

RESOLUTION NO. 3962

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND DENYING THE ISSUANCE OF A PROCESS IIB PERMIT, PRELIMINARY AND FINAL PLANNED UNIT DEVELOPMENT, AND SHORELINE CONDITIONAL USE PERMIT AS APPLIED FOR IN DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. IIB-SCUP-94-5 BY JAMES CLARK/MOSS BAY ROWING CLUB TO CONSTRUCT AND OPERATE A ROWING CLUB FACILITY BEING WITHIN A WATERFRONT DISTRICT I ZONE AND AN URBAN RESIDENTIAL I SHORELINE ENVIRONMENT AND ALSO DENYING A CHALLENGE TO THE RECOMMENDATION OF THE KIRKLAND HEARING EXAMINER ISSUED IN SAID FILE.

WHEREAS, the Department of Planning and Community Development has received an application for a Process IIB Permit, Preliminary and Final Planned Unit Development, and Shoreline Conditional Use Permit filed by James Clark/Moss Bay Rowing Club (the applicant) and Marie Vollstedt (the owner) for the subject property described in said application.

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, and a mitigated determination of nonsignificance was issued; and

WHEREAS, the mitigated determination of nonsignificance was appealed to the Kirkland Hearing Examiner who denied the appeal but attached an additional mitigating measure limiting the hours of operation into the determination of nonsignificance; and

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

WHEREAS, the application has been submitted to the Houghton Community Council which held a public hearing and made a recommendation thereon; and

WHEREAS, the application has been submitted to the Kirkland Hearing Examiner who held a hearing thereon at his meeting of March 20, 1995; and

WHEREAS, the Kirkland Hearing Examiner after his public hearing and consideration of the recommendations of the Department of Planning and Community Development did adopt certain Findings, Conclusions, and Recommendations and did recommend approval of the Process IIB Permit, Preliminary and Final Planned Unit Development, and Shoreline Conditional Use Permit 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 Findings, Conclusions and Recommendation of the Hearing Examiner and Houghton Community Council, as well as a timely filed challenge of the Hearing Examiner recommendation and timely filed responses to said challenge.

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

Section 1. The Findings of Fact of the City Council regarding Department of Planning and Community Development File No. IIB-SCUP-94-5 are set forth as Exhibit A hereto and are hereby included by reference as though fully set forth herein.

Section 2. The report of the Houghton Community Council as signed by the chairman thereof and filed in the Department of Planning and Community Development File No. IIB-SCUP-94-5 is hereby acknowledged as the recommendation of the Houghton Community Council.

Section 3. The Conclusions of the City Council regarding Department of Planning and Community Development File No. IIB-SCUP-94-5 are set forth as Exhibit B hereto and are hereby included by reference as though fully set forth herein.

Section 4. The Process IIB Permit, Preliminary and Final Planned Unit Development, and Shoreline Conditional Use Permits are hereby denied.

Section 5. The challenge to the Hearing Examiner recommendation is found to be without merit and is hereby denied.

Passed by a majority vote of the Kirkland City Council on the 19th day of October, 1995.

SIGNED IN AUTHENTICATION THEREOF on the 19th day of October, 1995.

  
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Mayor

Attest:

  
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City Clerk

**EXHIBIT A****CITY COUNCIL ADOPTION OF FINDINGS OF FACT**

The City Council hereby adopts the following findings of fact of the Kirkland Hearing Examiner, as signed by him and filed in the Department of Planning and Community Development File No. IIB-SCUP-95-5 set forth below:

**FINDING 1**

With respect to Hearing Examiner Finding II.A.1, the City Council hereby adopts the following findings of fact as recommended on pages 9 to 25 of the Department of Planning and Community Development Advisory Report (Hearing Examiner Exhibit A) as the City Council's finding of fact except where otherwise noted:

II.A.1.a; II.A.2.a; II.B.1; II.C.1; II.D.1; II.E.1.a; II.E.2.a; II.E.2.a(1)[fact only]; II.E.2.a(2)[fact only] *except the last paragraph, which is not adopted*; II.E.2.a(3)(a); II.E.2.a(3)(b); II.E.2.a(3)(c); II.E.2.a(3)(d)(i-v)[facts only]; II.E.2.a(4); II.E.3.a *except paragraph 3.a(2), which is not adopted*; II.E.4.a; II.E.5.a; II.E.6.a; II.E.7.a; II.E.8.a; II.E.9.a; II.E.10.a; II.E.11.a; II.E.12.a; II.E.13.a; II.E.14.a; II.E.15.a; II.F.1.a; II.F.2.a; II.F.2.a(1)[fact only]; II.F.2.a(2); II.F.2.a(3); II.F.2.a(4); II.F.2.a(5)[fact only]; II.F.3.a; II.F.3.a(1)[fact only]; II.F.3.a(2)[fact only]; II.F.3.a(3)[fact only]; II.F.3.a(4)[fact only]; II.F.3.a(5)[fact only]; II.F.4.a; II.F.5.a; II.G.1; II.H.1.

**FINDING 2**

Hearing Examiner Finding II.A.3 is adopted by City Council.

**FINDING 3**

Hearing Examiner Finding II.A.4 is adopted by City Council.

**FINDING 4**

Hearing Examiner Finding II.A.5 is adopted by City Council.

**EXHIBIT B****CITY COUNCIL CONCLUSIONS**

Based on the findings of fact adopted by City Council, the City Council hereby concludes as follows:

**CONCLUSION 1- PUD CRITERIA**

The application does not comply with the criteria necessary for approval of a PUD as set forth in Kirkland Zoning Code Section 125.35.

- a. With respect to criteria 125.35.2, adverse impacts and undesirable effects of the proposed PUD are not outweighed by specifically identified benefits to the residents of the City. The proposed PUD will have unacceptable adverse impacts and undesirable effects on the neighborhood. While there may be benefits to the residents of Kirkland in having water oriented activities like rowing within or near the City, the benefits of locating the facility at this particular location do not outweigh the undesirable effects. Undesirable effects include noise impacts on nearby residents; intrusion of an incompatible use on nearby residential uses and resultant loss of privacy; uncertain availability of ongoing parking for proposed activities; and other effects on public health, safety and welfare addressed in Conclusion 2.b below.

Furthermore, limitations and conditions deemed necessary by the Hearing Examiner's in his recommended findings of fact and conclusions, significantly reduce the utility of the proposed site for a recreational activity of this type and, therefore, the provision of public benefit necessary for approval of a PUD. The extent of public testimony on the benefits of rowing activity indicates that the Club's size should ultimately expand, while the limitations and conditions deemed necessary by the Hearing Examiner to allow the activity to locate at the subject property would diminish the activities. Therefore, neither the public, through perceived benefits, nor the applicant is well served by the restrictions necessary to locate the rowing club at this site.

- b. With respect to criteria 125.35.3, the applicant is not providing one or more of the following benefits to the City as part of the proposed PUD:
- (1) No public facilities are proposed that the City could not require for development of the property without a PUD; and
  - (2) No preservation, enhancement or rehabilitation of natural features is proposed that the City could not require for development of the property without a PUD; and
  - (3) No solar energy systems are proposed; and
  - (4) The design of the PUD is not superior to the design that would result from development of the property without a PUD:
    - (a) There is no superior design in the proposed PUD in terms of increased open space or recreational facilities. The PUD is applied for to obtain approval for a use not otherwise permitted in the zoning district. The open space and recreational facilities proposed for the site are what the City would expect for any

proposal of this type of facility proposed without a PUD. Therefore, there is nothing about the design of the proposal which is superior in terms of open space and recreational facilities.

- (b) No superior circulation patterns are proposed and no superior screening of parking areas is proposed.
- (c) No superior landscaping, buffering, or screening is proposed.
- (d) No superior design, placement, relationship, or orientation of the structure is proposed.
- (e) No minimum use of impervious surfacing materials is proposed.

#### CONCLUSION 2 - PROCESS IIB PERMIT CRITERIA

The application does not comply with the criteria necessary for approval of a Process IIB permit as set forth in Kirkland Zoning Code Section 152.90.3.

- a. With respect to criteria 152.90.3.a, the proposal is not consistent with the intent of the goals and policies of the applicable neighborhood provisions of the Comprehensive Plan, including those adopted by reference from the Shoreline Master Program and addressed in Conclusion 3 below.
- b. With respect to criteria 152.90.3.c, the proposal is not consistent with the public health, safety, and welfare. The nature and extent of the conditions recommended by the Hearing Examiner indicate that the use would require extensive monitoring and enforcement by City staff. This monitoring and enforcement comes at a cost to the public. The history of the Club during its interim tenancy of the site over the past two years indicates that it is reasonable to anticipate difficulties in monitoring and enforcing compliance with all of the recommended conditions of approval. The nature and extent of the conditions recommended by the Hearing Examiner indicate that this is not an appropriate location for the Club and that trying to condition and monitor the use so that it fits at the proposed site is not an appropriate use of public resources.

The constrained nature of the site precludes the ability to meet parking obligations on-site. The proposed use of the property for a rowing club depends on the ongoing availability of off-site parking. Parking agreements or commitments have not been submitted for off-site parking to indicate the ongoing availability of parking for all of the programs proposed. This leaves open the question of whether the parking obligations can be met. This lack of certainty buttresses the conclusion that this site is inappropriate for the proposed activity.

In addition, as discussed elsewhere in these Conclusions, other problems and conflicts indicate that the proposal is not consistent with the public health, safety, and welfare.

#### CONCLUSION 3- SCUP CRITERIA

The application does not comply with the criteria necessary for approval of a Shoreline Conditional Use Permit as set forth in the Kirkland Shoreline Master Program Section 24.05.115 and Kirkland Municipal Code Section 24.06.45.

- a. With respect to criteria 24.05.115.1, the proposed use, development, and activity is not compatible with existing and permitted uses, development, and activities within the UR I shoreline environment. The proposed activity is unacceptably close to existing permitted residential use, development and activity. Due to the limited size and width of the subject property, it is not possible to separate the incompatible uses in a manner that would alleviate the conflicts addressed elsewhere in Conclusions 1 and 3.
- b. With respect to criteria 24.05.115.4, the proposal does not comply with the criteria set forth in Section 173-14-140(1)(a) through (e) of the Washington Administrative Code:
- (1) With respect to criteria WAC 173-14-140(1)(a), the proposed use is not consistent with state and local policies that encourage compatibility with existing uses and development.  
  
Goals and policies of the Kirkland Shoreline Master Program encourage new uses and developments to be consistent and compatible with established and desirable development patterns (Policy 24.05.50.2.b). Policy 24.05.55.2.a states that commercial uses should only be permitted where compatible with exiting development or where land can be aggregated to minimize impacts. As discussed elsewhere in these Conclusions, the proposed use is not consistent and compatible with existing development and established development patterns. Furthermore, the restricted size of the subject property does not permit aggregation of land in a manner that would minimize the identified impacts, including locating activities and noise away from residential uses and providing adequate on-site parking.
  - (2) With respect to criteria WAC 173-14-140(1)(c), the proposed use of the site and design of the project is not compatible with other permitted uses in the area as discussed elsewhere in these Conclusions.
  - (3) With respect to criteria WAC 173-14-140(1)(e), the public interest would suffer substantial detrimental effect. In addition to public interests identified in adopted fact II.F.3.a(5), other public interests at stake include the health, safety, welfare, comfort, and repose of Kirkland residents. If approved with the conditions deemed necessary by the Hearing Examiner to mitigate the impacts of the use (i.e. - limiting hours of operation, monitoring off-site parking, limiting number of participants...), the proposal would require continuous monitoring and enforcement by the City to ensure compliance with the established conditions. The extent of the monitoring and enforcement required indicates the unsuitability of the site for the proposed activity and the acceptance of this burden is not in the best interests of the City. The proposal would have a substantial detrimental effect to the public interest.
- c. With respect to criteria 24.06.45.c, the applicant has not demonstrated that the impacts of the proposed use on nearby uses are essentially the same as the impacts that would result from the allowed uses in the UR I shoreline environment. The nature and extent of the proposed outdoor uses and the corresponding early morning noise and activity would not be anticipated from other allowed uses in the UR 1 shoreline environment. The impacts from the close proximity of the use and activities to residential uses are greater and different than those that would likely occur from an allowed use on the site.

#### CONCLUSION 4 - GENERAL

The establishment of land use regulations are intended to provide predictability and certainty to the community. The PUD provisions of the Zoning Code and the SCUP provisions of the Shoreline Master Program are intended to allow flexibility in approving land uses to meet continually changing demands. However, for the City to approve such a use, the application must meet rigorous tests of land use compatibility, limitation of undesirable effects, and public benefit. The issue here is not whether rowing is an appropriate activity on the Kirkland waterfront, but whether the activity is appropriate at the proposed location.

The City Council concludes that this is not the appropriate site for the activity. The nature and extent of the conditions and limitations recommended by the Hearing Examiner are indicative of the severe physical limitations of the proposed site and the inappropriate proximity to existing residential uses.