



MEMORANDUM

DATE: May 26, 2011
TO: Chair Kasner, Members of the East Bellevue Community Council
FROM: Mike Upston, Senior Planner
SUBJECT: Health Club @ Kelsey Creek Center/ Conditional Use (11-103765-LB)

On May 16, 2011 the City Council voted 6 – 0 (1 councilmember was absent) to approve the subject Conditional Use application to allow a health club at Kelsey Creek Center.

This memorandum follows up from that decision to inform you that the applicant and City staff will be present at your June 7, 2011 hearing to answer any final questions you may have about the project so that you may make a determination as to whether the City Council decision should be upheld.

Attached for your review are the following:

- Hearing Examiner staff presentation on April 7th
- Hearing Examiner's recommendation to City Council on April 20th
- City Council Agenda Memo of May 9th (study session)
- City Council Agenda Memo of May 16th (action)
- Ordinance 6001
- EBCC Public Notice

Please contact me if you have any questions prior to the June 7th hearing.

CITY OF BELLEVUE
EAST BELLEVUE COMMUNITY COUNCIL
PUBLIC HEARING NOTICE

Rules of Procedure are available at the City Clerk's Office

The East Bellevue Community Council will hold a public hearing during its Regular Meeting on **Tuesday June 7, 2005, at 6:30 p.m.**, in the Lake Hills Clubhouse, 15230 Lake Hills Boulevard, for final consideration of a Conditional Use Permit Application, as applicable within their jurisdiction:

Conditional Use Permit File No. 11-103765-LB, final hearing:

- Conditional Use Application for a health club within the existing commercial center. The Bellevue City Council approved the Conditional Use by Ordinance No. 6001.

Written comments may be addressed to the East Bellevue Community Council in care of Michelle Murphy, Deputy City Clerk, P.O. Box 90012, Bellevue, WA 98009.

Posting/Publication Date: May 26, 2010

1217-ORD
05/12/11

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6001

AN ORDINANCE approving the conditional use permit application of Group Mackenzie to locate a health club in the Kelsey Creek Center, 15015 Main Street; File No. 11-103765-LB.

Whereas, Group Mackenzie, has applied to the City for a conditional use permit to locate a health club in the Kelsey Creek Center, located at 15015 Main Street; and

Whereas, on April 7, 2011 a public hearing was held thereon by the Hearing Examiner pursuant to notice required by law; and

Whereas, on April 20, 2011, the Hearing Examiner recommended approval, subject to conditions, of said application and made and entered findings of fact and conclusions based thereon in support of his recommendation; and

Whereas, the City Council concurs in the findings of fact and conclusions of the Hearing Examiner; and

Whereas, the City of Bellevue has complied with the State Environmental Policy Act and the Bellevue Procedures Code; now; therefore

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

Section 1. The City Council Adopts the findings of fact and conclusions made and entered by the Hearing Examiner in support of his recommendation to the City Council in this matter as set forth in "Findings of Fact, Conclusions of Law and Recommendation of the Hearing Examiner for the City of Bellevue, in the Matter of the Application of Group Mackenzie for a Conditional Use Permit to Allow the Operation of a Health Club in the Kelsey Creek Center, FILE NO. 11-103765-LB."

Section 2. The City Council hereby approves, subject to conditions, the conditional use application to locate a health club in the Kelsey Creek Center, on property legally described as:

Lots 1, 2, and 3 of City of Bellevue Short Plat No. 96-8900, as filed under Recording No. 9803099020, in King County, Washington.

Section 3. The application approval shall be subject to the following conditions:

A. General Conditions: The following conditions apply to all phases of development

1. Compliance with Bellevue City Codes and Ordinances
The applicant shall comply with all applicable Bellevue City Codes and Ordinances including but not limited to:

Clearing and Grading Code - BCC 23.76
Transportation Development Code - BCC 14.60
Traffic Standards Code – BCC 14.10
Trans. Impact Fee Program – BCC 22.16
Transportation Development Standards
Right-of-Way Use Permit - BCC 14.30
Land Use Code - BCC Title 20
Sign Code - BCC Title 22B
Noise Control - BCC 9.18
Utilities Code - BCC Title 24
Construction Codes - BCC Title 23
Uniform Fire Code - BCC 23.11

2. CONSTRUCTION HOURS

Noise related to construction is allowed from 7:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturday. Exceptions to the construction noise hours limitation contained in the Noise Control Code MAY be granted pursuant to 9.18.020C.1 when necessary to accommodate construction which cannot be undertaken during exempt hours. Allowances for short term work outside of normal construction hours shall be limited and will be reviewed on a case by case basis to verify necessity and ensure appropriate noise mitigation is utilized to protect surrounding uses and properties. Written requests for exemption from the Noise Control Code must be submitted two weeks prior to the scheduled onset of extended hour construction activity. Such request shall include a noise analysis prepared by a noise consultant, including recommendations for achieving the noise limitations of the Noise Ordinance for new residential construction.

BCC 9.18.040

3. ON-STREET LOADING & UNLOADING

The property owner shall provide off-street loading spaces which can access a public street, and which will be accessible by large trucks without using Main Street to and from the east. On-street loading and unloading will not be permitted.

LUC 20.20.590.K.4

4. PARKING

The property owner shall submit to the Land Use Division an updated parking calculation for Kelsey Creek Center whenever the tenant size and/or mix changes significantly to ensure that on-site parking supply will continue to meet current parking requirements of the Land Use Code. In addition, the City maintains the authority to require additional mitigation if the parking proves to be more significant than the projections contained in the parking demand analysis provided by the applicant.

LUC 20.20.590.F, LUC 20.30B.165, LUC 20.30B.170.A

5. TRANSPORTATION MANAGEMENT PROGRAM

To the extent required by BCC 14.60.070, the operator of the proposed health club is required to participate in any Transportation Management Program established for the Kelsey Creek Center, as described in the Design Review 1 Staff Report, 10-121806-LD.

BCC 14.60.070

6. HEALTH CLUB OCCUPANCY MAY BE AFFECTED BY PHASING OF KELSEY CREEK CENTER DEVELOPMENT

The proposed health club is subject to the required relationship between phasing of the overall site development and phasing of street frontage improvements as described in the Design Review staff report for the Kelsey Creek Center, 10 121806 LD. Per those requirements, the health club cannot receive a Certificate of Occupancy until all street frontage improvements that the developer of the Kelsey Creek Center is required to construct on Main Street and on 148th Avenue north of Main Street are complete and accepted by the City of Bellevue Transportation Department.

BCC 14.60.060

B. PRIOR TO BUILDING PERMIT: The following conditions are required by City Code. Unless specified otherwise below, these conditions must be complied with on plans submitted with the Building permit application:

1. RECYCLING & SOLID WASTE COLLECTION

A letter from Allied Waste shall be submitted to the Land Use reviewer confirming their endorsement of the proposed size and function of the recycling & solid waste collection areas, and that garbage containers will be kept out of view.

BCC 22B.025

2. ROOF-TOP MECHANICAL EQUIPMENT SCREENING

Since mechanical equipment screening is not addressed, a Land Use Exemption from Design Review (file number 10-121806-LD) will be required prior to the tenant improvement permit approval for this use. The drawings shall show the location of each piece of mechanical equipment (including communication equipment such as satellite dishes) and demonstrate that the equipment is not visible from adjacent streets, public sidewalks, or from the tops of surrounding buildings.

LUC 20.20.525, 20.20.650, 20.20.730, 20.25B, 20.25I

3. RIGHT-OF-WAY USE PERMIT

Prior to issuance of any construction permit, the applicant shall secure applicable right-of-way use permits from the City's Transportation Department, which may include:

- Designated truck hauling routes.
- Truck loading/unloading activities.
- Location of construction fences.
- Hours of construction and hauling.
- Requirements for leasing of right of way or pedestrian easements.
- Provisions for street sweeping, excavation and construction.
- Location of construction signing and pedestrian detour routes.
- All other construction activities as they affect the public street system.

In addition, the applicant shall submit for review and approval a plan for providing pedestrian access during construction. Access shall be provided at all times during the construction process, except when specific construction activities such as shoring, foundation work, and construction of frontage improvements prevents access. General materials storage and contractor convenience are not reasons for preventing access.

The applicant shall secure sufficient off-street parking for construction workers before the issuance of a clearing and grading, building, a foundation or demolition permit.

BCC 11.70 & 14.30

4. TRANSPORTATION IMPACT FEE

Payment of a transportation impact fee will be required at building permit issuance, per BCC 22.16. The proposed health club will require calculation of a unique impact fee rate, using the method described in the Transportation Impact Fee Program 2009 Update. Impact fee rates are subject to change and the most current fee schedule in effect at the time of permit issuance will apply, unless a Development Agreement for the Kelsey Creek Center modifies this requirement.

Tenant improvement permits within the Kmart building that will generate one or more net new trips will be classified as "developments" for impact fee

purposes under BCC 22.16.020.C, because SEPA review is required for the entire site and because trip generation for each tenant is part of the site's cumulative total, which exceeds the 11-trip threshold stated in BCC 22.16.020C. Removal of the previous Kmart use will not be eligible for credit against the transportation impact fee because that the Kmart has been out of usage for more than two years.
BCC 22.16

Section 4. This ordinance shall be recorded with the King County Department of Records and Elections.

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

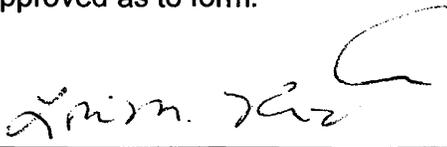
Passed by the City Council this 16th day of May, 2011
and signed in authentication of its passage this 16th day of May,
2011.

(SEAL)



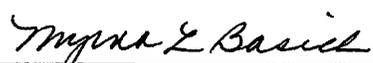
Don Davidson, DDS
Mayor

Approved as to form:



Lori M. Riordan, City Attorney

Attest:



Myrna L. Basich, City Clerk

Published May 19, 2011

Hearing Examiner Presentation
Conditional Use Application for a Health Club @ Kelsey Creek Center
April 7th, 2011

Application

- **Conditional Use.** The application was received Feb 2nd for a health club within the existing commercial center. The proposed health club would be within an approximately 50,000 square foot portion of the 106,000 SF former K-Mart building – about ½ of the building.
- **SEPA Determination.** A DNS was issued along with the notice of recommendation and public hearing on March 10th. No mitigation measures were included. Mitigation measures for the Kelsey Creek Center redevelopment project as a whole are included in the Mitigation Plan which is part of Rezone 09-113801-LQ adopted by the City Council April 26, 2010 and as conditions of approval in Design Review decision 10-121806-LD issued on March 31, 2011. Since the health club was an anticipated use within the larger redevelopment proposal, no further mitigation was included with the SEPA determination.

A color illustration of the redevelopment proposal is included in the staff report (page 13B) and on pages 1F & 2F in the project file.

Background

- **Zoning.** Base zoning for this project site is Community Business (CB), which is a neighborhood-oriented land use classification. The 2010 concomitant zoning agreement (CZA) supersedes a prior CZA and the base CB zoning, using most of the CB zoning parameters while applying land use allowances and dimensional standards customized for this project site. The Transition Area and Community Retail Design District overlays apply as well. The CZA requires a conditional use for health clubs.
- **Surrounding Uses.** The separate parcel at the southeast corner of Main Street and 148th Avenue SE is an abandoned Shell gas station that is planned to become a KeyBank branch office. A variety of office and retail uses are located across 148th Avenue SE west of the project site, as well as across the western half of Main Street. The eastern half of Main Street north of the project site contains multi-family and single family uses, and a well established single family residential neighborhood is located to the east. Lake Hills greenbelt is to the immediate south.
- **Site History.** The commercial center used to be anchored by a Kmart department store. After Kmart vacated in 2000, Costco leased the property with the idea of developing a warehouse store there. But in 2008 Costco abandoned their project and to date the building continues to remain vacant and deteriorate. This existing condition limits the ability of the property owner to attract and retain quality tenants, and it negatively impacts the property values of the center and the neighborhood.
- **Next Steps.** The City is reviewing construction permits for renovation of the two existing buildings, construction of two new buildings, and site improvements as approved under the Mar 31st Design Review decision and SEPA determination. And, as mentioned earlier, a color illustration of the redevelopment proposal is included in the staff report. Approval of the health club's conditional use will allow the City to move forward with review of TI plans for their use of the old K-Mart building.

Conditional Use Process

- The application was received and deemed complete on Feb 2nd.
- The notice of application & East Bellevue Community Council meeting was posted on Feb 17th.

- The public meeting was held with the EBCC on March 1st.
- The minimum public comment period ended on March 3rd. The single comment received was from Karen Walter with the Muckleshoot Indian Tribe Fisheries Division. The comment was dated March 3rd but not received until March 14th, after the decision was published on March 10th, therefore the comment is not identified in the staff report. However, the comment is in the project file (page 49C) and therefore part of the public record. The comment is a reiteration of Ms. Walter's suggestions for Kelsey Creek provided during the rezone process in 2010 and was addressed by the City then.
- The notice of recommendation to the City Council, SEPA Determination, and Hearing Examiner public hearing was posted on March 10th.
- The Hearing Examiner public hearing is being held today, April 7th.
- Hearing Examiner report and draft ordinance to City Council anticipated later this month.
- City Council public meeting & action, including adoption of ordinance anticipated for May.
- EBCC public hearing to approve or disapprove the City Council action anticipated for June.

Conditional Use Decision Criteria

The City may approve, or approve with modifications, an application for a Conditional Use Permit if:

1. The proposal is consistent with the Comprehensive Plan.

The Community Business Comprehensive Plan designation and the Southeast Bellevue Subarea Plan generally support health clubs as a land use. Applicable policies which support the proposed use along with brief discussion are provided in the staff report.

2. The design is compatible with and responds to the existing or intended character, appearance, quality of development and physical characteristics of the subject property and immediate vicinity.

The building's exterior design was approved under Design Review decision 10-121806-LD. It was determined then that the design is compatible with the character, appearance, quality of development and other physical characteristics of the subject property and immediate vicinity.

3. The conditional use will be served by adequate public facilities including streets, fire protection, and utilities

All required public services and facilities are available to the site, and any improvements required to upgrade fire protection and utilities will be accomplished under construction permits.

4. The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property;

The health club won't be materially detrimental to the other uses within the commercial center, nor to properties surrounding it. On the contrary, the health club will help reinvigorate what is currently an underutilized property. One point: As discussed in the staff report, the City retains the authority to require additional mitigation if the parking proves to be more significant than the parking demand analysis projects.

5. The conditional use complies with the applicable requirements of this Code.

As discussed in the staff report, the proposal complies with all applicable Land Use Code requirements.

Recommendation

Approval with the recommended conditions in the staff report which address construction noise, loading, parking supply, trip management, sequencing for site improvements, trash collection, mechanical equipment screening, and impact fees.

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BEFORE THE HEARING EXAMINER FOR THE CITY OF BELLEVUE

In the Matter of the Application of)
)
HEALTH CLUB AT KELSEY CREEK)
CENTER)
For a Conditional Use Application for a)
Health Club within an Existing Commercial)
Center at 15015 Main Street, and within the)
Jurisdiction of the East Bellevue Community)
Council)

FILE NO. 11-103765-LB
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

SUMMARY

Recommendation. The application should be **APPROVED**, subject to conditions.

Proposal. The applicant, Group Mackenzie, seeks a Conditional Use Permit to construct a health club within Kelsey Creek Center, an existing commercial center at 15015 Main Street, Bellevue. The proposed club would occupy approximately 50,700 square feet of a former K-Mart building with a total area of approximately 106,000 square feet.

The site at issue is within a commercially zoned property and it is also within the boundaries of the East Bellevue Community Council.

Issue Presented. The primary issue in this matter is whether the proposed health club meets the criteria for Conditional Use Permit approval under in the Bellevue Land Use Code at LUC 20.30D.140.

Procedural History. The applicant-developer, Group Mackenzie, applied for a conditional use permit for a health club at Kelsey Creek Center on February 2, 2011. A notice of application and public meeting was published on February 17, 2011. The East Bellevue Community Council held a public meeting on March 1. The public comment period for this application ended on March 3.

The City issued a determination of nonsignificance (DNS) on the application under the State Environmental Policy Act (SEPA) on March 10, 2011, along with notices of the

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1 recommendation and the hearing examiner public hearing. The deadline for a SEPA appeal
2 expired on March 24.

3 No mitigation measures were included in the SEPA determination. However, according
4 to the City, mitigation measures for the entire Kelsey Creek Center redevelopment project were
5 included in the Mitigation Plan of Rezone 09-113801-LQ, adopted by the City Council on April
6 26, 2010, and as conditions of Design Review Decision 10-121806-LD on March 31, 2011. The
7 SEPA determination required no further mitigation because the health club was an anticipated
8 use within the redevelopment plan for the commercial center.

9 Only one public comment was received prior to hearing in this matter from Karen Walter,
10 Watersheds and Land Use Team Leader of the Muckleshoot Indian Tribe, Fisheries Division.
11 According to the City, this comment was received on March 14, 2011 (but dated March 3),
12 several days after the SEPA determination was published on March 10. The comment reiterated
13 earlier suggestions on improvements to Kelsey Creek and riparian areas for fish habitat..
14 According to the City, prior actions in the rezone process of 2010 addressed the mitigation and
15 design issues raised by Ms. Walter and the prior determinations resolved her concerns.

16 The Director of the Development Services Department recommends approval of this
17 Conditional Use Permit application, subject to conditions.

18 **Community Council Jurisdiction.** The proposal here involves a conditional use permit
19 within the jurisdiction of the East Bellevue Community Council. A land use matter within a
20 community council requires a Process III decision under the Bellevue Land Use Code (LUC
21 20.35.300), which is a quasi-judicial decision of the City Council. The role of the hearing
22 examiner in this matter is to hold a public hearing, take testimony on the proposal, and
23 recommend action to the City Council, which in turn makes a decision based on the record
24 established by the hearing examiner. The East Bellevue Community Council then approves or
25 disapproves the decision of the City Council.

26 **The Hearing.** This case came before the undersigned hearing examiner for a public
27 hearing on April 7, 2011, at 7 PM in the Bellevue City Hall. Michael Chen appeared on behalf
28 of the applicant, Group Mackenzie. In addition, Brian Franklin of PMF Investments, and Jeffery
29 Hee of Transportation Solutions, Inc., testified on behalf of the applicant in favor of the project
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1 at issue. Mike Upston, Senior City Planner, testified for the City's Development Services
2 Department. There was no public testimony.

3 Sara Gollersrud of the Office of the Hearing Examiner was also present.

4 **Exhibits.** The City's March 10, 2011 report on the conditional use application and other
5 file reports were admitted into evidence as Exhibit A1.

6 **FINDINGS OF FACT**

7 1. The factual matters in the foregoing **SUMMARY** are adopted by the undersigned
8 examiner as findings.

9 2. The site of the proposed health club is within commercially zoned property with
10 baseline zoning of Community Business (CB), and with a Transition Area Design District
11 (TADD), Community Retail Design District (CRDD), and a concomitant zoning agreement
12 (CZA) as zoning overlays. A 2010 CZA supersedes a prior CZA and base CB zoning, using
13 most CB zoning parameters while applying land use allowances and dimensional standards
14 customized for the site with applicable TADD and CRDD overlays.

15 3. The current concomitant zoning agreement (CZA) requires a conditional use permit
16 for health clubs to provide a formal process for analyzing compatibility, identifying impacts
17 associated with this use, and ensuring impacts can be adequately mitigated. The permit process
18 in this case concludes with East Bellevue Community Council approval or disapproval of City
19 Council action following the issuance of this hearing examiner recommendation.

20 4. The entire Kelsey Creek Center was approved for planned re-development under
21 Design Review 10-121806-LD. The commercial center covers an area of about 16 acres at the
22 southeast corner of 148th Avenue SE and Main Street.

23 5. The proposed health club of about 50,700 square feet will be located within a former
24 K-Mart building of about 106,000 square feet total area. Other commercial units are anticipated
25 within this building. K-Mart vacated this building in 2000, and Costco then leased the site in
26 anticipation of development of a warehouse store, but abandoned that project in 2008. The
27 building has been vacant since 2000, and area residents have expressed concern about this
28 underutilized site and its deterioration since then.

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1 6. The City anticipates that redevelopment of this commercial center—including the
2 proposed health club—will enliven and benefit the neighborhood by providing new services and
3 activities and property improvements.

4 7. In addition to the former K-Mart building, the Kelsey Creek Center also has a fully
5 occupied, two-story building with office and retail tenants, and the remainder of the site contains
6 parking and landscaping. According to the City, redevelopment of the site contemplates two
7 new buildings, renovations to existing buildings, and other site improvements.

8 8. Zoning surrounding the project is single-family residential (R-5) to the east; single-
9 family residential (R-1)—developed as a park to the south; office (O) and neighborhood business
10 (NB) to the west and northwest; and multi-family residential (R-15) and single-family residential
11 (R-4) to the northeast.

12 9. Surrounding uses include a variety of office and retail uses west of the project site and
13 across 148th Avenue SE and on the western half of Main Street. The eastern half of Main Street
14 north of the project site has multi-family and single-family uses, and a single-family residential
15 neighborhood to the east. Lake Hills greenbelt is on the immediate south. An abandoned gas
16 station, which is slated to become a Key Bank branch, occupies a separate parcel at the southeast
17 corner of Main Street and 148th Avenue SE.

18 10. With approval of the health club conditional use application, the City may move
19 forward on review of plans for all uses of the former K-Mart building.

20 11. The City issued a determination of non-significance of the proposal under SEPA on
21 March 10, 2011. On March 14, several days after the determination, the City received an email
22 comment (dated March 3, 2011) from Karen Walter, Watersheds and Land Use Team Leader
23 with the Muckleshoot Indian Tribe, Fisheries Division. In her comment, Ms. Walter raised
24 concerns about improvements to Kelsey Creek and the riparian areas for fish habitat at the
25 commercial center site.

26 At the hearing, senior city planner Mike Upston testified credibly that Ms. Walter's
27 concerns had been addressed and resolved by the 2010 re-zone actions on the center concerning
28 mitigation and environmental improvements. (Mr. Upston cited the Mitigation Plan for Rezone
29 09-113801-LQ, adopted by City Ordinance 5946, and the Design Review Approval 10-121806-
30 LD.)

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1 12. Traffic impact mitigation and street frontage requirements for the commercial center
2 were analyzed by the City as part of the staff report on Design Review of application of 10-
3 121806-LD. All street improvements are the responsibility of the site's developer under the
4 conditions of that approval.

5 The March 10, 2011 staff report on the health club project discusses phasing of the
6 commercial center development and the traffic mitigation requirements related to the proposed
7 health club. Before any Certificate of Occupancy for the former K-Mart building, including the
8 health club, the developer must complete the required improvements. These improvements
9 include but are not limited to the street light system on Main Street; sidewalks and a planter strip
10 along Main Street; revised access points on Main Street; revised raised median and
11 channelization on Main Street; and a turn lane extension on 148th Avenue SE north of Main
12 Street.

13 13. The City presented un rebutted evidence, as discussed in its staff report, that the
14 health club proposal meets the criteria for approval of a Conditional Use Permit under LUC
15 20.30B. 140:

16 a. The proposal is consistent with the comprehensive plan in that the Community
17 Business Comprehensive Plan designation and the Southeast Bellevue Subarea Plan
18 generally support health clubs as a land use. As discussed in the City's staff report,
19 specific Southeast Bellevue Subarea policies and land use element policies on expanded
20 use of commercial districts and enhancement of neighborhoods and other policies support
21 the proposed health club. In addition, re-use of the existing former K-Mart building
22 retains the existing scale of the commercial center thus protecting surrounding areas from
23 nonresidential uses of a scale that might be inappropriate to the neighborhood.

24 b. The project design is compatible with and responds to the existing or intended
25 character, appearance, quality of development and physical characteristics of the subject
26 property and immediate vicinity, as determined in approval of the building's exterior
27 design in Design Review Decision 10-1212806-LD.

28 c. The project will be served by adequate public facilities including streets, fire
29 protection, and utilities in that all required public services and facilities are available to
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the site and any necessary improvements will be accomplished under future construction permits.

d. The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property, but instead the health club will enhance an underutilized property and increase customers for other businesses within the center. The City also retains authority to require additional mitigation if parking demand proves more significant than parking analysis projections.

e. The conditional use complies with all applicable Land Use Code requirements, as determined by the City and detailed in its staff report.

14. The record establishes that the health club project at issue will be beneficial to the area around the site by promoting reasonable redevelopment and improvement of existing conditions on the site.

15. The undersigned examiner concurs with the City's findings and recommendation on the conditional use application for the Health Club at Kelsey Creek Center.

16. Any conclusion herein, which may be deemed a finding, is adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. The application is subject to Process III procedures because it is within the jurisdiction of Community Council. In this situation, the hearing examiner makes a recommendation following a public hearing and the City Council in turn makes a final decision, which may be approved or disapproved by the Community Council. LUC 20.35.015D and LUC 20.35.300.

2. Requirements under the State Environmental Policy Act have been satisfied.

3. The Examiner has, as required, accorded substantial weight to the recommended approval of the conditional use permit by the Development Services Department Director. LUC 20.35.250(F).

4. The proposed health club at the Kelsey Creek Center, as conditioned, is consistent with all of the criteria for a conditional use permit under LUC 20.30B.140 as follows:

The City may approve or approve with modifications an application for a Conditional Use Permit if:

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- A. The conditional use is consistent with the Comprehensive Plan; and
- B. The design is compatible with and responds to the existing or intended character, appearance, quality of development and physical characteristics of the subject property and immediate vicinity; and
- C. The conditional use will be served by adequate public facilities including streets, fire protection, and utilities; and
- D. The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property; and
- E. The conditional use complies with the applicable requirements of this Code.

5. The examiner concurs with the findings and the recommendation of the City in its March 10, 2011 report.

6. Any finding of fact deemed to be a conclusion of law is adopted as such.

CONDITIONS

The following conditions apply to all phases of the proposed development and shall be imposed to insure compliance with Conditional Use Permit criteria and Code provisions, and to mitigate adverse impacts that are otherwise not addressed by Code provisions.

1. The applicant shall comply with all applicable Bellevue City Codes and Ordinances including but not limited to:

- Clearing & Grading Code BCC 23.76
- Construction Codes BCC Title 23
- Fire Code BCC 23.11
- Land Use Code BCC Title 20
- Noise Control BCC 9.18
- Sign Code BCC Title 22
- Transportation Code Bcc 14.60
- Utility Code BCC Title 24

2. The applicant shall comply with all conditions of approval listed in March 10, 2011 staff report on the conditional use permit, including the specific conditions described on construction hours, on-street loading and unloading, parking (including submission of updated parking calculations for the Kelsey Creek Center), participation in a transportation management program, sequencing for site improvements, a certificate of occupancy only after street frontage

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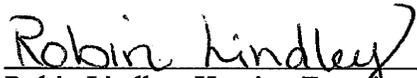
1 improvements for Kelsey Creek Center as described in the design review staff report, 10-
2 121806-LD, and any other required conditions.

3 3. Prior to issuance of a building permit, the applicant must comply with conditions as
4 outlined in the March 10, 2011 staff report for recycling and waste collection, roof-top
5 mechanical equipment screening, right-of-way use permits, transportation impact fees, and any
6 other required conditions.

7
8 **RECOMMENDATION**

9 The requested Conditional Use Permit should be approved, subject to the above stated
10 conditions.

11 **SO ORDERED**, this 20th day of April 2011.

12
13 
14 Robin Lindley, Hearing Examiner SG

15 **NOTICE OF RIGHT TO APPEAL**

16 (Pursuant to Resolution No. 5097)

17 **RIGHT TO APPEAL-TIME LIMIT**

18 A person who submitted written comments to the Director prior to the hearing, or
19 submitted written comments or made oral comments during the hearing on this matter, may
20 appeal the recommendation of the Hearing Examiner to the Bellevue City Council by filing a
21 written appeal statement of the Findings of Fact or Conclusion being appealed, and paying any
22 appeal fee, no later than 14 calendar days following the that the decision was mailed. The appeal
must be received by the City Clerk by 5:00 p.m. Wednesday, May 4, 2011.

23 **TRANSCRIPT OF HEARING-PAYMENT OF COST**

24 An appeal of the Hearing Examiner's decision requires the preparation of a transcript of
25 the hearing before the Hearing Examiner. Therefore, the request for appeal must be
26 accompanied by an initial deposit of \$100. Should the actual cost be less the amount of the
deposit, any credit due shall be reimbursed to the appellant. Should the cost for transcript
preparation be more than the deposit, the appellant will be additionally charged.

27 **WAIVER OF TRANSCRIPTION FEE**

28 Upon request, the City Clerk will waive transcription fees upon submission by an
29 appellant of the following documentation: a) an affidavit stating that the appellant's net financial
30 worth does not exceed \$20,000; b) an affidavit stating that the appellant's annual income does
not exceed \$5,200; c) a brief statement of the issues sought to be reviewed; d) a designation of
those parts if the record the party thinks are necessary for review; e) a statement that review is
sought in good faith.

4/20/2011

CITY OF BELLEVUE
450 - 110th Avenue NE
P. O. Box 90012
Bellevue, WA 98009 9012

1 **CITY COUNCIL CONSIDERATION**

2 Unless appealed, this matter will come before the City Council on Monday, May 9, 2011,
3 6:00 p.m. for discussion, and Monday, May 16, 2011 at 8:00 p.m. for legislation. After May 4,
4 2011, interested persons may contact the Hearing Examiner's Office at (425) 452-6934 to find
5 out whether an appeal has been filed.
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4/20/2011

18

CITY OF BELLEVUE
450 – 110th Avenue NE
P. O. Box 90012
Bellevue, WA 98009 9012

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

The application of **Group Mackenzie** for a Conditional Use Permit to construct a health club within the Kelsey Creek Center, an existing commercial center. The project site is approximately 15 acres and is located at the corner of 148th Avenue SE and Main Street. The site is zoned Community Business (CB) and is located within the jurisdictional area of the East Bellevue Community Council. Health clubs are permitted outright in CB zoning, however the current concomitant zoning agreement (CZA) for Kelsey Creek Center requires that a Conditional Use Permit be approved as a formal process for analyzing compatibility and identifying potential impacts.

FISCAL IMPACT

None of Record.

STAFF CONTACT

Robin Lindley, Hearing Examiner – 452-6934

POLICY CONSIDERATION

Whether the application complies with the Bellevue City Code and applicable decision criteria.

BACKGROUND

For background information, please review the attached Hearing Examiner's Summary.

EFFECTIVE DATE

The Ordinance concerning this application will become effective five days after its publication.

OPTIONS

1. Approve the application as recommended by the Examiner.
2. Approve the application with additions or modifications.
3. Deny the application.
4. Remand the matter.

HEARING EXAMINER'S RECOMMENDATION

Move to adopt the Hearing Examiner's Findings and Recommendation, and approve the Ordinance.

ATTACHMENTS

Hearing Examiner's Summary
Vicinity and Site Maps
Proposed Ordinance No. 6061

AVAILABLE IN COUNCIL OFFICE

The Department (DSD) supporting file (Exhibit 1)

SUMMARY

The City Council is considering the Hearing Examiner's Recommendation on the application of **Michael Chen of Group Mackenzie (Health Club at Kelsey Creek Center)** for a Conditional Use Application (Process III). The site is zoned Community Business (CB). Health clubs are permitted outright in CB zoning, however the current concomitant zoning agreement (CZA) for Kelsey Creek Center requires that a Conditional Use Permit be approved as a formal process for analyzing compatibility and identifying potential impacts. The project site is a 15 acre area at the corner of 148th Avenue SE and Main Street that used to be anchored by the Kmart Department Store. The site is located within the jurisdictional area of the East Bellevue Community Council.

The proposed health club at Kelsey Center would be located within approximately a 50,000 square portion of the 106,000 SF former K-Mart building (about ½ of the building). Other commercial uses are anticipated in this building along with the construction of two additional buildings. A Keybank branch is planned to go in at the southeast corner of Main Street and 148th Avenue SE which is currently an abandoned Shell station.

1. BACKGROUND

Kmart vacated in 2000 and its building has since remained unoccupied. In the interim, Costco leased the property with the idea of building a warehouse there. In 2008 Costco abandoned their project and the building remains vacant and continues to deteriorate. The existing condition negatively impacts the value of the center and also surrounding properties.

In 1987 the site was rezoned from Neighborhood Business (NB) to Commercial Business (CB), accompanied by a concomitant zoning agreement (CZA) which imposed special use restrictions. In 2010 the CZA removed a condition requiring the daylighting of Kelsey Creek upon redevelopment. The current CZA provides land use allowances as well as dimensional standards customized for the project site.

A Determination of Non-Significance (DNS) was issued on March 10, 2010. No mitigation measures were included and the DNS was not appealed. A Mitigation Plan for the Kelsey Creek Center redevelopment as a whole is contained in both the Rezone and the Design Review decisions (file nos. 09-113801-LQ and 10-121806-LD.)

2. APPLICATION BEFORE THE EXAMINER

The public hearing before the Examiner was held as noticed on April 7, 2011 at 7:00 p.m. in the Bellevue City Hall Council Chambers. Michael Upston, Senior Planner for Bellevue's Development Services Department, appeared on behalf of the City. Testimony was heard from Michael Chen, of Group Mackenzie; Jeffrey Hee, of Transportation Solutions Inc.; and from Brian Franklin, representing the applicant. Courtney Flora, attorney for Costco, appeared but did not testify. There was no public testimony.

On April 20, 2011 the Hearing Examiner issued Findings of Fact, Conclusions of Law and a Recommendation that the application be approved with conditions (see pages 8 and 9 of the Hearing Examiner's Recommendation). The deadline for filing an appeal of the Examiner's Recommendation was May 4, 2011. No appeals were filed.

3. SITE CHARACTERISTICS

The existing commercial center is generally flat and the majority of its 15 acres is occupied by a paved parking area. Adjacent to the south is a portion of the Lake Hills Greenbelt which contains Larson Lake and an upstream segment of Kelsey Creek. The creek flows north into the culvert that extends across the subject site and discharges into an open stream channel on the other side of Main Street.

The former Kmart lies along the east side of the site. Along the south side is a long two-story commercial building occupied by a variety of tenants. East of the property, behind the former Kmart, is a residential neighborhood. To the north and west is a strip of church, institutional and commercial properties with residential development beyond.

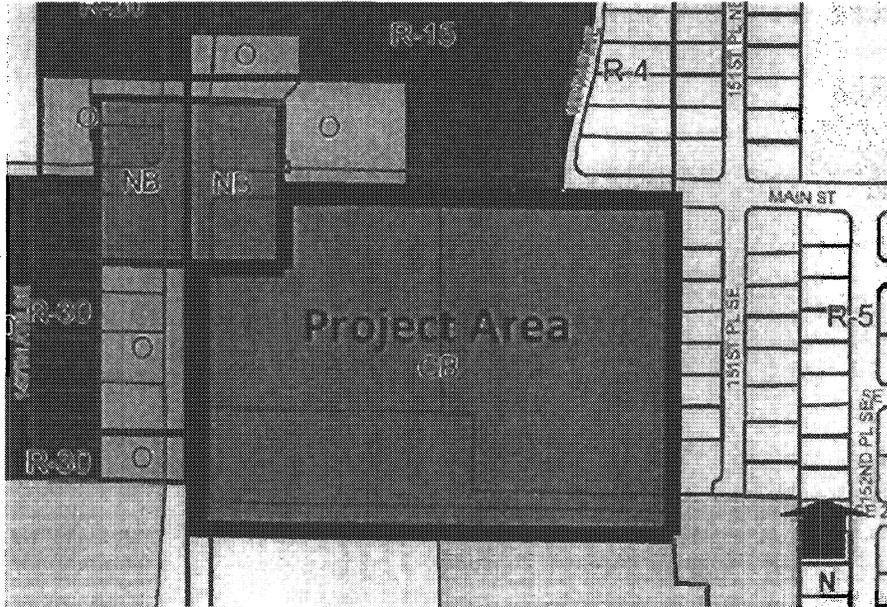
4. COMMENTS

As noted above no public testimony was received.

5. HEARING EXAMINER RECOMMENDATION

The Hearing Examiner concurs with the Development Services Department and recommends that the proposed Conditional Use application be **APPROVED** subject to conditions (see pages 7 and 8 of the Hearing Examiner's Recommendation).

Zoning Map
Health Club @ Kelsey Creek Center



The project site's baseline zoning is Community Business (CB) with the Transition Area Design District (TADD), Community Retail Design District (CRDD), and the concomitant zoning agreement (CZA) as zoning overlays.

Vicinity Map
Health Club @ Kelsey Creek Center
11-103765-LB



Project Drawings
Health Club @ Kelsey Creek Center

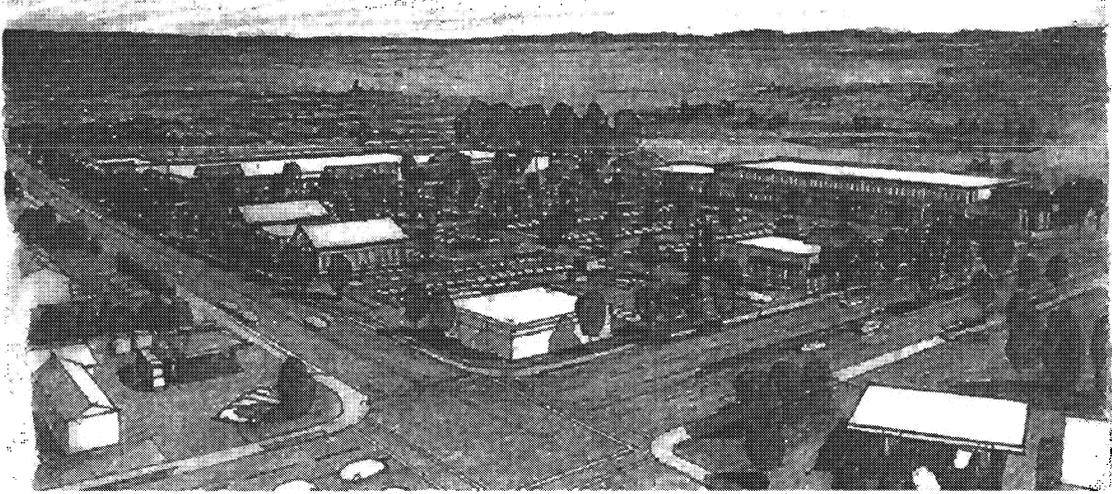


Illustration of the future redeveloped Kelsey Creek Center

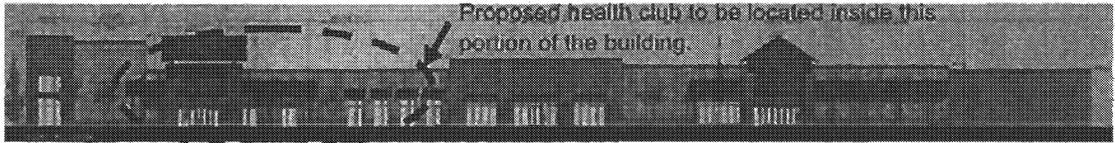
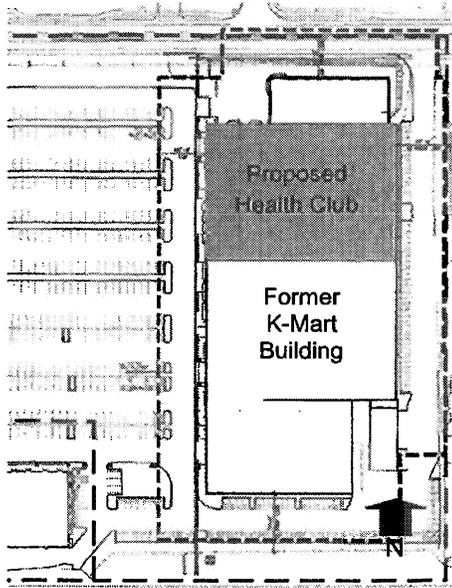


Illustration of the former K-Mart building after renovation



CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6001

AN ORDINANCE approving the conditional use permit application of Group Mackenzie to locate a health club in the Kelsey Creek Center, 15015 Main Street; File No. 11-103765-LB.

Whereas, Group Mackenzie, has applied to the City for a conditional use permit to locate a health club in the Kelsey Creek Center, located at 15015 Main Street; and

Whereas, on April 7, 2011 a public hearing was held thereon by the Hearing Examiner pursuant to notice required by law; and

Whereas, on April 20, 2011, the Hearing Examiner recommended approval, subject to conditions, of said application and made and entered findings of fact and conclusions based thereon in support of his recommendation; and

Whereas, the City Council concurs in the findings of fact and conclusions of the Hearing Examiner; and

Whereas, the City of Bellevue has complied with the State Environmental Policy Act and the Bellevue Procedures Code; now; therefore

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

Section 1. The City Council Adopts the findings of fact and conclusions made and entered by the Hearing Examiner in support of his recommendation to the City Council in this matter as set forth in "Findings of Fact, Conclusions of Law and Recommendation of the Hearing Examiner for the City of Bellevue, in the Matter of the Application of Group Mackenzie for a Conditional Use Permit to Allow the Operation of a Health Club in the Kelsey Creek Center, FILE NO. 11-103765-LB."

Section 2. The City Council hereby approves, subject to conditions, the conditional use application to locate a health club in the Kelsey Creek Center, on property legally described as:

Lots 1, 2, and 3 of City of Bellevue Short Plat No. 96-8900, as filed under Recording No. 9803099020, in King County, Washington.

Section 3. The application approval shall be subject to the following conditions:

A. General Conditions: The following conditions apply to all phases of development

1. Compliance with Bellevue City Codes and Ordinances
The applicant shall comply with all applicable Bellevue City Codes and Ordinances including but not limited to:

Clearing and Grading Code - BCC 23.76
Transportation Development Code - BCC 14.60
Traffic Standards Code – BCC 14.10
Trans. Impact Fee Program – BCC 22.16
Transportation Development Standards
Right-of-Way Use Permit - BCC 14.30
Land Use Code - BCC Title 20
Sign Code - BCC Title 22B
Noise Control - BCC 9.18
Utilities Code - BCC Title 24
Construction Codes - BCC Title 23
Uniform Fire Code - BCC 23.11

2. CONSTRUCTION HOURS

Noise related to construction is allowed from 7:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturday. Exceptions to the construction noise hours limitation contained in the Noise Control Code MAY be granted pursuant to 9.18.020C.1 when necessary to accommodate construction which cannot be undertaken during exempt hours. Allowances for short term work outside of normal construction hours shall be limited and will be reviewed on a case by case basis to verify necessity and ensure appropriate noise mitigation is utilized to protect surrounding uses and properties. Written requests for exemption from the Noise Control Code must be submitted two weeks prior to the scheduled onset of extended hour construction activity. Such request shall include a noise analysis prepared by a noise consultant, including recommendations for achieving the noise limitations of the Noise Ordinance for new residential construction.

BCC 9.18.040

3. ON-STREET LOADING & UNLOADING

The property owner shall provide off-street loading spaces which can access a public street, and which will be accessible by large trucks without using Main Street to and from the east. On-street loading and unloading will not be permitted.

LUC 20.20.590.K.4

4. PARKING

The property owner shall submit to the Land Use Division an updated parking calculation for Kelsey Creek Center whenever the tenant size and/or mix changes significantly to ensure that on-site parking supply will continue to meet current parking requirements of the Land Use Code. In addition, the City maintains the authority to require additional mitigation if the parking proves to be more significant than the projections contained in the parking demand analysis provided by the applicant.

LUC 20.20.590.F, LUC 20.30B.165, LUC 20.30B.170.A

5. TRANSPORTATION MANAGEMENT PROGRAM

To the extent required by BCC 14.60.070, the operator of the proposed health club is required to participate in any Transportation Management Program established for the Kelsey Creek Center, as described in the Design Review 1 Staff Report, 10-121806-LD.

BCC 14.60.070

6. HEALTH CLUB OCCUPANCY MAY BE AFFECTED BY PHASING OF KELSEY CREEK CENTER DEVELOPMENT

The proposed health club is subject to the required relationship between phasing of the overall site development and phasing of street frontage improvements as described in the Design Review staff report for the Kelsey Creek Center, 10 121806 LD. Per those requirements, the health club cannot receive a Certificate of Occupancy until all street frontage improvements that the developer of the Kelsey Creek Center is required to construct on Main Street and on 148th Avenue north of Main Street are complete and accepted by the City of Bellevue Transportation Department.

BCC 14.60.060

B. PRIOR TO BUILDING PERMIT: The following conditions are required by City Code. Unless specified otherwise below, these conditions must be complied with on plans submitted with the Building permit application:

1. RECYCLING & SOLID WASTE COLLECTION

A letter from Allied Waste shall be submitted to the Land Use reviewer confirming their endorsement of the proposed size and function of the recycling & solid waste collection areas, and that garbage containers will be kept out of view.

BCC 22B.025

2. ROOF-TOP MECHANICAL EQUIPMENT SCREENING

Since mechanical equipment screening is not addressed, a Land Use Exemption from Design Review (file number 10-121806-LD) will be required prior to the tenant improvement permit approval for this use. The drawings shall show the location of each piece of mechanical equipment (including communication equipment such as satellite dishes) and demonstrate that the equipment is not visible from adjacent streets, public sidewalks, or from the tops of surrounding buildings.

LUC 20.20.525, 20.20.650, 20.20.730, 20.25B, 20.25I

3. RIGHT-OF-WAY USE PERMIT

Prior to issuance of any construction permit, the applicant shall secure applicable right-of-way use permits from the City's Transportation Department, which may include:

- Designated truck hauling routes.
- Truck loading/unloading activities.
- Location of construction fences.
- Hours of construction and hauling.
- Requirements for leasing of right of way or pedestrian easements.
- Provisions for street sweeping, excavation and construction.
- Location of construction signing and pedestrian detour routes.
- All other construction activities as they affect the public street system.

In addition, the applicant shall submit for review and approval a plan for providing pedestrian access during construction. Access shall be provided at all times during the construction process, except when specific construction activities such as shoring, foundation work, and construction of frontage improvements prevents access. General materials storage and contractor convenience are not reasons for preventing access.

The applicant shall secure sufficient off-street parking for construction workers before the issuance of a clearing and grading, building, a foundation or demolition permit.

BCC 11.70 & 14.30

4. TRANSPORTATION IMPACT FEE

Payment of a transportation impact fee will be required at building permit issuance, per BCC 22.16. The proposed health club will require calculation of a unique impact fee rate, using the method described in the Transportation Impact Fee Program 2009 Update. Impact fee rates are subject to change and the most current fee schedule in effect at the time of permit issuance will apply, unless a Development Agreement for the Kelsey Creek Center modifies this requirement.

Tenant improvement permits within the Kmart building that will generate one or more net new trips will be classified as "developments" for impact fee

1217-ORD
05/12/11

purposes under BCC 22.16.020.C, because SEPA review is required for the entire site and because trip generation for each tenant is part of the site's cumulative total, which exceeds the 11-trip threshold stated in BCC 22.16.020C. Removal of the previous Kmart use will not be eligible for credit against the transportation impact fee because that the Kmart has been out of usage for more than two years.
BCC 22.16

Section 4. This ordinance shall be recorded with the King County Department of Records and Elections.

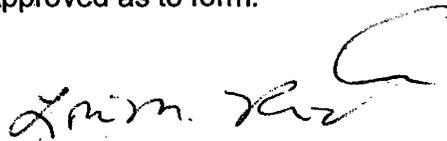
Section 5. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

Passed by the City Council this _____ day of _____, 2011
and signed in authentication of its passage this _____ day of _____,
2011.

(SEAL)

Don Davidson, DDS
Mayor

Approved as to form:



Lori M. Riordan, City Attorney

Attest:

Myrna L. Basich, City Clerk

Published _____

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

The application of **Group Mackenzie** for a Conditional Use Permit to construct a health club within the Kelsey Creek Center, an existing commercial center. The project site is approximately 15 acres and is located at the corner of 148th Avenue SE and Main Street. The site is zoned Community Business (CB) and is located within the jurisdictional area of the East Bellevue Community Council. Health clubs are permitted outright in CB zoning, however the current concomitant zoning agreement (CZA) for Kelsey Creek Center requires that a Conditional Use Permit be approved as a formal process for analyzing compatibility and identifying potential impacts. File No. 11-103765 LB.

FISCAL IMPACT

None of Record.

STAFF CONTACT

Robin Lindley, Hearing Examiner – 452-6934

POLICY CONSIDERATION

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BACKGROUND

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EFFECTIVE DATE

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OPTIONS

1. Approve the application as recommended by the Examiner.
2. Approve the application with additions or modifications.
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Move to adopt the Hearing Examiner's Findings and Recommendation, and approve the Ordinance.

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Vicinity and Site Maps
Proposed Ordinance

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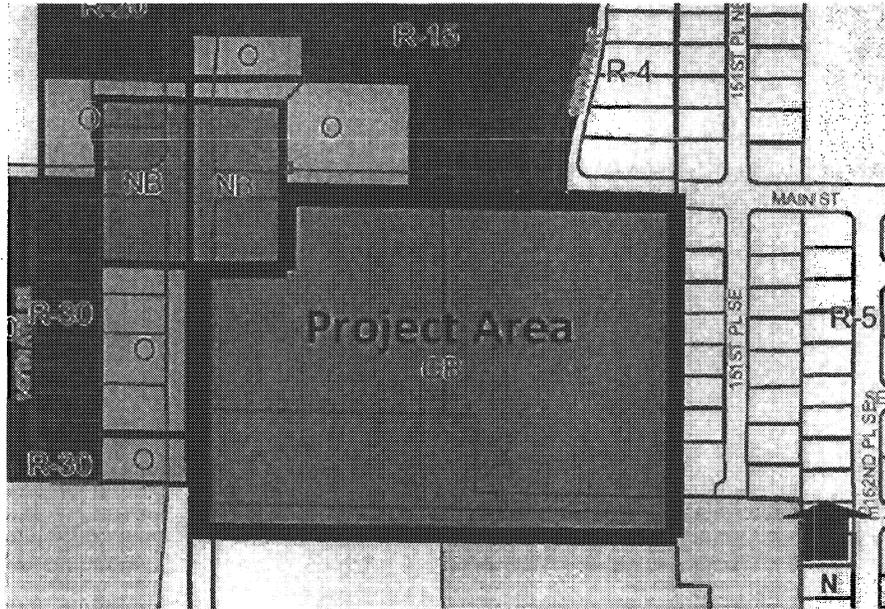
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Health Club @ Kelsey Creek Center

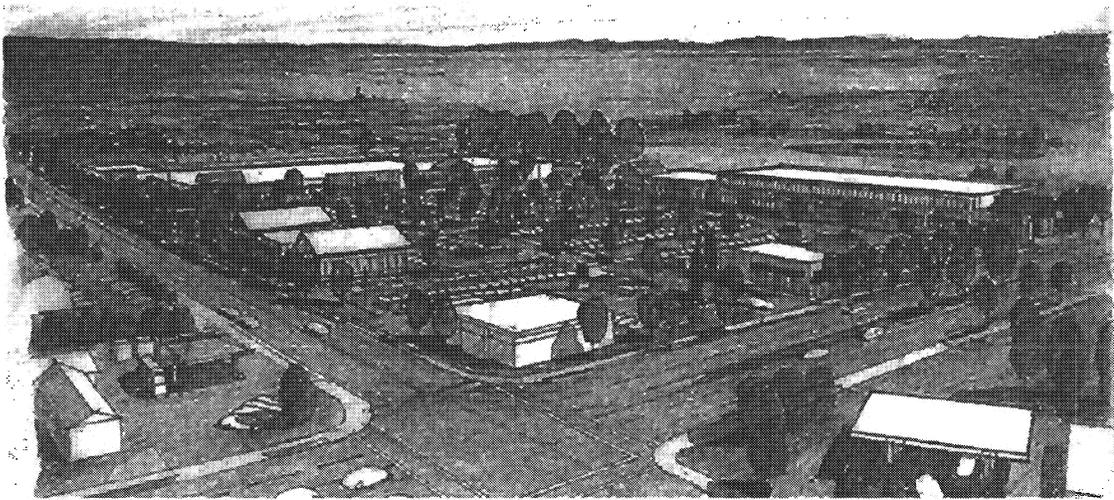


Illustration of the future redeveloped Kelsey Creek Center

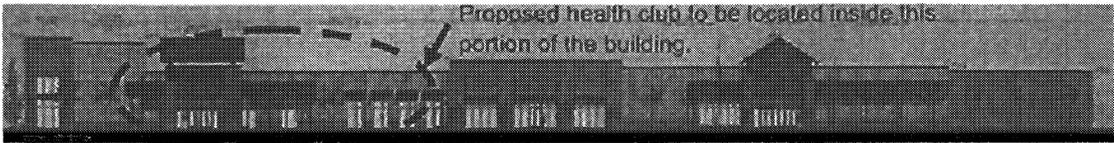
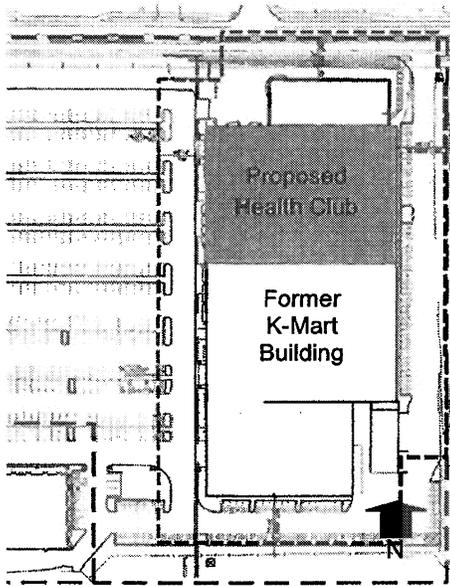


Illustration of the former K-Mart building after renovation



**East Bellevue Community Council
Summary Minutes of Regular Meeting**

March 1, 2011
6:30 p.m.

Lake Hills Community Clubhouse
Bellevue, Washington

PRESENT: Chair Kasner, Councilmembers Erwin, Elwin, Gooding and Seal

ABSENT: None

STAFF: Mike Upston, Senior Planner
Catherine Drews, Legal Planner
Matthew Jackson, Neighborhood Development Planning Manager
Monica Buck, Assistant City Attorney/Legal Advisor

1. **CALL TO ORDER**

The meeting was called to order at 6:30 p.m. with Chair Kasner presiding.

2. **ROLL CALL**

The Clerk called the roll. All Councilmembers present. Chair Kasner led the flag salute.

3. **COMMUNICATIONS - WRITTEN AND ORAL:**

Wendy Pender, Lake Hills Librarian, informed Council of the Lake Hills Library's 6 month anniversary at their new location. She invited Council to come and explore the Library's new accommodations.

4. **APPROVAL OF AGENDA**

Mr. Seal requested the addition of proposed State Legislature House Bill 1812 under New Business.

Mr. Erwin moved approval of the agenda as amended. Mr. Elwin seconded the motion which carried unanimously.

5. **COURTESY HEARINGS:**

(a) Conditional Use Application for Health Club at Kelsey Creek Center

Chair Kasner opened the Courtesy Hearing. He suggested, due to the similarity of subject matter and in an effort to make the most economical use of Mr. Upston's time, that Agenda Item 8, Department Reports, be taken up following Agenda Item 5(a).

Mike Upston, Development Services Department, as part of his presentation, provided a brief status report on Kelsey Creek Center in terms of design review and construction permits. The City is currently reviewing a Design Review application and construction permit plans for redevelopment of the entire Kelsey Creek Center. Included in this redevelopment proposal is the intent to re-tenant the former K-Mart building for use by multiple commercial tenants, one of those being a health club. As dictated by the concomitant zoning agreement for the Center, a Conditional Use Permit is being sought for the health club use.

In response to Chair Kasner, Mr. Chen, Project Architect, stated the total proposed health club footprint is about 50,000 square feet.

A public hearing with the Hearing Examiner on this item is expected within the next few months with City Council action thereafter. This Conditional Use Permit process concludes with the Community Council's approval/disapproval of the City Council's action. It is anticipated that this will come back to the Community Council in May.

Nat Franklin, Applicant, stated his desire to be under construction as soon as possible, as timing is critical for project completion this year.

In response to Chair Kasner, Mr. Upston stated the public hearing before the Hearing Examiner has been set for April 7.

Responding to Chair Kasner, Mr. Franklin stated the health club was an envisioned use from the outset and a critical element to the Center's proposed development.

Mr. Upston stated the Conditional Use requirement makes sense on some levels as there are impacts associated with this use that are unique from retail and service uses. The City will be requiring some level of review of parking overtime but there are no immediate mitigation measures required as part of the City's approval. He stated overall, this proposed use is viewed as compatible with the surrounding neighborhoods.

In response to Chair Kasner, Mr. Franklin stated there will be a pool at the health club facility. In addition, the Center will definitely have a grocery store that will be within the 65,000 square foot cap.

There was discussion related to the Key Bank adjacent to the Center. Mr. Franklin pointed out the easement for shared ingress/egress located within the Center's site plan.

Seeing no one wishing to comment, Chair Kasner closed the courtesy hearing.

Agenda Interruption

8. DEPARTMENT REPORTS:

- (a) Lake Hills Shopping Center Update