

1                   **BEFORE THE HEARING EXAMINER FOR THE CITY OF KENMORE**

2                                   Phil Olbrechts, Hearing Examiner

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4           RE: Burkard Preliminary 5                Subdivision 6                Preliminary Plat, 7                PLP24-0019, VAR24-0020 (PRJ23-0067)	<b>DECISION UPON RECONSIDERATION</b>
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9           The May 19, 2025 final decision of the above-captioned matter was issued in error by  
10          failing to address Applicant requests made at the May 1, 2025 hearing. The Applicant  
11          filed a motion dated May 27, 2025 requesting reconsideration and clarification based  
12          upon reiterating its comments made during the May 1, 2025 hearing. The Applicant  
13          also requested removal of a perimeter landscaping requirement. Reconsideration is  
14          granted in part as follows using the section headings of the Applicant's  
15          reconsideration request:

16          **IIA.       Clarify Admission of Exhibits:** Ex. C1 and C2 are deemed replaced as  
17          requested by the Applicant at the May 1, 2025 hearing. Ex. J (Brad Lincoln Resume)  
18          and Ex. I (Preapplication notes) were also admitted and should be added to the exhibit  
19          list.

20          **IIB.       Remove 10-foot Landscape Requirement.** Condition 2f requires a ten-  
21          foot landscaping strip along the project's street perimeter. This condition was  
22          erroneously recommended by staff. KMC 18.35.045, n. 8 only requires such a buffer  
23          for attached residential development. The condition is stricken.

24          **IIIC. Clarify Extent of Frontage Requirements Along 80th Avenue NE –**  
25          **Condition 2(p).** Condition 2p requires frontage improvements along the full width of  
the project site (400 feet) along 80<sup>th</sup> Avenue.

          The Applicant and City dispute the application of City of Kenmore 2021 Road  
Standard 2.01.C1, which provides in pertinent part as follows:

*On lots which develop behind another parcel or parcels abutting the  
roadway and utilize a tract, alleyway, private road, easement or other  
access stem to access the right-of-way, the project frontage shall be*

1           *the segment of roadway equal to the widest portion of the development*  
2           *parcel....*

3           The access road proposed by the Applicant, NE 186th street, will be dedicated as a  
4           public road with sidewalks on both sides. The Applicant takes the position that  
5           2.01.C1 only applies to “narrow” access stems, such as those associated with flag  
6           lots. The plain language of 2.01.C1 makes no such limitation. 2.01.C1 lists the types  
7           of access roads to which it applies, which includes generally “*other access stem*.”  
8           Although the specific examples of access stems listed in 2.01.C1 are often associated  
9           with the narrow access provided to flag lots and the like, there is nothing in the  
10          language of 2.01.C1 that otherwise requires that such access stems be narrow or that  
11          they exclude publicly dedicated roads. NE 186th as proposed by the Applicant ends  
12          in a cul-de-sac. As such it is clearly an “other access stem.”

13          The Applicant also asserts that requiring full frontage violates Nollan/Dolan  
14          nexus/proportionality. That argument is also unavailing. The practical result of the  
15          Applicant’s interpretation would be that the three lots fronting the 80<sup>th</sup> Ave NE road  
16          area in question would have to do the frontage improvements as opposed to the  
17          Applicant who will be adding 12 lots of traffic to the 80<sup>th</sup> Ave. The Applicant’s 80<sup>th</sup>  
18          Ave NE impact would clearly be significantly greater than that of the three lots. The  
19          intervening lots between Lots 5 and 12 and 80<sup>th</sup> Ave N are just a fortuitous  
20          circumstance resulting from an oddly shaped lot. The road impacts of the project  
21          aren’t materially different from a rectangular shaped lot that fully fronts 80<sup>th</sup> St.

22          Finally, the Applicant also applies 2.01.C3 to argue against the required frontage.  
23          2.01.C3 applies to corner lots. The Applicant applies this standard to Lot 1 of the  
24          project. However, as identified by the City during the hearing, the reference to  
25          “corner lot” in 2.01.C is to the project site as a whole, prior to subdivision. 2.01.C  
                identifies that required frontage improvements “*shall be based upon the original*  
                *parcel size prior to subdivision.*” Consequently, 2.01.C3 applies to the entire project  
                site, not Lot 1. The entire project site is not a corner lot so 2.01.C3 does not apply.

**Nonconforming Koi use:** The Applicant did not include its hearing request to  
                preserve its nonconforming Koi business. However, given the Examiner’s failure to  
                address the issue in the Final Decision it is addressed now. As noted by staff and the  
                Examiner during the hearing, the proposed preliminary plat increases the degree of  
                nonconformity of the Koi business. The business thereby loses its nonconforming  
                status. *See* KMC 18.100.060. However, as in all code enforcement actions, property  
                owners can be given a reasonable amount of time to bring their violations into  
                compliance. In this regard the Koi pond and shed operated by the Applicant will be  
                allowed to remain in place the shorter of three years from final plat approval or within  
                six months of the occupancy of any adjoining home.

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## DECISION UPON RECONSIDERATION

The exhibit list of the Final Decision shall be modified as identified in this reconsideration decision. The conditions of final plat approval of the May 19, 2025 Final Decision are modified in track change as follows:

Condition 2c: Lot 7 contains an existing shop building associated with the koi business. The shop shall be demolished ~~prior to substantial or final engineering approval~~ within the sooner of three years after final plat approval or six months form occupancy of the newly constructed homes on lots 6 or 8.

Condition 2d: Lot 8 contains an existing plastic covered pond associated with the koi business. The pond shall be filled ~~prior to substantial or final engineering approval~~ within the sooner of three years after final plat approval or six months form occupancy of the newly constructed homes on lots 7 or 9.

Condition 2p: The adjacent roadway to the east, 80th Avenue NE, is classified as a Minor Arterial, and the internal cul-de-sac (NE 186th Street) that will become a public roadway is considered a Local Access road. Except as otherwise noted, required the frontage improvements shall be constructed along the project's width along the frontage for width of the property on 80th Ave NE and NE 186th Street. Additional overlays may be required depending on final utility cuts required, per KRS 11.03.E. The width of the property for purposes of 80<sup>th</sup> Ave NE frontage shall be the project site's maximum 400 foot width extended perpendicularly from the rear lot line

Condition 2f is stricken.

Reconsideration: In the interest of preventing further delay the Applicant's reconsideration request was not distributed for comment from the hearing parties because except for the landscaping condition it didn't raise any issues that were not subject to public and staff response during the hearing. However, removal of the landscaping condition could potentially be a matter of public concern. For this reason this decision shall be subject to a second round of reconsideration. Any reconsideration requests must be emailed to Reilly Rosbotham, project City planner, at [rrosbotham@kenmorewa.gov](mailto:rrosbotham@kenmorewa.gov) by 5 pm June 23, 2025.

Dated this 16<sup>th</sup> day of June 2025.

*Phil Olbrechts*  
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Phil Olbrechts,  
City of Kenmore Hearing Examiner

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**Appeal and Valuation Notices**

This decision is final and subject to appeal to superior court as governed by the Washington State Land Use Petition Act, Chapter 36.70C RCW.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.