RESOLUTION NO. R- 3616

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A DEVELOPMENT PROPOSAL SUBMITTED UNDER THE QUASI-JUDICIAL PROJECT REZONE PROVISIONS OF CHAPTER 130 OF THE KIRKLAND ZONING CODE, ORDINANCE 2740, AS AMENDED, AS APPLIED FOR IN DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. IIB-90-8 BY SCOTT FRASER TO REZONE PROPERTY IN ORDER TO CONSTRUCT A SECOND DETACHED DWELLING UNIT AND SETTING FORTH CONDITIONS TO WHICH SUCH DEVELOPMENT PROPOSAL SHALL BE SUBJECT AND SETTING FORTH THE INTENTION OF THE CITY COUNCIL TO, UPON APPROVED COMPLETION OF SAID DEVELOPMENT, REZONE THE PROPERTY FROM RS 8.5 TO RM 3.6.

WHEREAS, the Department of Planning and Community Development has received an application filed by Scott Fraser as owner of the property described in said application requesting a permit to develop said property in accordance with the Quasi-Judicial Project Rezone procedure established in Chapter 130 of Ordinance 2740, as amended; and

WHEREAS, said property is located within an RS 8.5 zone and the proposed development is a permitted use within the RM 3.6 zone; and

WHEREAS, the application has been submitted to the Hearing Examiner who held a public hearing thereon at his regular meeting of June 28, 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 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 available and accompanied the application through the entire review process; and

WHEREAS, the 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 to the City Council approval of the proposed development and the Quasi-Judicial Project Rezone pursuant to Chapter 130 of Ordinance 2740, as amended, all subject to the specific conditions set forth in said recommendation; 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.

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 Hearing Examiner as signed by him and filed in the Department of Planning and Community Development File No. IIB-90-8 are hereby adopted by the Kirkland City Council as though fully set forth herein.

Section 2. A Development Permit, pursuant to the Quasi-Judicial Project Rezone procedure of Chapter 130 of Ordinance 2740, as amended, shall be issued to the applicant subject to the conditions set forth in the Recommendations hereinabove adopted by the City Council.

Section 3. The City Council approves in principle the request for reclassification from RS 8.5 to RM 3.6, pursuant to the provisions of Chapter 23.130 of Ordinance 2740, as amended, and the Council shall, by ordinance, effect such reclassification upon being advised that all of the conditions, stipulations, limitations, and requirements contained in this Resolution, including those adopted by reference, have been met; provided, however, that the applicant must begin the development activity, use of land or other actions approved by this Resolution within one year from the date of enactment of this Resolution, or the decision becomes void.

Section 4. Nothing in this resolution shall be construed as excusing the applicant from compliance with any federal, state or local statutes, ordinances or regulations applicable to the proposed development project, other than as expressly set forth herein.

Section 5. Failure on the part of the holder of the development permit to initially meet or maintain strict compliance with the standards and conditions to which the development permit and the intent to rezone is subject shall be grounds for revocation in accordance with Ordinance 2740, as amended, the Kirkland Zoning Ordinance.

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

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

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

PASSED by majority vote of the Kirkland City Council in regular, open meeting on the 7th day of August, 1990.

SIGNED IN AUTHENTICATION THEREOF on the 7th day of August, 1990.

Mayor

ATTEST:

City Clerk

RES90-8.JUL/JLB:rk

CITY OF KIRKLAND
HEARING EXAMINER FINDINGS, CONCLUSIONS, AND RECOMMENDATION

APPLICANT: Scott Fraser **FILE NO.** IIB-90-8

APPLICATION:

1. Site Location: 703 State Street South (see Exhibit A, Attachment 1 - Vicinity/Zoning Map).

2. Request: To rezone an 8,552 square foot site from RS 8.5 to RM 3.6, to allow the construction of a second single-family residence on the subject property (see Exhibit A, Attachment 2 - Proposed Plot Plan).

3. Review Process: Process IIB - Hearing Examiner conducts public hearing and makes recommendation to City Council.

4. Major Issues: Compliance with Zoning Code criteria for quasi-judicial rezones, Chapter 130, and Process IIB applications, Chapter 152.

SUMMARY OF RECOMMENDATION:

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 Fraser application was opened at 2:35 p.m., June 28, 1990, in the Council Chamber, City Hall, 123 Fifth Avenue, Kirkland, Washington, and was closed at 2:47 p.m. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the City Clerk's office.

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 4 to 13 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. A copy of said report is available in the Department of Planning and Community Development.

B. The applicant testified at the hearing that rather than tear down the existing house and build a duplex on the property, he decided to retain and remodel the existing house and would like to build another single-family house on the proposed lot. He said there is a twelve foot high hedge to the west which will be retained and he said he would add landscaping on the south side of the proposed house.

C. One neighbor asked a question during the hearing, but no one testified in favor of or in opposition to the request. Two letters were received, one expressing opposition to the proposal (Exhibit B) and one expressing concerns (Exhibit C).

1. Points raised in opposition to the application were:

a. Construction noise in a residential neighborhood.

b. Crowding.

c. Overall quality of life.

d. Safety hazards if automobiles back out onto State Street.

2. The concern raised in Exhibit C related to parking and the concerned neighbor recommended that the proposal only be approved if the existing house is made to conform to current off-street parking requirements.

II. CONCLUSIONS:

A. The conclusions recommended by the Department of Planning and Community Development, as set forth on pages 4 to 13 of the Department's Advisory Report, accurately set forth the conclusions of the Hearing Examiner and, by this reference, are adopted as part of the Hearing Examiner's conclusions. A copy of said report is available in the Department of Planning and Community Development.

B. A condition which would bring the existing house into compliance with the parking provisions of the code is reasonable and should be required.

C. This proposal is consistent with the provisions of the LUPP and if approved, subject to the conditions listed in Part III, RECOMMENDATION, below, would make adequate provisions for the public health safety and general welfare of the citizens of Kirkland.

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 6, Development Standards, is provided 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 6, the condition of approval shall be followed.

2. 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, and

   b. The change will not result in increasing the residential density or gross floor area of the project; and

   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; and

   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.8.b).

3. Prior to the submittal of an application for a Building Permit for an additional residence on the subject property, the applicant shall apply for and finalize a Lot Line Alteration to reconfigure the existing lots in a manner which satisfies the site development standards of the RM 3.6 zone (see Conclusion II.D.4.b).

4. Prior to the submittal of an application for a Building Permit for an additional residence on the subject property, the applicant shall provide off-street parking for two automobiles for the existing residence (Hearing Examiner Conclusion B).

5. 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. Plans for installing street trees in the existing landscape property, to be approved by the Department of Public Works (see Exhibit A, Conclusion II.D.6.b(1)).

   c. Plans for installing street trees between the east property line of the subject property and the sidewalk in the State Street right-of-way, bordering the subject property, to be approved by the Department of Public Works (see Exhibit A, Conclusion II.D.6.b(2)).

   d. The proposed location of clustered mail box structure(s), approved by the U.S. Postal Service (see Exhibit A, Conclusion II.D.6.b(4)).

   e. A signed and notarized concomitant agreement, as set forth in Exhibit A, Attachment 10, for recording with the King County records and Elections Division, to underground all existing transmission (power, telephone, etc.) lines bordering the subject property within the State Street and Seventh Avenue South rights-of-way. Underground all on-site transmission lines (see Exhibit A, Conclusion II.D.6.b(5)).

6. Prior to occupancy of any additional residence constructed on the subject property, the applicant shall:

   a. Install a fully operational permanent storm water control system (see Exhibit A, Conclusion II.D.5.b).

   b. Install street trees within the rights-of-way of Seventh Avenue South and State Street as specified in Conditions I.B.4.b and c (see Exhibit A, Conclusion II.D.6.b(1) and (2)).

   c. Sign and submit to the Department of Planning and Community Development for recording with the King County Records and Elections Division an agreement, as set forth in Exhibit A, Attachment 9, to continually maintain the landscaping within the rights-of-way of Seventh Avenue South and State Street (see Conclusion II.D.6.b(3)).

d. Install the clustered mail box structure(s) as specified by Condition I.B.4.d (see Exhibit A, Conclusion II.D.6.b(4)).

e. Submit to the Department of Planning and Community Development a security device to ensure maintenance of the permanent storm water retention system and street trees (see Exhibit A, Conclusion II.D.12.b).

f. 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.11.b).

7. 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, washers and nuts separated from the sign board (see Exhibit A, Conclusion II.D.9.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 Gary Zelansky, dated 6/23/90
C. Letter from James Jewell, dated 6/23/90

PARTIES OF RECORD:

Scott Fraser, 15336 164th NE, Woodinville, WA 98072
Gary Zelansky, 315 Seventh Avenue S., Kirkland, WA 98033
James Jewell, 745 Second Street S., Kirkland WA, 98033
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

Entered this 16th day of July, 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 July 24, 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 July 31, 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

A. 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.

»SR\HE90-8/RM:cc

CITY OF KIRKLAND

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

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
ADVISORY REPORT
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

To: Ron McConnell, Hearing Examiner

From: Joan Lieberman-Brill, Project Planner

Joe Tovar, Planning Director

Date: June 1, 1990

File: FRASER REZONE, FILE NO. IIB-90-8

Hearing Date, Time, and Place: JUNE 28, 1990, 1:30 pm
City Hall Council Chamber
123 Fifth Avenue, Kirkland

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EXHIBIT A
FILE NO. IIB-90-8

I. INTRODUCTION

A. APPLICATION

1. Applicant: Scott Fraser

2. Site Location: 703 State Street South (see Attachment 1 - Vicinity/Zoning Map).

3. Request: To rezone an 8,552 square foot site from RS 8.5 to RM 3.6, to allow the construction of a second single-family residence on the subject property (see Attachment 2 - Proposed Plot Plan).

4. Review Process: Process IIB - Hearing Examiner conducts public hearing and makes recommendation to City Council.

5. Major Issues: Compliance with Zoning Code criteria for quasi-judicial rezones, Chapter 130, and Process IIB applications, Chapter 152.

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:

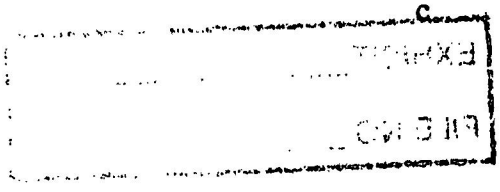
1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 6, Development Standards, 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 6, the condition of approval shall be followed.

2. 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; and

   b. The change will not result in increasing the residential density or gross floor area of the project; and

   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; and



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.8.b).

3. Prior to the submittal of an application for a Building Permit for an additional residence on the subject property, the applicant shall apply for and finalize a Lot Line Alteration to reconfigure the existing lots in a manner which satisfies the site development standards of the RM 3.6 zone (see Conclusion II.D.4.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. Plans for installing street trees in the existing landscape strip in the 7th Avenue South right-of-way bordering the subject property, to be approved by the Department of Public Works (see Conclusion II.D.6.b(1)).

c. Plans for installing street trees between the east property line of the subject property and the sidewalk in the State Street right-of-way bordering the subject property, to be approved by the Department of Public Works (see Conclusion II.D.6.b(2)).

d. The proposed location of clustered mail box structure(s), approved by the U.S. Postal Service (see Conclusion II.D.6.b(4)).

e. A signed and notarized concomitant agreement, as set forth in Attachment 10, for recording with the King County Records and Elections Division, to underground all existing transmission (power, telephone, etc.) lines bordering the subject property within the State Street and 7th Avenue South rights-of-way. Underground all on-site transmission lines (see Conclusion II.D.6.b(5)).

5. Prior to occupancy of any additional residence constructed on the subject property, the applicant shall:

a. Install a fully operational permanent storm water control system (see Conclusion II.D.5.b).

b. Install street trees within the rights-of-way of 7th Avenue South and State Street as specified in Conditions I.B.4.b and c (see Conclusion II.D.6.b(1) and (2)).

c. Sign and submit to the Department of Planning and Community Development for recording with the King County Records and Elections Division an agreement, as set forth in Attachment 9, to continually maintain the landscaping within the rights-of-way of 7th Avenue South and State Street (see Conclusion II.D.6.b(3)).

d. Install the clustered mail box structure(s) as specified by Condition I.B.4.d (see Conclusion II.D.6.b(4)).

e. Submit to the Department of Planning and Community Development a security device to ensure maintenance of the permanent storm water retention system and street trees (see Conclusion II.D.12.b).

f. 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.11.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, washers and nuts separated from the sign board (see Conclusion II.D.9.b).

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:

a. Facts:

(1) Size: The site contains 8,552 square feet (0.20 acres).

(2) Land use: The site contains one single-family residence.

(3) Zoning: RS 8.5.

(4) Terrain and Vegetation: The site contains a moderate slope (approximately 8%), falling at a constant grade from the southeast corner to the northwest corner. The only significant tree on the site is a large holly tree in the northeast corner, near the existing residence. This tree has been flagged for retention. A few other materials exist along the south and west property lines, none of which are significant.

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 7th Avenue South, is zoned RM 3.6 and contains a multi-family development.

(2) South: The site to the south is zoned RS 8.5 and contains a single-family residence.

(3) East: The site to the east, across State Street, is zoned PLA 6B and contains attached-unit housing.

(4) West: The site to the west is zoned RS 8.5 and contains a single-family residence.

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

B. HISTORY

1. a. Fact: In 1983 and 1984, the site was the subject of an application to amend the Land Use Policies Plan to allow office use at this location (File No. IV-83-15). During the review of that request, the discussion was broadened to examine potential land uses along the west side of State Street, extending from 7th Avenue South to a point approximately 600 feet south, together with several properties located at the northwest corner of the intersection of 7th Avenue South and State Street. City staff and the Planning Commission recommended that the LUPP be amended to allow residential development at a density of 10-14 units per acre, as well as office use, for the study area.

After reviewing the Planning Commission recommendation, the City Council elected to not act upon the amendment request independent of other LUPP update activities. The Central/State/Everest neighborhood was scheduled to be reviewed in 1985, during which the applicant's request could be considered. The property was subsequently sold. The City Council later adopted Ordinance 3016, amending the Central neighborhood element of the LUPP, which now prescribes residential land use at a density of 10-14 units per acre for the subject property.

Other rezone actions have occurred in the immediate neighborhood. R-77-1 was approved in 1977, rezoning a parcel at 730 State Street (on the east side of State Street) from RS 8.5 to RM 3.6, allowing the construction of a four-plex. R-77-30 was also approved, resulting in a rezone of 729 State Street from RS 8.5 to RM 3.6, to

allow the construction of a duplex. R-79-97, in which a rezone was requested from RS 8.5 to RM 3.6 for property located at 749 State Street, was withdrawn by the applicant prior to review at a public hearing. The file for this request does not explain the reason for the withdrawal of the application.

b. Conclusion: These are not constraining factor in this application.

C. STATE ENVIRONMENTAL POLICIES ACT (SEPA)

1. a. Fact: A Determination of Nonsignificance (DNS) was issued on January 15, 1990. The Determination of Nonsignificance and Environmental Checklist are included as Attachments 3 and 4.

b. Conclusions: The applicant and the City have satisfied the requirements of SEPA.

D. ZONING CODE COMPLIANCE

1. a. Fact: The fundamental site development standards pertaining to single-family development in an RM 3.6 zone are set forth in Section 20.10.a (see Attachment 5).

b. Conclusion: The site complies with the lot and dimension regulations for the RM 3.6 zone as set forth in Section 20.10.a. However, as discussed in Section II.D.4 below, in order for a second residence to be constructed on the site, a Lot Line Alteration will be necessary.

2. a. Fact: Section 20.10.a requires detached dwelling units in an RM 3.6 zone to not exceed the maximum structure height of 25' 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 west and south. The applicant intends to construct a new detached dwelling unit on the site. The applicant has submitted information showing the proposed footprint and setbacks for this future residence, and specific information concerning the height of the residence. The proposal as submitted by the applicant calls for a building which will be 25 feet above average building elevation (see Attachment 2).

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 that each detached dwelling units in an RM 3.6 zone be provided 2 parking spaces. The existing detached dwelling unit on the subject property has no on-site parking.

b. Conclusion: The lack of on-site parking for the existing property constitutes a non-conformance. Non-conformances are governed by Chapter 162 (see Section II.D.10 below).

4. a. Fact: Section 20.10.a requires each detached dwelling unit in an RM 3.6 zone to be located on a separate lot containing at least 3600 square feet, and comply with required setbacks and lot coverage allowances. The subject property presently contains three 30' wide platted lots, two of which contain the existing residence. The third lot, which is the southernmost lot, contains approximately 2851 square feet, less than the 3600 square feet required for the construction of an additional residence.

b. Conclusion: In order for the applicant to construct a second residence on the subject property, it will be necessary to apply for and finalize a Lot Line Alteration to reconfigure the existing lots in a manner which satisfies the minimum lot size requirements of the RM 3.6 zone, and which allows both the existing and proposed residences to conform to setback and lot coverage requirements of the RM 3.6 zone. The proposed site plan submitted by the applicant would satisfy these requirements (see Attachment 2).

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 (see Attachment 6, Development Standards).

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 State Street, which is shown on the City Rights-of-Way Designation Map as a Collector Arterial, and 7th Avenue South, which is designated as a Neighborhood Collector. Section 110.40 establishes that a Collector Arterial and Neighborhood Collector must be improved with 36' of pavement in a 60' right-of-way, vertical curb and underground storm sewer with through curb inlets and bicycle grates, 4-1/2' wide

landscape strip adjacent to the curb with trees placed no closer than 36" to the curb, street trees planted approximately 30' on center in the landscape strip, 5' wide concrete sidewalk between landscape strip and utility strip, and a 2' wide (minimum) utility strip adjacent to the property line (see Attachment 7).

State Street is currently improved with pavement, curb, underground storm sewer, and sidewalk improvements, with the sidewalk placed directly adjacent to the curb. The excess right-of-way is located between the back of sidewalk and the property line of the subject property.

7th Avenue South is currently improved with pavement, curb, underground storm sewer, landscape strip, and sidewalk. The landscape strip is located between the curb and sidewalk, and does not contain street trees.

(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. The applicant has not requested a modification, deferment, or waiver of these requirements (see Attachment 8).

(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 110.60.6 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 plans in a location approved by the U.S. Postal Service Growth Management Representative.

(5) 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.

State Street, abutting the subject property, currently has overhead lines on both the east and west sides of the street.

7th Avenue South, abutting the subject property, currently has overhead lines on only the north side of the street.

b. Conclusions:

(1) Pursuant to Section 110.10 and 110.25, the applicant must provide street improvements in the rights-of-way immediately adjacent to the subject property, consistent with the standards set forth in Section 110.40. Because of the existing improvements in 7th Avenue South, the improvement required of the applicant within this right-of-way consists of the installation of street trees, placed approximately 30' on center.

(2) Pursuant to Section 110.70, the location of the existing street improvements in the abutting State Street right-of-way makes it infeasible to install a landscape strip between the curb and sidewalk. Therefore, the standards of Section 110.40 should be modified to allow the placement of the required landscape strip between the back of the sidewalk and the property line. Within this landscape strip, the applicant should install street trees, placed approximately 30' on center.

(3) Pursuant to Sections 110.60.4 and .5, the owners of the subject property should sign an agreement to continually maintain the landscaping within the abutting State Street and 7th Avenue South rights-of-way (see Attachment 9).

(4) 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.

(5) Pursuant to Section 110.60.9, undergrounding of existing overhead utility lines on State Street is infeasible because of the limited property width (90') and the fact that the utility lines are overhead both to the north and south of the subject property. Consequently, the applicant should sign a concomitant agreement to underground the utility lines adjacent to both rights-of-way (see Attachment 10). All on-site utility lines and overhead transmission lines must be underground.

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 the 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 11.

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.F.1.b).

(2) It bears a substantial relation to public health, safety, or welfare and is in the best interest of Kirkland residents because it will allow an addition to the single-family housing stock of the community, and will allow development in accordance with all City planning and building codes.

(3) Is is appropriate because the Land Use Policies Plan has designated this area for 10-14 dwelling units per acre, and the proposal would allow for development at a density of 10 units per acre. Developing the property at the lower end of

the density range supported by the LUPP is appropriate given the fact that the site abuts single-family development on two sides (west and south).

(4) If modified as suggested in Conclusions II.D.1.b - 12.b, 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: Section 152.30 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 152.30.

10. a. Fact: Section 162.40 requires that the City, in reviewing any Process IIB requests for development, consider the degree of any nonconformance and its relationship to the proposed development activity, and authorizes the City to require the applicant to correct such nonformance. Section 162.35.4 regulates non-conforming parking. It requires that the subject property provide the required number of spaces only if the applicant is going to change the use conducted on the subject property and the new use requires more parking stalls than the former use. As discussed in Section II.D.3

above, the existing residence on the north portion of the subject property does not conform to the requirement of Section 20.10.a that it be provided with two parking stalls, but the use is going to continue to be single-family residential. A change of use is not proposed.

b. Conclusion: Pursuant to Section 162.40, the applicant should not be required to correct the nonconforming parking situation which presently exists at the subject property, since there will be no change of use.

11. 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.

12. a. Fact: Sections 107.90, and 175.10.1 allow the City to require a maintenance bond to ensure continued compliance with code requirements.

b. Conclusion: Pursuant to Sections 107.90, and 175.10.1, a maintenance bond should be required to ensure that the storm water system and street trees are maintained in good condition for a period of two years following initial occupancy of the site.

E. TECHNICAL COMMITTEE

1. a. Fact: Comments and requirements placed on the project by other departments are found on the Development Standards Sheet, Attachment 6.

b. Conclusion: The applicant must follow the requirements of other Departments set forth in Attachment 6.

F. LAND USE POLICIES PLAN (LUPP)

1. a. Fact: Figure C-1 illustrates the subject property as being suitable for development at a density of 12 units per acre. Discussion on

Page C-7 states that the subject property is suitable for development within a density range of 10 to 14 units per acre. The proposed rezone would allow development at a density of 10 units per acre (see Attachments 12 and 13).

b. Conclusion: The proposed application is consistent with the LUPP.

III. RECONSIDERATIONS, CHALLENGES AND JUDICIAL REVIEW

The following is a summary of the deadline and procedures for filing requests for reconsiderations, appeals, and challenges. Any person wishing to file or respond to a request for reconsideration, appeal 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 personmaking 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 for the development activity 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

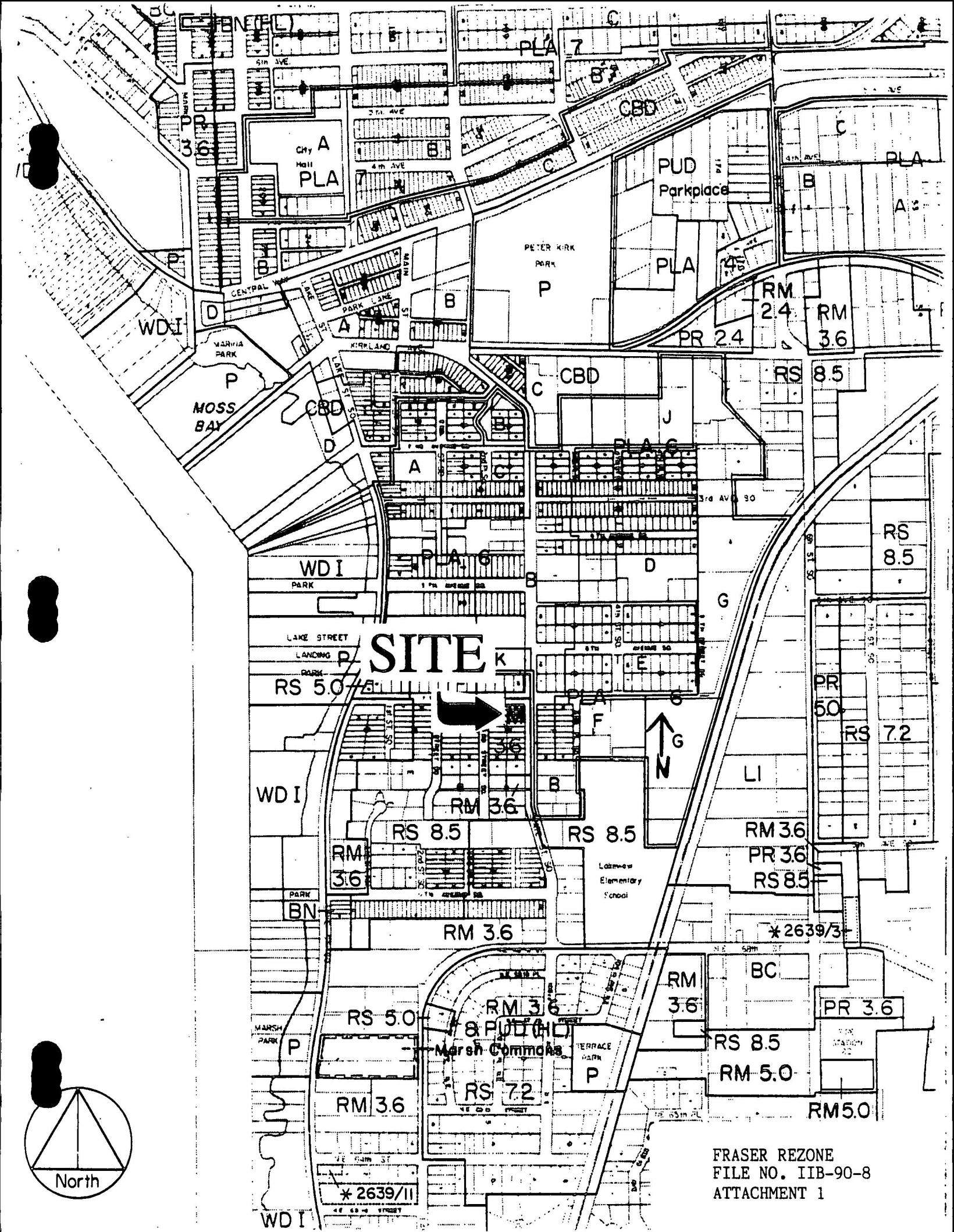
Attachments 1 through 13 are attached.

1. Vicinity/Zoning Map
2. Proposed Plot Plan, Elevation Plans, Floor Plans, and Average Building Elevation Calculations Submitted by the Applicant
3. Determination of Nonsignificance
4. Environmental Checklist
5. Use Zone Chart - 20.10.a
6. Development Standards
7. Collector Arterial/Neighborhood Collector Standards - 110.40
8. Street Improvement Modification Criteria - 110.70
9. Landscape Strip Maintenance Agreement
10. Concomitant Agreement for Undergrounding Utilities
11. Applicant Response to Rezone Criteria
12. LUPP - Figure C-1
13. LUPP - Page C-7

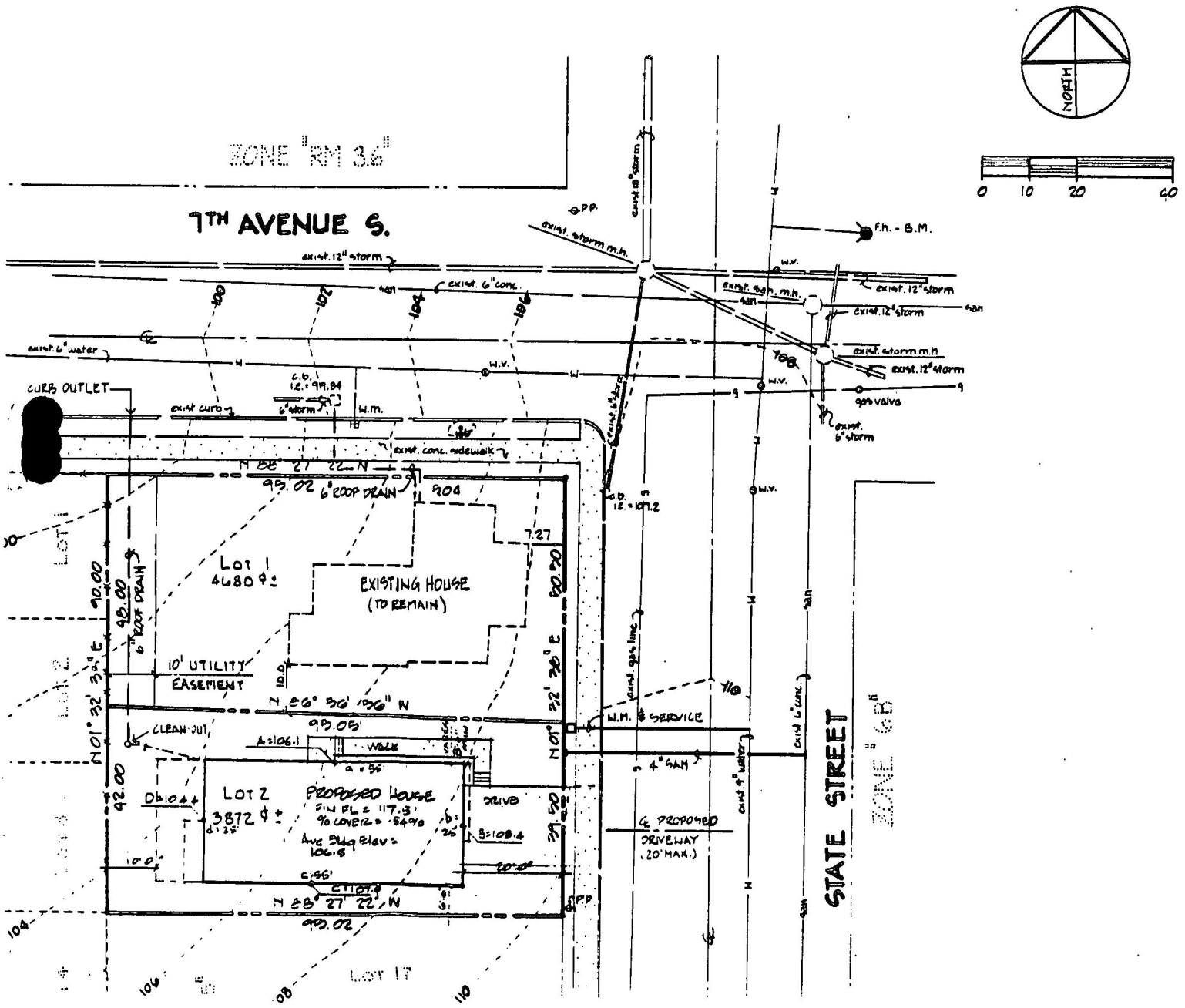
VI. PARTIES OF RECORD

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

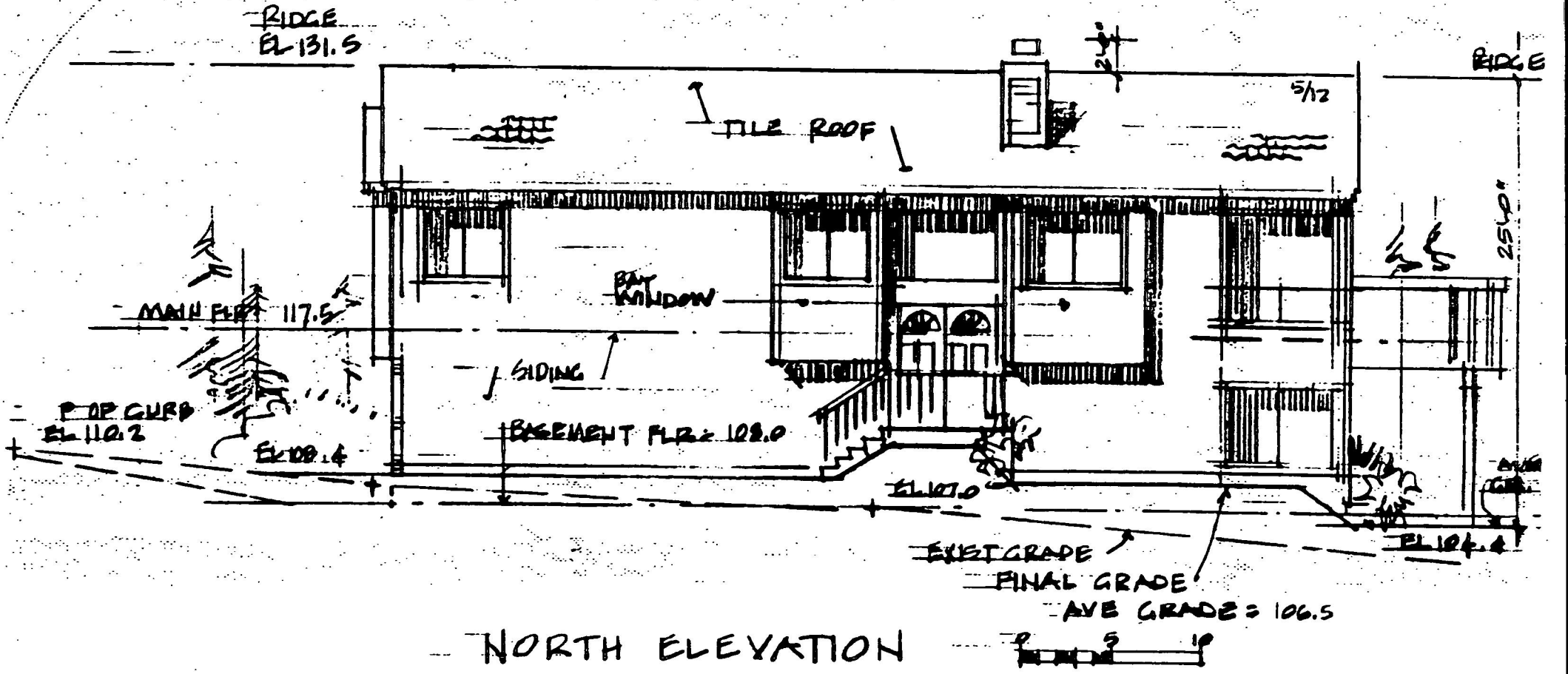
A written recommendation will be issued by the Hearing Examiner within two weeks of the close of the public hearing. If you have any questions about the timing or content of the report, contact Hearing Examiner Ron McConnell at 827-6550.



FRASER REZONE
FILE NO. IIB-90-8
ATTACHMENT 1

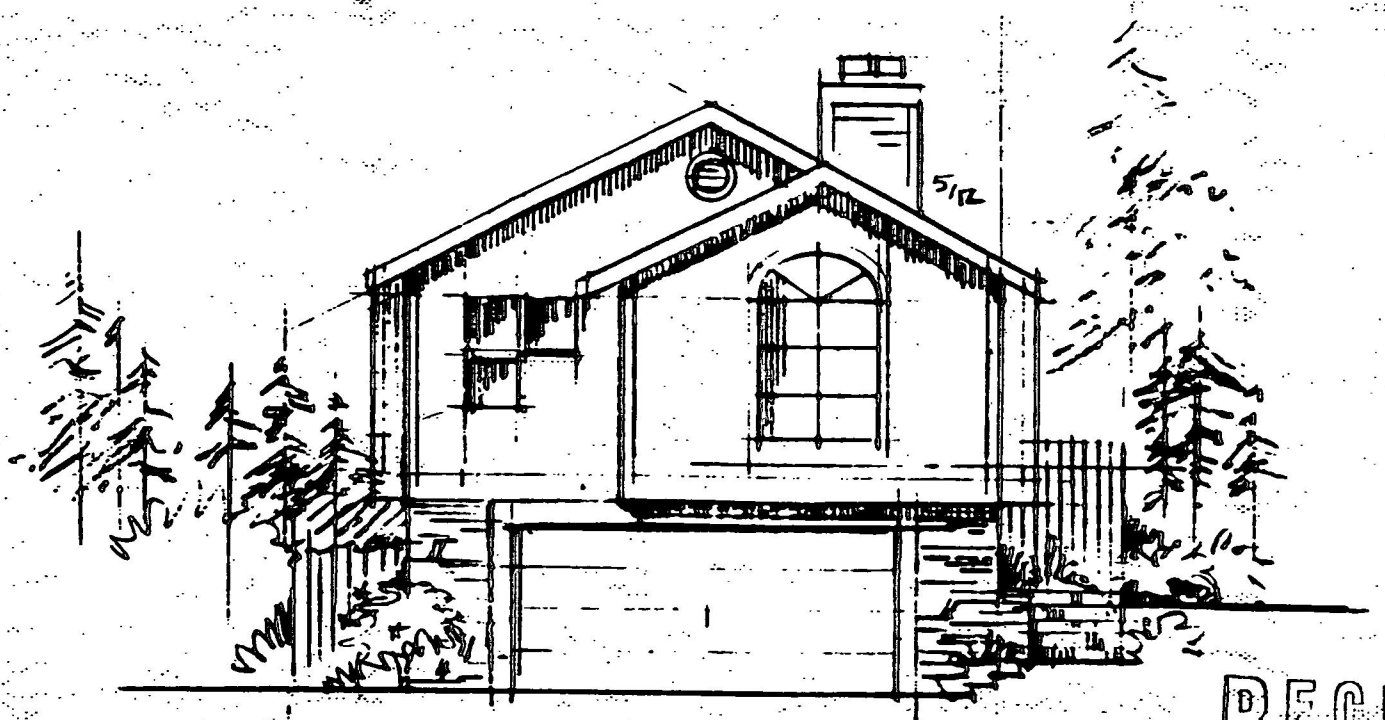


FRASER REZONE
FILE NO. IIB-90-8
ATTACHMENT 2



NORTH ELEVATION

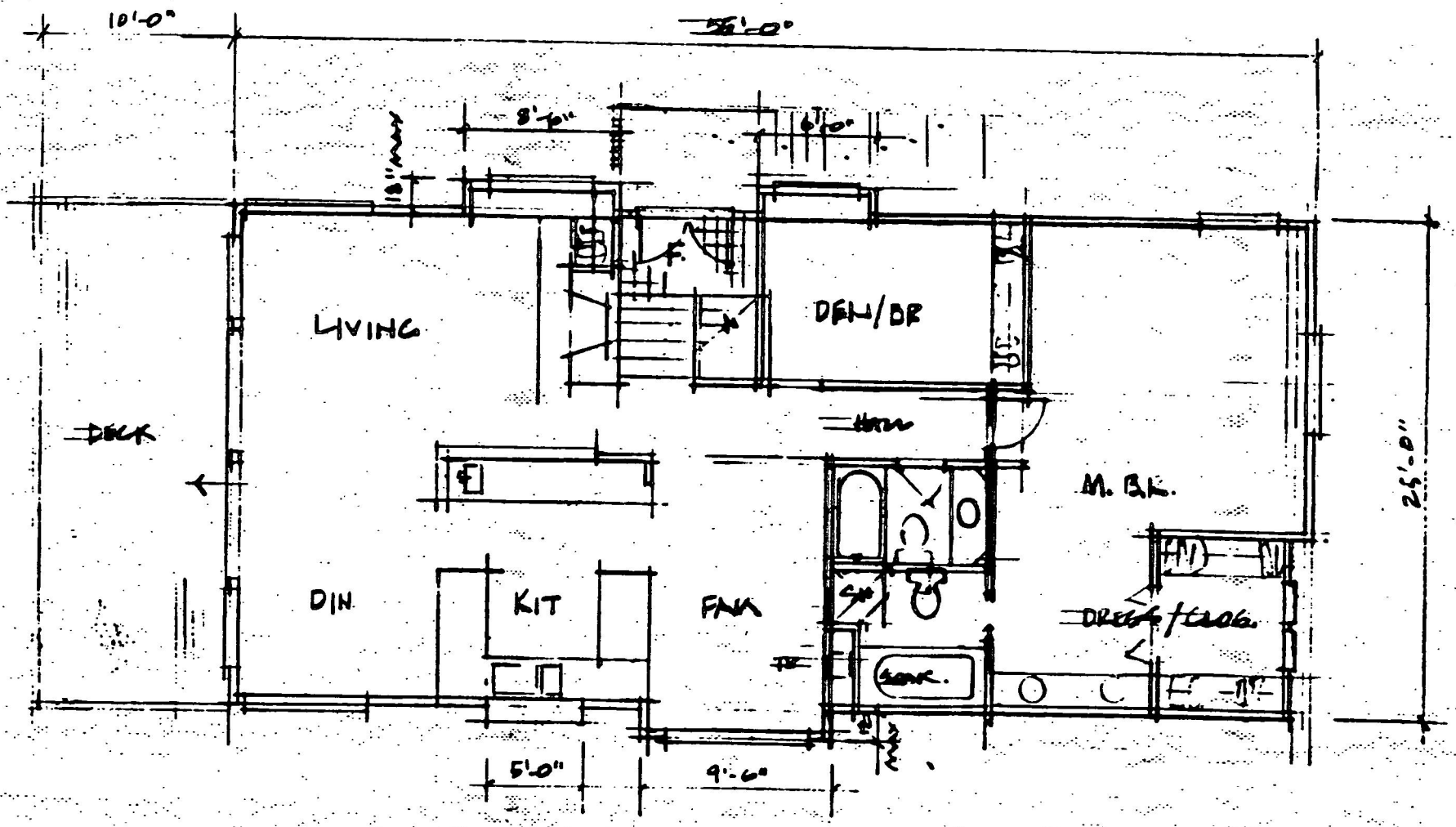
CONIFER
DESIGN GROUP
4205 148th AVE N.E. BELLEVUE, WA 98007



STREET ELEVATION

0 5 10

CONIFER
DESIGN GROUP
4205 148th AVE. N. E. BELLEVUE, WA 98007



MAIN FLOOR PLAN

CONIFER
DESIGN GROUP
4205 148th AVE. N. E. BELLEVUE, WA 98007

12-4-89
FRASER

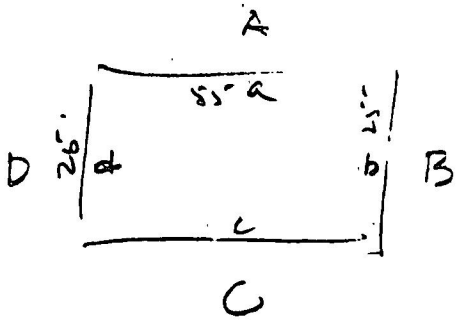
CALC OF AVE ELEV:

A 106.1 a 55'

B 108.41 b 25'

C 109.0 c 55'

D 104.4 d = 25'



$$\frac{(55)(106.1) + (25)(108.4) + (55)(107.0) + (25)(104.4)}{55 + 25 + 55 + 25} = \frac{17040.5}{160}$$

5835.5 2710 5885 2610

$$= 106.5$$

CALC OF
% COVER =

HOUSE:

(55)(25) = 1375
+ (1)(16) = 16
+ (4)(12.5) = 50

1441 SF

DRIVE:

(16)(20) = 320 SF

PATIO:

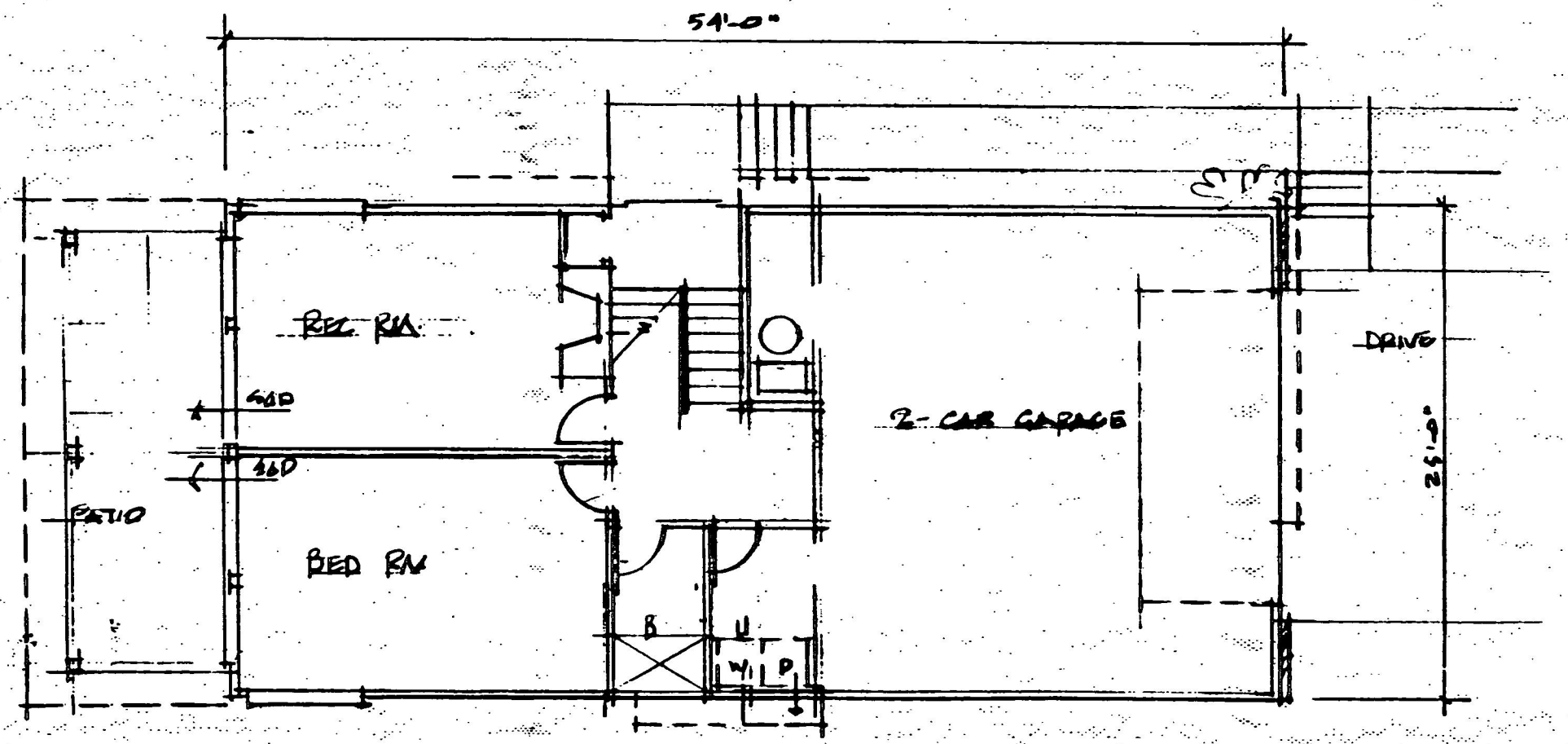
(10)(25) = 250
− (4)(12.5) 50
200 SF

WALK:

136 SF

2097 / 3872 = .54%

(LOT AREA = 3872)



BASEMEN FLOOR PLAN

0 5 10

CONIFER
DESIGN GROUP
4203 148th AVE. N. E. BELLEVUE, WA 98007

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 2 lot short plat & rezone from RS 8.5 to RM 3.6

Proponent Scott Fraser

Location of proposal, including street address, if any 703 State Street South. Kirkland, WA. 98033

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 1/15/90 Signature

X You may appeal this determination to Nancy L. Carlson
at Kirkland City Hall, 123 Fifth Avenue, Kirkland,
no later than (date) 1/22/90
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: _____

FRASER REZONE
FILE NO. IIB-90-8
ATTACHMENT 3

Mailed to the following alc 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 Scott Fraser
15336 169th Ave NE, Woodinville WA. 98072

cc: Planning & Community Development File No. SS-113-90-8
___ Building Department (Permit No. _____)

___ Mitigating Measures Incorporated into the Proposal:

Distributed by: _____ on: _____

SEPA/07-24-89/BK:rk

DEVELOPMENT STANDARDS

Fraser Rezone, File No. IIB-90-8

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) All roof drainage must be tight lines to storm sewer.

   b) **Authority:** Zoning Code Chapter 107

4. a) **Right-of-Way Improvements:** Existing adequate.

   b) **Authority:** Zoning Code Chapter 110

5. a) **Transmission Lines:**

   1) Underground on site.
   2) Defer all off-site utility lines with concomitant agreement.

   b) **Authority:** Zoning Code Chapter 110

C. **Building Department**

1. **Relevant Building Code Requirements:** Buildings must comply with the Uniform Building Code, Uniform Mechanical Code, and the Uniform Plumbing Code, as adopted and amended by the City of Kirkland.

D. **Fire Department** F.D. Ref. #E4-18

1. **Fire Flow Information (UFC 10.301):** Minimum 750 gpm at 20 psi required.

MAINTENANCE AGREEMENT - LANDSCAPE STRIP

Parcel Data File: 703 State Street 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 Zoning Permit File No. IIB-90-8 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 rights-of-way are State Street and Seventh 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:

> Lots 18, 19, and 20, Block 2, Commercial Addition to Kirkland, according to the plat thereof recorded in Volume 6 of Plats, page 77, records of King County, Washington, except the west 5 feet thereof, conveyed to the Town of Kirkland for road purposes by deed recorded in Volume 672, page 309 (AF Number 692734).

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)
) SS.
County of King)

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)
) SS.
County of King)

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)
) SS.
County of King)

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: 703 State Street South

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

Zoning Permit File No. IIB-90-8
Project Name: Fraser Rezone
Project Address: 703 State Street S

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 State Street and Seventh Avenue South rights-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:

> Lots 18, 19, and 20, Block 2, Commercial Addition to Kirkland, according to the plat thereof recorded in Volume 6 of Plats, page 77, records of King County, Washington, except the west 5 feet thereof, conveyed to the Town of Kirkland for road purposes by deed recorded in Volume 672, page 309 (AF Number 692734).

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.

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: _____