

Council decision could land city in court

By Kendall Watson | May 14, 2008

The futures of both a planned downtown redevelopment and a key city board were put in doubt last week when the City Council voted to support an appeal of the project.

The Kirkland City Council voted 4-3 in favor of an appeal of the Bank of America/Merrill Gardens redevelopment plan on Lake Street at its May 6 meeting. In voting for the appeal, the Council rejected the findings of the Design Review Board (DRB), a volunteer board established by the city in 1999 as a way to provide professional review of new developments.

Council members Jim Lauinger, Dave Asher, Jessica Greenway and Tom Hodgson voted in favor of the appeal.

"It's very, very difficult for me to reverse the work of the DRB and in fact of all of our citizens and volunteers," Greenway said. "It was a very difficult decision, but one that I was compelled to make based on the evidence presented in this hearing."

SRM's Development Manager Andy Loos appeared as a witness before the decision was made, referencing the strong working relationship he had with the city's DRB and a Seattle Times success-story of Google coming to Kirkland. He asked to be treated fairly after following the process spelled out in the zoning code.

"We rely on (the city) as the authority on what to do," he said. "We need predictability. We need accurate information on the property. We rely on city staff giving us accurate information at that time."

The appeal was brought by the same citizen's group that in 2005 stopped a four-story mixed-use development on Lake Street and Central Way. Citizens for a Vibrant Kirkland's (CiViK) stated goal is to protect the economic vitality of the area, and the livability and "small-town feel" of downtown Kirkland.

Two of the group's supporters, Pat Mialovich, 67, and Pat Little, 63, attended the hearing wearing green "I (heart) Downtown Kirkland" stickers. The Kirkland residents both said they didn't want to live in another Bellevue.

"We're going to lose what everyone wants," said Mialovich. "This is the Northwest's Sausalito."

CiViK attorney Richard Aramburu made a series of arguments focused on zoning issues of a bank in the project and building heights on Lake Street. According to city planning guidelines, two stories are preferred on Lake Street South, but the east side of the street does permit building heights up to four stories. In special cases where "superior retail space" is incorporated, a fifth floor is allowed.

The majority ruling came down to how the Council interpreted two key phrases from the city's 2002 comprehensive plan: "superior retail space" and "set back significantly from the street." As applied to downtown, the plan uses terms such as "superior" or "significant" -- qualifiers some council members and developers said were left intentionally vague in deference to the DRB.

Voting from the minority, Councilman Bob Sternoff voiced concern that an overturn of the DRB's decision had no legal basis.

“I think that’s a big issue and I think that is a judgement call that we turned over to the DRB,” Sternoff said. “And I would argue that -- we can’t legislate that at this point.”

In their decision, the majority moved to more narrowly define the city zoning code by blocking a development based both on “use” and the way in which building heights over two stories are restricted. Council members repeatedly criticized the bank as undesirable and disagreed with the DRB’s decision to award an incentive to a developer who already knew one of the tenants.

“These guidelines clearly allow us to use ‘use’ as a criteria for defining ‘superior retail,’” Greenway said. “A bank by no stretch of the imagination can qualify as superior retail ... In my opinion, based on the evidence, based on my reading of the comprehensive plan, based on my interpretation of these guidelines, which I think are very clear, this does not qualify as superior retail.”

DRB’s future unclear

The decision casts doubt on the future decision-making ability of the DRB. Councilman Hodgson was particularly frustrated by a process that brought the matter to city council review. While Greenway and other council members recognized the positives of the DRB in their criticism, Hodgson was less sanguine.

“What’s right for the intent and spirit of the downtown was pretty much pushed aside,” Hodgson said of the DRB’s process. “If that’s the way we want to do this, then we don’t need the DRB. We can have administrative approval of these things, which, to me, is what looks like what happened.”

“I’m hearing ... through this whole process from the very start it looked like the ‘five story project’ that came in and we are going to find a way to make it fit. Not from the ground up, but from the fifth floor down. And that’s what’s bothering me about this. I think we have to have a further discussion about the function of (the DRB).”

In response to the Council’s criticism, half the board (3) resigned last Wednesday. Architect H. Todd Kilburn called the Council’s actions “disrespectful and insulting” in his resignation letter. The resignations leave the board (already without a chairman since April 17) without a quorum and unable to review new projects.

“The board will be difficult to reconstitute,” said City Planning Director Eric Shields, who also sits on the DRB as an advisor. He said finding replacements for the board could take several months.

Redevelopments put in doubt

The decision could also impact two other proposed redevelopments -- the McLeod Project on Lake Street and Parkplace Center -- currently moving through the city’s review process.

Developer Stuart McLeod said he believes his project, also on appeal, will be judged on a different set of criteria. He said his proposal has already scaled-down in response to DRB concerns about its size appearance. Working from a similar interpretation of size and set-backs on Lake Street, the DRB worked with McLeod for over four months to scale down the project to a four-story, 157,000-square-foot mixed-use building.

“The community at large, the City Council and the DRB are all very passionate about the process,” he said, “But I think I understood what the consensus is: How do you create this ‘two-story’ feel.”

Parkplace developer Douglas Howe, who has requested a variance in the zoning code to allow even greater heights, could now face a bigger challenge given the Council's stated preference for less height. Howe has submitted plans for 11.5 acre, 1.8 million square-foot development that includes eight-story buildings. Current city zoning code limits buildings to five stories.

He's hoping an alternate plan for an office park -- that fits within existing zoning codes -- will provide insurance should the private amendment request (PAR) be declined. That plan, however, must also be first reviewed by the DRB.

All we're asking the Council is, will you allow us to develop a functional Parkplace, to make a retail plan that works," Howe said.

City prepares for Superior Court

The Council's stance on the Bank of America project could put the city in legal trouble.

"I think the next stop for this development is Superior Court," Asher said.

Following the hearing, Loos said his company had no plans to sue Kirkland for improperly applying the zoning codes, but the possibility of legal action remains. City staff will closely examine the Council's findings -- from hearings that twice stretched into the early morning -- and present them as a resolution of findings of facts and conclusions at the Council's next meeting on May 20. The Council is expected to then vote on that resolution to conclude the appeal.

"We'll have to wait and see what the staff will find in the exact wording," city manager David Ramsay said.

The uncertainty left by the ruling may also prove a problem for future development, as property owners try to determine their options.

"We want to see exactly what the position of the city is ... We're not sure what the Council is looking for. It's confusing to say the least," Loos said.

He also warned the uncertainty created by the decision could undermine the confidence developers have in Kirkland's staff.

"With the apparent ruling that the city has authority over tenant uses in development sites, there could be an interesting effect on who property owners can lease their spaces to," Loos said. "I think that's a major factor in their decision ... Those sorts of restrictions are going to have a negative impact on property values downtown."

Kirkland Chamber of Commerce head Bill Vadino, who supports the Lake Street developments and the Parkplace renovation, said the process is far from over.

"They have to look at the findings and I don't believe they'll be able to win their case if they go to Superior Court," he said. "There's a lot of people betting on Kirkland. Can they trust the system?"

Council members will not comment on the decision until the conclusion of the process.

Contact Kendall at kwatson@reporternewspapers.com.