

RESOLUTION NO. R-3496

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE SUBDIVISION AND FINAL PLAT OF TALL FIRS BEING DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. SF-88-152 AND SETTING FORTH CONDITIONS TO WHICH SUCH SUBDIVISION AND FINAL PLAT SHALL BE SUBJECT.

WHEREAS, a subdivision and preliminary plat of Tall Firs was approved by the Hearing Examiner on July 28, 1988; and

WHEREAS, thereafter the Department of Planning and Community Development received an application for approval of subdivision and final plat, said application having been made by Mike Patterson, the owner of the real property described in said application, which property is within a Residential Single Family 8.5 zone; 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 has been 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 made available and accompanied the application throughout the entire review process; and

WHEREAS, the Director of the Department of Planning and Community Development did make certain Findings, Conclusions and Recommendations and did recommend approval of the subdivision and the final plat, subject to specific conditions set forth in said recommendation.

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

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

Section 1. The Findings, Conclusions and Recommendations of the Director of the Department of Planning and Community Development, filed in Department of Planning and Community Development File No. SF-88-152, are hereby adopted by the Kirkland City Council as though fully set forth herein.

Section 2. Approval of the subdivision and the final plat of Tall Firs is subject to the applicant's compliance with the conditions set forth in the recommendations hereinabove adopted by the City Council and further conditioned upon the following:

- (a) A Plat Bond or other approved security performance undertaking in an amount determined by the Director of Public Works in accordance with the requirements therefor in Ordinance No. 2178 shall be deposited with the City of Kirkland and be conditioned upon the completion and acceptance by the City of all conditions of approval, including public improvements, within one year from the date of passage of this Resolution. No City official, including the Chairperson of the Planning Commission, the Mayor, or the City Engineer, shall affix his signature to the final plat drawing until such time as the plat bond or other approved performance security undertaking herein required has been deposited with the City and approved by the Director of Public Works as to amount and form.
- (b) Special Condition of Approval of the Plat of Tall Firs

Robert E. Kinssies and Angela Kinssies have asserted a claim of adverse possession as to a portion of the property within the proposed plat of Tall Firs. That claim is presently subject to litigation in Wallace H. Litchfield and Alice C. Litchfield, his wife, vs. Robert E. Kinssies and Angela Kinssies, his wife, King County Superior Court Cause No. 88-2-06075-4, now on appeal before the Washington State Court of Appeals, Division I.

In Halverson v. Bellevue, 41 Wn.App. 457 (1985), the Washington State Court of Appeals considered the effect of an adverse possession claim upon a proposed plat, stating:

"Halverson's interest in the land subdivided was made clear when she put the City Council on notice that she was claiming a portion of the land by adverse possession ...

"Because the merit of an adverse possession claim cannot be determined by the City prior to adjudication, caution in approving plats in such cases is warranted. The platting statute requires the consent of owners in order to prevent title disputes. Once the City was put on notice of Halverson's claim, approval of the plat as submitted was improper."

The Court of Appeals went on to hold that without the Halverson's signature on the proposed plat, it did not meet the requirements of RCW 58.17.165 (KMC 22.16.030(18)), which requires the certificate of plat dedication to be signed by all parties having any "ownership interest" in the land subdivided.

Therefore, unless the Kinssies' claim for adverse possession is judicially resolved against them (including all appellate review thereof), the final plat of Tall Firs shall not be recorded as required by RCW 58.17.170, unless said plat dedication has been signed by Robert E. Kinssies and Angela Kinssies, as well as all other owners of record.

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

Section 4. A certified copy of this Resolution, along with the Findings, Conclusions and Recommendations hereinabove adopted shall be delivered to the applicant.

Section 5. Certified or conformed copies of this Resolution shall be delivered to the following:

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

PASSED in regular meeting of the Kirkland City Council on the 13th day of December, 1988.

SIGNED IN AUTHENTICATION thereof on the 13th day of December, 1988.

Loris Cooper
Mayor

Attest:

Janice [Signature]
City Clerk