FAQ

Here are some answers to frequently asked questions about the Keesling properties issue. Quotes from state and county codes are in *italics*. Emphasis added with **Bold.**

Q: Where are the Keesling estate properties located?
A: They abut the north side of the Tolt pipeline, east of 152nd Ave NE and south of extended NE 155th St.

Q: How many acres comprise the Keesling estate properties here?
A: 24.2 acres

Q: Is this one parcel or is it comprises of more than one lot?
A: The Keesling properties were divided into 25 lots in 1974. These lots average just less than 1 acre each. The creation of these did not involve a typical subdivision process, but rather a complex legal process referred to as testamentary deed with court activities that stretched to 1999. Regardless, **these lots are recognized as legal lots.**

Q: Do any houses exist on these lots?
A: Yes. Two of the lots contain houses, build dates 1977 and 1965.

Q: Are there provisions in our zoning laws to allow development of additional homes on this property?
A: Yes. The question is how many buildable lots can be accommodated on this tract.

Q: If these are legal lots, then doesn't the owner have a right to develop them as they currently exist?
A: Not necessarily. **A lot may be recognized as a legal lot but not qualify as a "buildable site".** This could be for a number of reasons. In the case of the Keesling lots, they are too small to be considered "buildable sites" under existing codes. *1

Q: How does the county define a "buildable site"?
A: A lot must meet the zoning requirements for lot size among other criteria. It must meet minimums for both total area and width. *2

Q: If the existing lots are too small to be considered "buildable sites", is there any way for this tract of land to be developed?
A: Yes. Lots can be combined to form new lots that meet the minimum dimensional requirements. A subdivision process or, in some cases, a Boundary Line Adjustment can be used for this purpose. See the next question about Boundary Line Adjustments.

Q: King County recently granted the "Boundary Line Adjustment" requested by developer Murray Franklyn. What is a Boundary Line Adjustment (BLA)?

A: As the name indicates, this is a process where property boundaries may be realigned for a list of reasons. One of these reasons can be to combine small lots to create a lot with dimensions sufficient to qualify as a "buildable site". This process is governed by state and county law. *3

Q: Why is this BLA being challenged in court?
A: First, this BLA creates new lots that are too small to be considered "buildable sites" per the applicable zoning codes. County and state laws stipulate that lots created by a BLA are new lots and new lots must conform to current zoning code requirements. On this point alone, King County Permitting should have denied this request for a BLA. *4

Second, a BLA cannot be applied to a large number of lots. If we use the threshold for requiring a SEPA analysis as defining a "large number of lots", then the number is 8. The Murray Franklyn proposal exceeds this number, so a BLA cannot be used in this case.
SEPA def: *The State Environmental Policy Act (SEPA) process identifies and analyzes environmental impacts associated with governmental decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, or adopting regulations, policies, and plans.*

Q: If a BLA cannot be used to adjust more than 8 lots, what process could be used to create buildable sites?
A: The normal subdivision process can be applied for this purpose.

Q: What size lots does our zoning allow?
A: The zoning on Hollywood Hill is RA-2.5. This means that the maximum density is 1 house per 5 acres and the minimum lot size is 1.87 acres.

For example, a 20 acre parcel could be divided into 4 lots (4 lots x 5 acres/lot = 20 acres). Or it could be divided into 4 lots of different sizes, say 2 lots at 3 acres each and 2 lots of 7 acres each. Or, there could be 4 minimum sized lots 1.87 acres with the balance of the tract dedicated as permanent open space. Etc.

While we are not certain that the 5 acre maximum density stipulation would apply to Keesling, certainly the minimum lot size of 1.87 acres should be applied for a BLA to pass muster. The Murray Franklyn BLA lot sizes average under 1 acre each. Therefore, King County Permitting should have denied this proposal.

Q: If these lots were legal when they were created, doesn't the owner have some sort of "grandfathered right" to develop them?
A: No. The concept of being "grandfathered" is often misconstrued. Here is how it works.

- The proper term for a "**grandfathered use**" is a "**legal non-conforming use**". This **relates to a pre-existing use** that was in place and legal at the time zoning code changes occurred that would no longer allow that use. Since it was legal when it was established, the use may continue. Examples of a "grandfathered use" is the Woodinville Athletic Club. Residential examples include a house situated on a lot that is smaller than a new zoning code would allow. Many examples exist on Hollywood Hill (any house on a lot less that 1.87 acres).

- **Vesting** differs from "grandfathering" as vesting is **applied to an activity that has not yet occurred** when a zoning code change occurs that would no longer allow it. In these cases, there is generally a defined period of time after the change during which a party may, for instance, exercise a pre-existing building permit or build on a lot that met the previous standards but is no longer big enough under new codes. The end of the vesting period is often referred to as the sunset date.

Q: So, doesn't the Keesling estate have a "vested" right to develop their existing legal lots?
A: No. Testamentary lots such as the Keesling estate's do not carry the same vesting provisions as lots that were created by subdivision, which would in any case have expired (sunset) after 6 years. Instead, testamentary lots are specifically addressed as being required to meet minimum lot area requirements for their underlying zoning. *1

Q: Could the county issue a variance for these properties?
A: No. A variance could not be issued for at least one reason – a variance cannot allow the creation of lots that exceed the permitted density by more than 10%. The density provision applied to our zoning, RA-2.5, is a minimum of 5 acres per lot. *5

References

***1.** Here is what King County's codes have to say about legal lots vs buildable sites:

19A.08.070 ***Determining and maintaining legal status of a lot.***

E. ***The department's determination*** (that a lot is legal) ***shall not be construed as a guarantee that the lot constitutes a building site*** *as defined in K.C.C. 19A.04.060. Testamentary lots created after December 31, 1999, and before January 1, 2019, are exempt from meeting the minimum lot area requirements in K.C.C. 21A.12.030 and 21A.12.040 for the applicable zoning district, if all other federal, state and local statutes and regulations are met.* ***All other testamentary lots shall be required to meet*** *all federal, state and local statutes and regulations, including* ***minimum lot area requirements*** *in K.C.C. 21A.12.030 and 21A.12.040.*
(The Keesling lots fall under this highlighted "other testamentary lots" category)

Supporting this, here is King County's response to the Keesling attorney dated Nov 1, 1999 (ref DDES file # L99M3031, the "subdivision exemption"). The letter explicitly states the following:
"Recognition of the property as a separate lot is not to be regarded as a commitment of any sort by King County that the lots in their present state are suitable for development under applicable King County ordinances. Any application for development approval will be reviewed under the ordinances and laws in effect at that time."

2** *19A.04.060* ***Building site. *Building site: an area of land, consisting of one or more lots or portions of lots, that is:*

A. Capable of being developed under current federal, state, and local statutes, including ***zoning and use provisions, dimensional standards, minimum lot area, minimum lot area for construction, minimum lot width,*** *shoreline master program provisions, critical area provisions and health and safety*

provisions; or

B. Currently legally developed.

***3.** Here's what King County codes say about BLAs:

19A.08.070 Determining and maintaining legal status of a lot.

F. ***Reaggregation of lots*** *after January 1, 2000, shall only be the result of a deliberate action by a property owner expressly requesting the department for a* ***permanent merger of two or more lots*** *through a* ***boundary line adjustment*** *under K.C.C. chapter 19A.28.*

4.** *19A.28.020* ***Procedures and limitations of the boundary line adjustment process. *Adjustment of boundary lines between adjacent lots shall be consistent with the following review procedures and limitations:*

D. ***A boundary line adjustment proposal shall not result in a lot that does not qualify as a building site pursuant to this title;***

And here is where Washington State law says that provisions for creating new lots using a BLA method can only be applied if the new lots meet minimum requirements for width and area to be considered a "building site" for the applicable zoning:

RCW 58.17.040 PLATS -SUBDIVISIONS-DEDICATIONS

The provisions of this chapter (addressing the creation of new lots) ***shall not apply to****:*

(6) ***A division made by adjusting boundary lines****, between platted or unplatted lots or both,* ***which does not create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;***

5.** *21A.44.030* ***Variance. *A variance shall be granted by the county, only if the applicant demonstrates all of the following:*

I. The variance does not allow the creation of lots or densities that exceed the base residential density for the zone by more than ten percent;