IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

NO. 83790-7

HOLLYWOOD HILL NEIGHBORS,

Appellant,

v.

KING COUNTY; MURRAY FRANKLYN HOMES LLC,

Respondents.

OPENING BRIEF OF APPELLANT

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I. INTRODUCTION

A. Summary of the Issues

This case is an appeal of a boundary line adjustment (BLA) issued by King County under permit no. BLAD21-0005. A BLA is a land use procedure governed by certain prohibitions, which appear in the King County Code (KCC) at KCC 19A.28.020.D. The BLA under appeal violates three of those prohibitions. First, the BLA unlawfully results in eight new lots that do not qualify as building sites. KCC 19A.28.020.D.2. Second, even if the eight new lots do qualify as building sites, a single BLA is not allowed to create more than one new building site. KCC 19A.28.020.D.1. Third, the BLA constitutes an attempt to circumvent the subdivision statute. KCC 19A.28.020.D.7.

B. Procedural History

This case is an appeal under the Land Use Petition Act (LUPA), Ch. 36.70C RCW. The case comes before the Court

pursuant to RCW 36.70C.150, which authorizes the superior court to transfer judicial review of a land use decision directly to the Court of Appeals upon stipulation by the parties. The parties here have so stipulated. CP 376-377.

The land use decision appealed is a boundary line adjustment (BLA) decision, BLAD21-0005, made by King County's Permitting Division. CP 9. A boundary line adjustment is a procedure that changes the shape of existing lots, without increasing the number of lots.

For this type of land use decision, the King County code (KCC) does not authorize an administrative appeal to a hearing examiner. KCC 20.20.020.E (listing boundary line adjustment among the "type 1" decisions with "no administrative appeal"). Therefore, because there was no administrative appeal to a hearing examiner and no judicial review by the superior court, this Court will review King County's permitting decision directly, not the decision of any lower reviewing tribunal. The

record in this case consists of King County's permit application file, CP 16-352, plus King County's notice of decision approving the permit application. CP 9.

C. Identity of the Parties

The Hollywood Hill Neighbors is an unincorporated group of homeowners who live in unincorporated King County in the immediate vicinity of the properties subject to boundary line adjustment. They oppose the BLA on the grounds that the County has wrongly concluded that approval of the BLA means the subject properties can be developed with single-family homes. The development of the subject properties will negatively affect the group members' quality of life by increasing traffic in their rural neighborhood, diminishing their rural views and the wildlife habitat they enjoy, and subjecting them to construction noise. CP 2-3.

Respondent King County approved the BLA. Respondent Murray Franklyn Homes, LLC is the developer that owns the properties and who applied for the BLA. CP 13-14.

II. ASSIGNMENTS OF ERROR

1. King County unlawfully approved BLAD21-0005 in violation of the prohibition against approving a BLA that results in a lot that does not qualify as a building site under the County code. KCC 19A.28.020.D.2.

2. Even assuming the new lots do qualify as building sites, King County unlawfully approved BLAD21-0005 in violation of the prohibition against creating more than one new building site in a single BLA. KCC 19A.28.020.D.1.

3. King County unlawfully approved BLAD21-0005 in violation of the prohibition against circumventing the subdivision process. KCC 19A.28.020.D.7.

III. STATEMENT OF THE CASE

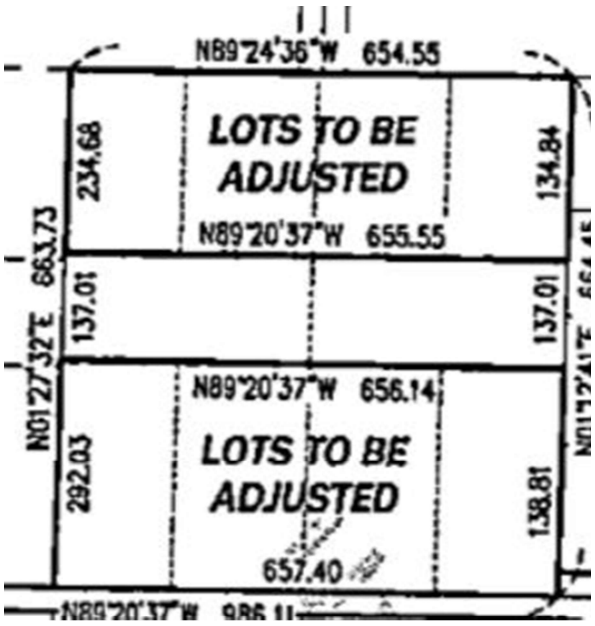
A. BLAD21-0005 Reconfigures Eight "Keesling Lots"

This case involves a contiguous group of nineteen parcels collectively known as the "Keesling lots." The Keesling lots are in unincorporated King County, outside Woodinville city limits, in the "RA 2.5" zone. CP 356-360. The RA 2.5 zone allows development of single-family houses on lots 1.875 acres or larger. KCC 21A.12.030.A. The Keesling lots are substantially smaller than this. CP 44.

Originally, the developer applied for two BLAs for the Keesling lots. BLAD21-0005 was originally for nine lots in the northern half of the Keesling lots, while BLAD21-0006 was for ten lots in the southern half of the Keesling lots. CP 276, 298-301 (email correspondence with King County senior engineer). The developer voluntarily withdrew the BLA for the southern Keesling lots, leaving only BLAD21-0005 for the northern

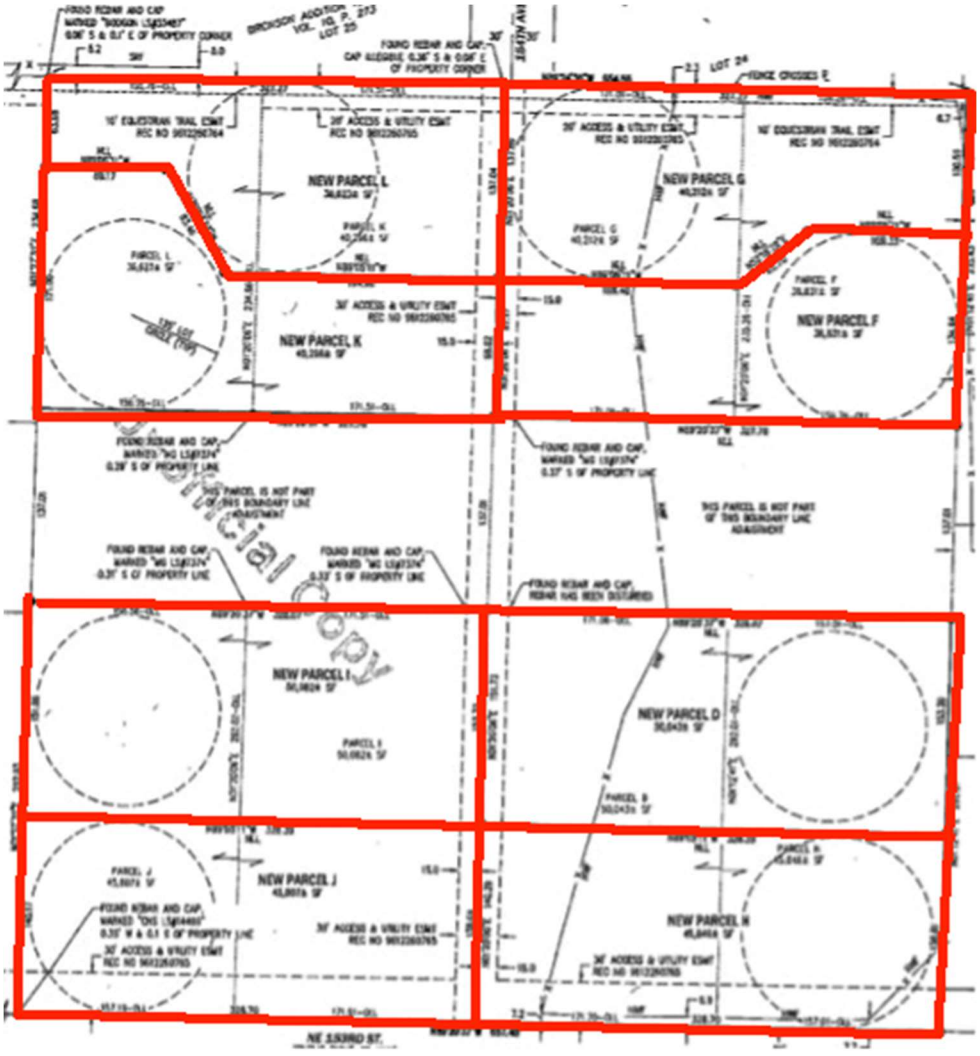
Keesling lots, the decision under review here. *Id*. In the final recorded version of the BLA, one more lot had been deleted, leaving a total of eight lots in BLAD21-0005. CP 45.

The BLA reconfigures the eight northern Keesling lots. The lots' current configuration is at CP 44, reproduced here:



The middle lots (137 feet wide) are not part of the BLA.

The lots' proposed configuration, approved in BLAD21-0005, is at CP 45, reproduced below, and with red highlighting added to show the boundaries of the lots subject to the BLA:



Again, the middle lots are not part of the BLA.

B. History of the Keesling Lots

The nineteen Keesling lots (ten southern lots applied for under the rescinded BLAD21-0006 plus nine northern lots

applied for under BLAD21-0005) have an unusual history, which, as the Court will see in the next section of this brief, is relevant to the lawfulness of BLAD21-0005. The County's historic record on the 19 Keesling lots (identified in the index to the record as the "legal lot determination documents") comprise the bulk of the permitting record. CP 50-255.

On November 1, 1999, the County's Permitting Division issued a letter to then owners of the Keesling lots. CP 60. The letter concluded that 25 of the 29 lots on then-extent tax parcels 340170-0065 and -0080 were lawfully created lots. Lots are typically created through the subdivision process. *See* Ch. 58.17 RCW. But other methods are available. Here, the County determined that some of the Keesling lots were lawfully created by "Superior Court Resolution no. 120884 dated June 26, 1974," while others were lawfully created "by testamentary provision and the laws of descent," *Id*. As we will explain, some of the

Keesling lots were created by a divorce, while others of the Keesling lots were created by a testament.

The 1999 letter's citation to "Superior Court Resolution no. 120884 dated June 26, 1974" refers to those twenty-five lots created by the divorce decree of James J. Keesling and Maxine Keesling, entered June 26, 1974. CP 162-187. The 1974 divorce decree allocated twelve of the lots to Maxine. Apparently, however, the lots intended for James were inadvertently omitted from the divorce decree, because a supplemental judgment, entered February 21, 1985, allocated the rest of the lots to James. Thus, Maxine got her lots in 1974, and James got his lots in 1985, each pursuant to the orders of the court for their divorce.

The 1999 letter's "testamentary lots" refer to those lots bequeathed by James upon his passing, pursuant to an order of distribution dated June 30, 1998. CP 90-161. The lots James had retained after the divorce (as well as various properties elsewhere

in Washington) were left to his ex-wife Maxine Keesling and his children in his will. CP 90-161.

The King County Code provides that a lot may be created outside the subdivision process by testament. KCC 19A.08.070.B.5.d. Prior to May 18, 1981, a lot could also be created by court order. *See* 1974 Laws of Washington, Ex. Sess. c. 134, § 2; amended 1981 Laws of Washington, c. 292, § 2.

Because Maxine got her lots in 1974 pursuant to the court's order, her lots were lawfully created at that time. But James did not get his lots until 1985, too late to take advantage of the pre-1981 laws of Washington, which allowed lots to be created by court order. James's lots were not lawfully created until 1998, when he left them to Maxine and the children in his 1998 will. In 1998, James's lots became testamentary lots, a lawful procedure for lot creation.

For the Court's convenience, we attach a demonstrative exhibit (Appendix B) showing the provenance of each lot, drawn

from the documents cited above. "Maxine 1974" means lots granted to Maxine in the 1974 divorce. "James 1985" means lots granted to James in the 1985 supplementary divorce proceeding. "In will" means a lot bequeathed by James in 1998. The eight Keesling lots that are the subject of BLAD21-0005 are parcel nos. 340170-0061, -0062, -0063, -0064, -0065, -0066, -0067, -0068, and -0069. CP 22 (stating lot numbers, from when BLA was for nine lots); CP 45 (showing recorded BLA, deleting parcel -0062, leaving eight lots).

IV. ARGUMENT

BLAD21-0005 violates three provisions of the County code for BLAs. First, the BLA creates lots that do not qualify as building sites, in violation of KCC 19A.28.020.D.2. Under the King County code, a lawfully created lot is not necessarily a lawful building site. A building site must meet certain dimensional standards. The new lots created by BLAD21-0005

do not have the required minimum lot area, so they do not qualify as building sites.

Second, even if the new lots did qualify as building sites, a single BLA cannot create more than one new building site. KCC 19A.28.020.D.1. The eight new lots created by BLAD21-0005 would constitute eight new building sites, because the existing eight lots themselves do not qualify as building sites. The existing lots (like the new lots) do not meet the minimum lot area requirement to qualify as building sites. Therefore, the existing lots are not building sites, so any BLA created out of the existing lots could only create one new building site—not eight new building sites.

Third, BLAD21-0005 constitutes an attempt to circumvent the statutory subdivision process, in violation of KCC 19A.28.020.D.7. The BLA involves a large number of lots, which the code calls a factor which "indicate[s] that the boundary line adjustment process is being used in a manner inconsistent

with statutory intent." *Id*. In addition, BLAD21-0005 was originally accompanied by a second BLA (BLAD21-0006) for ten more lots next door. "Numerous" BLAs are another factor that indicates an attempt to circumvent the subdivision process. *Id*.

The County has not said so explicitly, but it may believe the existing lots are somehow "grandfathered" as building sites. In our final section below, we rebut any such belief. The existing lots are lawful lots, but they are not lawful building sites. Building sites are judged against the standards set forth in the *current* County code. KCC 19A.04.060.A. The existing lots do not meet those standards. A non-compliant can also be a building site if the lot is already legally developed. KCC 19A.04.060.B. None of the Keesling lots subject to this BLA are developed, so they are not building sites.

A. Standard of Review Under the Land Use Petition Act

In a Land Use Petition Act case, this Court reviews the final land use decision of King County. RCW 36.70C.030. The "final decision" is the decision by the County decision-maker with the highest level of authority to make the decision at issue. RCW 36.70C.020(2). Where, as here, there was no administrative appeal available, the permit decision itself is the County's final land use decision that is subject to judicial review. *Durland v. San Juan Cty.*, 182 Wn.2d 55, 64, 340 P.3d 191 (2014).

The Court may reverse the permitting decision if any of the following is true:

> …
>
> (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

> (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
>
> (d) The land use decision is a clearly erroneous application of the law to the facts;
>
> …

RCW 36.70C.130(1).

Under the first standard, while some deference to the County's land use expertise is appropriate, deference is far from absolute. Indeed, "deference is not always due—in fact, even a local entity's interpretation of an ambiguous local ordinance may be rejected." *Ellensburg Cement Prods., Inc. v. Kittitas Cty.*, 179 Wn.2d 737, 753, 317 P.3d 1037 (2014) (citing *Sleasman v. City of Lacey*, 159 Wn.2d 639, 646, 151 P.3d 990 2007)). Instead, the interpreting local entity "bears the burden to show its interpretation was a matter of preexisting policy." *Id*. at 647 (citing *Cowiche Conservancy v. Bosley*, 118 Wn.2d 801, 815, 828 P.2d 549 (1992)). "No deference is due a local entity's interpretation that "was not part of a pattern of past enforcement,

but a by-product of current litigation." *Id*. at 646. "A local entity's interpretation need not 'be memorialized as a formal rule' but the entity must 'prove an established practice of enforcement.'" *Id*. (citing *Cowiche*, 118 Wn.2d at 815).

"Under the substantial evidence standard, there must be a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true." *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 829 (2011) (citing *Wenatchee Sportsmen Ass'n v. Chelan Cty*., 141 Wn.2d 169, 176 (2000)).

Finally, a "finding is clearly erroneous under subsection (d) when, although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed." *Id*. (citing *Norway Hill Pres. & Prot. Ass'n v. King Cty Council*, 87 Wn.2d 267, 274 (1976)).

B. BLAD21-0005 Was Issued in Violation of Multiple Provisions of the King County Code

A BLA is a land use permitting procedure which can serve various purposes:

> [A BLA may be used to] rectify defects in legal descriptions, to allow the enlargement or merging of lots to improve or qualify as a building site, to achieve increased setbacks from property lines or sensitive areas, to correct situations wherein an established use is located across a lot line, or for other similar purposes.

KCC 19A.28.010.

BLAs are subject to multiple prohibitions, several of which are at issue here. Although the existing Keesling lots are lawfully created lots, they are not lawfully created building sites. As we will explain in the sections below, the King County code differentiates between a "lot" (which is any physically and distinct parcel of property created pursuant to current or former state and local laws) and a "building site" (which is a lot that meets *current* dimensional requirements for developed or is

already lawfully developed). State law also provides that a BLA must create lots that meet building site standards. RCW 58.17.040(6).

The new lots created from the existing Keesling lots do not meet the requirements for lawful building sites, because the new lots do not meet dimensional standards and are not already developed. The existing Keesling lots also do not qualify as building sites for the same reason. Under the BLA rules, a BLA cannot be used to shuffle non-building sites from one lot configuration to another, nor to create a subdivision without undergoing the statutory subdivision process. For the following reasons, BLAD21-0005 should be reversed.

1. A BLA cannot create lots that do not qualify as building sites

BLAD21-0005 violates the prohibition against creating lots that do not qualify as "building sites." Under the rules for BLAs:

> A boundary lot adjustment proposal shall not:
> …
> Result in a **lot** that does not qualify as a **building site** pursuant to this title.

KCC 19A.28.020.D.2 (emphasis added).

A "lot" is defined as follows:

> a physically separate and distinct parcel of property that has been created pursuant to the provisions of this title, or pursuant to any previous state or local laws governing the subdivision, short subdivision or segregation of land.

KCC 19A.04.210.

A "building site" is defined as follows:

> 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.

KCC 19A.04.060.

None of the Keesling property subject to this BLA has been developed, so none of the post-BLA lots can qualify as building sites under KCC 19A.04.060.B. Instead, the post-BLA lots can only qualify as building sites if they are "[c]apable 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…" KCC 19A.04.060.A (emphasis added).

The minimum lot area in the RA 2.5 zone is 1.875 acres. KCC 21A.12.030.A. An area of 1.875 acres is equivalent to 81,675 square feet. None of the lots created by BLAD21-0005 meet this requirement. The largest post-BLA lot is 50,082 square feet ("New Parcel I"), while the smallest is 36,623 square feet ("New Parcel L"). CP 45. For this reason, the BLA must be reversed.

Footnote 13 to KCC 21A.12.030.A provides that the minimum lot area requirement does not apply to "lot clustering proposals as provided in K.C.C. chapter 21A.14." The code provides that residential lot clustering is allowed in the RA zone. KCC 21A.14.040.B. However, clustering is available only for a "subdivision." This BLA is not a "subdivision," so clustering is not available.[1]

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[1] The Keesling lots would also not be able to take advantage of clustering due to density limits. A clustering proposal is allowed to create smaller individual lots, but the cluster as a whole must still preserve the "existing zoned density." KCC 21A.06.196. In the RA 2.5 zone, the maximum density is 0.4 dwelling units per acre (43,560 square feet), and even that density may only be achieved through the receipt of transfer of density credits from forest zones. KCC 21A.12.030, fn. 20. Needless to say, these eight lots have a density far higher than 0.4 units per 43,560 square feet, since even the largest lot here only has 50,082 square feet for one whole unit, not a fraction of a unit. In addition, this BLA is not a "subdivision," so clustering is not available even if the lots did meet density requirements. In addition, the record does not show the required transfer of density credits from forest lands. Therefore, because clustering is the one exception to the minimum lot area requirement, and clustering is not available, the BLA must be reversed for failure to provide the minimum lot area.

The County's decision letter (CP 9) does not identify how the County believes the post-BLA lots comply with the minimum lot area requirement. Even when the Hollywood Hill Neighbors submitted a code interpretation request (CP 356-368) on this point (and others) prior to approval of the BLA, the County refused to address the issue, responding that it would be "premature" to assess compliance with the minimum lot area requirement. CP 39-42, at 41. But the County did not address it later, either. At no time has the County explained how the new lots meet the minimum lot area requirement to qualify as building sites under the current code, as required by KCC 19A.28.020.D.2.

The lack of explanation makes it difficult to determine the flaw in the County's reasoning (if any reasoning existed). If the County believes the new lots possess the required minimum lot area, then that belief is not supported by substantial evidence. If the County believes the post-BLA lots are not required to possess

the minimum lot area specified in KCC 21A.12.030.A, then that belief is an erroneous interpretation of the law and a misapplication of the law to the facts. Either way, the BLA decision should be reversed.

2. A BLA cannot be used to create eight new building sites

The new lots violate a second prohibition on BLAs: the prohibition against creating "more than one additional building site." KCC 19A.28.020.D.1. This is so because the pre-existing Keesling lots were not lawful building sites. Thus, if the BLA did create new lots that qualify as building sites, the BLA has been used to create eight new building sites where none existed before. That would violate the prohibition on using a BLA to create "more than one additional building site." KCC 19A.28.020.D.1.

The recorded BLA lists the lot sizes both before and after the BLA. CP 44. The Court will note that each lot remains exactly the same size, and that no lot meets the minimum lot size

for the RA 2.5 zone, which is 1.875 acres (81,675 square feet), as discussed above. For this reason, the existing Keesling lots are not lawful building sites.

Therefore, even if the post-BLA lots were lawful building sites (which they are not), they would constitute new building sites. Since a BLA cannot create more than one new building site, BLAD21-0005 should be reversed.

Once again, the County does not explain its reasoning in approving BLAD21-0005. If the County believes the existing lots have the lot area and lot width to qualify as building sites, that belief is not supported by substantial evidence. If the County believes the existing lots do not need to qualify as building sites, that belief is an erroneous interpretation of the law and a misapplication of the law to the facts. Regardless, the approval of the BLA was an error and should be reversed.

3. A BLA cannot be used to circumvent the subdivision statute

The King County Code prohibits BLAs that "circumvent the subdivision or short subdivision procedures set forth in this title." "Factors which indicate that the boundary line adjustment process is being used in a manner inconsistent with statutory intent include … a large number of lots being proposed for a boundary line adjustment." KCC 19A.28.020.D7.

The code does not define how many lots is a "large number." However, the code provides that, outside the urban growth area, which the Keesling lots are, a developer may use the abbreviated "short subdivision" procedures to create a maximum of four lots. Any more than that requires the full subdivision process. KCC 19A.04.310. Inside the urban growth area, up to nine lots may be created through short subdivision. *Id*. This rule is evidence is that any development of more than four lots in a rural area constitutes a sufficiently large number of

lots to warrant the greater scrutiny of the full subdivision process. Here, where the developer proposes eight lots, it is reasonable to conclude that eight is a "large number" for purposes of the prohibition against circumventing the subdivision statute.

Further evidence that BLAD21-0005 is being used to circumvent the subdivision statute comes from the state subdivision statute. It is appropriate to look to state law, because the BLA rule on circumvention of the subdivision statute refers to the "statutory intent." KCC 19A.28.020.D.7. Similarly, the County's local subdivision code defines its intent in KCC 19A.12.010 (Subdivisions and short subdivisions) by reference to state law:

> The purpose of this chapter is to specify requirements for the segregation of land into short subdivisions and subdivisions, **in accordance with applicable Washington state and King County laws**, rules and regulations, including permit processing procedures required by K.C.C. chapter 20.20.

Under the state subdivision statute, a subdivision is "the division or redivision of land into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership…" RCW 58.17.020(1). Under the statute, a lot "is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for lot width and area. The term shall include tracts or parcels." RCW 58.17.020(9).

Thus, when the subdivision statute refers to the creation of "lots," it means something more like "building sites"—that is, lots that meet the lot width and lot area requirements set forth in the zoning code. The subdivision process cannot be used to create lots that are not lawful building sites.

As we have demonstrated above, the new lots are not lawful building sites because they do not meet minimum lot area requirements. Therefore, these lots could not have been created through the statutory subdivision process. The use of BLAD21-

0005 to create these lots is further evidence that the subdivision statute is being circumvented.

The subdivision statute is clear that a BLA is an allowed land use decision, and does not constitute a subdivision, but *only* if the BLA does not "does not create any additional lot, tract, parcel, site, or division nor 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." RCW 58.17.040(6). Yet these non-permissible lots are exactly what BLAD21-0005 has created, in violation of state law.

The final piece of evidence for the circumvention of the subdivision statute is circumstantial but nonetheless compelling. The developer originally applied simultaneously for two BLAs, totaling nineteen lots. CP 276, 298-301 (email correspondence with King County senior engineer); 361-364 (showing original BLAD21-0005 for nine northern lots); 366-368 (showing BLAD21-0006 for ten southern lots). The two original BLAs

would have been directly across the street from one another, sharing NE 153rd St. (a public right-of-way) as a point of access. *Id*. Given their shared street, it is fair to say these two BLAs constituted a single, common plan of development. If even the eight lots of BLAD21-0005 (originally nine) are enough to trigger the subdivision statute, so much more so do the nineteen combined lots of the two original BLAs. The southern Keesling lots of BLAD21-0006 remain in the ownership of the Keesling lot developer, and it is clear the developer's intent is one day to build out all of the lots. Originally, the plan was to do so with two large BLAs, but the new plan appears to be to piecemeal the BLAs—today, BLAD21-0005, tomorrow, perhaps, a revived BLAD21-0006. However, when a developer owns a large number of lots and wishes to develop them, state law prescribes the process he or she must follow: an application for a subdivision, not a series of BLAs.

The Court should conclude that BLAD21-0005 constitutes an attempt to circumvent the subdivision statute. Once again, the County does not explain its reasoning, but whether the County has made a mistake of fact or law, the result is the same: The Court should reverse the BLA.

4. The existing Keesling lots are not somehow grandfathered as building sites

Lacking an explanation of the County's reasoning, we can only speculate as to how to County could have imagined that BLAD21-0005 complies with the restrictions in KCC 19A.28.020 and the subdivision statute. One possible explanation is that the County may believe, erroneously, that the existing Keesling lots are already somehow "grandfathered" as lawful building sites, and therefore, it is not prohibited to reconfigure them through the BLA process. This belief, though wrong, may explain why the County and developer have retained

the exact same square footage for the pre-BLA and post-BLA lot (CP 44), a requirement which does not appear in the BLA rules.

As described above, the Keesling lots were created through a divorce and will in 1974, 1985, and 1998. On November 1, 1999, the County issued its letter finding that the lots had been lawfully created. CP 60-61. Under the King County code, such a letter carries binding legal effect:

> Once the department has determined that the lot was legally created, the department shall continue to acknowledge the lot as such, unless the property owner reaggregates or merges the lot with another lot or lots in order to:
>
> 1. Create a parcel of land that would qualify as a building site, or
>
> 2. Implement a deed restriction or condition, a covenant or court decision.

KCC 19A.08.070.D.

However, the code emphasizes that just because a lot was lawfully created does not mean that a building site was created:

> The department's determination **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.

KCC 19A.08.070.F (emphasis supplied).

Recall from p. 20, *supra*, that a lot is only a building site if the lot meets *current* zoning requirements or is already developed. KCC 19A.04.060. Neither is true of the former Keesling lots, so they were not building sites. Therefore, there was no right to build that could possibly be grandfathered from the former lots to the new lots.

Nor could the former Keesling lots take advantage of the window for testamentary lots created between December 31, 1999 and January 1, 2019, when testamentary lots did not have

to meet minimum lot size requirements. Some of the Keesling lots are testamentary lots (the rest being divorce lots), but the decree of distribution for those testamentary lots dates from 1998, not 1999. CP 90-161. None of the Keesling lots can avoid the rule that a building site must meet current minimum lot area requirements.

If the County were relying on some belief that the existing lots are lawful building sites through some kind of grandfathering, that belief is mistaken. Moreover, even if the existing sites were lawful building sites, that still would not justify the creation of new lots that are not lawful building sites.

5. The County has a long-standing policy of rejecting non-conforming BLAs, and should have rejected BLAD21-0005

Hollywood Hill Neighbors' code interpretation request cited the minutes of the County's regulatory review committee

meeting that occurred January 23, 2020. CP 359, fn. 1.[2] A link to those minutes appears in the code interpretation request but was inadvertently omitted from the record here. We attach a copy to this brief as Appendix C.[3]

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[2] According to its website, the regulatory review committee "meets to consider questions raised by or through staff regarding the meaning of King County Code provisions and Public Rules relevant to the activities of Permitting … Minutes from RRC meetings summarize the discussion and conclusions of the committee. The statements in these minutes may be subject to re-examination from time to time. More recent minutes concerning a particular topic should always be consulted first. These minutes are intended solely to aid agency staff in understanding the code provisions that underlie their work." https://kingcounty.gov/depts/local-services/permits/planning-regulations/regulatory-review-committee.aspx

[3] These minutes were generated by the County and called to the County's attention as part of our request for a code interpretation regarding the then-pending BLAD21-0005 application, so the minutes did form part of the County's decision-making. The minutes reveal that Jim Chan and Doug Dobkins were present at the January 23, 2020 meeting. One or both men appear in dozens of emails in the pre-decision record for BLAD21-0005. Jim Chan signed the decision for BLAD21-0005. *See, e.g.,* CP 313-326; 344-349. Also present at the January 23, 2020 meeting, according to the minutes, was County attorney Devon Shannon, who corresponded with the attorney for

The minutes describe the committee's consideration of a proposed BLA for two existing lots in the RA-5 zone, each with an area of 2.45 acres. Each existing lots was smaller than the minimum lot area required for a building site in that zone. The proposed BLA suggested moving the boundary such that one lot would be 1.2 acres and the other 3.75 acres, which would result in the larger new lot (3.75 acres) becoming a lawful building site. The smaller new lot (1.2 acres) would not be a lawful building site.

The County denied the proposal on the grounds that a BLA cannot create a lot that fails to meet the lot area requirement, even if both of the pre-existing lots *already* fail to meet the

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Hollywood Hill Neighbors about the code interpretation request in which the citation to the minutes appears, and who represents the County in this appeal. *See* CP 373-375. All of which is to say, the County was well aware of these minutes prior to its decision on BLAD21-0005, so it is fair to include the minutes in the record, even though only a link to the minutes is in the record, not the minutes themselves.

requirement, and even if it would *create* a lot next door that did meet the requirement. The County's position is described in the minutes as "the Permitting Division's **long-standing practice** of not approving boundary line adjustments that would result in lots that do not comply with the minimum lot size of a given zoning classification" (emphasis added).

The long-standing practice, upheld in the January 23, 2020 meeting, of denying BLAs when they create lots that are smaller than the minimum area requirement, should have controlled the outcome for BLAD21-0005. The new Keesling lots are even less meritorious than the proposed lots rejected at the meeting—at least that proposed BLA would have created *one* compliant lot. The Keesling BLA does not even accomplish that much.

The minutes do say that the County sometimes approves BLAs to rectify "building setback nonconformities and outright encroachment issues." The County does so when there is no "reduction in square footage of the lots involved." This practice,

however, does not save the Keesling BLA, either. The readjustment of non-conforming lots to fix problems with building setbacks or encroachments does not, thereby, create new building sites, because any lot that is already developed is automatically a building site, even if the lot is non-conforming. KCC 19A.04.060.B. By contrast, the Keesling BLA attempts to create new building sites where none exist, because the existing Keesling lots are not building sites and are not already developed. This maneuver has no support in the code, and the County's minutes indicate a long-standing practice of rejecting similar attempts.

V. CONCLUSION

The Court should conclude that the County erred in approving BLAD21-0005. The decision is not represented by substantial evidence and represents erroneous interpretations of the law and clearly erroneous applications of the law to the facts

under RCW 36.70C.130(1). The decision should be reversed and the appellants awarded their statutory attorneys' fees and costs.

In compliance with RAP 18.17, I certify that this brief contains 5,689 words.

Respectfully submitted,

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APPENDIX A

KCC 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. (Ord. 15031 § 4, 2004: Ord. 13694 § 8, 1999).

KCC 19A.28.010 Purpose. The purpose of this chapter is to provide procedures and criteria for the review and approval of adjustments to boundary lines of legal lots or building sites in order to rectify defects in legal descriptions, to allow the enlargement or merging of lots to improve or qualify as a building site, to achieve increased setbacks from property lines or sensitive areas, to correct situations wherein an established use is located across a lot line, or for other similar purposes. (Ord. 17841 § 3, 2014: Ord. 13694 § 79, 1999).

KCC 19A.04.210 Lot. Lot: a physically separate and distinct parcel of property that has been created pursuant to the provisions of this title, or pursuant to any previous state or local laws governing the subdivision, short subdivision or segregation of land. (Ord. 17191 § 9, 2011: Ord. 13694 § 23, 1999).

KCC 19A.04.310 Short subdivision. Short subdivision: inside the Urban Growth Area, a division or redivision of land into nine or fewer lots, tracts, parcels or sites for the purpose of the sale, lease or transfer of ownership. Outside the Urban Growth Area, a division or redivision of land into four or fewer lots, tracts, parcels or sites for the purpose of sale, lease or transfer of ownership. (Ord. 14788 § 1, 2003: Ord. 13694 § 32, 1999).

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

A. A property owner may request that the department determine whether a lot was legally created. The property owner shall demonstrate to the satisfaction of the department that a lot was created in compliance with applicable state and local land segregation statutes or codes in effect at the time the lot was created.

B. A lot shall be recognized as a legal lot:

1. If before October 1, 1972, it was:

a. conveyed as an individually described parcel to separate, noncontiguous ownerships through a fee simple transfer or purchase; or

b. recognized as a separate tax lot by the county assessor;

2. If created by a recorded subdivision before June 9, 1937, and it was served by one of the following before January 1, 2000:

a. an approved sewage disposal;

b. an approved water system; or

c. a road that was:

(1) accepted for maintenance by the King County department of transportation; or

(2) located within an access easement for residential use or in a road right-of-way and consists of a smooth driving surface, including, but not limited to, asphalt, concrete, or compact gravel, that complied with the King County road standards in effect at the time the road was constructed;

3. If created by an approved short subdivision, including engineers subdivisions;

4. If created by a recorded subdivision on or after June 9, 1937; or

5. If created through the following alternative means of lot segregation provided for by state statute or county code:

a. at a size five acres or greater, created by a record of survey recorded between August 11, 1969, and October 1, 1972, and that did not contain a dedication;

b. at a size twenty acres or greater, created by a record of survey recorded before January 1, 2000, and not subsequently merged into a larger lot;

c. at a size forty acres or greater created through a larger lot segregation made in accordance with RCW 58.18.010, approved by King County and not subsequently merged into a larger lot. Within the F zone, each lot of tract shall be of a size that meets the minimum lot size requirements of K.C.C. 21A.12.040.A;

d. through testamentary provisions or the laws of descent after August 10, 1969; or

e. as a result of deeding land to a public body after April 3, 1977.

C. In requesting a determination, the property owner shall submit evidence, deemed acceptable to the department, such as:

1. Recorded subdivisions or division of land into four lots or less;

2. King County documents indicating approval of a short subdivision;

3. Recorded deeds or contracts describing the lot or lots either individually or as part of a conjunctive legal description (e.g., Lot 1 and Lot 2); or

4. Historic tax records or other similar evidence, describing the lot as an individual parcel. The department shall give great weight to the existence of historic tax records or tax parcels in making its determination.

D. Once the department has determined that the lot was legally created, the department shall continue to acknowledge the lot as such, unless the property owner reaggregates or merges the lot with another lot or lots in order to:

1. Create a parcel of land that would qualify as a building site, or
2. Implement a deed restriction or condition, a covenant or court decision.

E. The department's determination 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.

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. (Ord. 19010 § 1, 2019: Ord. 18764 § 1, 2018: Ord. 17539 § 11, 2013: Ord. 17191 § 11, 2011: Ord. 16687 § 1, 2009: Ord. 15031 § 2, 2004: Ord. 13694 § 42, 1999).

KCC 19A.12.010 Purpose. The purpose of this chapter is to specify requirements for the segregation of land into short subdivisions and subdivisions, in accordance with applicable Washington state and King County laws, rules and regulations, including permit processing procedures required by K.C.C. chapter 20.20. (Ord. 14788 § 3, 2003: Ord. 13694 § 55, 1999).

KCC 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:

A. Applications for boundary line adjustments shall be reviewed as a Type 1 permit as provided in K.C.C. chapter 20.20. The review shall include examination for consistency with the King County zoning code, K.C.C. Title 21A., shoreline master program, K.C.C. chapter 21A.25, applicable board of health regulations and, for developed lots, fire and building codes;

B. A lot created through a large lot segregation shall be consistent with the underlying zoning and shall not be reduced to less than twenty acres within ten years of the large lot segregation approval unless it is subdivided in accordance with K.C.C. chapter 19A.12;

C. Any adjustment of boundary lines must be approved by the department before the transfer of property ownership between adjacent legal lots;

D. A boundary line adjustment proposal shall not:

1. Result in the creation of an additional lot or the creation of more than one additional building site;

2. Result in a lot that does not qualify as a building site pursuant to this title;

3. Relocate an entire lot from one parent parcel into another parent parcel;

4. Reduce the overall area in a plat or short plat devoted to open space;

5. Be inconsistent with any restrictions or conditions of approval for a recorded plat or short plat;

6. Involve lots which do not have a common boundary; or

7. Circumvent the subdivision or short subdivision procedures set forth in this title. Factors which indicate that the boundary line adjustment process is being used in a manner inconsistent with statutory intent include: numerous and frequent adjustments to the existing lot boundary, a proposal to move a lot or building site to a different location, and a large number of lots being proposed for a boundary line adjustment;

E. The elimination of lines between two or more lots shall in all cases shall be considered a minor adjustment of boundary lines and shall not be subject to the subdivision and short subdivision provisions of this title or to K.C.C. 19A.28.030. The format and requirements of a minor adjustment under this subsection shall be specified by the department;

F. Recognized lots in an approved site plan for a conditional use permit, special use permit, urban planned development, or commercial site development permit shall be considered a single site and no lot lines on the site may be altered by a boundary line adjustment to transfer density or separate lots to another property not included in the original site plan of the subject development; and

G. Lots that have been subject to a boundary line adjustment process that resulted in the qualification of an additional building site shall not be permitted to utilize the boundary line adjustment process again for five years to create an additional building site. (Ord. 17841 § 4, 2014: Ord. 17191 § 15, 2011: Ord. 16950 § 6, 2010: Ord. 13694 § 80, 1999).

KCC 20.20.020 Classifications of land use decision processes (expires May 25, 2022*).

A. Land use permit decisions are classified into four types, based on who makes the decision, whether public notice is required, whether a public hearing is required

before a decision is made and whether administrative appeals are provided. The types of land use decisions are listed in subsection E. of this section.

1. Type 1 decisions are made by the permitting division manager or designee ("the director") of the department of local services ("the department"). Type 1 decisions are nonappealable administrative decisions.

2. Type 2 decisions are made by the director. Type 2 decisions are discretionary decisions that are subject to administrative appeal.

3. Type 3 decisions are quasi-judicial decisions made by the hearing examiner following an open record hearing. Type 3 decisions may be appealed to the county council, based on the record established by the hearing examiner.

4. Type 4 decisions are quasi-judicial decisions made by the council based on the record established by the hearing examiner.

B. Except as provided in K.C.C. 20.44.120A.7. and 25.32.080 or unless otherwise agreed to by the applicant, all Type 2, 3 and 4 decisions included in consolidated permit applications that would require more than one type of land use decision process may be processed and decided together, including any administrative appeals, using the highest-numbered land use decision type applicable to the project application.

C. Certain development proposals are subject to additional procedural requirements beyond the standard procedures established in this chapter.

D. Land use permits that are categorically exempt from review under SEPA do not require a threshold determination (determination of nonsignificance ["DNS"] or determination of significance ["DS"]). For all other projects, the SEPA review procedures in K.C.C. chapter 20.44 are supplemental to the procedures in this chapter.

E. Land use decision types are classified as follow:

TYPE 1	(Decision by director, no administrative appeal)	Temporary use permit for a homeless encampment under K.C.C. 21A.45.010, 21A.45.020, 21A.45.030, 21A.45.040, 24A.45.050, 21A.45.060, 21A.45.070, 21A.45.080 and 21A.45.090; building permit, site development permit, or clearing and grading permit that is not subject to SEPA, that is categorically exempt from SEPA as provided in K.C.C. 20.20.040, or for which the department has issued a determination of nonsignificance or mitigated determination of nonsignificance; boundary line adjustment; right of way; variance from K.C.C. chapter 9.04; shoreline exemption; decisions to require studies or to approve, condition or deny a development proposal based

		on K.C.C. chapter 21A.24, except for decisions to approve, condition or deny alteration exceptions; decisions to approve, condition or deny nonresidential elevation and dry floodproofing variances for agricultural buildings that do not equal or exceed a maximum assessed value of sixty-five thousand dollars under K.C.C. chapter 21A.24; approval of a conversion-option harvest plan; a binding site plan for a condominium that is based on a recorded final planned unit development, a building permit, an as-built site plan for developed sites, a site development permit for the entire site; approvals for agricultural activities and agricultural support services authorized under K.C.C. 21A.42.300; final short plat; final plat.
TYPE 2[1,2]	(Decision by director appealable to hearing examiner, no further administrative appeal)	Short plat; short plat revision; short plat alteration; zoning variance; conditional use permit; temporary use permit under K.C.C. chapter 21A.32; temporary use permit for a homeless encampment under K.C.C. 21A.45.100; shoreline substantial development permit[3]; building permit, site development permit or clearing and grading permit for which the department has issued a determination of significance; reuse of public schools; reasonable use exceptions under K.C.C. 21A.24.070.B; preliminary determinations under K.C.C. 20.20.030.B; decisions to approve, condition or deny alteration exceptions or variances to floodplain development regulations under K.C.C. chapter 21A.24; extractive operations under K.C.C. 21A.22.050; binding site plan; waivers from the moratorium provisions of K.C.C. 16.82.140 based upon a finding of special circumstances; sea level rise risk area variance adopted in K.C.C. chapter 21A.23; temporary small house sites under ordinance K.C.C. chapter 21A.46.

TYPE 3[1]	(Recommendation by director, hearing and decision by hearing examiner, appealable to county council on the record)	Preliminary plat; plat alterations; preliminary plat revisions.
TYPE 4[1,4]	(Recommendation by director, hearing and recommendation by hearing examiner decision by county council on the record)	Zone reclassifications; shoreline environment redesignation; urban planned development; special use; amendment or deletion of P suffix conditions; plat vacations; short plat vacations; deletion of special district overlay.

[1] See K.C.C. 20.44.120.C. for provisions governing procedural and substantive SEPA appeals and appeals of Type 3 and 4 decisions to the council.

[2] When an application for a Type 2 decision is combined with other permits requiring Type 3 or 4 land use decisions under this chapter, the examiner, not the director, makes the decision.

[3] A shoreline permit, including a shoreline variance or conditional use, is appealable to the state Shorelines Hearings Board and not to the hearing examiner.

[4] Approvals that are consistent with the Comprehensive Plan may be considered by the council at any time. Zone reclassifications that are not consistent with the Comprehensive Plan require a site-specific land use map amendment and the council's hearing and consideration shall be scheduled with the amendment to the Comprehensive Plan under K.C.C. 20.18.040 and 20.18.060.

F. The definitions in K.C.C. 21A.45.020 and 21A.46.010 apply to this section. (Ord. 19291 § 3, 2021: Ord. 19146 § 13, 2020: Ord. 19128 § 3, 2020: Ord. 18791 § 150, 2018: Ord. 18710 § 3, 2018: Ord. 18683 § 36, 2018: Ord. 18626 § 16, 2017: Ord. 17420 § 87, 2012: Ord. 17420 § 85, 2012 (Expired 12/31/2012): Ord. 17029 § 5, 2011 (Expired 12/31/2012): Ord. 16263 § 7, 2008: Ord. 15606 § 2, 2006: Ord. 15170 § 2, 2005: Ord. 14449 § 2, 2002: Ord. 14190 § 23, 2001: Ord. 14047 § 11, 2001: Ord. 13694 § 84, 1999: Ord. 13147 § 33, 1998: Ord. 13131 § 1, 1998: Ord. 12878 § 2, 1997: Ord. 12196 § 9, 1996).

***Reviser's note: "This ordinance expires one year after the effective date of this ordinance." (Ord. 19291 § 10, 2021).**

KCC 20.20.020 Classifications of land use decision processes (in effect May 25, 2022, and thereafter*).

A. Land use permit decisions are classified into four types, based on who makes the decision, whether public notice is required, whether a public hearing is required before a decision is made and whether administrative appeals are provided. The types of land use decisions are listed in subsection E. of this section.

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4. Type 4 decisions are quasi-judicial decisions made by the council based on the record established by the hearing examiner.

B. Except as provided in K.C.C. 20.44.120A.7. and 25.32.080 or unless otherwise agreed to by the applicant, all Type 2, 3 and 4 decisions included in consolidated permit applications that would require more than one type of land use decision process may be processed and decided together, including any administrative appeals, using the highest-numbered land use decision type applicable to the project application.

C. Certain development proposals are subject to additional procedural requirements beyond the standard procedures established in this chapter.

D. Land use permits that are categorically exempt from review under SEPA do not require a threshold determination (determination of nonsignificance ["DNS"] or determination of significance ["DS"]). For all other projects, the SEPA review procedures in K.C.C. chapter 20.44 are supplemental to the procedures in this chapter.

E. Land use decision types are classified as follow:

TYPE 1	(Decision by director, no administrative appeal)	Temporary use permit for a homeless encampment under K.C.C. 21A.45.010, 21A.45.020, 21A.45.030, 21A.45.040, 24A.45.050, 21A.45.060, 21A.45.070, 21A.45.080 and 21A.45.090; building permit, site development permit, or clearing and grading permit that is not subject to SEPA, that is categorically exempt from SEPA as provided in K.C.C. 20.20.040, or for which the department has issued a determination of nonsignificance or mitigated determination of nonsignificance; boundary line adjustment; right of way; variance from K.C.C. chapter 9.04; shoreline exemption; decisions to require studies or to approve, condition or deny a development proposal based on K.C.C. chapter 21A.24, except for decisions to approve, condition or deny alteration exceptions; decisions to approve, condition or deny nonresidential elevation and dry floodproofing variances for agricultural buildings that do not equal or exceed a maximum assessed value of sixty-five thousand dollars under K.C.C. chapter 21A.24; approval of a conversion-option harvest plan; a binding site plan for a condominium that is based on a recorded final planned unit development, a building permit, an as-built site plan for developed sites, a site development permit for the entire site; approvals for agricultural activities and agricultural support services authorized under K.C.C. 21A.42.300; final short plat; final plat.
TYPE 2[1,2]	(Decision by director appealable to hearing examiner, no further administrative appeal)	Short plat; short plat revision; short plat alteration; zoning variance; conditional use permit; temporary use permit under K.C.C. chapter 21A.32; temporary use permit for a homeless encampment under K.C.C. 21A.45.100; shoreline substantial development permit[3]; building permit, site development permit or clearing and grading permit for which the department has issued a determination of

		significance; reuse of public schools; reasonable use exceptions under K.C.C. 21A.24.070.B; preliminary determinations under K.C.C. 20.20.030.B; decisions to approve, condition or deny alteration exceptions or variances to floodplain development regulations under K.C.C. chapter 21A.24; extractive operations under K.C.C. 21A.22.050; binding site plan; waivers from the moratorium provisions of K.C.C. 16.82.140 based upon a finding of special circumstances; sea level rise risk area variance adopted in K.C.C. chapter 21A.23.
TYPE 3[1]	(Recommendation by director, hearing and decision by hearing examiner, appealable to county council on the record)	Preliminary plat; plat alterations; preliminary plat revisions.
TYPE 4[1,4]	(Recommendation by director, hearing and recommendation by hearing examiner decision by county council on the record)	Zone reclassifications; shoreline environment redesignation; urban planned development; special use; amendment or deletion of P suffix conditions; plat vacations; short plat vacations; deletion of special district overlay.

[1] See K.C.C. 20.44.120.C. for provisions governing procedural and substantive SEPA appeals and appeals of Type 3 and 4 decisions to the council.

[2] When an application for a Type 2 decision is combined with other permits requiring Type 3 or 4 land use decisions under this chapter, the examiner, not the director, makes the decision.

[3] A shoreline permit, including a shoreline variance or conditional use, is appealable to the state Shorelines Hearings Board and not to the hearing examiner.

[4] Approvals that are consistent with the Comprehensive Plan may be considered by the council at any time. Zone reclassifications that are not consistent with the Comprehensive Plan require a site-specific land use map amendment and the council's hearing and consideration shall be scheduled with the amendment to the Comprehensive Plan under K.C.C. 20.18.040 and 20.18.060.

F. The definitions in K.C.C. 21A.45.020 apply to this section. (Ord. 19291 § 3, 2021 (expired May 25, 2022*): Ord. 19146 § 13, 2020: Ord. 19128 § 3, 2020: Ord. 18791 § 150, 2018: Ord. 18710 § 3, 2018: Ord. 18683 § 36, 2018: Ord. 18626 § 16, 2017: Ord. 17420 § 87, 2012: Ord. 17420 § 85, 2012 (Expired 12/31/2012): Ord. 17029 § 5, 2011 (Expired 12/31/2012): Ord. 16263 § 7, 2008: Ord. 15606 § 2, 2006: Ord. 15170 § 2, 2005: Ord. 14449 § 2, 2002: Ord. 14190 § 23, 2001: Ord. 14047 § 11, 2001: Ord. 13694 § 84, 1999: Ord. 13147 § 33, 1998: Ord. 13131 § 1, 1998: Ord. 12878 § 2, 1997: Ord. 12196 § 9, 1996).

***Reviser's note: "This ordinance expires one year after the effective date of this ordinance." (Ord. 19291 § 10, 2021).**

KCC 21A.06.196 Clustering. Clustering: development of a subdivision at the existing zoned density that reduces the size of individual lots and creates natural open space for the preservation of critical areas, parks and permanent open space or as a reserve for future development. (Ord. 15606 § 5, 2006).

KCC 21A.12.030 Densities and dimensions - residential and rural zones.

A. Densities and dimensions - residential and rural zones.

RURAL					RESIDENTIAL								
STANDARDS	**RA-2.5**	**RA-5**	**RA-10**	**RA-20**	**UR**	**R-1 (17)**	**R-4**	**R-6**	**R-8**	**R-12**	**R-18**	**R-24**	**R-48**
Base Density: Dwelling Unit/Acre (15) (28)	0.2 du/ac	0.2 du/ac	0.1 du/ac	0.05 du/ac	0.2 du/ac (21)	1 du/ ac	4 du/ ac (6)	6 du/ac	8 du/ac	12 du/ac	18 du/ac	24 du/ac	48 du/ac
Maximum Density: Dwelling Unit/Acre (1)	0.4 du/ac (20)						6 du/ ac (22) 8 du/ ac (27)	9 du/ac 12 du/ac (27)	12 du/ac 16 du/ac (27)	18 du/ac 24 du/ac (27)	27 du/ac 36 du/ac (27)	36 du/ac 48 du/ac (27)	72 du/ac 96 du/ac (27)
Minimum Density: (2)							85% (12) (18) (23)	85% (12) (18)	85% (12) (18)	80% (18)	75% (18)	70% (18)	65% (18)
Minimum Lot Area (13)	1.875 ac	3.75 ac	7.5 ac	15 ac									
Minimum Lot Width (3)	135 ft	135 ft	135 ft	135 ft	35 ft (7)	35 ft (7)	30 ft	30 ft	30 ft	30 ft	30ft	30 ft	30 ft
Minimum Street Setback (3)	30 ft (9)	30 ft (9)	30ft (9)	30 ft (9)	30 ft (7)	20 ft (7) (29)	10 ft (8)	10 ft (8)	10 ft (8)	10 ft (8)	10 ft (8)	10ft (8)	10 ft (8)
Minimum Interior Setback (3) (16)	5 ft (9)	10ft (9)	10 ft (9)	10 ft (9)	5 ft (7)	5 ft (7) (29)	5 ft	5 ft	5 ft	5 ft (10)	5 ft (10)	5 ft (10)	5 ft (10)

Base Height (4)	40 ft	40 ft	40 ft	40 ft	35 ft	35 ft (29)	35 ft (25)	35 ft 45 ft (14) (25)	35 ft 45 ft (14) (25)	60 ft	60 ft 80 ft (14)	60 ft 80 ft (14)	60 ft 80 ft (14)
Maximum Impervious Surface: Percentage (5)	25% (11) (19) (26)	20% (11) (19) (26)	15% (11) (19) (24) (26)	12.5% (11) (19) (26)	30% (11) (26)	30% (11) (26)	55% (26)	70% (26)	75% (26)	85% (26)	85% (26)	85% (26)	90% (26)

B. Development conditions.

1. This maximum density may be achieved only through the application of residential density incentives in accordance with K.C.C. chapter 21A.34 or transfers of development rights in accordance with K.C.C. chapter 21A.37, or any combination of density incentive or density transfer.

2. Also see K.C.C. 21A.12.060.

3. These standards may be modified under the provisions for zero-lot-line and townhouse developments.

4.a. Height limits may be increased if portions of the structure that exceed the base height limit provide one additional foot of street and interior setback for each foot above the base height limit, but the maximum height may not exceed seventy-five feet. b. Netting or fencing and support structures for the netting or fencing used to contain golf balls in the operation of golf courses or golf driving ranges are exempt from the additional interior setback requirements but the maximum height shall not exceed seventy-five feet, except for recreation or multiuse parks, where the maximum height shall not exceed one hundred twenty-five feet, unless a golf ball trajectory study requires a higher fence.

c. Accessory dwelling units and accessory living quarters shall not exceed base heights, except that this requirement shall not apply to accessory dwelling units constructed wholly within an existing dwelling unit.

5. Applies to each individual lot. Impervious surface area standards for:

a. Regional uses shall be established at the time of permit review;

b. Nonresidential uses in rural area and residential zones shall comply with K.C.C. 21A.12.120 and 21A.12.220;

c. Individual lots in the R-4 through R-6 zones that are less than nine thousand seventy-six square feet in area shall be subject to the applicable provisions of the nearest comparable R-6 or R-8 zone; and

d. A lot may be increased beyond the total amount permitted in this chapter subject to approval of a conditional use permit.

6. Mobile home parks shall be allowed a base density of six dwelling units per acre.

7. The standards of the R-4 zone apply if a lot is less than fifteen thousand square feet in area.

8. At least twenty linear feet of driveway shall be provided between any garage, carport or other fenced parking area and the street property line. The linear distance shall be measured along the center line of the driveway from the access point to such garage, carport or fenced area to the street property line.

9.a. Residences shall have a setback of at least one hundred feet from any property line adjoining A, M or F zones or existing extractive operations. However, residences on lots less than one hundred fifty feet in width adjoining A, M or F zones or existing extractive operations shall have a setback from the rear property line equal to fifty percent of the lot width and a setback from the side property equal to twenty-five percent of the lot width.

b. Except for residences along a property line adjoining A, M or F zones or existing extractive operations, lots between one acre and two and one-half acres in size shall conform to the requirements of the R-1 zone and lots under one acre shall conform to the requirements of the R-4 zone.

10.a. For developments consisting of three or more single-detached dwellings located on a single parcel, the setback shall be ten feet along any property line abutting R-1 through R-8, RA and UR zones, except for structures in on-site play areas required in K.C.C. 21A.14.190, which shall have a setback of five feet.

b. For townhouse and apartment development, the setback shall be twenty feet along any property line abutting R-1 through R-8, RA and UR zones, except for structures in on-site play areas required in K.C.C. 21A.14.190, which shall have a setback of five feet, unless the townhouse or apartment development is adjacent to property upon which an existing townhouse or apartment development is located.

11. Lots smaller than one-half acre in area shall comply with standards of the nearest comparable R-4 through R-8 zone. For lots that are one-half acre in area or larger, the maximum impervious surface area allowed shall be at least ten thousand square feet. On any lot over one acre in area, an additional five percent of the lot area may be used for buildings related to agricultural or forestry practices. For lots smaller than two acres but larger than one-half acre, an additional ten percent of the lot area may be used for structures that are determined to be medically necessary, if the applicant submits with the permit application a notarized affidavit, conforming with K.C.C. 21A.32.170A.2.

12. For purposes of calculating minimum density, the applicant may request that the minimum density factor be modified based upon the weighted average slope of the net buildable area of the site in accordance with K.C.C. 21A.12.087.

13. The minimum lot area does not apply to lot clustering proposals as provided in K.C.C. chapter 21A.14.

14. The base height to be used only for projects as follows:

a. in R-6 and R-8 zones, a building with a footprint built on slopes exceeding a fifteen percent finished grade; and

b. in R-18, R-24 and R-48 zones using residential density incentives and transfer of density credits in accordance with this title.

15. Density applies only to dwelling units and not to sleeping units.

16. Vehicle access points from garages, carports or fenced parking areas shall be set back from the property line on which a joint use driveway is located to provide a straight line length of at least twenty-six feet as measured from the center line of the garage, carport or fenced parking area, from the access point to the opposite side of the joint use driveway.

17.a. All subdivisions and short subdivisions in the R-1 zone shall be required to be clustered if the property is located within or contains:

(1) a floodplain;

(2) a critical aquifer recharge area;

(3) a regionally or locally significant resource area;

(4) existing or planned public parks or trails, or connections to such facilities;

(5) a category type S or F aquatic area or category I or II wetland;

(6) a steep slope; or

(7) an urban separator or wildlife habitat network designated by the Comprehensive Plan or a community plan.

b. The development shall be clustered away from critical areas or the axis of designated corridors such as urban separators or the wildlife habitat network to the extent possible and the open space shall be placed in a separate tract that includes at least fifty percent of the site. Open space tracts shall be permanent and shall be dedicated to a homeowner's association or other suitable organization, as determined by the director, and meet the requirements in K.C.C. 21A.14.040. On-site critical area and buffers and designated urban separators shall be placed within the open space tract to the extent possible. Passive recreation, with no development of recreational facilities, and natural-surface pedestrian and equestrian trails are acceptable uses within the open space tract.

18. See K.C.C. 21A.12.085.

19. All subdivisions and short subdivisions in R-1 and RA zones within the North Fork and Upper Issaquah Creek subbasins of the Issaquah Creek Basin (the North Fork and Upper Issaquah Creek subbasins are identified in the Issaquah Creek Basin and Nonpoint Action Plan) and the portion of the Grand Ridge subarea of the East Sammamish Community Planning Area that drains to Patterson Creek shall have a maximum impervious surface area of eight percent of the gross acreage of the plat. Distribution of the allowable impervious area among the platted lots shall be recorded on the face of the plat. Impervious surface of roads need not be counted towards the allowable impervious area. Where both lot- and plat-specific impervious limits apply, the more restrictive shall be required.

20. This density may only be achieved on RA 2.5 zoned parcels receiving density from rural forest focus areas through a transfer of density credit pursuant to K.C.C. chapter 21A.37.

21. Base density may be exceeded, if the property is located in a designated rural city urban growth area and each proposed lot contains an occupied legal residence that predates 1959.

22. The maximum density is four dwelling units per acre for properties zoned R-4 when located in the Rural Town of Fall City.

23. The minimum density requirement does not apply to properties located within the Rural Town of Fall City.

24. The impervious surface standards for the county fairground facility are established in the King County Fairgrounds Site Development Plan, Attachment A to Ordinance 14808* on file at the department of natural resources and parks and the department of local services, permitting division. Modifications to that standard may be allowed provided the square footage does not exceed the approved impervious surface square footage established in the King County Fairgrounds Site Development Plan Environmental Checklist, dated September 21, 1999, Attachment B to Ordinance 14808*, by more than ten percent.

25. For cottage housing developments only:

a. The base height is twenty-five feet.

b. Buildings have pitched roofs with a minimum slope of six and twelve may extend up to thirty feet at the ridge of the roof.

26. Impervious surface does not include access easements serving neighboring property and driveways to the extent that they extend beyond the street setback due to location within an access panhandle or due to the application of King County Code requirements to locate features over which the applicant does not have control.

27. Only in accordance with K.C.C. 21A.34.040.F.1.g., F.6. or K.C.C. 21A.37.130.A.2.

28. On a site zoned RA with a building listed on the national register of historic places, additional dwelling units in excess of the maximum density may be allowed under K.C.C. 21A.12.042.

29. Height and setback requirements shall not apply to regional transit authority facilities. (Ord. 19146 § 48, 2020: Ord. 18791 § 168, 2018: Ord. 18671 § 4, 2018: Ord. 17841 § 31, 2014: Ord. 17539 § 33, 2013: Ord. 17420 § 99, 2012: Ord. 16267 § 25, 2008: Ord. 15245 § 6, 2005: Ord. 15051 § 126, 2004: Ord. 15032 § 17, 2004: Ord. 14808 § 4, 2003: Ord. 14807 § 7, 2003: Ord. 14429 § 2, 2002: Ord. 14190 § 33, 2001: Ord. 14045 § 18, 2001: Ord. 13881 § 1, 2000: Ord. 13571 § 1, 1999: Ord. 13527 § 1, 1999: Ord. 13274 § 10, 1998: Ord. 13086 § 1, 1998: Ord. 13022 § 16, 1998: Ord. 12822 § 6, 1997: Ord. 12549 § 1,

1996: Ord. 12523 § 3, 1996: Ord. 12320 § 2, 1996: Ord. 11978 § 4, 1995: Ord. 11886 § 5, 1995: Ord. 11821 § 2, 1995: Ord. 11802 § 3, 1995: Ord. 11798 § 1, 1995: Ord. 11621 § 41, 1994: Ord. 11555 § 5, 1994: Ord. 11157 § 15, 1993: Ord. 10870 § 340, 1993).

KCC 21A.12.040 Densities and dimensions - resource and commercial/industrial zones.

A. Densities and dimensions - resource and commercial/industrial zones.

	ZONES	RESOURCE				COMMERCIAL/INDUSTRIAL				
		AGRICULTURE		FOREST	MINERAL	NEIGHBOR-HOOD BUSINESS	COMMUNITY BUSINESS	REGIONAL BUSINESS	OFFICE	INDUSTRIAL
STANDARDS		**A-10**	**A-35**	**F**	**M**	**NB**	**CB**	**RB**	**O**	**I**
Base Density: Dwelling Unit/Acre (19)		0.1 du/ac	.0286 du/ac	.0125 du/ac		8 du/ac (2)	48 du/ac (2)	36 du/ac (2) 48 du/ac (1)	48 du/ac (2)	
Maximum Density: Dwelling Unit/Acre						12 du/ac (3) 16 du/ac (15)	72 du/ac (16) 96 du/ac (17)	48 du/ac (3) 72 du/ac (16) 96 du/ac (17)	72 du/ac (16) 96 du/ac (17)	
Minimum Lot Area		10 acres	35 acres	80 acres	10 acres					
Maximum Lot Depth/ Width Ratio		4 to 1	4 to 1							
Minimum Street Setback		30 ft (4)	30 ft (4)	50 ft (4)	(12)	10 ft (5)	10 ft (5)	10 ft (5)	10 ft	25 ft
Minimum Interior Setback		10 ft (4)	10 ft (4)	100 ft (4)	(12)	10 ft (18) 20 ft (14)	20 ft (7)	20 ft (7)	20 ft (7)	20 ft (7) 50 ft (8)
Base Height (10)		35 ft	35 ft	35 ft	35 ft	35 ft 45 ft (6)	35 ft 60 ft (6) 65 ft (17)	35 ft 65 ft (6)	45 ft 65 ft (6)	45 ft
Maximum Floor/Lot Ratio: Square Feet						1/1 (9)	1.5/1 (9)	2.5/1 (9)	2.5/1 (9)	2.5/1
Maximum Impervious Surface: Percentage (13)		15% 35% (11)	10% 35% (11)	10% 35% (11)		85%	85%	90%	75%	90%

B. Development conditions.

1. In the RB zone on property located within the Potential Annexation Area of a rural city, this density is not allowed.

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

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

4.a. in the F zone, scaling stations may be located thirty-five feet from property lines. Residences shall have a setback of at least thirty feet from all property lines.

b. for lots between one acre and two and one half acres in size, the setback requirements of the R-1 zone shall apply. For lots under one acre, the setback requirements of the R-4 zone shall apply.

c. for developments consisting of three or more single-detached dwellings located on a single parcel, the setback shall be ten feet along any property line abutting R-1 through R-8, RA and UR zones.

5. Gas station pump islands shall be placed no closer than twenty-five feet to street front lines.

6. This base height allowed only for mixed-use developments and for stand-alone townhouse development in the NB zone on property designated commercial outside of center in the urban area.

7. Required on property lines adjoining rural area and residential zones.

8. Required on property lines adjoining rural area and residential zones for industrial uses established by conditional use permits.

9. The floor-to-lot ratio for mixed use developments shall conform to K.C.C. chapter 21A.14.

10. Height limits may be increased if portions of the structure building that exceed the base height limit provide one additional foot of street and interior setback for each foot above the base height limit, provided the maximum height may exceed seventy-five feet only in mixed use developments. Netting or fencing and support structures for the netting or fencing used to contain golf balls in the operation of golf courses or golf driving ranges are exempt from the additional interior setback requirement provided that the maximum height shall not exceed seventy-five feet.

11. Applicable only to lots containing less than one acre of lot area. Development on lots containing less than fifteen thousand square feet of lot area shall be governed by impervious surface standards of the nearest comparable R-4 through R-8 zone.

12. See K.C.C. 21A.22.060 for setback requirements in the mineral zone.

13. The impervious surface area for any lot may be increased beyond the total amount permitted in this chapter subject to approval of a conditional use permit.

14. Required on property lines adjoining rural area and residential zones unless a stand-alone townhouse development on property designated commercial outside of center in the urban area is proposed to be located adjacent to property upon which an existing townhouse development is located.

15. Only as provided for walkable communities under K.C.C. 21A.34.040.F.8. well-served by transit or for mixed-use development through the application of rural area and residential density incentives under K.C.C. 21A.34.040.F.1.g.

16. Only for mixed-use development through the application of residential density incentives under K.C.C. chapter 21A.34 or the transfer of development rights under K.C.C. chapter 21A.37. In the RB zone on property located within the Potential Annexation Area of a rural city, this density is not allowed.

17. Only for mixed-use development through the application of residential density incentives through the application of residential density incentives under K.C.C. chapter 21A.34 or the transfer of development rights under K.C.C. chapter 21A.37. Upper-level setbacks are required for any facade facing a pedestrian street for any portion of the structure greater than forty-five feet in height. The upper level setback shall be at least one foot for every two feet of height above forty-five feet, up to a maximum required setback of fifteen feet. The first four feet of horizontal projection of decks, balconies with open railings, eaves, cornices, and gutters shall be permitted in required setbacks. In the RB zone on property located within the Potential Annexation Area of a rural city, this density is not allowed.

18. Required on property lines adjoining rural area and residential zones only for a social service agency office reusing a residential structure in existence on January 1, 2010.

19. On a site zoned A with a building designated as a county landmark in accordance with the procedures in K.C.C. 20.62.070, additional dwelling units in excess of the maximum density may be allowed under K.C.C. 21A.12.042. (Ord. 17539 § 34, 2013: Ord. 16950 § 20, 2010: Ord. 16267 § 26, 2008: Ord. 14190 § 34, 2001: Ord. 14045 § 19, 2001: Ord. 13086 § 2, 1998: Ord. 13022 § 17, 1998: Ord. 12929 § 2, 1997: Ord. 12522 § 4, 1996: Ord. 11821 § 3, 1995: Ord. 11802 § 4, 1995: Ord. 11621 § 42, 1994: Ord. 10870 § 341, 1993).

21A.12.042 Historic buildings – exceptions for number of dwelling units allowed. On a site zoned A or RA with a building designated as a county landmark in accordance with the procedures in K.C.C. 20.62.070, the number of dwelling units allowed may exceed what would otherwise be allowed under K.C.C. 21A.12.030 as follows:

A. All dwelling units shall be located within the historic building; and

B. No more than five dwelling units shall be allowed, subject to approval by the historic preservation officer and, where required, review and approval by the landmarks commission in accordance with the procedures in K.C.C. 20.62.080. (Ord. 17539 § 35, 2013).

KCC 21A.12.050 Measurement methods. The following provisions shall be used to determine compliance with this title:

A. Street setbacks shall be measured from the existing edge of a street right-of-way or temporary turnaround, except as provided by K.C.C. 21A.12.150;

B. Lot widths shall be measured by scaling a circle of the applicable diameter within the boundaries of the lot, provided that an access easement shall not be included within the circle;

C. Building height shall be measured from the average finished grade to the highest point of the roof. The average finished grade shall be determined by first delineating the smallest square or rectangle which can enclose the building and then averaging the elevations taken at the midpoint of each side of the square or rectangle, provided that the measured elevations do not include berms;

D. Lot area shall be the total horizontal land area contained within the boundaries of a lot; and

E. Impervious surface calculations shall not include areas of turf, landscaping, natural vegetation or flow control or water quality treatment facilities. (Ord. 15051 § 127, 2004: Ord. 13190 § 16, 1998: Ord. 10870 § 342, 1993).

KCC 21A.14.040 Lot segregations - clustered development. Residential lot clustering is allowed in the R, UR and RA zones. If residential lot clustering is proposed, the following requirements shall be met:

A. In the R zones, any designated open space tract resulting from lot clustering shall not be altered or disturbed except as specified on recorded documents creating the open space. Open spaces may be retained under ownership by the subdivider, conveyed to residents of the development or conveyed to a third party. If access to the open space is provided, the access shall be located in a separate tract;

B. In the RA zone:

1. No more than eight lots of less than two and one-half acres shall be allowed in a cluster;

2. No more than eight lots of less than two and one-half acres shall be served by a single cul-de-sac street;

3. Clusters containing two or more lots of less than two and one-half acres, whether in the same or adjacent developments, shall be separated from similar clusters by at least one hundred twenty feet;

4. The overall amount, and the individual degree of clustering shall be limited to a level that can be adequately served by rural facilities and services, including, but not limited to, on-site sewage disposal systems and rural roadways;

5. A fifty-foot Type II landscaping screen, as defined in K.C.C. 21A.16.040, shall be provided along the frontage of all public roads when adjoining differing types of development such as commercial and industrial uses, between differing types of residential development and to screen industrial uses from the street. The planting materials shall consist of species that are native to the Puget Sound region. Preservation of existing healthy vegetation is encouraged and may be used to augment new plantings to meet the requirements of this section;

6. Except as provided in subsection B.7. of this section, open space tracts created by clustering in the RA zone shall be designated as permanent open space. Acceptable uses within open space tracts are passive recreation, with no development of active recreational facilities, natural-surface pedestrian and equestrian foot trails and passive recreational facilities. A resource tract created under K.C.C. 16.82.152.E. may be considered an open space tract for purposes of this subsection B.6;

7.a. In the RA zone a resource tract may be created through a cluster development in lieu of an open space tract. A resource tract created under K.C.C. 16.82.152.E. may be considered a resource tract for purposes of this subsection B.7. The resource tract may be used as a working forest or farm if:

(1) the department determines the resource tract is suitable for forestry or agriculture; and

(2) the applicant submits a forest management plan prepared by a professional forester that has been approved by the King County department of natural resources and parks, or a farm management plan developed by the King Conservation District. The management plan must:

(a) ensure that forestry or farming will remain as a sustainable use of the resource tract ;

(b) set impervious surface and clearing limitations and identify the type of buildings or structures that will be allowed within the resource tract; and

(c) if critical areas are included in the resource tract, clearly distinguish between the primary purpose of the resource portion of the tract and the primary purpose of the critical area portion of the tract as required under K.C.C. 21A.24.180.

b. The recorded plat or short plat shall designate the resource tract as a working forest or farm.

c. If the applicant conveys the resource tract to residents of the development, the resource tract shall be retained in undivided interest by the residents of the subdivision or short subdivision.

d. A homeowners association shall be established to ensure implementation of the forest management plan or farm management plan if the resource tract is retained in undivided interest by the residents of the subdivision or short subdivision.

e. The applicant shall file a notice with the King County department of executive services, records and licensing services division. The required contents and form of the notice shall be set forth in a public rule. The notice shall inform the property owner or owners that the resource tract is designated as a working forest or farm, that must be managed in accordance with the provisions established in the approved forest management plan or farm management plan.

f. The applicant shall provide to the department proof of the approval of the forest management plan or farm management plan and the filing of the notice required in subsection B.7.g. of this section before recording of the final plat or short plat.

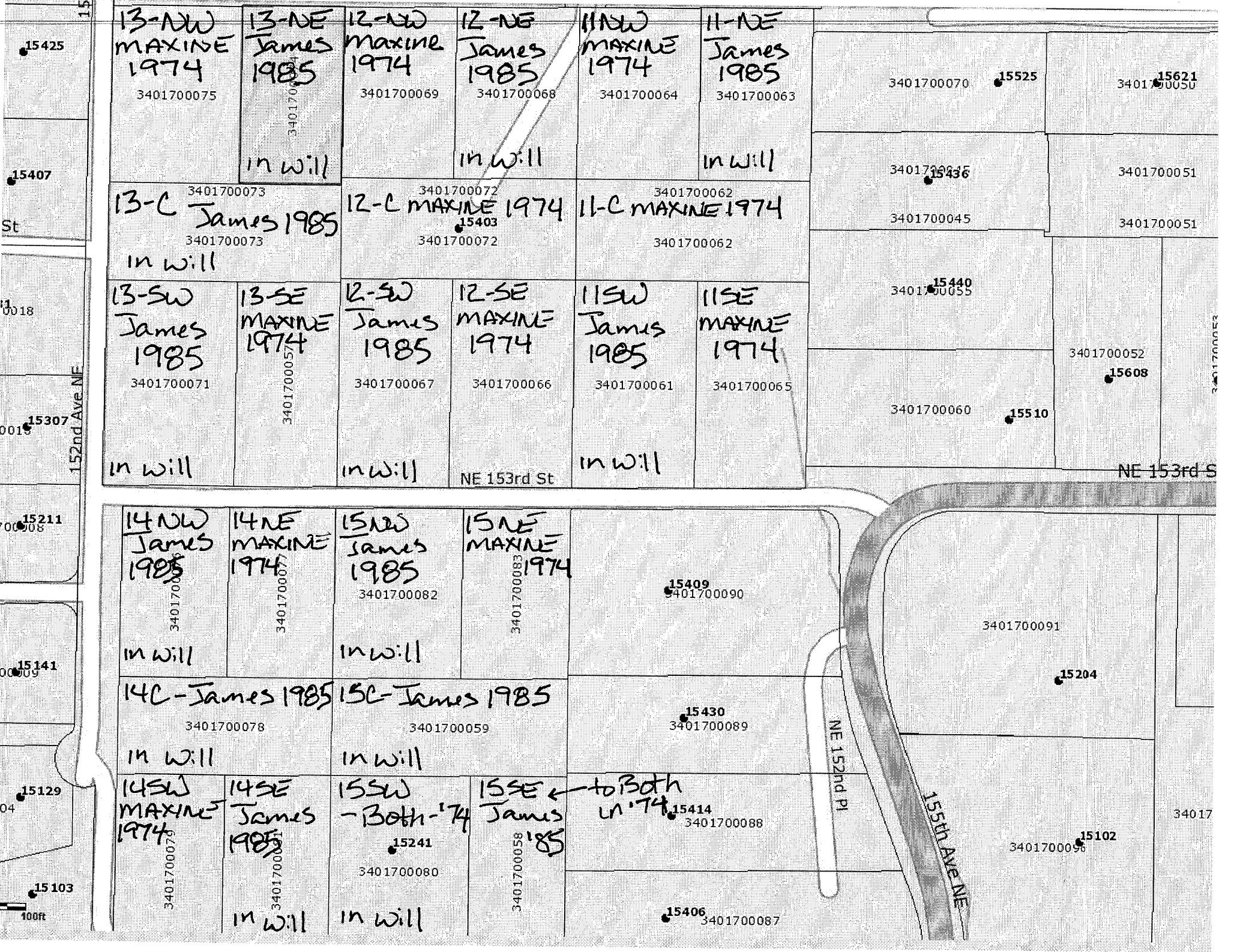
g. The notice shall run with the land.

h. Natural-surface pedestrian and equestrian foot trails, passive recreation, and passive recreational facilities, with no development of active recreational facilities, are allowed uses in resource tracts; and

8. The requirements of subsection B.1., 2., or 3. of this subsection may be modified or waived by the director if the property is encumbered by critical areas containing habitat for, or there is the presence of, species listed as threatened or endangered under the Endangered Species Act when it is necessary to protect the habitat; and

C. In the R-1 zone, open space tracts created by clustering required by K.C.C. 21A.12.030 shall be located and configured to create urban separators and greenbelts as required by the Comprehensive Plan, or subarea plans or open space functional plans, to connect and increase protective buffers for critical areas, to connect and protect wildlife habitat corridors designated by the Comprehensive Plan and to connect existing or planned public parks or trails. The department may require open space tracts created under this subsection to be dedicated to an appropriate managing public agency or qualifying private entity such as a nature conservancy. In the absence of such a requirement, open space tracts shall be retained in undivided interest by the residents of the subdivision or short subdivision. A homeowners association shall be established for maintenance of the open space tract. (Ord. 17539 § 37, 2013: Ord. 16267 § 31, 2008: Ord. 15971 § 95, 2007: Ord. 15606 § 17, 2006: Ord. 15051 § 129, 2004: Ord. 15032 § 19, 2004: Ord. 14199 § 234, 2001: Ord. 14259 § 8, 2001: Ord. 14045 § 25, 2001: Ord. 13022 § 19, 1998: Ord. 12822 § 8, 1997: Ord. 11621 § 47, 1994: Ord. 10870 § 364, 1993).

APPENDIX B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APPENDIX C

King County
Permitting Division
Department of Local Services
35030 SE Douglas St., Ste. 210
Snoqualmie, WA 98065-9266
206-296-6600 TTY Relay: 711
www.kingcounty.gov

Regulatory Review Committee (RRC)
- Minutes -

Meeting Date: January 23, 2020
Minutes finalized: February 12, 2020

TO: Jim Chan, Director
Mark Rowe, Assistant Director
Devon Shannon, Prosecuting Attorney's Office
Ramon Locsin, Urban Product Line Manager
Doug Dobkins, Residential Product Line Manager
Ty Peterson, Commercial Product Line Manager
Sheryl Lux, Code Enforcement Product Line Manager
Chris Ricketts, Building Official and Fire Marshal

FM: Christine Jensen, Legislative/Policy Analyst and RRC Co-Chair
Kevin LeClair, Principal Subarea Planner and RRC Co-Chair

Present: Kevin LeClair, Sheryl Lux, Ty Peterson, Wally Archuleta, Ramon Locsin and Scott Smith.

1. Concerning boundary line adjustments of rural area lots that do not meet the minimum lot size in the given zone.

Indexes

Subjects: Boundary line adjustment, minimum lot size, building site, and nonconformance
Code: 19A.04.060,19A.28, 21A.12, and 21A.32

Background

This issue was prompted by an inquiry from a rural area property owner of two adjacent, developed properties with RA-5 zoning. The property owner wants to request a boundary line adjustment of the two properties in order to make one of the properties comply with

the minimum lot size requirement for a property within the RA-5 zone, which is 3.75 acres per King County Code (K.C.C.) 21A.12.030. The two properties are each currently 2.45 acres in size. The proposal is to adjust the boundary line in such a way that the resulting lots would measure 1.2 acres and 3.75 acres in size.

The stated intention of the property owner is to enlarge one of the properties in order to build a new primary dwelling on the resulting larger parcel and convert an existing structure on the property to a detached, accessory dwelling unit.

The property owner contends that the proposed boundary line adjustment would result in having only one lot that is non-compliant with the minimum lot standard in K.C.C. Chapter 21A.12, where there are currently two non-compliant lots.

Discussion

The committee first discussed the Permitting Division's long-standing practice of not approving boundary line adjustments that would result in lots that do not comply with the minimum lot size of a given zoning classification.

In this case, the owner is arguing that by reconfiguring the lot lines, the result would be one lot that would conform with the minimum lot area and one that does not conform, which would be a net improvement in conformance when taken together. The committee understood the logic of this argument but then discussed that the provisions of nonconformance outlined in K.C.C. Chapter 21A.32 apply to "use, structures, and improvements." The matter of site area is not an issue of conformance per K.C.C. Chapter 21A.32, but rather compliance with the zoning code's dimensional standards in K.C.C. Chapter 21A.12 and the definition of building site in K.C.C. 19A.04.060.

The committee then discussed that Boundary Line Adjustments may only be approved in accordance with K.C.C. Chapter 19A.28 and in conformance with K.C.C. 21A.02.040. K.C.C. 19A.28.020 states that "a boundary line adjustment proposal shall not:... a. Result in a lot that does not qualify as a building site pursuant to this title." K.C.C. 21A.02.040.B, states "Creation of or changes to lot lines shall conform with the use provisions, dimensional and other standards, and procedures of this title and Title 19, Subdivisions." (emphasis added) The resulting lot dimension of one of the resulting parcels would not comply with the minimum lot dimensional standards in K.C.C. Chapter 21A.12. Therefore, the committee does not agree that the code would allow approval of the boundary line adjustment.

Similarly, this same standard has been regularly applied over the years when property owners have attempted to resolve either building setback nonconformities or outright encroachment issues by requesting a boundary line adjustment. When the lots involved do not meet the minimum lot area prescribed for the zone, the Permitting Division does

not approve boundary line adjustments where there is any reduction in square footage of the lots involved.

The committee also spent a short amount of time discussing the rural area in general and its definitions in the King County Zoning Code (K.C.C. 21A.04.060) and the purpose of the rural area as described in the King County Comprehensive Plan.

Conclusion

Although the committee could understand and sympathize with the argument of creating one lot that complied with the minimum lot size as a means of improving conformity, the Division cannot approve a boundary line adjustment of a lot if the resulting lot does not meet the minimum lot area dimensional standard.