
- FAR is double of other uses on Kirkland Way and should be reduced to 1 to 1 *(See Exhibit A, Attachment 5 and Hearing Examiner Report on SEPA appeal).*
- Parking and traffic problems. – queuing out onto Kirkland Way *(See Hearing Examiner Report on SEPA appeal).*
- The building is not superior in design and does not meet that PUD criterion *(The building has been reviewed for compliance with the design regulations by staff and the DRB - see Exhibit B. Staff has concluded, and the Examiner concurs, that if approved as conditioned below, the proposal will comply with Section 50.65 of the Zoning Code Design Regulations).*
- The proposal is not providing any benefit to the City as part of the PUD. The City already has a prescriptive access easement across the property *(The City does not have clear public access easement rights across the subject property and the applicant is willing to convey those rights to the City as part of this process (See Exhibits JJ, KK and LL)).*
- Exclusion of Main Street in lot coverage calculations should not be allowed *(A large portion of "Main Street" will serve as pedestrian walkways and Zoning Code Section 10518.2.a.4) excludes required pedestrian walkways from impervious surface calculations)*
- Venting of parking garage and proximity to other properties and senior center, park and childcare center has not been adequately addressed. *(The Building Code has specific ventilation requirements to protect adjoining properties against impacts from fumes)*
- HVAC units of 12 feet in height will create an additional story above the height limit *(See Section I.A.2 of this report regarding screening of mechanical units above height limit)*
- Applicant should not be able to allow paid parking *(The City does not regulate whether or not property owners charge for parking)*

- Architectural drawings submitted by the applicant incorrectly show the location of the Emerald Building approximately 25' to the north (*The applicant has since confirmed location and accurately represents the location in revised plans*)

Continental Plaza Owners and Managers expressed several concerns, including the following:

- Parking reduction should not be permitted- Existing insufficient parking at Park Place causes overflow parking from employees and customers of Park Place attempting to park in their building (*The applicant has withdrawn the request for a reduction in parking*).
- Reduction of parking stalls along Kirkland Way should not be allowed (*Elimination of parking along street is a public safety issue. See traffic report and staff memo contained in environmental information Exhibit C*)
- Traffic volumes will increase dramatically on Kirkland Avenue and Kirkland Way (*See traffic impact analysis and mitigation measures contained in environmental information*).
- A traffic signal at 6th Street and at entrance to development should be provided. (*Project will be required to install a traffic signal at 6th Street and Kirkland Way*)
- The project being proposed is out-of-scale with everything else in CBD-5 and the neighborhood, and should be limited to a maximum of 3 stories (*See Hearing Examiner report on SEPA appeal and sections I.F through I.J of this report*).

The Original Pancake House

- The owner of the Original Pancake House had a number of questions of staff.
2. Conclusion: The Hearing Examiner considered this correspondence as well as other testimony received during the public hearing in during the preparation of this report.

D. CONCURRENCY

1. Facts: The Public Works Department has reviewed the application for concurrency. A concurrency test was passed for water, sewer and traffic on April 5, 1999.

E. STATE ENVIRONMENTAL POLICY ACT (SEPA)

1. Facts:

- a. A mitigated Determination of Non-significance was issued on July 11, 2000 (see Exhibit A, Attachment 2).
- b. A timely filed appeal of the City's MDNS was submitted by Davidson, Serles & Associates on July 25, 2000. The Environmental Checklist, Determination, additional supporting environmental information and SEPA appeal have been addressed in a separate report by the Hearing Examiner.

2. Conclusion: The Hearing Examiner has denied the appeal in a separate report.

F. ZONING CODE REGULATIONS

Facts:

1. Use Zone Chart

- a. CBD-5 Use Zone Chart- The fundamental site development standards pertaining to office and retail uses in the CBD-5 zone, at the time of complete application (June 30, 1999), are contained in Ordinance 3609, Section 50.30. d. for a retail use and g. and h. for an office use. *Note: for purposes of this report the primary use is office and therefore, the Special Regulations from the office Use Zone Chart in Section 50.30.g.and h. will be used (see Exhibit A, Attachment 3).*
- b. Maximum Building Height -The maximum building height in the CBD-5 zone is 3-5 stories above average building elevation. Special regulation #4 sets forth the maximum allowed height as 5 stories for portions of a structure set back 50' from Kirkland Way. Structures exceeding two stories require a Process IIB zoning permit review and must meet the following special regulation requirements:
 - Special Regulation #3 requires a 3-story height limit within 100' from Peter Kirk Park. On the 4th floor, the applicant proposes to extend a 44' 9" wide portion of the building (3,500-sq. ft.) into the 100' setback area (see Exhibit B, Attachment 2, Plan Sheet A12). Part of this extension will enclose a mechanical unit. On the 5th floor, a 590-sq. ft. area will extend 10' into the setback area primarily to line up with the stairwell to provide a superior façade design.
 - Special Regulation #4 sets forth-specific building setbacks with maximum height requirements along Kirkland Way resulting in a terraced building for the proposal. Buildings within 20 feet of Kirkland Way are limited to 3 stories; within 40 feet, limited to 4 stories; within 50 ft, limited to 5 stories. The code is very specific that the maximum height allowed is 5 stories outside both the 100-ft. setback zone from Peter Kirk Park (the west property line) and the 50' setback from Kirkland Way.
 - Special Regulation #8 requires that the entire zone to be physically integrated in site with building design and pedestrian linkages, which the proposal provides. The new 8' wide sidewalk along Kirkland Way with street trees, tree grates and decorative street lighting as well as the pedestrian amenities and landscaping along "Main Street" will connect to the existing pathways off site to the north to the east/west pedestrian corridor.
 - Special Regulation #12 establishes that "*buildings must show compliance with the design regulations of Section 50.65. and the provisions of the Downtown Plan Chapter of the Comprehensive Plan using a Process IIB review*" (See Exhibit B for staff's analysis of compliance with design regulations and Section I.I of this report for Comprehensive Plan compliance)
 - Pursuant to the definition of story in Sections 5.10.890 and 50.62.4. stories are defined as 10-13 feet per story for office and 15 feet maximum for ground floor

retail uses. The proposal is for a ground floor to floor height of 15' with 4 stories of office above with 13' high ceilings. With an average building elevation of 57.8', the maximum allowed height for a 5-story building with retail on the ground floor is at elevation 124.8'.

- The proposed building height is 123.50'. Retail uses on the ground floor are not mandatory for the site because it is not located on a pedestrian oriented street. The applicant may choose to have a mix of office and retail tenants on the ground floor depending on the market demands. Retail uses are encouraged to locate on the ground floor of the project.
 - To meet the height limitations of Section 50.62.4 if a mix of office and retail uses will be on the ground floor, the ground floor façades should be designed with retail characteristic. Such design elements should include providing large display windows, direct entrances onto pedestrian walkways, awnings for weather protection, blade signage, landscaping in decorative pots and wider sidewalks. Most of these design elements are proposed but the building permit application should indicate the height of the ground floor, planned uses and if retail the above described retail design elements.
 - Required Parking Stalls: Section 50.30.d. /g. /h. establishes that for an office or retail use, one parking stall for each 350 sq. ft. of gross floor area is required. No reduction in the amount of required parking stalls is proposed. The proposal is for 137,120-sq. ft. gross floor area requiring a minimum of 392 parking stalls. 392 parking stalls are provided. To avoid potential queuing problems from people backing out of the parking stalls, the number of parking stalls located near the center access drive (Main Street) will need to be reduced (see Exhibit A, Attachment 8, Public Works Condition).
- c. Lot Coverage: Maximum lot coverage allowed is 80%. The proposal indicates lot coverage of 77%. Sections 105.18.2.a.4) and 115.90 of the Zoning Code exempt required pedestrian walkways from lot coverage calculations.

Conclusions: The proposal complies with the requirements set forth in the CBD-5 Use Zone Chart except for Special Regulation #3 which is addressed by the PUD request. The proposal complies with the maximum height, setbacks, lot coverage and parking requirements. As part of the building permit application, the applicant should indicate the height for the ground floor and use. If the ground floor - floor to floor height will be 15' the ground floor façade plans should indicate that the above retail design elements will be provided. To avoid queuing problems from the cars located along the center access driveway backing out onto Kirkland Way, as part of the building permit application, the number of parking stalls should be reduced near the main entrance (See Exhibit A, Attachment 8, Public Works condition). The applicant should provide the required parking stalls at a ratio of one stall per 350 sq. ft. of gross floor area pursuant to the requirements of Section 50.30.d. /g. /h.

2. Exceptions to Building Height for Rooftop Appurtenances

- a. Section 115.60 establishes:

"1.) Rooftop appurtenances for all structures other than detached dwelling units may exceed the applicable height limitation by a maximum of four feet if the area of all appurtenances and screening does not exceed 10% of the total area of the building footprint. These structures must be located in such a way as to minimize view blockage.

Appurtenances that do not meet the standards of subsection (1) of this section may be permitted if the Planning Official determines that, based on accurate graphic representations provided by the applicant, views from adjacent properties will not be significantly blocked. Any appurtenance other than chimneys and antennas must be screened from all streets and nearby properties. See KZC 115.120 for standards pertaining to rooftop screening".

- b. Section 50.62 establishes *"decorative parapets may exceed the height limit by a maximum of 4 feet; provided, that the average height of the parapet around the perimeter of the structure shall not exceed 2 feet. For structures with a peaked roof, the peak may extend 8' above the height limit if the slope of the roof is equal or greater than four feet vertical to 12' horizontal"*
- c. The applicant proposes two sets of mechanical units, one located on the 4th floor within the PUD modification area. A second set of mechanical units on the 5th floor roof will be approximately 20' wide x 80' in length and oriented in a narrow east to west axis to minimize any view obstruction from the adjacent properties to the east. The applicant has indicated that the units are the minimum height and size necessary for a building of this size (See Exhibit A, Attachment 7). Exhibits E and F provide photos of views from the property to the east with the greatest potential impact of these units.

In Exhibit A, Attachment 7, the applicant proposes an alternative to the mechanical screen proposed, by adding an 8' tall sloped roof with a 4' tall mechanical screen for a total of 12' tall parapet surrounding the entire roof that would be more visually intrusive given the size of the mechanical units.

- d. The Comprehensive Plan does not contain policy provisions protecting private views through or over the subject property from adjacent properties. The most superior view from adjacent properties is of Lake Washington. The properties with the potential for greatest view impact of Lake Washington and beyond as a result of the mechanical units are the Emerald Building located directly east of the subject property and the condominiums at 555 Kirkland Way to the south east of the subject property.

Conclusion: Based on both of these photos as well as site visits to the Emerald Building and surrounding properties, it is apparent that some view blockage of Lake Washington and shoreline will occur as a result of the building itself. Although the mechanical units will be visible, the additional height of the units will not result in any additional blockage of views of the Lake, skyline or territorial views. The Examiner acknowledges that the decision regarding the rooftop units is one that is made by the Planning Director, however, after review of the record, the Examiner recommends the units should be located in a more east/west orientation to minimize view blockage from the adjacent and nearby properties to the east and south east.

3. Bonds and Securities

- a. Facts: Zoning Code section 175.10.2 establishes the circumstances under which the City may consider the use of a performance security in lieu of completion of certain site work prior to occupancy. The City may consider a performance security 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. Conclusions: 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 Zoning Code section 175.10.2.

G. DESIGN REGULATIONS OF SECTION 50.65

1. Fact: As noted in Section I.H of this report, the City will use Process IIB to determine compliance with Zoning Code Design Regulations of Section 50.65. A staff analysis of the compliance with Design Regulations is found in Exhibit B.
2. Conclusion: With the recommended conditions of approval, the Examiner concurs with staff that the proposal complies with the Design Regulations contained in Section 50.65.

H. ZONING PERMIT APPROVAL CRITERIA

1. Facts: Zoning Code section 152.70.3 states that a Process IIB application may be approved if:
 - a. *It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and*

See Sections I.F through I.H and I.J for discussion regarding compliance with Zoning Code regulations, and Section I.I for discussion regarding consistency with the Comprehensive Plan.

- b. *It is consistent with the public health, safety, and welfare.*

Established development regulations, the recommended conditions of approval and SEPA mitigation measures address the public health, safety and welfare issues.

2. Conclusion: The proposal complies with the criteria for approval of a Process IIB application. The proposal is consistent with all applicable development regulations except for the area under consideration through the PUD request (See Section I.J). It is consistent with the public health, safety, and welfare by approving the proposal the public will benefit from a superior designed project, new pedestrian amenities and increased employment opportunities from the new office and retail services in the Downtown that

do not currently exist. The proposal is consistent with the land use and desired development pattern for the Design District-5 as described in the Comprehensive Plan.

I. COMPREHENSIVE PLAN

1. Facts:

- a. **East Core Frame Land Use District-** The subject property is located within the East Core Frame within the Downtown area of the Central Neighborhood (See Exhibit A, Attachment 4, Figure C-3 on page XV.D-5). Office and retail uses are appropriate in this district.
- b. **Circulation and gateways for Design District 5-** Figure C-6 of Exhibit A, Attachment 4, specifies that the appropriate location for a major north/south vehicular access and pedestrian pathway is through the middle of the site eventually connecting Kirkland Way with Central Way through Park Place shopping center. Consistent with Figure C-6, the proposal includes the north /south vehicular and enhanced pedestrian "Main Street" through the middle of the site.
- c. **Design District 5 Development Policies-** Figure C-5 of Exhibit A, Attachment 4, indicates that 3-5 stories in height is appropriate with 3 stories facing Kirkland Way and discretionary approval for heights exceeding 2 stories. Design District 5 text on page XV.D-13 of the Downtown Plan sets forth specific policy guidance for new development in the areas of land use, urban design and circulation.

The following is a description of Design District 5 development policies and a staff analysis of compliance. Staff has identified which policies are more discretionary and which policies are codified in the Zoning Code.

1. **Public Review:** *Buildings over 2 stories should be reviewed through a City Council process for consistency with applicable policies and criteria.*

Analysis: Zoning Code Section 50.30.g. Special Regulation #12 requires buildings over two stories to be reviewed through a Process IIB. As part of their review of the proposal, the Hearing Examiner and City Council will need to evaluate the proposal for consistency with the policies contained in the Downtown Plan and Design Principles of the Comprehensive Plan, development standards contained in the Zoning Code for CBD-5, Design Regulations (see Exhibit B) and approval criteria for a PUD and Process IIB zoning permit.

Conclusion: City Council will ultimately determine if the proposal is consistent with these Comprehensive Plan Downtown Policies and decisional criteria.

2. **Building and District Massing and Terracing:** *Massing should be lower toward the perimeter of the district and step up toward the center. Facing Kirkland Way facades should be 2-3 stories, with taller portions of the building stepped back significantly. Buildings over 3 stories in height should reduce the building mass above the 3rd story.*

Transition to Park: *Buildings fronting Peter Kirk Park and the Kirkland Performance Center should be well modulated, vertically and horizontally to ease transition to the park.*

Analysis:

Massing and Terracing:

The site is located on the perimeter of Design District 5. These policies emphasize that buildings along Kirkland Way and Peter Kirk Park should be terraced to ease transition to Peter Kirk Park, with the taller portions of buildings toward the center of the district and reduced massing on upper stories. These terracing and massing policies are codified in Zoning Code Sections Special Regulations #3 (limiting the height to 3 stories within 100' from Peter Kirk Park) and in Special Regulation #4 (the number of stories along Kirkland Way). These special regulations are very specific that 5 stories are allowed beyond 50'. As discussed in the previous Zoning Code compliance section, the proposal meets the Zoning Code setback to height requirements along Kirkland Way.

The proposed building is terraced along the south, west and north facades and building mass is reduced at the upper stories. To meet this massing policy, the amount of floor area proposed at the upper levels is reduced beyond what the zoning code allows if built out to the maximum building envelope. To illustrate this point, the applicant provided Exhibit A, Attachment 11, and Exhibits L and M. The shaded areas of Exhibit A, Attachment 11 show the maximum development floor area at each level of the site that could be utilized if the project were built out to the setbacks allowed per the Zoning Code.

Transition to Peter Kirk Park:

The west façade complies with the vertical and horizontal modulations of the Design Regulations and terracing policies of Design District as described in Exhibit B, Design Regulation Compliance. To provide a gradual transition to the park, the building provides bay windows, more frequent modulations, recesses with balconies and a greater setback from the west property line than the minimum 10' setback allowed because of the proposed access driveway.

Conclusion: The Hearing Examiner concludes that the project massing is reduced on all sides greater than dictated by the zoning code with an emphasis on the south and west facades. Building mass and terracing are at least partially addressed in the Zoning Code by Special Regulation 4, which clearly contemplates allowance of a 5 story building within 50' of Kirkland Way. It is unclear whether the massing and terracing policies of the Comprehensive Plan would dictate additional restrictions beyond those established by the Zoning Code. If so, the Hearing Examiner and City Council should carefully consider that any additional restrictions placed on the proposal that may be desired, should be reasonable and justifiable deviations from the specific zoning requirements. The proposed PUD modification to extend portions of the 4th and 5th floors into the 100' setback area meet the massing and terracing policies resulting in a gradual transition from the

lower 3 story Kirkland Performance Center building to the 5 story portion of the building. The proposal is consistent with the height requirements codified in Section 50.30.d. /g. /h. and the above massing and terracing policies.

3. ***Preserve the Sense of Openness Within District: The existing mix of building heights and arrangement of structures within the district preserves a sense of openness with the district and around the perimeter. New structures should preserve this sense of openness.***

Analysis: The degree that the proposal provides the desired sense of openness within and around the District is discretionary and could be evaluated in different ways, i.e.: by assessing the distance between existing structures within the district, the amount of FAR or lot coverage of other existing buildings in the CBD, or the degree of openness provided between buildings at property lines.

- a. Distance between existing structures:- Buildings within the western 1/3 of the CBD-5, primarily in Park Place and the Kirkland Performance Center are closer together than the remaining eastern 2/3 of the District. Distance between buildings in Park Place and Kirkland Performance Center range from 50' to 60', and 40' between the proposed building and the Emerald Building on the east. Buildings in the eastern 2/3 of the district have larger separations of approximately 100' apart. The 2 story opening in the proposed building through the middle of the site along the Main Street, would allow some view into the interior of the District, to Park Place from Kirkland Way.
- b. Proposal exceeds codified required building setback yards- Zoning Code Section 50.30.d. /g. /h., establishes a minimum of a 10' required yard setback from Peter Kirk Park (proposal shows 20') and elsewhere in the CBD-5 zone, 0' side and 0' rear building setbacks are allowed. The proposed building exceeds the minimum building setbacks on the west, north and east property lines. The setbacks proposed provide a greater amount of openness between buildings along the property lines than is required by code. The project also does not propose building a 2-story retail building within the front yard setback that would be allowed under current code regulations.
- c. Proposed building mass is reduced at upper stories- The building mass, as now proposed, would be reduced as the building increases in height. The proposal for reduction in building mass goes beyond what code requires (See Exhibit A, Attachment 11). The Zoning Code required height to building setbacks along Kirkland Way and Peter Kirk Park result in a consolidation of building areas toward the center of the site and creates a sense of openness at upper stories into the district. Above the 3rd floor the amount of building mass is oriented in an east to west direction, reducing the amount of building floor area and view obstruction from the properties located to the east. The building mass is also reduced in the middle of the site on the north and south portions of the building and at building corners (See Exhibits L and M).
- d. Comparative floor area ratio (FAR)- The proposed FAR is 1.85. The applicant has indicated that the proposal is 56% of the maximum FAR allowed for the site. Based on comparable research by the Planning Department, other recent buildings in the CBD have a FAR ranging from the

.87 FAR of the Emerald Building, to Portsmouth FAR of 2.85. The lower FAR's are typically the result of large surface parking lots on properties that have not been redeveloped (see Exhibit A, Attachment 5).

- e. Maximum Lot Coverage- Zoning Code Section 50.30.d. /g. /h. establishes a maximum lot coverage of 80%. The proposed plan shows maximum lot coverage of 77%.

Conclusion: It is difficult to comply with competing Plan policies, which in this case envision a "large, intensively developed mix use project" for the area in which the site is located and also envisions that a sense of openness be preserved. Given those competing policies, the Examiner believes the proposal does a reasonable job of complying with the policy that new development should retain the sense of openness within and through the District. For example:

- Building setbacks exceed code requirements;
- The distance between proposed structures is consistent with existing buildings near the site;
- Building mass is reduced at upper stories and at building corners beyond what is required by code; and
- Views into and beyond the site from Kirkland Way, the stepping back of the structure along Kirkland Way, and the orientation of the building mass on an east/west axis help to provide a sense of openness in the District.

4. *Treatment of Building Facades along Peter Kirk Park: Buildings should not turn their backs onto the park with service access, blank walls etc.*

Analysis:

- a. Existing conditions are such that the area along the west property line adjacent to the Park zone already functions as a service area for accessory parking and loading for the Kirkland Performance Center, Senior Center and secondary vehicular access to Park Place. Consistent with the existing driveway conditions, access to the proposals underground parking area will be at the northwest corner of the building, and a delivery zone will be provided at the north end of "Main Street" (See Exhibit DD).
- b. There are no blank walls planned on the west facade. The west and lower north building façades are treated with trellises and landscaping, bay windows and recesses to provide human and architectural scale toward the park.

Conclusion: The proposed building complies with this policy because the building is not directly adjacent to the open areas of the Park. The west property line already functions as a service area for the KPC, Senior Center and south access to Park Place. Pursuant to Design Regulation requirements, design techniques of bay windows, building recesses, landscaping at garage façade bases will be used to improve the architectural and human scale of the building visible from the Park and Kirkland Performance Center.

5. ***Enhanced Pedestrian Pathways and Pedestrian Linkages Within the District- Landscaping and pedestrian linkages should be used to create and effective transition between the Park and buildings within the district.***

Analysis: Page XV.D-19 of the Plan promotes enhanced pedestrian pathways between activity centers in the Downtown and that new development should connect with pedestrian routes east/west through Peter Kirk Park. This policy is codified in Special Regulation #8 (See discussion of the Zoning Code in Section I.F of this report).

Conclusion: The proposal meets the above policy by incorporating pedestrian pathways within the development and connections to pathways located to the north on adjacent properties and to the Park.

6. ***North/South Vehicular and Pedestrian Connection- Within the district a north - south vehicular access between Central Way and Kirkland Way should be preserved and enhanced with pedestrian improvements.***

Analysis: The north/south vehicular and pedestrian connection to be known as "Main Street", from Kirkland Way to the existing internal circulation road in Park Place at the north property line and eventually connecting to Central Way meets or exceeds both this policy and Special Regulation #8. The location of the "Main Street" is approximately where the existing driving aisle is in front of the former Kirkland Hardware store. An existing access easement located along the north property line at two points grants access rights between the two sites (Park Place) expires September 2000. "Main Street" will provide angled parking stalls and pedestrian access to ground floor retail and offices and will be enhanced with other pedestrian oriented design details such as 10-12' wide sidewalk, landscaping in decorative pots and overhead awnings.

Conclusion: The proposal complies with this policy. As part of the building permit application, plans should indicate that vehicular/pedestrian access would remain open along the north property line at the "Main Street" and west vehicular access easement.

J. PLANNED UNIT DEVELOPMENT APPROVAL CRITERIA

Facts:

1. Zoning Code Chapter 125 establishes a mechanism for an applicant to propose a development that is innovative or otherwise beneficial but which does not strictly comply with the provisions of the Zoning Code, if the development will benefit the City more than would a development which complies with the specific requirements and certain criteria are met.
 - a. The applicant proposes to modify Zoning Code Section 50.30.g Special Regulation #3 of Ordinance 3609, which states that no portion of a structure within 100 feet of Peter Kirk Park, *shall exceed 3 stories above average building elevation*. Section 50.30.g. establishes that outside the 100' setback area, the maximum building height limit for the zone is a range of 3-5 stories above average building elevation.

- b. Exhibit A, Attachment 6 describes the applicant's PUD request. The applicant requests to extend portions of the 4th and 5th floors into the 100' setback from Peter Kirk Park exceeding the 3-story limitation. On the 4th floor the applicant proposes a 3,500 sq. ft. area of office space, of which a 21'9" section would house a 12' screened mechanical unit (see sheet A-12). On the 5th floor the applicant proposes a 10' wide x 84' long (590 sq. ft.) portion of the building that would partially contain the stairwell (see sheet A-13).
2. The applicant has identified the following elements of the proposal, which he believes, are public benefits justifying the PUD request (see Exhibit A, Attachment 6 and discussion below).
 - a) Superior architectural design, placement, relationship or orientation of structure.
 - b) Vehicular access easement to the City along the west property line.
 3. Zoning Code section 125.35 establishes four decisional criteria with which a PUD request must comply in order to be granted. The applicant's response to these criteria can be found in Exhibit A, Attachment 6. Below is an analysis of staff's findings of fact and conclusions based on these four criteria.

PUD Criterion 1: The proposed PUD meets the requirements of Zoning Code Chapter 125.

a. Facts:

- (1) Chapter 125 sets forth regulations regarding development requests, which are innovative or otherwise beneficial to the citizens of Kirkland but do not strictly, comply with the provisions of the Code.
- (2) Section 125.20 and .25 limits the Zoning Code regulations and uses that may be modified.

- b. Conclusion: The proposed PUD meets the requirements of Chapter 125. The proposed PUD is being reviewed through the appropriate process. The uses are allowed by the Zoning Code for this site and the applicant has not requested modification of any Zoning Code provisions that may not be modified.

PUD Criterion 2: Any adverse impacts or undesirable effects of the proposed PUD are clearly outweighed by specifically identified benefits to the residents of the city.

- a. Facts: The proposed 4,090 gross floor area of building extending into the 100' setback zone on the 4th and 5th stories is relatively small in size. On the 5th floor, lining up the building façade with the stair tower creates an improved architectural façade. During the course of project review, building mass was removed from the north façade and added to the west façade reducing view impacts on the adjacent property to the east. The number of mechanical units on the roof are reduced and better screened by incorporating one of the units into the area of modification on the 4th floor.

- b. Conclusion: The request for increased height within the 100 ft setback from Peter Kirk Park on portions of the 4th and 5th floor is minimal and will not result in any adverse impacts or undesirable effects. The increase in height in these areas allows for a more gradual transition from the 3 story portion of the building to the 5th story resulting in a superior architectural design than strict code compliance without the PUD. The benefits of the proposed PUD modification request outweigh any potential undesirable effects.

PUD Criterion 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.*

Facts:

1. The applicant proposes to grant a permanent vehicular access easement to the City for access to the east parking lot and loading area for the Kirkland Performance Center, Senior Center and future Teen Center. The western access driveway easement is currently improved wider than 20' and provides a south entrance to Park Place Shopping Center. The City does not currently have clear legal access across the western portion of the property or the existing access easement (See Exhibits JJ, KK, and LL).
2. Granting of this easement would correct a long standing question as to the right of access between the two properties and will benefit the citizens of Kirkland by providing secure access to the rear parking lot the KPC, Senior Center and future Teen Center.

Conclusion: The City should accept the applicant's offer to grant a permanent vehicular access easement to the City owned property to the west. As part of building permit application, the applicant should submit to the Department of Planning and Community Development for approval by the City Attorney's office for recording with the King County Records and Elections Division a vehicular access easement that provides vehicular and pedestrian access to the City owned property to the west.

- 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.*

Not applicable. The proposal will not be preserving or enhancing any natural feature.

- c. *The design of the PUD incorporates active or passive solar energy systems.*

Not applicable. No passive or active solar energy systems are proposed.

- 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:*

- *Increased provision of open space or recreational facilities.* Not applicable.

- *Superior circulation patterns or location or screening of parking facilities.* Not applicable.
 - *Superior landscaping, buffering, or screening in or around the proposed PUD.* Not applicable.
 - *Minimum use of impervious surfacing materials.* Not applicable.
 - *Superior architectural design, placement, relationship orientation of structure.* This criterion applies.
1. The applicant states that the PUD modification request to increase the height of the building on portions of the 4th and 5th floors within the 100 ft park setback zone, provides a superior architectural design than would otherwise be provided without the PUD request for the following reasons set forth in Exhibit A, Attachment 6.
 2. Below is an analysis of how the proposal meets this criteria:
 - *Improved height transition adjacent to the Kirkland Performance Center.* Staff agrees and the Examiner concurs that the PUD modification on the 4th and 5th floors provides superior architectural design as a transition between the 3 story KPC and higher elevation of the 5th story. If not approved, an abrupt 2 story (26' tall) wall would be visible on the west side of the building from the 3 story to 5-story height.
 - *Greater setbacks on all floors than required by code.* Staff agrees and the Examiner concurs that the proposal exceeds the required building setbacks (See Exhibit A, Attachment 11). Along the north property line, zoning code allows a minimum 0' setback. At the north property line, Sheet A9 shows an actual 20-25' rear setback at the lower level. A 10' minimum setback is required abutting Peter Kirk Park, whereas, a 20' setback from the west property line is provided as a result of the existing access easement location. Elsewhere in other areas of CBD-5, for sites not abutting Peter Kirk Park a 0' setback is permitted. The amount of floor area on the northern 5th Floor portion of the building has been reduced to benefit the Emerald Building to the east by opening up more westerly view from their building and transferred to the western portion of the building within the area of modification.
 - *Introduces a "Main Street" vehicular/pedestrian corridor through middle of site.* Staff agrees and the Examiner concurs that the proposed "Main Street" vehicular and pedestrian corridor provides a superior feature that is consistent with Zoning Code Section 50.30 and Comprehensive Plan policies to integrate new development with the rest of CBD-5 zone.
 - *Building appears like two separate buildings from Main Street level reducing building mass.* Staff agrees and the Examiner concurs that this design is superior by creating less building bulk and mass than one large building footprint allowed by code. Building mass is reduced in the center of the site, vertically by the two-story opening and horizontally by setting the mass back from Kirkland Way and Park Place.

- Curved building entrances along Kirkland Way creating a "Gateway." Staff agrees and the Examiner concurs that the building's curved corners at entrances is a design technique not required per Design Regulations, but provides a superior design at the main entrance to the development.
- Superior Building Materials. Building materials used will be brick at lower levels, textured concrete or split faced block, use of metal and glass awnings, decorative sunscreens at upper levels and pedestrian oriented spaces and crosswalks that are superior (See Exhibit G- Materials Board showing the building materials to be used)
- Provides retail connection from Downtown waterfront to Park Place. Staff agrees and the Examiner concurs that the development will help provide a desired connection from the waterfront, encouraging pedestrians to travel from the Downtown Core east to patronize retail shops and services along the project's street frontage on Kirkland Way, Main Street and on into Park Place shopping center.
- "Only slightly more than one-half FAR allowed." The applicant has indicated that the project's floor area ratio (FAR) less than the maximum allowed per Zoning Code. The amount of building floor area is less than allowed per code. The proposal will be at FAR 1.85. See Section I and Exhibit A, Attachment 5 for staff's research of other sites in the CBD. Also see Exhibit S for a comparison of densities in the area submitted by Davidson, Serles and Associates. The FAR for the proposal is higher than that of nearby developments partly due to the fact that all but a small number of parking spaces will be provided in a parking garage instead of on surface lots, which is more common on surrounding properties.

Conclusion: The proposal incorporates superior architectural and human scale design as described in Exhibit B. The building is separated into two building masses at lower floors with increased building setbacks at upper floors reducing building mass. Emphasis is on pedestrian oriented development not mandatory for the site, but consistent with the desired Comprehensive Plan policies and complimentary to adjacent park and retail uses.

PUD Criterion 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.

Not applicable. The proposal does not include the provision of special needs housing.

Conclusion: The proposed PUD modification request complies with the PUD approval criteria of Chapter 125.

K. DEVELOPMENT REVIEW COMMITTEE

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards Sheet, Attachment 8. Attachments 9 and 10 describe two agreements requiring the applicant to pay the proportionate share to underground existing

overhead utilities along the property frontage and to maintain the landscape strip and sidewalk property frontage along Kirkland Way. In addition, as a result of the new entrance on Kirkland Way, the existing METRO bus stop will need to be relocated to avoid sight distance problems at driveways exiting the site.

2. Conclusion: The applicant should follow the requirements set forth in Exhibit A, Attachments 8, 9 and 10.

II. MINOR MODIFICATIONS:

The Department of Planning and Community Development shall be administratively authorized to approve modifications to the approved Process IIB permit, unless:

1. There is a change in use and the Zoning Code establishes different or more rigorous standards for the new use than for the existing use; or
2. The Planning Director determines that there will be substantial changes in the impacts on the neighborhood or the City as a result of the change. or

The Department of Planning and Community Development shall be authorized to approve minor modifications to the approved PUD site plan, provided that:

1. The change will not have the effect of reducing landscaped area, or reducing or encroaching into buffering areas, or reducing the amount of open space in the PUD; and
2. The change will not have the effect of increasing the residential density of the PUD; and
3. The change will not have the effect of increasing the area devoted to non-residential uses in the PUD; and
4. The change will not increase the height of any structure above the height allowed in the underlying zone, nor change the orientation of structures which would result in reduced view corridors or increase in the perceived bulk and mass of the 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.

III. RECOMMENDATION:

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, and 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 8, Development Standards, is available 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 8, the condition of approval shall be followed (see Exhibit A, Conclusion II.F).

2. As part of an application for building permit the applicant shall:
- a. Dedicate to the City of Kirkland in a form acceptable to the City Attorney, a vehicular access easement along the west property line to provide vehicular access to the City owned property to the west (Senior Center, KPC, Teen Center) (See Exhibit A, Conclusion III.E.3).
 - b. To avoid sight distance problems along the north side of Kirkland Way, the applicant shall work with Metro and the City Public Works Department to relocate the existing METRO bus stop located in between the two driveways to a new location (See Exhibit A, Conclusion III.F.).
 - c. Indicate on plans that vehicular and pedestrian access will remain open along the north property line at the Main Street location and west vehicular access easement to the adjacent Park Place property (See Exhibit A, Conclusion III.D.6).
 - d. Indicate on the plans the ground floor use and floor height of each story pursuant to the requirements of Section 50.62.4. If there will be a mix of office and retail uses or only office on the ground floor, the ground floor façade must be designed with the following retail façade characteristics. Provide large clear windows, direct entrances to ground floor uses from pedestrian walkways, landscaping in decorative pots, blade signage, awnings for weather protection and wider sidewalks (See Exhibit A, Conclusion III.A).
 - e. Incorporate the following recommended Administrative Design Conditions contained in Exhibit B in the building permit application:
 - 1) Landscaping in compliance with Section 50.65.1.d. (see Exhibit A, Conclusion on page 3)
 - 2) Combined trellises with landscaping for treatment of building façades and parking garage bases on the northwest corner façade and west facades (see Exhibit A, Conclusion on page 4).
 - 3) Water spigots and two permanent commercial grade bicycle racks, one in the garage and one on the exterior ground floor for commercial uses in conformance with Section 50.65.3.d. (See Exhibit A, Conclusion on page 6).
 - 4) Screening of applicable exposed portions of the parking garage bases on the north and west facades consistent with Section 50.65.2.e.3) (see Exhibit A, Conclusion on page 8).
 - 5) Designated pedestrian pathways within parking garages and lighting consistent with Section 50.65.4.g (see Exhibit A, Conclusion on page 8).
 - 6) "Main Street" pedestrian pathways and on site pedestrian crossings including details for width, lighting, and benches, landscaping, distinctive raised pavement materials consistent with Sections 50.65.4c. - f and 50.65.4h. (See Exhibit A, Conclusions on page 5 and 7).

- 7) Pedestrian oriented spaces consistent with the requirements of Section 50.65.2 including landscaping, benches, distinctive pavement materials and lighting. (See Exhibit A, Conclusion on page 11).
 - 8) Parking stall dimensions, curbing and landscaping within "Main Street" and traffic circle to ensure pedestrian are protected from encroachment of parked cars per 50.65.4.h (see Exhibit A, Conclusions on page 6 and 7).
 - 9) Plans showing the preferred design alternative for the center office without the balcony alternative design on level 2 (see Exhibit A, Conclusion on page 13).
 - 10) Building cornerstone or plaque (see Exhibit A, Conclusion on page 15).
 - 11) Street trees and lighting in compliance with City standards (see Exhibit A, Conclusion 6)
 - 12) Building materials, decorative paving, trellises and lighting consistent with the requirements of Section 50.65.6. (See Exhibit A, Conclusions on page 8 and 13)
3. Prior to beginning construction install a chain link fence along the west property line to protect the existing trees from damage during construction. If as a result of construction disturbance and location of driveway paving any existing tree needs to be removed, the applicant shall install replacement landscaping. Prior to installation, a landscape plan showing the location of replacement trees and/or shrubs shall be submitted for approval by the Department of Parks and Community Services and the Planning Department. See Exhibit A, Conclusion II.A).
 4. Prior to Certificate of Occupancy the applicant shall:
 - a. Install street lighting and other street improvements and landscaping per City Standards along property frontage along north side of Kirkland Way.
 - b. Install building cornerstone or plaque.
 - c. Schedule a final inspection by the Department of Planning and Community Development to verify compliance with approved design plans.
 - d. Install the required development standards described in Exhibit A, Attachment 8.
 - e. 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 III.A.3)
 5. The Department of Planning and Community Development shall be administratively authorized to approve modifications to the approved application unless:
 - a. There is a change in use and the Zoning Code establishes different or more rigorous standards for the new use than for the existing use; or
 - b. The Planning Director determines that there will be substantial changes in the impacts on the neighborhood or the City as a result of the change, and provided that:
 - c. The change reduces landscaping, or reduces or encroaches into buffer areas, or reduces the amount of open space in the PUD; and

- d. The change increases the residential density of the PUD; and
 - e. The change increases the area devoted to non-residential uses in the PUD; and
 - f. The change increases the height of any structure above the height allowed in the underlying zone, changes the orientation of structures which would result in reduced view corridors or increase in the perceived bulk and mass of the structure; and
 - g. 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.
6. The applicant shall incorporate the SEPA Mitigation Measures contained in the DNS into the conditions of approval for the project unless otherwise determined by the Hearing Examiner as a result of the decision on the SEPA appeal (see Exhibit A, Conclusion II.E).
 7. Within seven (7) calendar days after the end of the 21-day period following the City's final decision on the permit, 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 signboard.

IV. EXHIBITS:

The following exhibits were offered and entered into the record:

- | | |
|-----------|--|
| Exhibit A | Staff Report to Hearing Examiner, dated 8/29/00, with 12 attachments |
| Exhibit B | Staff's Analysis of Proposals Compliance with Design Regulations, dated 8/29/00, with 4 attachments |
| Exhibit C | Staff's Analysis of the SEPA Appeal, dated 8/29/00, with 6 attachments |
| Exhibit D | Public Comment Letters received prior to Public Hearing |
| Exhibit E | Graphic Photo Representation of rooftop appurtenances |
| Exhibit F | Photo boards showing building envelope from adjacent properties |
| Exhibit G | Building Materials Board |
| Exhibit H | Letter from Robin Vogel and Corky Thoreson received 9/1/2000 |
| Exhibit I | Letter from Robert Cornish, received 9/5/2000, with 2 attachments |
| Exhibit J | Letter from Bob and Carolyn Norman received 9/6/00 |
| Exhibit K | Large foam boards showing architectural plans and a photo of the site taken from Peter Kirk Park |
| Exhibit L | Photos of model showing southeast, north, east and southwest elevation |
| Exhibit M | 11 drawings and renderings of the proposal, submitted by Brian Brand and received 9/6/00 |
| Exhibit N | Letter from Frederic and Harriette Dorkin received 9/6/00 |
| Exhibit O | Letter from Six Continental Associates, by D.K. Hong, received 9/6/00 |
| Exhibit P | Community Character section from Comprehensive Plan, photos of the subject area, and sketches of the proposal with alternative design sketches, submitted by Rick Grimes |

- Exhibit Q Resume and achievements for Robert Bernstein, P.E. received 9/6/00
- Exhibit R Review of traffic issues associated with 424 Kirkland Way by Robert Bernstein, received 9/6/00
- Exhibit S Comparison of densities of existing and proposed commercial buildings in CBD-5
- Exhibit T Letter from Robert Pantley, dated 9/7/00
- Exhibit U 16 photos of properties near Kirkland Way, submitted at the September 6, 2000 hearing by Ken Davidson
- Exhibit V Photo of subject property submitted by Ken Davidson on 9/7/00
- Exhibit W Hearing Memorandum of Davidson/Serles & Associates, submitted by Jeffery Eustis, dated 9/6/00
- Exhibit X Letter from G. Michael Zimo, Jr., dated 9/6/00
- Exhibit Y Resume and achievements of Brian Brand, AIA, received 9/7/00
- Exhibit Z Code required setbacks submitted by Brian Brand received 9/7/00
- Exhibit AA Letter from Ken Naito, The Original Pancake House, dated 9/7/00
- Exhibit BB Photo of Yarrow Bay Office Building Rooftop screening from Brian Brand received 9/7/00
- Exhibit CC Photo example of ground intake submitted by Brian Brand received 9/7/00
- Exhibit DD Applicants proposal to accommodate truck loading & unloading submitted by Brian Brand 9/7/00
- Exhibit EE Resume and achievements of Katherine G. Casseday, P.E., received 9/7/00
- Exhibit FF Memorandum from Eric Shields on Transportation Impact Analysis Guidelines
- Exhibit GG East Core Frame Work section from Comprehensive Plan
- Exhibit HH West Water Hearing SEPA Appeal Response, submitted 9/7/00
- Exhibit II Keith Maehlum resume
- Exhibit JJ Amendment To Grant of Mutual Easements Recordings
- Exhibit KK Letter from Donald V. Barker to Jim Arndt, dated 11/1/96
- Exhibit LL Letter from Oskar Rey to Don Barker regarding Revocable License Agreement, dated 1/14/97
- Exhibit MM Sketches of the proposed Park Place Phase I Expansion
- Exhibit NN West Water Real Estate Service's prehearing memorandum, by J. Tayloe Washburn, dated 9/6/00, with one attachment
- Exhibit OO City of Kirkland's Hearing Brief, by Dawn Findlay, dated 9/7/00
- Exhibit PP LOS Calculation Worksheet submitted by Thang Nguyen on 9/7/00
- Exhibit QQ City of Kirkland's Closing Arguments, by Dawn Findlay, dated 9/19/00
- Exhibit RR Closing Argument of Davidson, Serles, & Associates, by Jeffery Eustis, dated 9/19/00
- Exhibit SS Applicant West Water Real Estate Service's Posthearing Memorandum, by J. Tayloe Washburn, dated 9/19/00

V. PARTIES OF RECORD:

The party of record list is extremely long and is available at the Planning and Community Development Department.

Entered this 9 day of October 2000, per authority granted by Section 152.70, Ordinance 2740 of the Zoning Code. 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)~~ ⁷ working days as specified below.


Ron McConnell, FAICP
Hearing Examiner

VI. CHALLENGES AND JUDICIAL REVIEW

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

A. CHALLENGE

Section 152.85 of the Zoning Code allows the Hearing Examiner's project recommendation to be challenged by the applicant or any person who submitted written or oral comments or 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 5:00 p.m., October 19, 2000, 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 Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.