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June 12, 2000

Hearing Examiner
City of Kenmore
P.O. Box 82607
Kenmore, WA 98028-0607

CITY OF KENMORE

J. Batchelor
City Clerk

Re: Statement of Appeal: City of Kenmore May 26th, 2000 Decision regarding the Lakepointe Project

Dear Hearing Examiner:

In accordance with the City of Kenmore Public Rules, with this statement, we appeal the City's reinstatement of the Lakepointe Commercial Site Development Permit for reasons listed below. Appellants will be represented in the appeal by Jennifer Dold, Bricklin & Gendler, LLP, 1424 4th Ave., Suite 1015, Seattle WA 98101.

I. SIGNIFICANT EFFECTS ON APPELLANTS

We are residents of Kenmore who will be significantly affected by the impacts, including traffic impacts, of the Lakepointe project as approved by the City of Kenmore. Dan and Bonnie Olsen filed two earlier appeals of the County's approval of the Lakepointe development and of the City's subsequent affirmation of the County's permit approval.

II. APPELLANTS' ISSUES

The City of Kenmore erred in reinstating the Lakepointe Commercial Site Development in violation of standards applicable to this project. The City in conjunction with the engineering firm for the Lakepointe development conducted several reviews of the traffic data as directed by the hearing examiner. Following the final studies in spring of this year, the City issued its decision on May 26, 2000 finding that the Lakepointe development now complies with King County Intersection Standards. The errors in the reinstating the Commercial Site Development Permit include, but are not limited to, the following:

A. Prematurely reinstating the Commercial Site Development Permit before the Revised Transportation Mitigation Agreement is final. This improperly allows the developer to proceed with the project before the permit is final. Moreover, the lack of a final Revised Transportation Mitigation Agreement precludes appellants from being able to know what specific mitigation measures will be required as part of project approval. When the Lakepointe permit was approved in August 1998, the County included a signed and executed Transportation Mitigation Agreement as part of the project approval. The commercial site development permit is not final until an updated Transportation Mitigation Agreement is signed and executed and requiring an appeal to go forward before that time is unfair and unlawful.

Appellants raised this issue with the City on June 8, 2000. Rather than addressing the issue substantively, the City required the Olsens to file this appeal without resolving the issue. Requiring this premature filing is unfair, onerous and burdensome to appellants because it required appellants to spend their time and financial resources filing an appeal based upon a City decision that was not final or complete.

B. The City erred in failing to follow all of its notice procedures when it released the May 26, 2000 Notice of Decision, including but not limited to, failing to publish the notice in the City's newspapers of record and failing to mail notice to persons who had requested it. The City must follow its notice procedures to adequately and lawfully notify the public and interested parties of its decision before any

appeal of the decision is required. Failure to follow all notice requirements violates City requirements and the due process rights of the appellants and the public.

C. The City erred in failing to produce data available to the City to appellants in a timely fashion. In order to adequately evaluate the City's May 26, 2000 decision, appellants requested route summaries showing additional turning movements and showing one additional intersection. The City told appellants the requested materials were available and would be produced which lead the appellants to rely upon receipt of the information to evaluate the City's decision. On June 9th, 2000, the City told appellants the requested information would not be available. Appellants continue to request this information from the City and reserve the opportunity to supplement their appeal upon receipt of the requested information.

D. Errors in the traffic analysis. Errors include, but are not limited to, underestimating traffic trips entering and exiting the development and therefore underestimating traffic impacts. For example, the analysis erred in calculating pass-by volumes. The traffic studies on which the City bases its decision to reinstate the CSDP rely upon trip generation data from the Supplemental Environmental Impact Statement of August 1998 (Table 27A). Although the total of overall project trips can be reduced by 466 PM peak hour pass-bys, these trips must be added back in for traffic volumes at the project's two access points to ensure an accurate and lawful evaluation of Lakepointe's traffic impacts. If drivers who are passing by the project decide to enter it, those entry and exit movements must be taken into account and evaluated.

In another example, the latest Transyt7F traffic study, performed by Transpo Group on 1/25/00, assumes two westbound dedicated left turn lanes on SR522 at 68th Ave. NE. Yet there is no information that WSDOT will complete this improvement in a timeframe assumed by the traffic studies. It is neither reasonable nor lawful to rely upon these turn lanes without assurance that these lanes will be constructed in a timely fashion. Relying upon these improvements was erroneous.

Another error includes improperly ignoring discrepancies in the traffic analyses and data. For example, there are discrepancies between trip distribution estimates from the FSEIS and King County's EMME2 analysis. The FSEIS in Figure 35A puts the volume for traffic from the project using 68th NE at only 6%. However, the EMME2 data suggests a much higher percentage of the project traffic using 68th NE. Attachment A in the latest traffic information is based on the same figures as Figure 35A and is a central document in the City's decision. Relying upon and/or utilizing the conflicting volume estimates is a technical error and unlawful.

An additional error includes improperly relying upon and/or utilizing outdated data. For example, the traffic studies accepted by the City use growth rates projected for the year 2005 rather than for 2007 to calculate traffic volumes. The 2-percent annual growth used in the studies must be added to all traffic volumes, in order to ensure that mitigation measures are sufficient. Otherwise, the City's decision is based on data four percent lower than it should be, constitutes technical error and is unlawful.

E. The City unlawfully and inappropriately disregarded the Kenmore Hearing Examiner's previous rulings regarding Lakepointe. For example, the Hearing Examiner charged the City to use all "reasonably available approaches to meeting the Intersection Standards... Those approaches include demand reduction strategies that could include an alteration of the mix of uses; increased use of public or private mass transit; reduction in parking spaces to discourage multiple vehicle ownership; and alternative access to commercial activities."

There is no evidence that the City considered any of these approaches in alleviating traffic congestion on 68th NE as was necessary. For example, from the 1998 Transyt-7F data, it is clear that a third northbound lane was already in the traffic studies for the FSEIS. In fact, there are no new improvements planned

since the FSEIS, except the increased storage capacity for 68th Ave. NE through a shorter taper of 300 feet in the outside northbound lane, the restriction of turning movements at NE 175th, and the addition of an approximately 200-foot lane on 68th NE south of SR522. The FSEIS defines a significant adverse impact as any intersection that operates at Level of Service F or worse. There are numerous intersections on SR522 left at LOS F in the traffic studies. Moreover, the City did not adequately verify the submitted analyses, relying upon the appearance of the analyses as satisfactory. By approving the latest traffic analysis, the City has improperly and unlawfully determined that Lakepointe is lawful based upon the breathtaking improvement in performance only in light of a few changes.

The hearing examiner in his previous rulings showed that citizens deserve to have their community defended from the undue burdens of terrible traffic conditions created by large developments. He criticized the County for not taking stronger action to provide for mitigation and then challenged the City to do better. Failing to adhere to the Examiner's rulings was erroneous and unlawful.

III. RELIEF REQUESTED

- A. Vacation of the Notice of Decision until a Revised Transportation Mitigation Agreement is signed by the City of Kenmore and the Lakepointe developer and made part of the Commercial Site Development Permit.
- B. Proper Notice by the City of the May 26, 2000 Notice of Decision, including but not limited to, publication and mailed notice to all who requested it, with all appeal periods to run after all notification procedures have been followed.
- C. Sufficient time and opportunity for appellants to review and evaluate requested information about the Lakepointe traffic studies and analyses. In addition, appellants request sufficient opportunity to file a new appeal and/or supplement issues on appeal once full and adequate information from the City is obtained and once a Revised Transportation Mitigation Agreement is signed, executed and made part of the Commercial Site Development Permit.
- D. The opportunity to present issues on appeal in a hearing before the Examiner when a proper and final decision on Lakepointe is issued by the City.
- E. Vacation of the Commercial Site Development Permit based upon the erroneous and incomplete analyses of impacts to Lakepointe Way NE/ 68th Ave. NE and based upon Lakepointe's failure to comply with all applicable traffic and intersection requirements.
- F. In the alternative, if the permit is not vacated, proper conditioning of the permit to ensure full compliance with all applicable traffic and intersection standards, including but not limited to requiring regular checks on the project's traffic generation volumes to qualify for further development.
- G. Any other relief that is just or necessary.

Sincerely,

Daniel R. Olsen Daniel R. Olsen 6/12/00
6504 NE 196th St., Kenmore WA 98028. Tel: 425-489-2641.

Bonnie L. Olsen Bonnie L. Olsen 6/12/00
6504 NE 196th St., Kenmore WA 98028. Tel: 425-489-2641.

Lyle D. Sellards Lyle D Sellards 6/12/00
7031 NE 175th St., Kenmore WA 98028. Tel: 425-485-5948.

Joyce Sellards Joyce Sellards 6/12/00
7031 NE 175th St., Kenmore WA 98028. Tel: 425-485-5948.

Karen McFadden Karen McFadden 6/12/00
19604 NE 66th Ave. NE, Kenmore WA 98028. Tel: 425-486-9585.



Notice of Decision Regarding the LakePointe Project May 26, 2000

The City of Kenmore Hearing Examiner, in his decision dated April 2nd, 1999, found that the new intersection of LakePointe Way NE and 68th Avenue NE as proposed, did not meet applicable King County Intersection Standards (King County Municipal Code, Chapter 14.65). These standards apply to the Lakepointe project because it was vested with King County before Kenmore's incorporation as a City. In addition, the Examiner found that the County failed to adequately justify the exception that was granted from the King County Intersection Standards for this intersection. As a result, the Examiner vacated the exception and remanded the question of the compliance of the intersection for further review. LakePointe was then notified by the City of Kenmore that the Commercial Site Development Permit for their project had, in effect, been suspended pending resolution of the question at hand.

Subsequently, LakePointe submitted a Revised Supplemental Traffic Study to the City of Kenmore, dated February 4, 2000. This study and subsequent correspondence incorporated several additional road improvements (both publicly and privately funded) and mitigating measures in the vicinity of the intersection of LakePointe Way NE and 68th Avenue NE, including:

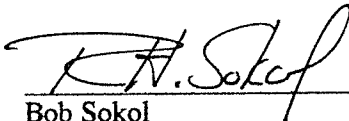
- 1) Adding an additional northbound lane at the intersection of 68th Avenue NE and Bothell Way NE, so that the new intersection includes two exclusive left turn lanes, a dedicated through lane, and a dedicated right turn lane.
 - a) LakePointe will pay for all costs associated with the acquisition of right-of-way for the new turn lane.
 - b) The City will pay for the costs of constructing the new lane as part of a comprehensive intersection improvement project.
- 2) Left turn movements at the intersection of NE 175th Street and 68th Avenue NE will be phased out in accordance with the provisions of the City's approved 6-Year Transportation Improvement Plan (TIP).
- 3) The addition, at LakePointe expense, of a lengthened, third northbound lane from the north end of the Sammamish River Bridge to LakePointe Way and continuing on to NE 175th Street.
- 4) Reconfiguration, at LakePointe expense, of the northbound lanes of 68th Avenue NE at the intersection with LakePointe Way NE to provide a dedicated left turn lane and two dedicated through lanes.
- 5) Improved channelization and signal operation, at LakePointe expense, at the intersection of NE 170th Street and 68th Avenue NE.

The City of Kenmore has reviewed this Revised Traffic Study and asked LakePointe to respond to several issues and questions. Ultimately, it was determined that with the additional improvements proposed by LakePointe that the intersection of LakePointe Way NE and 68th Avenue NE will operate, on the average,

at a Level of Service E or better during the AM and PM peak hours, possibly as high as Level of Service C in the year 2005 with full development of LakePointe, which is in compliance with the King County Intersection Standards (King County Municipal Code, Chapter 14.65) as adopted by the City of Kenmore. Consequently, the need for an exception to the intersection standards has been eliminated. The City of Kenmore finds that the LakePointe project is now in full compliance with all applicable regulations and standards, which is the standard under which this project is vested.

With this finding, the Commercial Site Development Permit has, in effect, been reinstated and LakePointe is authorized to proceed in accordance with their approved permits, subject to the execution of a revised Transportation Mitigation Agreement with the City of Kenmore, that fully provides for the implementation of the improvements proposed in the Revised Supplemental Traffic Study and related correspondence.

This decision completes the Administrative Review of the Commercial Site Development Permit. The Public Rules implementing the King County Intersection Standards (paragraph 6.3.6), as adopted by the City of Kenmore, provide that appeals of this final decision together with appeals arguments, must be filed with the City of Kenmore, within 10 working days of the receipt of this decision, in a manner prescribed in King County Code Chapter 20.24.090 C 2 as adopted by the City of Kenmore. Assuming that there are no appeals of this final decision, further appeals of the matters addressed in the Hearing Examiner decisions of December 11, 1998 and April 5, 1999 must be filed in King County Superior Court within 21 days of the date of this decision.



Bob Sokol
Community Development Director
City of Kenmore

5/26/00

Date