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Department of Development and Environmental Services
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FINAL CODE INTERPRETATION
L07CI003

Background

Mr. J. Richard Aramburu filed a code interpretation request November 26, 2007 on behalf of his client Roger Lowe. Mr. Aramburu's request concerns several different provisions of K.C.C. Title 19A as they relate to the construction of an eleven unit townhouse development known as Kirkland Villas. On October 14, 2003, Cedarbrook Homes applied for a building permit to build the Kirkland Villas development. On January 25, 2005, DDES issued building permit B03L1800 to Cedarbrook Homes. Cedarbrook Homes also applied for a binding site plan on July 1, 2004. If the binding site plan had been approved, Cedarbrook Homes would have been allowed to divide the one lot that contains the Kirkland Villas development into eleven lots in addition to a road and recreational area tract. Based on the provisions of K.C.C. Chapter 19A.20, DDES notified Cedarbrooke Homes that a condominium declaration was required before DDES could approve binding site plan application B04DB001. On July 7, 2006, DDES cancelled binding site plan application B04DB001 because Cedarbrook Homes failed to provide DDES with the required condominium declaration.

Mr. Aramburu asks three separate questions regarding this development proposal:

1. Under K.C.C. Chapter 19A.20, is a binding site plan required for the creation of an 11 unit condominium that will be sold as individual condominium units?

2. Does the development proposal function as one site as required by K.C.C. 19A.20.030A for a binding site plan?

3. May a recorded condominium declaration that has been approved by King County be abandoned or modified without the approval of King County?

These questions are addressed below.

Discussion

1. Under K.C.C. Chapter 19A.20, is a binding site plan required for the creation of an 11 unit condominium that will be sold as individual condominium units?

Binding site plans are governed by state law and King County Code. RCW 58.17.035 allows a local government to establish procedures for the division of land through a binding site plan under three circumstances: the sale or lease of commercial or industrially zoned property; divisions for lease; and divisions through the creation of a condominium consistent with RCW 58.17.040(7). KC.C. Chapter 19A.20 establishes the procedures for the division of land through a binding site plan in King County, consistent with state law.

K.C.C. 19A.20.030A requires the recording of a condominium agreement for a binding site plan that proposes to create individual lots. This is consistent with the provisions of RCW 58.17.040(7) and 58.17.035. However, a binding site plan is not required to create a condominium if individual lots are not created. Nothing in RCW Chapters 64.32 or 64.34 or K.C.C. Chapter 19A.20 requires a binding site plan as a prerequisite for the sale of individual condominium units.

2. Does the development proposal (Kirkland Villas) function as one site as required by K.C.C. 19A.20.030A for a binding site plan?

As noted previously, the Binding Site Plan application for the Kirkland Villas development has been cancelled. As a result, the question as it applies to this development is moot.

3. May a recorded condominium declaration that has been approved by King County be abandoned or modified without the approval of King County?

An applicant for a condominium must submit to King County for its approval the final recording maps, the legal description from the title report, boundary closure calculations, and a copy of the last real estate transaction for adjacent unplatted parcels. K.C.C. 19A.24.020. If changes are made to the condominium declarations related to these elements, those changes must be approved by King County.

Decision

Mr. Aramburu has asked three code interpretation questions as they relate to the Kirkland Villas development proposal.

1. A binding site plan is not required to create a condominium that does not create individual lots. However, both RCW 58.17.040(7) and K.C.C. 19A.20.030 require the creation of a condominium if a binding site plan is proposed as an alternative to a subdivision.

2. Under K.C.C. 19A.24.040, King County must approve certain elements of a condominium agreement, including the final recording maps and the legal description from the title report. The condominium owners must obtain approval from King County to modify provisions of the agreement that relate to those elements that require King County approval. Other elements of the

condominium agreement that do not require approval by King County, may be modified by the condominium owners without King County approval.

3. Mr. Aramburu's question concerning the applicability of binding site plan requirements as they apply to the Kirkland Villas proposal is moot. The binding site plan application for this development has been canceled.

Finality of Code Interpretation
Under K.C.C. 2.100.050, a code interpretation is final when issued by the director, unless it relates to a development proposal pending before the department or to a code enforcement action.

Mr. Aramburu's code interpretation request does not make an explicit claim that the request relates to a development proposal pending before King County, although the request does reference specific permit applications. In its Acknowledgement of the Code Interpretation Request, the Department made the initial determination that the request did relate to two permits – B03L1800 and B04DB001. Upon further review, the Director determines that this code interpretation request does not relate to a development proposal pending before the Department. As noted previously, B04DB001 has been canceled. Building Permit B03L1800 was issued on July 28, 2005 and is therefore no longer pending before the department. Because this code interpretation request does not relate to a development proposal pending before the department, the Director's decision is final on the date it is issued. K.C.C. 2.100.040D; 2.100.050.

Stephanie Warden
Director
Development and Environmental Services

1/11/08
Date