

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5725

AN ORDINANCE granting a Planned Unit Development and Preliminary Plat with conditions, on the Application of Dennis Johnson, Freemantle Development Group For a 25-lot Residential Subdivision and Planned Unit Development, on approximately 2.45 acres accessed via an Easement from 156th Avenue Northeast in the Crossroads Subarea, commonly known as the "Enclave at Fox Glen", Application No. 05-103350 LK.

WHEREAS, Dennis Johnson, Freemantle Development Group submitted an application for a Planned Unit Development and Preliminary Plat to create 25 lots on approximately 2.45 acres to be used for a single-family residence and two 12-unit buildings, located west of 156th Avenue NE and accessed by an easement in the Crossroads Subarea to be known as the "Enclave at Fox Glen", in Bellevue, King County, Washington; and

WHEREAS, a Notice of Application and Public Meeting was published in the Land Use Bulletin on April 6, 2006 and said public meeting was held on April 25, 2006; and

WHEREAS, the associated design review approval and Determination of Nonsignificance (DNS) for the Enclave at Fox Glen were appealed on September 14, 2006 pursuant to the Process II procedures of the Bellevue Land Use Code; and

WHEREAS, on September 21, 2006, October 19, 2006 and October 26, 2006, the Bellevue Hearing Examiner conducted a hearing on the application of Dennis Johnson, Freemantle Development Group for a Planned Unit Development and Preliminary Plat, Application File No. 05-103350 LK and on the Process II design review and DNS appeals, pursuant to notice as required by law; and

WHEREAS, on December 8, 2006, the Hearing Examiner issued Findings of Fact, Conclusions of Law and Decisions, approving the Planned Unit Development and Preliminary Plat with conditions and denying the Process II design review and DNS appeals; and

WHEREAS, an appeal was filed by Innisfree Condominiums; and

WHEREAS, following an appeal hearing by the City Council on March 5, 2007, the Council voted to deny the appeal and grant the application; and

WHEREAS, the City has complied with the State Environmental Policy Act and the City Environmental Procedures Code, now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The City Council adopts the Findings of Fact and Conclusions of Law of the Hearing Examiner as set forth in "Findings of Fact, Conclusions of Law and Decisions" on Planned Unit Development and Preliminary Plat Application File No. 05-103350 LK.

Section 2. Based on the foregoing Findings of Fact and Conclusions, the City Council enters the following Decision:

The City Council concludes that appellant failed to meet its burden to prove that the Hearing Examiner's Decisions were not supported by substantial evidence in the record. The appeal is hereby denied, and the Decision of the Hearing Examiner approving the Preliminary Plat and PUD, with conditions, is approved, subject to the following conditions:

A. COMPLIANCE WITH BELLEVUE CITY CODES AND ORDINANCES

Applicable Codes, Standards and Ordinances
Clearing & Grading Code – BCC 23.76
Construction Codes – BCC Title 23
Fire Code – BCC 23.11
Land Use Code – BCC Title 20
Noise Control Code – BCC 9.18
Sign Code – BCC Title 22
Transportation Code – BCC 14.60
Right of Way Use Code – BCC 14.30
Utility Code – BCC Title 24

B. SEPA - MITIGATION OF CONSTRUCTION IMPACTS (SEPA, LUC 20.30D. and Comprehensive Plan Policies EN-87, EN-88, S-CR-4)

To mitigate construction impacts, the applicant must provide a mitigation plan to include, at a minimum:

- a) Timing of the construction traffic and activity, and
- b) Qualified traffic control personnel to ensure that the condominium residents are given deference for use of the easement, and
- c) Use all appropriate and effective measures to maintain a safe access for residents, and construction personnel, and
- d) Minimize other construction impacts such as noise and dust.

The applicant shall submit the plan for review and approval by City of Bellevue Transportation, Fire Prevention and Land Use and may not begin any project activity (demolition, site clearing, etc.) until a management plan has been approved. The applicant shall supply a copy of the approved construction

management plan to the president of the board of each condominium complex and to the single family residents whose properties abut the west property line of the plat/PUD. The applicant shall designate a contact person with a phone contact number available at all times that construction activity is occurring for the duration of the construction. The contact person shall be responsible to ensure that the mitigation plan is followed and to be the first contact point for the residents.

AND: To minimize impacts to air quality the project shall:

- a) Use only equipment and trucks that are maintained in optimal operational condition.
- b) Use car/van pooling or other trip-reduction strategies for construction workers.
- c) Pave or use gravel on staging areas and roads that would be exposed for long periods.
- d) Cover open container trucks transporting materials, wetting materials in trucks, or providing adequate freeboard (space from the top of the material to the top of the truck bed), to reduce emissions and deposition during transport.
- e) Provide wheel washers to remove particulate matter that would otherwise be carried off-site by vehicles to decrease deposition of particulate matter offsite.
- f) Remove particulate matter caused by project construction deposited on the easement road, public roadways, sidewalks, and bicycle and pedestrian paths to reduce mud and dust; sweep and wash streets continuously to reduce emissions.
- g) Cover dirt, gravel, and debris piles as needed to reduce dust and windblown debris. Route and schedule construction trucks to reduce delays to traffic during peak travel times to reduce air quality impacts caused by a reduction in traffic speeds.

C. GENERAL CONDITIONS:

1. CONSTRUCTION NOISE CONTROL

To minimize adverse construction noise impacts to the residents of the neighborhood, the City's requirements for controlling construction noise shall be listed on the plans submitted for the clearing and grading permit and the building permit, as follows:

Construction Noise Control

- a. The contractor shall not operate any diesel, pneumatic or gasoline powered equipment that is not properly muffled or silenced.
- b. Noise generated by construction activity is limited to the hours between 7:00 a.m. and 6:00 p.m. on weekdays, and 9:00 a.m. and 6:00 p.m. on Saturdays and prohibited on Sundays and legal holidays. (BCC 9.18.020.F)

2. LIGHTING

To ensure compatibility of the sport court activity with the adjacent residences, no lights shall be provided to allow activity after dark. Further, any exterior lighting between the buildings and the adjacent property line shall be shielded so that the source of light is not visible from off-site and there is no spillover of light to abutting properties. (Land Use Code 20.30D)

D. PLANS TO BE MODIFIED – 24 FOOT ROAD WIDTH REQUIRED

To meet Transportation Department standards for a private road internal to the site, the applicant shall submit revised plans to increase the internal road width to 24 feet with a five foot sidewalk. This dimension shall be taken from the area currently described as Tract D. Open space and tree retention calculations shall be recalculated. (BCC 14.60.110; Transportation Department Design Manual)

E. PRIOR TO ISSUANCE OF ANY PLAT ENGINEERING/CLEAR AND GRADE PERMIT:

1. RIGHT-OF-WAY USE PERMIT (Bellevue City Code 14.30)

The applicant is required to apply for a right-of-way use permit from the City of Bellevue Transportation Department before the issuance of any clearing and grading, building, foundation, or demolition permit. In some cases, more than one right-of-way use permit may be required, such as one for hauling and one for construction work within the right-of-way. A right-of-way use permit regulates activity within the city right-of-way, including but not limited to the following:

- a) Designated truck hauling routes.
- b) Truck loading and unloading activities.
- c) Hours of construction and hauling.
- d) Continuity of pedestrian facilities.
- e) Temporary traffic control and pedestrian detour routing for construction activities.
- f) Street sweeping and maintenance during excavation and construction.
- g) Location of construction fences.
- h) Parking for construction workers.
- i) Construction vehicles, equipment, and materials in the right of way.
- j) All other construction activities as they affect the public street system.

2. SITE (CIVIL ENGINEERING) PLANS

To meet Transportation Department standards for a private road internal to the site, a revised site (civil engineering) plan produced by a qualified engineer must be approved by the City prior to clearing and grading permit approval, including the required modification to provide a 24-foot road width and five foot sidewalk. The design of all street frontage improvements must

be in conformance with the requirements of the Americans with Disabilities Act and the Transportation Development Code, and the provisions of the Transportation Department Design Manual. (BCC 14.60.110; Transportation Department Design Manual)

3. PLANS TO BE MODIFIED - ADDITIONAL TREES TO BE PRESERVED AND ADDED TO WEST PORTION OF SITE

To mitigate the height difference between the proposed buildings on the west side of the site and the shorter single family homes adjacent to the project site, the Plat/PUD plans including the clearing and grading plans and landscape plans shall be modified to preserve the two existing Douglas fir trees (1-10" and 1-26" fir) located on the west portion of lots 18 and 19. In addition, at least three (total) 18-20 foot Douglas fir or western red cedar trees shall be planted on the west portion of lots 16 and 17. (LUC 20.30D.150)

4. PLANS TO BE MODIFIED - ADDITIONAL TREES TO BE PRESERVED AND ADDED ADJACENT TO BIOFILTRATION SWALE

The applicant will be required to amend the landscape plan for the area of the biofiltration swale to provide a minimum ten-foot wide densely planted evergreen landscape buffer to include trees 12'-14' high at planting between the west property line and the recreation facilities located on the vault. (LUC 20.20.520 J. and 20.30D)

5. TREE PROTECTION

To ensure the protection of the trees to be retained the clearing limits shall be revised to protect all significant trees to be retained. A six-foot high chainlink fence with driven posts, or an approved alternative, shall be installed at the clearing limits prior to any clearing and grading activity. (Land Use Code 20.30D)

6. CERTIFIED ARBORIST

The applicant shall provide a certified arborist to monitor the grading and construction activities to protect the rootzones of all the trees to be preserved, including the trees on the north side of the north property line, and to ensure that the health of the retained trees is not endangered. (Land Use Code 20.30D)

7. UTILITIES

The water, sewer and storm drainage systems shall be designed per the Utility codes BCC 24.02, 24.04, 24.06, and the Utilities Engineering Standards. Utility Developer Extension Agreements are required for the review, approvals and inspection of the water, sewer and storm drainage

improvements. The water, sewer and storm drainage design review, approvals and inspection will occur through the Utility Developer Extension process. The civil engineer shall be licensed in the state of Washington. (BCC 24.02, 24.04 & 24.06)

8. FIRE HYDRANT REQUIRED

The applicant shall provide a fire hydrant at Tract F near the entrance to the plat. (Bellevue Fire Code)

9. REFINE CLEARING AND GRADING PLANS TO MINIMIZE IMPORT AND EXPORT

The applicant shall refine the clearing and grading plan to minimize the need to export or import fill material. (Land Use Code 20.30D)

10. FIRE AND EMERGENCY ACCESS

At least 20 feet of usable width shall be provided along the easement to insure adequate access of fire and emergency equipment. The applicant shall work with the Innisfree Apartment Owners and the Fire Department to determine how this requirement will be met on the ground. Adjustments to existing parking, landscaping, and fencing shall be made if necessary.

F. PRIOR TO ISSUANCE OF ANY BUILDING PERMIT

1. TRANSPORTATION IMPACT FEE

This development is subject to the Transportation Improvement Program requirement to pay a traffic impact fee. The amount of the fee will be determined at the time of the building permit issuance. The fee schedule in effect at the time of building permit issuance will apply. (Bellevue City Code 22.16)

2. PEDESTRIAN EASEMENTS

The applicant shall record an easement to grant the residents of the plat a right of pedestrian access across Lot 35 to 151st Place N. E., and shall grant a public trail easement for a connection to future trail segments to the north and south. (LUC 20.30D)

3. AFFORDABLE HOUSING REQUIRED

The four (4) affordable homes must be designated on the preliminary plat and PUD plans prior to approval of any construction permits, and on the final plat prior to recording with King County. The affordable units must be proportionally distributed among the unit types. The applicant shall record with King County an agreement in a form approved by the City requiring that

the affordable units remain affordable for the life of the project. The agreement must be a covenant to run with the land. (LUC 20.20.128.B.2., ORDINANCE 4448)

4. MAINTENANCE OF EASEMENT

The applicant shall provide an appropriate mechanism obligating him, and the lot owners that succeed him, to pay the development's fair share of the costs of maintenance and upkeep of the access easement.

G. PRIOR TO FINAL PLAT APPROVAL:

1. SITE ACCESS IMPROVEMENTS

All access improvements must be constructed by the applicant and accepted by the Transportation Department prior to final plat approval, except as provided for in BCC 20.40.490. Specific requirements are detailed below:

- a) Landings on sloping approaches are not to exceed a 10% slope for a distance of 20 feet approaching the back edge of sidewalks. Driveway grades must be designed to prevent vehicles from bottoming out due to abrupt changes in grade.
- b) Vehicle and pedestrian sight distance must be provided per BCC 14.60.240 and 14.60.241.
- c) The private road shall not be gated or obstructed and must remain open at all times for emergency and public service vehicles. A note to this effect shall be placed on the face of the final plat.
- d) The maintenance responsibility for the private road shall be the shared responsibility of lot owners within this development. A note to this effect must be indicated on the face of the final plat.

(BCC 14.60.100, 110, 130, 150,170,190, 210, 240, 241; Transportation Department Design Manual Sections 3,4, 5, 7,11, 14,19)

2. PAVEMENT RESTORATION

Pavement restoration associated with road trenching or to repair damaged street surfaces shall be provided as follows:

- a) 156th Avenue NE: This street was recently overlaid and a five year no-street cut moratorium is currently in effect. Should street cuts prove unavoidable or if the street surface is damaged in the construction process, a half-street or full-street (depending on the extent of street cuts or damage) grind and overlay will be required. (BCC 14.60. 250; Design Manual Design Standard #21)

3. EXISTING HOMES TO BE REMOVED

The two single family residences on the proposal site shall be demolished prior to final plat approval. (LUC 20.20.010)

4. COMMON AREA TRACTS, SIDEWALKS AND ON-SITE TRAILS

The common areas in tracts shall be depicted on the final plat with notation as to the intended purpose(s) of the tract. Easements shall be established for the common use of the on-site sidewalks and trails by the residents of the PUD. (LUC 20.45A.130)

5. AFFORDABLE HOUSING REQUIRED ON FINAL PLAT

The four (4) affordable homes must be designated on the final plat prior to recording with King County. (ORDINANCE 4448)

6. EASEMENT FOR FUTURE TRAIL

A ten-foot wide trail easement shall be provided for a trail along the west side of the property for a trail to be constructed by the City when a future connection is available.

H. PRIOR TO ISSUANCE OF ANY CERTIFICATE OF OCCUPANCY

1. NO PARKING SIGNS

The access roads within the plat shall be posted and marked "Fire Lane-No Parking" per Bellevue Fire Department Standards, unless otherwise approved based on final field inspection. (Bellevue Fire Code)

2. ACCESS TO 151st PLACE TO BE CONTROLLED(Bellevue City Code 14.30)

The applicant shall provide a mechanism, such as a physical or electronic lock, on the gate to the pedestrian easement across lot 35 of the plat of Fox Glen to ensure that only residents and guests of the PUD will be able to access the path. (LUC 20.30D)

I. AFTER ISSUANCE OF CERTIFICATE OF OCCUPANCY

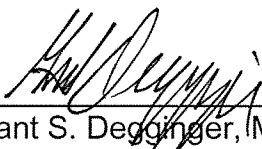
1. FUTURE PROPOSED CHANGES.

Any future proposed changes to the approved project including site development, landscaping, lighting, building design, affordable housing or the installation of communication equipment must be reviewed and approved by the City. (LUC 20.30D, 20.30F)

Section 3. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

Passed by the City Council this 19th day of March, 2007
and signed in authentication of its passage this 19th day of March,
2007.

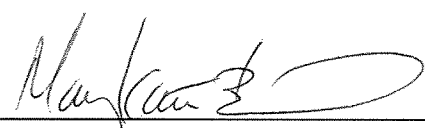
(SEAL)



Grant S. Degginger, Mayor

Approved as to form:

Lori M. Riordan, City Attorney



Mary Kate Berens, Deputy City Attorney

Attest:



Myrna L. Basich, City Clerk

Published March 22, 2007