

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Extended Study Session

April 28, 2008
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Degginger, Deputy Mayor Balducci, and Councilmembers Bonincontri, Chelminiak, Davidson, Lee, and Noble

ABSENT: None.

1. Executive Session

Deputy Mayor Balducci called the meeting to order at 6:01 p.m. and announced recess to Executive Session for approximately 20 minutes to discuss one matter of potential litigation.

The meeting resumed at 6:28 p.m., with Mayor Degginger presiding.

2. Oral Communications

Gary Manzari, representing the Samena Swim and Recreation Club, noted that the club is celebrating its 50th anniversary and the opening of a new indoor pool. He thanked the City and the Council for their guidance and assistance. The project will be completed within the next few days. Mr. Manzari invited the Council to the May 30th ribbon cutting for the new facility.

3. Study Session

(a) Council Business and New Initiatives

[No new initiatives were discussed.]

(b) Regional Issues

Diane Carlson, Director of Intergovernmental Relations, introduced Ron Paananen, Washington State Department of Transportation (WSDOT) Urban Corridors Office, and Julie Meredith, WSDOT Program Director for the SR 520 project.

Mr. Paananen explained that a finance plan for the SR 520 corridor improvement and bridge replacement project was developed in December. The plan demonstrates a funding gap of approximately \$2 billion, which can be covered by tolling. WSDOT is reviewing ways to reduce costs and will update the finance plan this year for legislative consideration in 2009.

Mr. Paananen provided an update on mediation activities, which began in September 2007. The mediation group has identified three design options for the west end of the corridor (Montlake area) for study in the Supplemental Draft Environmental Impact Statement (EIS). The legislature directed that the cost of the project should not exceed \$4.4 billion, which was based on a 2006 cost estimate for the Pacific Interchange option on the west end. The 2007 Finance Plan estimate is \$3.7 billion to \$3.9 billion for a slightly accelerated project schedule using fewer pontoons. The projected costs for the three options range from \$1.6 billion to \$3.85 billion. Cost estimates for the lake crossing and Eastside improvements range from \$1.77 billion to \$1.87 billion, for a total cost estimate range of \$3.4 billion to \$5.7 billion.

The original project schedule contemplated the bridge opening to traffic in approximately 2018. Further study and analysis indicates the project could be accelerated for completion by 2014. WSDOT will request additional funding from the state legislature for the 2009-2011 budget period. Mr. Paananen briefly reviewed the environmental process, which anticipates publication of the final EIS in 2010 and the issuance of a Record of Decision in 2011. He noted that replacement of the bridge is the top project priority. WSDOT has been directed to improve traffic flow on SR 520 between 108th Avenue NE in Bellevue and Lake Washington, and the agency must provide a report of its plan by September 1, 2008.

Ms. Meredith recalled that the draft EIS was published in August 2006. WSDOT received approximately 3,000 comments on the EIS. WSDOT met with Eastside mayors and ultimately developed an urban vision for the SR 520 corridor. Key project elements discussed by the group include transit facilities at Evergreen Point Road and the transit stop at 92nd Avenue NE; potential development of a direct access connection at Bellevue Way/108th Avenue NE. Additional topics addressed include pedestrian and bicycle paths, retaining walls, landscaping, sound walls, and interchange improvements at 84th Avenue NE. Ms. Meredith briefly reviewed interchange and lid concepts for the segment of SR 520 between the lake and 108th Avenue NE in Bellevue.

Ms. Meredith reviewed WSDOT's work with the University of Washington, Metro, and Sound Transit to develop a high capacity transit plan. A draft HCT plan was submitted to the Governor last September. The project contemplates a bus rapid transit component through the SR 520 corridor, as well as a Montlake multi-modal station generally located near the university station. Four foot buffers have been proposed for the lid and tunnel designs, in order to accommodate potential future transit systems such as light rail.

Ms. Meredith described upcoming public outreach activities through fairs and festivals and East/West open house meetings in June.

Responding to Councilmember Noble, Ms. Meredith said the potential for moving HOV lanes from the outside of the roadway along SR 520 to the inside is still being studied. There are several issues to be considered including the location and expense of flyer stops to accommodate the change.

Staff responded to additional questions of clarification.

Responding to Mayor Degginger, WSDOT staff said approximately \$400 million in mitigation funding is available for the east side of the lake and the same amount is available for the west end of the SR 520 corridor.

Deputy Mayor Balducci expressed concern that the estimated project cost for the west end of the lake ranges up to \$4 billion, while \$1.9 billion in costs is estimated for replacement of the bridge and improvements to the Eastside approach.

Councilmember Noble noted that increased project costs, including costs related to mitigation, will most likely be covered by tolls.

Mayor Degginger thanked WSDOT staff for the presentation.

Moving to the next item, Joyce Nichols, Utilities Policy Advisor, introduced Christie True, King County Wastewater Treatment Division Manager.

Ms. True described the King County Executive's 2009 wastewater rate proposal. She described the County's overall wastewater treatment system and services. Monthly rates provide most of the funding for the system, and additional revenue is generated through capacity/connection charges and other fees. Ms. True explained that the cost of operating wastewater systems is increasing locally and nationally. In addition, construction costs inhibit the replacement and maintenance of older systems.

King County had initially anticipated a \$5 per month rate increase for 2009, but the current proposed increase is \$2.25 per month. The proposed 2009 capacity charge for new hookups is \$47.64 monthly for 15 years. Ms. True reviewed costs related to the new Brightwater Treatment Plant. The project has been bid and the total cost is approximately \$1.8 billion.

Ms. True explained that King County has mitigated the rate increase by deferring some capital investments and eliminating projects. In addition, current staff will operate the two new treatment plans (Brightwater and Carnation) rather than adding new staff.

Ms. True described King County's interest in keeping rate increases relatively level year to year. The County proposes using a capitalized interest approach in which extra money is borrowed to make interest payments on existing debt for the short term. This method was used for the Tacoma Narrows Bridge project. Ms. True noted that wastewater treatment is the top pollution control and environmental protection method in any jurisdiction in the country.

Ms. True thanked Councilmember Davidson and City staff for their participation in regional forums on water and wastewater issues.

Councilmember Davidson noted that the Metropolitan Water Pollution Abatement Advisory Committee (MWPAAC) has not yet taken a position on the proposed rate increase. He commended King County for involving the MWPAAC finance committee in the early rate discussions.

Moving to the legislative updates, Ms. Carlson referenced page 3-11 of the meeting packet for information on interim state legislative studies and the Association of Washington Cities' annual conference.

Packet materials for the federal legislative update begin on page 3-21. Alison Bennett described a IRS rule that requires state and local governments to maintain records of all personal calls made on employer-provided cell phones and PDAs (e.g., Blackberry). She noted that the City currently monitors usage of these devices to ensure that they are used primarily for City business. The proposed federal legislation will not change the City's existing practices. A draft letter to Senators Cantwell and Murray, in support of legislation to remove cell phones from the IRS's recordkeeping requirements, is provided on page 3-26 for Council feedback. Mayor Degginger noted Council consensus to send the letter to the senators.

Ms. Bennett requested Council direction regarding a bill proposed by Congressman Reichert to expand the Alpine Lakes Wilderness and to designate the Pratt River as wild and scenic. She explained that the Washington Wilderness Coalition is circulating a letter and asking elected officials to sign it in support of the legislation. A copy of the Coalition's letter is provided on page 3-31 of the meeting packet. An alternate letter of support drafted by City staff is provided in the desk packet for Council's consideration.

Councilmember Chelminiak suggested sending the Bellevue-specific letter, noting that elected officials may choose to also sign the Coalition's letter of support.

Ms. Carlson recalled that the state legislature approved legislation in 2005 authorizing counties to impose a sales tax for funding mental health and drug dependency programs. In November 2007, the King County Council authorized the use of this sales tax revenue to fund the Mental Illness and Drug Dependency (MIDD) Action Plan. Staff is seeking Council direction regarding the selection of a Bellevue representative for the MIDD oversight committee.

Emily Leslie, Human Services Manager, referred the Council to page 3-45, which lists the strategies approved in the Action Plan as well as cost estimates based on projected sales tax collections. Implementation and evaluation plans for each strategy must be developed by June 1. It is anticipated that an ongoing oversight group will start meeting following the June 1 deadline.

Ms. Carlson noted that the King County Council will likely modify strategy priorities and funding levels. She said there is sufficient time for the Bellevue City Council to provide input on its interests and needs, and to develop a formal interest statement if desired.

Mayor Degginger expressed support for drafting an interest statement.

Responding to Councilmember Lee, Ms. Leslie said the Eastside Human Services Forum provided comment on the proposed oversight plan and expressed concern regarding the number of County staff participants versus local representatives. The King County Council passed legislation today to add seats to the oversight committee including a Councilmember, a representative of the sexual assault assistance community, and a representative from the National Alliance of the Mentally Ill. Bellevue and the Suburban Cities Association each have a seat on the committee.

In further response to Mr. Lee, Ms. Leslie requested Council direction to determine whether she should continue as a staff representative or a Councilmember would like to serve on the oversight committee. Councilmember Lee expressed an interest in participating in this regional forum.

Councilmember Noble stated his interest in participating as well, particularly given his involvement on the Eastside Human Services Forum, the Committee to End Homelessness, and Bellevue's Human Services Commission.

Deputy Mayor Balducci offered any assistance she could provide to Bellevue's representative, and noted the relevance of the work to her job with the County jail system.

Mayor Degginger commented on the importance of enhancing assistance and intervention for the mentally ill and drug dependent. He expressed concern that the Action Plan is trying to do too many things, which likely could prove to be not effective enough in any particular area.

Staff will work with the Council to develop an interest statement on the MIDD action plan and oversight committee.

(c) Bel-Red Finance Plan & Role of Impact Fees in Funding Capital Investment

Mayor Degginger noted the public hearing scheduled for 8:00 p.m. Matt Terry, Director of Planning and Community Development, indicated that the staff presentation would take approximately 15-20 minutes. Mr. Degginger said that Council will then resume discussion of this item following the hearing.

Mr. Terry opened discussion regarding the use of impact fees to establish infrastructure in the Bel-Red corridor to support redevelopment. The City currently has a transportation impact fee, but it does not have a parks impact fee. Staff is not seeking Council action at this time.

Transportation Director Goran Sparrman said Council direction is requested for the following two areas: 1) Should staff proceed with the development of a new, simplified fee program that will be a major component in both the citywide and Bel-Red corridor financial plans?, and 2) Should staff develop and initiate a public and stakeholder engagement process associated with

the impact fee program? Impact fees are a one-time charge paid by new development toward the capital cost of public facilities that are needed to serve the development. Policy questions for Council consideration are: 1) Should development pay up to the maximum for its impacts to the transportation system?, 2) From what sources will remaining, non-impact fee costs be paid?, and 3) Should there be a single citywide district, or should subareas such as the Bel-Red corridor have a separate fee structure?

Mr. Sparrman explained that the Transportation Facilities Plan (TFP) generates the impact fee project list and impact fee schedule. The fees are assessed on new development and the revenue is used to help implement projects in the City's Capital Investment Program (CIP) plan. The transportation impact fee program began in 1990 with the 1991-92 TFP. Impact fees have been updated four times since 1990. Council previously directed staff to review the current impact fee program and to explore options for simplifying it. Fees were not adjusted with the 2006-2017 TFP.

Mr. Sparrman presented a table of projected capital needs and costs for the Bel-Red corridor in the areas of transportation, parks and open space, and stream restoration. He reviewed a map of citywide needs as well. An estimated \$450 million is needed to fund projects in the Bel-Red corridor and citywide by 2030. Potential funding strategies include development incentives, general revenues, and other developer fees.

Mr. Sparrman reviewed a comparison of impact fees for surrounding jurisdictions, noting that Bellevue's rates are significantly lower than other cities on the Eastside. Staff and impact fee consultants are currently reviewing the City's impact fee program. Staff has held workshops on this topic with the Transportation Commission, and a white paper with a comprehensive review of the program will be completed. Key technical issues to be addressed in the white paper include: 1) Calculation of fees by district (14 fee districts), 2) Project cost allocation process, 3) Inclusion of completed projects (Projects might remain on the list if capacity is still available), and 4) Review of technical criteria (e.g., land use categories, trip generation rates).

Noting the estimated cost of infrastructure projects through 2030 of \$450 million, Mr. Sparrman said impact fee revenues, if based on the legally maximum levels, could exceed \$250 million by 2030. The assessment of fees based on a single citywide district could generate \$7,000-9,000 per PM peak hour trip. As a separate district, fees applied to the Bel-Red corridor could generate \$13,000-15,000 per trip and fees for districts outside of the Bel-Red area would generate approximately \$4,000-5,000 per trip.

Next steps are to:

- Finalize the impact fee program review and white paper.
- Return to Council in May with a proposed approach to updating the impact fee schedule and a public involvement strategy.
- In early summer, present Council with a draft Bel-Red corridor plan, including the proposed financial strategy and proposed 2009-2020 TFP project list.

- In the fall, present Council with the final Bel-Red corridor plan and updated TFP and impact fee program.

Parks and Community Services Director Patrick Foran said staff is seeking Council direction regarding whether to implement a park impact fee. The draft Bel-Red plan includes a park system with an estimated cost of approximately \$125 million for parks, trails, and open spaces. These projects are not included in the potential voter initiative and are beyond the capacity of typical Parks CIP funding. The draft financial plan for the Bel-Red corridor identifies park impact fees as a possible funding mechanism.

Mr. Foran said experience demonstrates that high quality parks systems can have a positive impact on economic development, and impact fees do not adversely business development and job creation. Impact fees enable developers to know exactly how their contributions are to be used to complement their development. Eight Eastside cities and 59 cities in the state utilize park impact fees. If Bellevue chooses to implement a park impact fee, a key issue will be determining the appropriate fee levels. Additional issues are whether to apply a park impact fee citywide or within a single area, whether to assess the fees for residential development only, and the methodology to be used for calculating rates.

At 8:00 p.m., Mayor Degginger declared recess to move to the Council Chamber for the scheduled Limited Public Hearing.

- (d) Limited Public Hearing on the appeal of the Hearing Examiner's March 14, 2008, Recommendation concerning the application of Dennis Johnson, Fremantle Development Group, for a Rezone and Plat/PUD Amendment for the Enclave at Fox Glen. File Nos. 07-122520 LQ, 07-139482 LI.

The meeting reconvened in the Council Chamber at 8:06 p.m.

City Attorney Lori Riordan reviewed the rules for the Limited Public Hearing regarding the application of Dennis Johnson, Fremantle Development Group, for a rezone and plat/PUD (Planned Unit Development) amendment for the Enclave at Fox Glen. The hearing responds to an appeal by the Director of Planning and Community Development regarding the Hearing Examiner's recommendation to approve the rezone and plat/PUD amendment.

The site is zoned R-10 (10 units per acre) and is addressed as 1025 and 1041 156th Avenue SE. The Limited Public Appeal Hearing is confined to the issues decided by the Hearing Examiner after taking testimony at the hearing held on February 7, 2008, on whether to recommend the rezone.

The parties to the appeal are the Director of the Department of Planning and Community Development, who is the appellant, and Dennis Johnson, Fremantle Development Group, who is the respondent. Ms. Riordan reviewed the procedures for the hearing. The parties will each have 15 minutes to present oral argument based on information in the Hearing Examiner's record. The appellant bears the burden of proof. Council may grant the appeal, or grant the

appeal with modifications if the appellant has carried the burden of proof and the City Council finds that the decision of the Hearing Examiner is not supported by material and substantial evidence. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner.

David Pyle, Land Use Planner, presented the staff report on the rezone application for properties located at 1025 and 1041 156th Avenue NE, a site commonly known as the Enclave at Fox Glen. The property is bordered to the east and south by multifamily developments and the Crossroads Shopping Center, and to the west by a single-family neighborhood. The site is located on two parcels with a land use designation of multifamily-low density and within a R-10 zoning district. Adjacent properties are zoned as R-2.5 (2.5 units per acre) and R-30.

The rezone application is subject to a Process III decision under Chapter 20.35 LUC. Process III decisions require public notice of the application, a staff report and recommendation by the PCD Director, a public hearing and recommendation by the Hearing Examiner, and a final decision by the City Council.

Mr. Pyle explained that in 1992, the City Council approved a rezone for the Enclave at Fox Glen properties, which modified zoning for the property located at 1025 156th Avenue NE from R-2.5 to R-10. It also modified zoning for the property located at 1041 156th Avenue NE from R-3.5 to R-10. The property addressed as 1041 is south of the 1025 lot.

As a condition of the 1992 rezones, the Council imposed the following condition: In the event the property is developed with 10 housing units or greater, at least 10 percent of the units buildable under the original maximum density must be affordable units, and at least 20 percent of the units buildable, as a result of the increase in density from the original maximum density to the total number of approved units, must be affordable units. One bonus market rate unit is permitted for each of the affordable units provided to meet the minimum 10 percent requirement of original maximum density, up to 15 percent above the original maximum density. Affordable unit shall be defined as set forth in LUC 20.50.010.

Mr. Pyle recalled that in 1996, the affordable housing section of the Land Use Code was amended through Ordinance No. 4855-C. This made affordable housing optional and at the discretion of the property owner, not mandatory. After amendment of the Land Use Code in 1996, Council provided staff with policy directives relating to administration of the new affordable housing provisions, including direction on how to administer preexisting rezone conditions requiring affordable housing.

The direction from Council included two parts and can be summarized as follows. Applicants were able to recalculate the number of affordable housing units required based on the development status of the project under review. For projects not yet started, the applicants were required to provide 10 percent of any increase in density actually achieved. For project underway, the applicants were required to meet the requirements of existing concomitant agreements, or for original conditions imposed for phases of the project underway. For future

phases of projects, the applicants were required to provide 10 percent of affordable units for the overall number of units proposed for that phase.

Continuing, Mr. Pyle said Council direction provided as an alternative the ability for applicants to provide a payment in lieu equal to 50 percent of the difference between the market price and the price of the affordable housing unit.

Mr. Pyle provided background information on the Enclave at Fox Glen. In March 2007, the City Council approved the plat/PUD for the subject project through Ordinance No. 5725. Council approval included a condition requiring the construction of four affordable housing units. After the Council issued its final decision on the plat/PUD, the applicant applied for the rezone before the Council tonight, requesting that the affordable housing condition imposed as part of the 1992 rezone be removed or modified. Simultaneously, the applicant applied to amend the approved plat/PUD to remove the four affordable housing units.

According to LUC 20.35.080, the staff report and recommendation are a combined report beginning on page 17 of the Hearing Examiner's report. The staff report both approves the administrative amendment to the plat/PUD, and recommends approval of the rezone with conditions. The rezone application did not request a change in the land use designation. Rather, the rezone application requested removal or revision of the affordable housing condition imposed as part of the 1992 rezone.

The original condition imposed by Ordinance No. 4448, the 1992 rezone, reads as follows: In the event the property is developed with 10 housing units or greater, at least 10 percent of the units buildable under the original maximum density must be affordable units, and at least 20 percent of the units buildable, as a result of the increase in density from the original maximum density to the total number of approved units, must be affordable units. One bonus market rate unit is permitted for each of the affordable units provided to meet the minimum 10 percent requirement of original maximum density, up to 15 percent above the original maximum density. Affordable unit shall be defined as set forth in LUC 20.50.010.

Consistent with Council's 1996 policy directive, the Department of Planning and Community Development recommended in a staff report and to the Hearing Examiner that the preexisting affordable housing condition be modified to read as follows: As an alternative to providing these units, the applicant may pay the fee in lieu of the units by providing the City 50 percent of the difference between the market rate and the affordable price of each required unit. If the buyout option or other alternative compliance method is utilized, all funds should be collected prior to the closing of each housing unit.

Mr. Pyle said a rezone hearing was held on February 7, 2008 before the Hearing Examiner. PCD recommended approval to rezone the property and to modify the affordable housing requirements of Ordinance No. 4448, consistent with the Council's 1996 affordable housing directive. On February 20, 2008, the Hearing Examiner issued a finding declining to modify the preexisting affordable housing condition, consistent with the Council's 1996 policy directive. PCD appealed the Hearing Examiner's issue on March 5, 2008. Staff is here tonight for Council

consideration of PCD's appeal and for Council action on the rezone application, which may be a combined decision under LUC 20.35.355A.

- Deputy Mayor Balducci moved to open the Limited Public Hearing, and Mr. Noble seconded the motion.
- The motion to open the Limited Public Hearing carried by a vote of 7-0.

Lacey Madche, Legal Planner with the Department of Planning and Community Development, spoke on behalf of the appellant. She indicated she would like to reserve whatever remaining time she has for rebuttal.

Ms. Madche explained that the issues on appeal relate to affordable housing. As described by Mr. Pyle, in 1992 the City Council approved with conditions a rezone for the subject properties, which essentially served as an upzone. As a consequence, the City imposed a condition requiring the construction of affordable housing. At that time, the condition was consistent with the Land Use Code regulations in place. In 1996, the Council amended the LUC to make the affordable housing provision voluntary rather than mandatory. This code amendment, however, did not negate or repeal any preexisting affordable housing conditions.

Ms. Madche said it is important to note that when the LUC is amended, a particular amendment does not supersede preexisting approvals or conditions imposed by the City Council or the PCD Director. The practical effect of that sort of an approach would be to unwind approvals that were based on repealed or modified code provisions, which would be absurd. Rezone conditions apply to a particular property and are binding on successive owners, unless the property is rezoned and the condition is explicitly modified or repealed.

For the Enclave at Fox Glen, following the 1996 LUC amendment the City Council provided staff with direction on how to administer the new code provisions. This included direction on how to treat preexisting rezone concomitant conditions that required affordable housing.

Ms. Madche urged the Council to review the memorandum prepared on April 26, 1996 [Page 174 of the Hearing Examiner's Report]. The directive applied to projects already approved, projects under review, and to projects not yet under review that are subject to concomitant or rezone conditions, such as the Fox Glen properties. Both the Hearing Examiner and the applicant contend that the Council's directive alone is not sufficient authority to impose a new affordable housing condition. In general, Ms. Madche said she would agree with that logic. However, PCD is not requesting that the Council impose a new condition. In other words, PCD does not take the position that the Council can impose mandatory affordable housing conditions for properties that are not subject to a preexisting rezone condition. PCD is simply requesting that the existing condition be modified to reflect the 1996 Council directive.

The City Council has authority to issue directives to staff on how to administer both the Land Use Code and the Comprehensive Plan. The 1996 directive is an example of that authority. Property subject to a preexisting affordable housing condition, like the Fox Glen properties,

received a benefit for the upzone. Imposition of the affordable housing condition essentially takes that into consideration. Nothing in the LUC or in staff's review of state law prevents the City from modifying a preexisting condition of a rezone based on a policy directive. Zoning is within the purview of the City Council, and it is an appropriate exercise of the Council's police power provided it is not arbitrary or unreasonable, or somehow conflicts with public health, safety, or general welfare. There is no evidence in the record that would suggest modification to this affordable housing condition would result as an arbitrary or unreasonable condition. The directive is uniform and applies the same to each property with a preexisting housing condition.

In that regard, the Council on a number of occasions, including most recently with the Rosenblatt rezone, has consistently imposed the same modification for properties subject to this preexisting affordable housing requirement. PCD's position is that Fox Glen should be treated no differently.

Ms. Madche feels that the record is sufficient for the City Council to find that PCD has met its burden of proof, and that the Hearing Examiner's recommendation is not supported by material and substantial evidence. She asked the Council to issue a decision that upholds the rezone, provided the preexisting affordable housing condition is modified consistent with the Council's 1996 directive. Alternatively, if Council elects to not modify the condition, PCD will request denial of the rezone.

Responding to Deputy Mayor Balducci, Ms. Madche said the appellant is requesting that the mandatory affordable housing language, currently attached to the property as a rezone condition, be modified to allow for a payment in lieu of providing the affordable housing units.

If Council denies the appeal, the result is that four affordable housing units would be required in order to develop the maximum number of market price units. If Council denies the rezone, Council would be upholding a portion of the appeal, which is to alternatively deny the rezone if Council does not modify the existing condition.

In further response, Ms. Madche confirmed that the appellant's first request is that the Council uphold the rezone with the alternative of developing one affordable housing unit and payment in lieu of the other three units.

Responding to Councilmember Noble, Ms. Madche noted that Bellevue is an optional municipal code city, and there are specific statutory provisions indicating that anything not specifically denied is fair game in terms of development regulations.

Mr. Noble commented that one of the Hearing Examiner's arguments is that the previous Council directive does not carry the force of law and therefore it is not required to be applied. Ms. Madche explained that PCD is not asking for a new condition to be imposed. The rationale of the Hearing Examiner and the applicant is consistent with state law, and the City would not have authority for a new application that did not have a preexisting affordable housing condition to impose a mandatory provision or require a payment in lieu. The appellant's position is that due to the preexisting condition, the appellant is not asking for a new condition to be imposed.

The appellant is simply asking for a modification, consistent with the directive provided by the City Council in 1996.

In further response to Mr. Noble, Ms. Madche said she would argue that requiring additional housing units or a payment in lieu is not the same. In this situation, there is a preexisting condition as well as a policy directive. She would argue that the two are distinguishable.

In further response to Mr. Noble, Ms. Madche opined that PCD's request to allow in lieu payments represents modifying an existing condition rather than imposing a new condition.

Responding to Councilmember Lee, Ms. Madche characterized the 1996 affordable housing provision as a policy directive rather than a LUC amendment. She explained that a Land Use Code/development regulation imposes requirements on the development of land, whereas a policy directive, as in this case the 1996 directive, is a policy statement and directive from Council to staff on how to implement a Comprehensive Plan Amendment or LUC amendment. In this case, the 1996 policy directive from Council was issued after the LUC amendments were put in place, which modified the requirement from a mandatory to a voluntary provision of affordable housing.

In further response to Mr. Lee, Ms. Madche said PCD is providing an alternative to the developer in the form of a payment in lieu rather than construction of the affordable housing units. This is consistent with the 1996 directive. Ms. Madche said if Council were to deny the rezone, the developer would be required to construct four affordable housing units.

Bob Johns, attorney for the applicant/respondent, Dennis Johnson, said that, except for the existence of this condition from the 1992 rezone, if an application was submitted today for property zoned R-10, the applicant would not be required to provide any affordable housing units, and 26 units could be built on the subject property. Mr. Johnson proposes to build 26 units. Today the City has a voluntary program stipulating that if a developer provides affordable housing units or pays a fee in lieu, he or she is entitled to bonus units. If the applicant had desired, he could have received approval for 28 units on the site under the current voluntary program.

Mr. Johns said the issue is whether the 1992 rezone condition changes the basic rule for properties in R-10 zones, which is that providing affordable housing is voluntary and entitles a developer to additional units. Mr. Johnson is not requesting additional units.

In 1992, the subject property and surrounding properties were zoned R-2.5 and R-3.5. The property owners at that time requested a rezone to R-10. The City granted the upzone, with the condition that the property owner provide affordable housing units. In 1996, the City Council changed to the voluntary program still in place today, which allows additional units if the developer chooses to provide one or more affordable housing units.

Mr. Johns said that City staff interprets the 1996 language as a policy directive on how to handle these older rezone situations. He referred to the policy on page 201 of the record, and noted that

the policy applies to six specific properties, none of which are the subject property. The policy directive did not specify the subject property. As a result, Mr. Johnson had no way of anticipating the current interpretation.

Mr. Johns highlighted a fact important to his argument. In looking at the zoning map today, since the time the subject property was rezoned to R-10, every property east of the middle of the block is now zoned R-10 or R-30. The affordable housing condition/requirement does not apply to any of these properties. The Fox Glen property could have been rezoned to R-10 or perhaps even R-30 today, without any requirement for affordable housing. Surrounding properties are allowed to participate in the voluntary affordable housing incentive if they choose.

Mr. Johns said there is no particular reason for an affordable housing requirement on the Fox Glen property other than the historic anomaly that this old condition was imposed, but has since been superseded by zoning changes as well as policy changes pertaining to affordable housing. If Mr. Johnson is required, unlike some of his neighbors, to provide affordable housing pursuant to this old condition, he will pay a fee in excess of \$100,000 to the City and receive no benefit in return. He will not receive bonus units provided by current policy, and he receives no other special consideration. He simply pays the fee, which is substantial.

Mr. Johns said the Hearing Examiner opined that the 1996 policy directive was never adopted as City Code. Current policy states that properties in the R-10 zone can volunteer to provide affordable housing, in exchange for a density bonus.

Mr. Johns asked the City Council to treat Mr. Johnson's property as the other properties would be treated. He feels this is fair and consistent with current policies. He asked the City Council to uphold the Hearing Examiner's decision approving the rezone without requiring payment of the alternative affordable housing fee.

Responding to Councilmember Noble, Mr. Johns said the property owner could gain two extra units if he provided affordable housing units. Mr. Johnson's application did not request that. In further response, Mr. Johns confirmed that a PUD application was previously granted, and it contained an affordable housing requirement. Mr. Noble stated that the matter was before the City Council in 2007, and there was no testimony or argument on behalf of Mr. Johnson seeking to change the affordable housing requirement.

Mr. Johns explained that initially the project density was miscalculated by City staff and, after the PUD was approved, the applicant was told that the maximum density available was lower than originally calculated. The applicant was instructed that the way to resolve the problem would be to request an amendment approving the number of units that should have been calculated originally (i.e., 28 units if include affordable housing units, 26 units without affordable housing).

Responding to Deputy Mayor Balducci, Mr. Johns said the affordable housing provision originated as a condition to the 1992 rezone. Mr. Johns clarified that the respondent's position is that the condition remains in place unless and until it is changed by the City Council. The

applicant/respondent is asking the Council to change the condition, as part of the current rezone request, in order to be consistent with current adopted City policy.

Ms. Balducci noted that this matter has been pending for some time, and she questioned why the issue of the affordable housing requirement did not come up earlier. Mr. Johns said a mistake was made in the initial processing of the application by an employee who is no longer with the City, and the applicant received bad advice in terms of how to handle the application. After the PUD was approved by the City Council approximately 18 months ago, David Pyle approached the applicant and explained the previous error in the processing of the application. Mr. Pyle advised the applicant to remedy the situation by submitting the rezone application that is currently under discussion.

In further response, Mr. Johns said he did not in the hearing before the Hearing Examiner accuse City staff of making the mistake. However, he felt it was clear that the purpose was to correct the density in order for it to match the current city code rules. The issue then arose of whether affordable housing should be required if the applicant was not asking for bonus units.

Councilmember Noble noted the Hearing Examiner's comments regarding affordable housing on page 7 of the Hearing Examiner's report, and asked Mr. Johns for his interpretation of this text. Mr. Johns opined that the Hearing Examiner was expressing that he was not attempting to change the ordinance with his decision because that would be up to the City Council. Mr. Johns felt that the Hearing Examiner was merely offering additional explanation of his decision.

Councilmember Chelminiak stated that his understanding of Mr. Johns' position is that the 1996 action did not repeal the 1992 rezone condition. Mr. Johns explained that when the City rezoned the Overlake community, making a large area R-10 to R-30, it did not go back and change the conditions for properties in the area that had previously been rezoned. Mr. Johns opined that had the 1992 rezone not occurred, the property would be zoned R-10 or R-30 now, without the affordable housing condition.

Mr. Johns said he and the respondent are asking a policy question about whether the Council will choose to impose the affordable housing fee on Mr. Johnson's development based on the 1992 rezone, when owners of adjacent properties with similar zoning do not have the same requirement.

Responding to Councilmember Bonincontri, Mr. Johns said the PUD allows the development of 26 units, as a provision that is separate from the affordable housing issue. If Mr. Johnson provides affordable housing units, the total number of units allowed would be 28.

Responding to Councilmember Davidson, Mr. Johns said at the time of the 1992 rezone, surrounding properties were zoned at varying densities. Responding to Mayor Degginger, Mr. Johns said the property immediately to the south was subject to the same affordable housing condition.

City Clerk Myrna Basich indicated nine minutes remaining for the appellant's rebuttal.

Responding to Ms. Madche, the City Attorney said it would be permissible for Mr. Pyle to elaborate regarding the alleged mistake by a former City employee.

Mr. Pyle explained that his predecessor did a good job of processing the PUD. However, she based the density on R-2.5 for both properties, when in fact one was zoned R-3.5. Allowable density was calculated based on R-2.5 for both properties. Mr. Pyle said his recalculations do not produce a different result.

Responding to Mayor Degginger, Mr. Pyle said the issue of the calculations is not contained in the record. Mayor Degginger did not allow any further comment in this regard.

Moving on, Ms. Madche noted the map depicted by Mr. Johns in his discussion about the subject property and surrounding properties. She confirmed Councilmember Davidson's observation that the surrounding properties had already been rezoned at the time of the 1992 rezone for the subject properties.

Ms. Madche referenced page 201 of the Hearing Examiner's report and noted that Mr. Johns, in his submittal to the Council, asserted that the directive from the Council applied only to six referenced parcels. The document beginning on page 201 is an example of what is commonly provided by staff to the Hearing Examiner, because it has language discussing the directive. The six parcels were subject to a rezone, and this was the memorandum included with that rezone. The Council directive from 1996 applies to many more properties than the six referenced by Mr. Johns.

Mayor Degginger read from the report a section referencing affordable housing modifications proposal descriptions, which then lists six proposals. In response to Mr. Degginger, Ms. Madche confirmed that it is a SEPA document from 1996, apparently a SEPA threshold determination although the format is different than documents used today. She speculated that it relates to a SEPA review conducted for the rezones, and that it was included as reference to the properties subject to the application. In further response, Ms. Madche said the original rezone on the subject property was completed in 1992. The SEPA documents describe six properties involved in rezones at the time.

- Deputy Mayor Balducci moved to close the Limited Public Hearing, and Mr. Chelminiak seconded the motion.
- The motion to close the Limited Public Hearing carried by a vote of 7-0.
- Deputy Mayor Balducci moved to defer action to a subsequent meeting, and Mr. Noble seconded the motion.
- The motion to defer action on the appeal carried by a vote of 7-0.

Mayor Degginger declared recess to return to the Council Conference Room.

(c) Bel-Red Finance Plan & Role of Impact Fees in Funding Capital Investment
[Continuation of discussion started before hearing.]

The meeting resumed at 9:05 p.m. with continued discussion of the role of park impact fees in the Bel-Red Finance Plan.

Responding to Councilmember Davidson, Mr. Terry said that during the early 1990s, the City collected fees through the imposition of SEPA (State Environmental Policy Act) conditions for park facilities in the Lakemont neighborhood. The area was platted by King County and then annexed by the City of Bellevue. In further response, Mr. Foran said Downtown Park was financed through Councilmanic bonds.

Dr. Davidson expressed concern that impact fees will discourage development. Mr. Terry said that redevelopment of the Bel-Red corridor is dependent on having the basic facilities to support growth, and it must be done a way that makes development feasible. Options for funding infrastructure are development incentives, other types of developer participation (e.g., impact fees), and general City revenues. Staff is seeking Council direction regarding the extent to which each component should be used for funding infrastructure.

Councilmember Chelminiak reviewed the potential impact fees to be assessed and expressed concern that these will further increase housing costs.

Mayor Degginger said he would like to hear comprehensive information regarding the implication of implementing impact fees. Dr. Davidson noted additional impact fees affecting citizens and development including a newly implemented fee from the Cascade Water Alliance. He would like to review a full list of impact fees affecting new development.

Deputy Mayor Balducci concurred with the need for a full understanding of the overall picture. Outside of the Bel-Red corridor, there are significant demands as well including a municipal court, adding a fire station, and transportation facilities. She feels there is a need to review the methodology of calculating impact fees. Ms. Balducci supports a public outreach effort involving the Council to discuss the issues and implications associated with impact fees.

Mr. Sparrman indicated staff's intention to bring back a proposed outreach strategy for Council's consideration, following Council direction to proceed with that approach.

Councilmember Lee said it is important to address citywide needs as well as infrastructure needs for the Bel-Red corridor. Given this significant challenge, he feels more information and discussion regarding long-term investments is needed in order to prioritize expenditures.

Noting that the assessment of park impact fees would be new for Bellevue, Mayor Degginger summarized the Council's need to fully study the issue and to engage stakeholders in the discussion.

Responding to Dr. Davidson, Mr. Terry confirmed that the developer incentive package currently undergoing review by the Planning Commission is one component of the overall Bel-Red finance plan.

Responding to Deputy Mayor Balducci, Mayor Degginger agreed that it would be helpful to involve Councilmembers in discussions with staff and the consultants. He noted that Councilmember Chelminiak was a liaison to the Bel-Red Steering Committee.

City Manager Steve Sarkozy acknowledged the Council's concerns and said staff will work through these with the Council.

4. Executive Session

At 9:30 p.m., Mayor Degginger declared recess to Executive Session for approximately 30 minutes to discuss one item of property acquisition. He noted the meeting would be adjourned upon conclusion of the Executive Session.

At 10:12 p.m., Mayor Degginger declared the meeting adjourned.

Myrna L. Basich
City Clerk

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