



King County

Department of Development and Environmental Services

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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: March 13, 2008

TO: Building Services Division Staff
Jim Chan, Manager
Chris Ricketts
Mark Bergam
Jarrod Lewis

Land Use Services Division Staff
Randy Sandin, Manager
Lisa Dinsmore
Deidre Andrus
Steve Bottheim

Fire Marshal Division Staff
John Klopfenstein, Fire Marshal

Stephanie Warden, Director
Joe Miles, Deputy Director
Harry Reinert, Special Projects Manager and RRC Co-Chair
Cass Newell, Prosecuting Attorney's Office

FM: Harry Reinert, Co-Chair

Present: Randy Sandin, Chris Ricketts, Mark Bergam, Deidre Andrus, Joelyn Higgins, Lisa Dinsmore, Hillary Jones, Cass Newell, Steve Bottheim, Nick Gillen, and Harry Reinert

1. Is a townhouse subdivision a stand-alone townhouse development under K.C.C. 21A.12.040? What are the requirements for achieving the maximum density?

Background.

DDES has an application for a townhouse subdivision in the NB zone, designated outside of center in the urban area. The proposal is for 31 lots on 2.6 acres, for a density of 11.92 du/acre. The maximum density in the NB zone is 12 du/acre, subject to a requirement that "these densities may only be achievedfor **stand-alone** townhouse development in the NB zone on property designated commercial outside of center in the urban area." K.C.C. 21A.12.040B.3.

Title 21A does not define the term “stand-alone townhouse development.”

Discussion.

K.C.C. 21A.12.040 establishes the base density and maximum densities for Resource, Commercial, and Industrial Zones. In the NB zone, the base density is 8 du/acre, subject to condition B.2. The maximum density is 12 du/acre, subject to condition B.3. These conditions are:

2. These densities are allowed only through the application of mixed-use development standards and for stand-alone townhouse development in the NB zone on property designated commercial outside of center in the urban area.

3. These densities may only be achieved through the application of residential density incentives or transfer of development rights in mixed-use developments and for stand-alone townhouse development in the NB zone on property designated commercial outside of center in the urban area. See K.C.C. chapters 21A.34 and 21A.37.

K.C.C. 21A.12.040B.

The term “stand-alone townhouse development” is not defined in K.C.C. Title 21A. The American Heritage College Dictionary defines stand-alone as “of, relating to, or being ... self-contained.” In the context of a development proposal, a stand-alone townhouse development would be a development that consists solely of townhouses and does not include other types of development. For example, the townhouses in a mixed use development that includes both commercial and townhouse elements would not be a stand-alone townhouse development. Likewise, the townhouse portion of a residential development that includes both townhouses and single family detached residences would not be a standalone townhouse development.

The requirements for achieving maximum densities are more confusing. On its face, K.C.C. 21A.12.040B.3, would appear to provide for two separate circumstances. The first would apply to mixed-use developments through the use of residential density incentives or transfer of development rights. The second would be for stand-alone townhouse development in the NB zone on property designated commercial outside of center in the urban area. However, this reading would effectively mean that for standalone townhouse developments in the NB zone, the base density and the maximum density are identical. Such a reading would be inconsistent with the circumstances under which maximum density is allowed in other circumstances. For example, in the residential zones in all circumstances achieving maximum densities requires the use of residential density incentives or transfer of development rights. See K.C.C. 21A.12.030B.1. As a result, K.C.C. 21A.12.040B.3 should be read to require that in order to achieve maximum densities, both mixed-use developments and stand-alone townhouse developments in the NB zone must use residential density incentives or transfer of development rights.

Conclusion.

For purposes of 21A.12.040, a stand-alone townhouse development is a development that consists solely of townhouses. In order for a stand-alone townhouse development in the NB zone to achieve the maximum density allowed under K.C.C. 21A.12.040, the application of residential density incentives or transfer of development rights is required.

- 2. May the impacts resulting from altering a category IV wetland be mitigated by through a fee-in-lieu as provided in K.C.C. 21A.24.133 or by relocating the category IV wetland relocated to another site under the provisions of K.C.C. 21A.24.335C? (Code Interpretation L08CI001)**

Background

CamWest filed Code Interpretation Request L08CI001 requesting an interpretation of the mitigation provisions of K.C.C. Chapter 21A.24 with respect to relocating a Category IV wetland that is less than 2,500 square feet in size and that is not part of a wetland complex.

Discussion

K.C.C. 21A.24.133 provides general guidelines for when offsite mitigation is allowed. This section directs that mitigation for critical area impacts should be provide on or contiguous to the development site. K.C.C. 21A.24.133A. When off-site mitigation is authorized, the priority is for sites within the same subbasin. K.C.C. 21A.24.133B. As an alternative to onsite site mitigation, the Department of Development and Environmental Services (DDES) may establish a program to allow the payment of a fee in lieu of providing onsite mitigation. K.C.C. 21A.24.133E.

With respect to wetlands, K.C.C. 21A.24.335 sets forth the development standards that apply to development proposals that propose to alter wetlands and their buffers. The development standards include the following limitation: “A category IV wetland less than two-thousand-five-hundred square feet that is not part of a wetland complex may be altered by relocating its functions into a new wetland on the site in accordance with an approved mitigation plan.” K.C.C. 21A.24.335C. K.C.C. 21A.24.335C implements King County Comprehensive Plan Policy E-144.

Of particular significance is the requirement in K.C.C. 21A.24.335C that the functions of the category IV wetland must be moved to another location on the site. Site is a defined term under the zoning code that includes multiple parcels that are adjacent to each other if they are part of a common plan of development.

Under K.C.C. 21A.24.133, off-site mitigation is allowed “when authorized.” K.C.C. 21A.24.133B. One circumstance when off-site mitigation is not authorized is when the proposal is to move the functions of a category IV wetland. K.C.C. 21A.24.335C.

The fee-in-lieu program authorized under K.C.C. 21A.24.133E is a mechanism for providing off-site mitigation and must be evaluated in the context of the requirements that apply to off-site mitigation. Since K.C.C. 21A.24.335C does not allow off-site mitigation for proposals to move

certain category IV wetlands, using the fee-in-lieu option provided for in K.C.C. 21A.24.133E is also not available for mitigating the impacts to those wetlands.

Conclusion

K.C.C. 21A.24.133 sets forth the circumstances under which the adverse impacts to critical areas may be mitigated off-site. K.C.C. 21A.24.335C allows a category IV wetland that is smaller than 2,500 square feet to be relocated, but requires that the functions be moved to another location on the same site. The result of the limitation in K.C.C. 21A.24.335C means that a category IV wetland that is smaller than 2,500 square feet and that is not part of a wetland complex may not be mitigated offsite under the provisions of K.C.C. 21A.24.133A. Since the fee-in-lieu program provided for in K.C.C. 21A.24.133E is one means of providing off-site mitigation, the fee-in-lieu program is not available to relocate these category IV wetlands.