

RESOLUTION NO R-3666

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-90-143 BY PAUL IVERSON TO DEVELOP A 4-UNIT CONDOMINIUM PROJECT 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 12 5 to RM 3 6

WHEREAS, the Department of Planning and Community Development has received an application filed by Paul Iverson 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 a RS 12 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 the regular meeting of March 14, 1991, 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 the 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-90-143 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 12.5 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. Notwithstanding any recommendations heretofore given by the Houghton Community Council, the subject matter of this resolution and the Permit herein granted are, pursuant to Ordinance 2001, subject to the disapproval jurisdiction of the Houghton Community Council, and therefore, this resolution shall become effective only upon approval of the Houghton Community Council or the failure of said Community Council to disapprove this resolution within 60 days of the date of the passage of this resolution

Section 6. 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

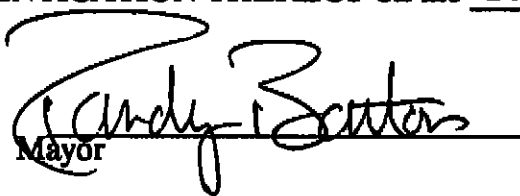
Section 7. A certified copy of this Resolution together with the Findings, Conclusions, and Recommendations herein adopted shall be attached to and become a part of the development permit or evidence thereof, delivered to the permittee

Section 8. 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 16th day of April 1991

SIGNED IN AUTHENTICATION THEREOF on the 16th day of April, 1991


Mayor

ATTEST

City Clerk

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

APPLICANT: Paul Iverson

FILE NO. IIB-90-143

APPLICATION:

Request To rezone a 37-acre property from RS 12.5 (single-family residential, minimum lot size 12,500 square feet) to RM 3.6 (multifamily residential, minimum lot size 3,600 square feet). The rezone is requested to construct a four-unit townhouse condominium (see Exhibit A, Attachment 2)

Review Process Process IIB The subject property is located within the boundaries of the former town of Houghton. A courtesy public hearing is held before the Houghton Community Council. The Hearing Examiner then conducts a public hearing and makes a recommendation, City Council makes the final decision. If the City Council approves the application, that approval is not effective until the Houghton Community Council approves or fails to disapprove within 60 calendar days after the City Council adopts the resolution granting the application.

Major Issues

- a Compliance with Zoning Code Section 20.10 a and b for the development of attached and stacked dwelling units (see Exhibit A, Attachment 3)
- b Compliance with the rezone criteria as set forth in Chapter 130 of the Zoning Code
- c Compliance with the decisional criteria as set forth in Chapter 152 of the Zoning Code

SUMMARY OF RECOMMENDATION AND DECISION:

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 Iverson application was opened at 9:04 a.m., March 14, 1991, in the Council Chamber, City Hall, 123 Fifth Avenue, Kirkland, Washington, and was closed at 10:35 a.m. Participants at the public hearing and the exhibits offered and entered are listed below.

ENCLOSURE A verbatim /

FILE NO IIB-90-143

recording of the hearing is available in the City Clerk's office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development.

FINDINGS, CONCLUSIONS, AND RECOMMENDATION/DECISION:

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

I FINDINGS:

- A The findings of fact recommended on pages 5 to 7 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 Staff reviewed some of the issues which had been raised by neighbors which were outside the scope of this application. They included the following:
 - 1 People who use Houghton Beach will sometimes park on this street.
 - 2 The existing road (NE 62nd) is narrow and should be improved.
 - 3 There is insufficient parking for the older apartment buildings in the area.Staff also said the proposal complies with the City's Comprehensive Plan and is in the best interests of the Community in that it would provide housing near shops, parks, and transit. Staff also said the proposed building would step up the hill and that would help minimize adverse impacts on the neighborhood.
- C The Houghton Community Council recommended that the project be reduced from four units to three or two units, that trees planted on the site be in perpetuity limited to the height of the building to which they are adjacent, and that a security device be constructed on the rockery (Exhibit C).
- D The applicant said he would agree to put railings at the top of the rockery for safety purposes and would agree to limit the height of trees to be no higher than the building, in order to preserve views.
- E The applicant's architect said there would be no view impact from this project and submitted Exhibits G and H to substantiate his claim. He said the applicant would be willing to work with the neighbors to form an LID to improve NE 62nd. He also said all code requirements have been complied with and he disagreed with the recommendation to reduce the number of units. He felt the project would have virtually no traffic impact on the neighborhood and said it meets with the intent of the State's new growth management law which seeks to increase urban density in order to preserve rural areas.

- F** A number of neighbors wrote (Exhibits B1 - B20) and/or testified that they were opposed to the project as proposed, but many concurred with the recommendation of the Houghton Community Council. Their concerns included the following:
- 1 The proposal is too dense for an area which is already overbuilt. The number of units should be reduced to three or even two units, Unit D should be removed, and the building should be either centered on the property or moved as far west as possible to preserve views from the homes to the east.
 - 2 The units will be too high and will block views now enjoyed by neighbors to the east.
 - 3 The potential increase in traffic brought on by construction of four dwelling units is excessive.
 - 4 The street is already impacted by insufficient off-street parking. This project would only intensify the problem.
 - 5 The project should be required to extend curbs, gutters, and sidewalks to Lakeview Drive to improve pedestrian safety and should be required to put utility lines underground to improve views.
 - 6 No trees should be allowed which would grow taller than the roof lines of the new building.
 - 7 Outdoor lighting should be controlled to protect neighbors from glare.
 - 8 Handrails should be installed along the upper edge of the proposed rockery.
 - 9 Only a limited size and number of curb cuts for car access should be allowed in order to preserve a sense of walkway safety for pedestrians.
 - 10 The proposal should only be approved if it is in the public interest.
- G** The applicant's architect responded that an individual could build a single-family home at the same height and location as Unit D, and the single-family home could even be longer than Unit D because no transition limitations would apply. He also said the Comprehensive Plan encompasses the entire City, not just the immediate neighborhood, and he indicated that the public interest should be viewed from a City-wide standpoint, not a neighborhood standpoint. Finally, he said that even if the number of dwelling units were reduced to three, the applicant could build the same size structure with more space per dwelling unit, because the proposed structure meets all of the code requirements.

II. CONCLUSIONS:

- A The conclusions recommended by the Department of Planning and Community Development, as set forth on pages 6 to 17 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 One of the major issues with the neighbors revolved around preservation of existing views. As was noted during the hearing, a single-family house could be located in the same location as Unit D, could be as high, could be longer, and it would still meet all code requirements. In addition, after visiting the site, reviewing the plans, and reviewing the view analysis (Exhibit H), it is believed the impact on views will be minimal. It should also be noted that at the present time, the City has no view protection policies other than policies which address public view corridors.
- C The City also has no policies or requirements which would require the applicant to make improvements to the public infrastructure beyond the impact caused by the applicant's development. In other words, the poor condition of NE 62nd was not caused by the applicant, nor did he erect the power lines. It would not be fair to require him to pay for the total improvements. Rather, the formation of a Local Improvement District to make those corrections would be more equitable.
- D The requests by the neighbors to have trees planted which do not grow above the height of the proposed structure, to have guardrails placed at the top of the rockery, and to shield outdoor lighting so it doesn't create glare are all requests which should be addressed in the conditions of approval.
- E After visiting the site on different occasions, it is believed by the Examiner that four units at this location will not have a significant impact on traffic in the neighborhood.
- F Staff is believed to be correct in its analysis. The proposal is consistent with the provisions of the City's Comprehensive Plan and if conditioned as outlined below, will make adequate provisions for the public health, safety, and welfare of the community.

III. RECOMMENDATION:

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

- A 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 4, 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 4, the condition of approval shall be followed

- B The recommendations of the geotechnical report of January 7, 1991, by GEOTECH CONSULTANTS (Exhibit A, Attachment 5) shall be followed during planning, excavation, and construction (see Exhibit A, Conclusion II D 3 b (2))
- C The Department of Planning and Community Development shall be authorized to approve minor modifications to the approved site plan, provided that
 - 1 The change will not result in reducing the landscaped area, buffering areas, or the amount of open space on the project,
 - 2 The change will not result in increasing the residential density or gross floor area of the project,
 - 3 The change will not result in any structure, vehicular circulation, or parking area being moved more than 10 feet in any direction and will not reduce any required yard,
 - 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 (see Exhibit A, Conclusion II D 10 b)
- D As part of the application for a Building Permit the applicant shall submit
 - 1 Revised site and landscape plans showing the following
 - a A minimum five-foot setback from the front property line for the portion of the driveway which does not connect with the adjacent street. The resulting additional buffer area between the driveway and the public right-of-way should be completely landscaped as shown on the attached landscaped plan. The proposed retaining wall or curb may not be included in the buffer area (see Exhibit A, Attachment 2, page 4). The plan is to be approved by the Department of Planning and Community Development (see Exhibit A, Conclusions II D 5 b (1) and (2))
 - b Trees planted 8 to 10 feet on center along the entire length of the landscape buffer adjacent to the west property line (see Exhibit A, Conclusion II D 4 b (1))
 - c Trees to be planted shall be species which do not grow to exceed 25 feet in height (Hearing Examiner Conclusion D)

- d The driveway changed to allow a greater distance between the curb and the existing 14-inch maple tree and the retaining wall and the 8" diameter cherry tree that are proposed to be saved. A temporary fence should be constructed around the dripline of the trees during construction. Proposed measures to retain the two trees should be reviewed by the Planning Department (see Exhibit A, Conclusion II D 4 6 (3))
 - e The site plan should also show the maximum height of the retaining wall not to exceed six feet (see Exhibit A, Conclusion II D 5 b (2))
 - f The plan shall include a fence along the top of the retaining wall wherever the wall exceeds a height of four feet (Hearing Examiner Conclusion D)
- 2 Plans for a permanent and construction-phase storm water control system, following the recommendations of the geotechnical report, to be approved by the Department of Public Works (see Exhibit A, Conclusion II D 6 b)
 - 3 A signed and notarized covenant, as set forth in Attachment 6, indemnifying the City from any loss, including claims made therefore, resulting from soils disturbance on the subject property to be approved by the Department of Planning and Community Development and recorded with the King County Records and Elections Division (see Exhibit A, Conclusion II D 3 b (1))
 - 4 Plans for installing the following half-street improvements in the NE 62nd Street right-of-way bordering the subject property: vertical curb, gutters, underground storm sewers, minimum 4½-foot-wide landscape strip located next to the curb and planted with street trees every 30 feet on center, street trees to be planted no closer than 36 inches to the curb, a minimum 5-foot-wide sidewalk located behind the landscape strip, a utility strip plus any excess right-of-way to be located immediately behind the sidewalk, and a minimum paving of 18 feet of asphalt from the face of the curb toward the centerline to be approved by the Department of Public Works
 - 5 A signed and notarized concomitant agreement, as set forth in Attachment 7, to underground all existing utility lines bordering the subject property within the NE 62nd Street right-of-way to be approved by the Department of Planning and Community Development and recorded with the King County Records and Elections Division (see Exhibit A, Conclusion II D 7 b 4)
 - 6 Sufficient information concerning construction and occupancy of structures to determine fire flow requirements, as well as plans for any on- or off-site improvements necessary to meet fire flow requirements (see Exhibit A, Conclusion II G 1 b) Fire Lanes must be completed and approved prior to any combustible construction

E Prior to occupancy, the applicant shall

- 1 Complete all site improvements indicated on the site plan approved by the Department of Planning and Community Development at the time of application for a Building Permit (see Exhibit A, Conclusions II D 4 b 1 and II D 6 b)
- 2 Complete the installation of the half-street improvements within the NE 62nd Street right-of-way bordering the subject property as specified in Condition I B 3 d (see Exhibit A, Conclusion II D 7 b (1))
- 3 Submit for approval by the Department of Planning and Community Development a signed and notarized agreement, as set forth in Attachment 8, to maintain the landscaping within the NE 62nd Street right-of-way to be recorded with the King County Records and Elections Division (see Exhibit A, Conclusion II D 7 b (3))
- 4 Install a fully-operational permanent storm water control system (see Exhibit A, Conclusion II D 6 b)
- 5 Complete improvements necessary to meet fire flow requirements (see Exhibit A, Conclusion II G 1 b)
- 6 Submit to the Department of Planning and Community Development a security device to ensure maintenance of landscaping, the permanent storm water retention system, right-of-way improvements, and other site improvements (see Exhibit A, Conclusion II D 6 b)
- 7 All outdoor lighting shall be shrouded to prevent glare onto neighboring properties (Hearing Examiner Conclusion D)
- 8 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 175 102 are met (see Exhibit A, Conclusions II D 7 b (2) and II D 13 b)

F Within seven (7) calendar days after the final public hearing, the applicant shall remove the public notice sign and return it to the Department of Planning and Community Development. The sign shall be disassembled with the posts, bolts, washer, and nuts separated from the sign board (see Exhibit A, Conclusion II D 12 b)

EXHIBITS:

*The following exhibits were offered and entered into the record

- A Department of Planning and Community Development Staff Advisory Report
- B1 Letter from Joy & John Weaver
- B2 Letter from Robert & Barbara Prince, dated 2/22/91
- B3 Letter from David & Pamela Kiesel, dated 2/21/91
- B4 Letter from Suzanne & Jacob Fisker-Pedersen, dated 2/22/91

*Exhibits and references can be found within File IIB-90-143 maintained in the Department of Planning and Community Development

- B5 Letter from Michael Mayfield, dated 2/23/91
- B6 Letter from Wilburn French, dated 2/23/91
- B7 Letter from Tom & David Smith, received 2/25/91
- B8 Letter from C. W Binford Jr, dated 2/22/91
- B9 Letter from David Kiesel, dated 3/13/91
- B10 Letter from Jeffery Waters, dated 3/13/91
- B11 Letter from Robert Prince, received 3/13/91
- B12 Letter from Joy & John Weaver, dated 3/13/91
- B13 Letter from Pamela Kiesel, dated 3/13/91
- B14 Letter from Wilburn French, dated 3/13/91
- B15 Letter from Mare & Carmen Graves, dated 3/13/91
- B16 Letter from Tobias & Linda Bright, dated 3/13/91
- B17 Letter from Gary Wegner, dated 3/13/91
- B18 Letter from John & Jo Billroth, dated 3/13/91
- B19 Letter from Michael Mayfield, dated 3/14/91
- B20 Letter from Jacob & Suzanne Fisker-Andersen, dated 3/12/91
- C Houghton Community Council Minutes, 2/25/91
- D Aerial Photo Copy
- E Criteria for Rezone
- F Enlarged Zoning Map
- G Photos and Graphic Representation of Project Height
- H View Analysis

PARTIES OF RECORD:

Paul Iverson, 11715 SE Fifth Street, Suite 100, Bellevue, WA 98005
Joy and John Scofield Weaver, 10255 NE 62nd Street, Kirkland, WA 98033
Robert and Barbara Prince, 10228 NE 62nd Street, Kirkland, WA 98033
David and Pamela Kiesel, P O Box 2051, Kirkland, WA 98083-2051
Jacob and Suzanne Fisher-Andersen, 6224 102nd Place NE, Kirkland, WA 98033
Michael Mayfield, 6220 102nd Place NE, Kirkland, WA 98033
Wilburn O French, 6220 102nd Place NE, Kirkland, WA 98033
C W Binford, Jr, 6221 102nd Place NE, Kirkland, WA 98033
Leonard Milbrandt, 11715 SE Fifth, Bellevue, WA 98005
Jeff Waters, 6215 102nd Place NE, Kirkland, WA 98033
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

Entered this 26th day of March, 1991, 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



Ron 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 April 4, 1991). 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 April 11, 1991, 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.

LAPSE OF APPROVAL:

ZONING PERMIT

Under Section 152 115 1 of the Zoning Code, the applicant must submit to the City a complete building permit application within one year after the final decision on the matter, or the decision becomes void. In the event that judicial review proceedings are initiated pursuant to Section 152 110, the decision would be void one year after the termination of judicial review proceedings. Furthermore, the applicant must substantially complete construction of the development activity, use of land, or other actions approved under Chapter 152 and complete the applicable conditions listed on the Notice of Approval within five (5) years after the final decision on the matter, or the decision becomes void. Application and appeal procedures for a time extension are described in Section 152 115 2 and 152 115 3.