CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

May 5, 2008 Council Chamber
8:00 p.m. Bellevue, Washington

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

ABSENT: None.

1. Call to Order

The meeting was called to order at 8:03 p.m., with Mayor Degginger presiding.

2. Roll Call, Flag Salute

Upon roll call, all Councilmembers were present. Councilmember Bonincontri led the flag salute.

(a) National Older Americans Month

Mayor Degginger read a proclamation recognizing the observance of Older Americans Month in May, and presented the proclamation to Lynne Robinson, Chair of Bellevue's Network on Aging. Ms. Robinson thanked the Council for its support of the Network's activities.

3. Communications: Written and Oral: None.

4. Reports of Community Council, Boards and Commissions: None.

5. Report of the City Manager

(a) Bellevue Network on Aging

Cathy VonWald, Community Services Supervisor, and Gary Dickerman presented an update on the activities of Bellevue's Network on Aging. Ms. VonWald explained that the purpose of the organization is to support aging services in Bellevue through systematic outreach, regional collaboration, and community involvement. Mr. Dickerman reported on the 2007

accomplishments of the Transportation Committee, Support Services Committee and the Housing Committee. He reviewed key elements of the 2008 committee work plans.

(b) Bellevue Convention Center Authority (BCCA) Reappointment

[Item postponed.]

(c) AICPA Statement on Auditing Standards (SAS) 112 – "Communicating Internal Control-Related Matters Identified in an Audit"

Finance Director Jan Hawn reviewed the guidelines provided by the American Institute of Certified Public Accountants (AICPA) in its Statement on Auditing Standard (SAS) 112, which addresses the communication of internal control-related matters that are identified in an audit. More stringent reporting definitions and guidelines were incorporated in a 2006 update to SAS 112, which was adopted by the Washington State Auditor's Office in 2007. Items once considered "exit items" or "management letter" items might be elevated to a higher communication response under the new guidelines. Ms. Hawn noted that there are likely to be inconsistencies in the application of the updated standard as it is implemented by auditors over the next couple of years.

City Manager Steve Sarkozy highlighted Agenda Item 8(h) regarding master planning for Meydenbauer Bay Park.

6. Council Business and New Initiatives

[Council Business was reported during the earlier Study Session.]

7. Approval of the Agenda

→ Deputy Mayor Balducci moved to approve the agenda, and Councilmember Noble seconded the motion.

→ The motion to approve the agenda carried by a vote of 7-0.

8. Consent Calendar

→ Deputy Mayor Balducci moved to approve the Consent Calendar, with the exception of Item (e). Councilmember Noble seconded the motion.

→ The motion to approve the Consent Calendar, amended to remove Agenda Item 8(e), carried by a vote of 7-0, and the following items were approved:

(a) Minutes of April 14, 2008 Extended Study Session
Minutes of April 21, 2008 Study Session
Minutes of April 21, 2008 Regular Session

(b) Motion to approve payment of claims for the period April 19, 2008 through May 2, 2008, and payroll for the period April 1, 2008 through April 15, 2008.

(c) Resolution No. 7732 authorizing execution of the 2008 Emergency Medical Services (EMS) Advanced Life Support (ALS) and Basic Life Support (BLS) contracts with King County.

(d) Resolution No. 7725 authorizing the execution of a successor labor agreement between the City and the Public, Professional and Office-Clerical Employees and Drivers Local Union No. 763 representing PCD Inspectors, Plans Examiners, and Clearing/Grading Reviewers. *[Action postponed from April 21, 2008, Consent Calendar.]*

(f) Resolution Nos. 7734, 7735, and 7736 authorizing execution of three General Services contracts with Open Works and Stardom Services for janitorial services at remote City sites.

(g) Motion to award Bid No. 8077 in the amount of $110,277.82 to Design Air, LTD, as the lowest responsible bidder, for the installation of a chiller at the South Bellevue Community Center.

(h) Resolution No. 7737 authorizing execution of a professional services agreement with EDAW, Inc., in the amount of $449,900 for landscape architecture, environmental studies, land use planning, architecture, and engineering services to prepare a park master plan for Meydenbauer Bay Park, and to integrate and complete the land use plan and strategy to guide future redevelopment of upland properties.

(i) Motion to award Bid No. 8015, SE 44th Street Sidewalk Project, in the amount of $66,555 to Merlino Brothers, LCC, as low bidder to install a segment of sidewalk on the northeast corner of SE 44th Street and Somerset Boulevard. [CIP Plan No. PW-W/B-56]

(j) Resolution No. 7738 authorizing execution of a lease agreement with the Central Puget Sound Regional Transit Authority (Sound Transit) for a commute trip planning and secured bicycle storage facility at the Rider Services Building of the Bellevue Transit Center.

(k) Motion to award Bid No. 8018 for Meydenbauer Creek Sewer Replacement and Bank Stabilization to Gary Harper Construction, Inc., in an amount not to exceed $1,391,832.83. [CIP Plan Nos. D-80, D-86 and S-24]

(l) Resolution No. 7739 authorizing execution of a professional services agreement with Jacobs Field Services North America, in an amount not to exceed $200,000, to provide construction management and inspection services for the Meydenbauer Creek Sewer Replacement and Bank Stabilization project. [CIP Plan Nos. D-80,

D-86 and S-24]

Item for Council Discussion

(e) Resolution No. 7733 authorizing execution of a one-year administrative services agreement with Premera Blue Cross as Third Party Administrator, in the amount of $630,000, to administer the City's self-insured medical and prescription drug benefit programs for 2008.

Mayor Degginger recused himself from action on Resolution No. 7733, noting that his law firm occasionally provides legal counsel to Premera Blue Cross.

→ Deputy Mayor Balducci moved to approve Resolution No. 7733, and Councilmember Bonincontri seconded the motion.

→ The motion to approve Resolution No. 7733 carried by a vote of 6-0, with Mayor Degginger recused from voting.

9. Public Hearings

(a) Limited Public Hearing on the Hearing Examiner's January 30, 2008, Decision concerning the application of D.R. Horton for a planned unit development (Torello PUD) with 10 units on a 1.007-acre site, zoned R-10 and within a Transition Area Design District. File Nos. 06-105832-LK and 06-120824-LD. *[This is a Process I application under the City's Land Use Code. Under Process I, the Hearing Examiner is the final decision-maker for the City unless the decision is appealed to the City Council. At the conclusion of the public hearing, Council may discuss and make a decision or may defer a decision to a later meeting.]*

Noting that this is a quasi-judicial matter, City Attorney Lori Riordan explained the need to address any ex parte communications involving Councilmembers regarding the Torello Planned Unit Development (PUD) application and Hearing Examiner's decision. Last week several emails were sent to City Councilmembers. The land use appeal was not identifed as the subject of the message, and the topic was not apparent until the emails were opened. State law governing the appearance of fairness doctrine is applicable to this situation. The doctrine requires that no member of a decision making body may have ex parte contacts with opponents or proponents with respect to the proposal that is the subject of the proceeding, unless the Councilmember: 1) Places on the record the substance of the communication, and 2) Provides that a public announcement of the content of the communication, and of the parties' right to rebut the substance of the communication, is made at each hearing where action is considered or taken on the subject.

At the Mayor's direction, Ms. Riordan questioned each Councilmember regarding the emails. Councilmember Lee said he did not read any of the emails.

Councilmember Bonincontri explained that her emails automatically open in the preview pane. She read a couple of sentences of an email.

Councilmember Davidson opened and started to read an email, but he did not read further once he realized which issue was being addressed.

Mayor Degginger did not open or read any of the emails.

Deputy Mayor Balducci said she opened one of the emails. Once she realized it was one of a series of emails on the issue, she closed the email and did not read any of them any further.

Councilmember Noble opened one of the emails but realized the topic and did not read the email.

Councilmember Chelminiak opened three of the emails but did not read the content because he recognized that the issue was quasi-judicial.

Ms. Riordan stated that because some Councilmembers read portions of the emails, she asked the City Clerk to make copies of the emails a part of the record of these proceedings. Emails were received from Margot Navarre, Stacie LeBlanc Anderson, Hilary Salkind**,** Renay Bennett, Geoffrey Bidwell, Alan W. Smith, and Barbara Hilliker.

In general, the emails: 1) Refer to Comprehensive Plan Policy S-SW-9, which is at issue in the appeal, 2) Advocate for the retention of trees at the Torello site, and 3) Request that the Council find that the PUD application, as approved by the Hearing Examiner, violates Policy S-SW-9.

Mayor Degginger asked whether any parties to the appeal wish to rebut the substance of the communications from any of these citizens who are not parties to the appeal.

Duana Kolouškova, attorney for the applicant/respondent D.R. Horton, placed on the record her objection to the attempt of citizens to submit additional public comment after the record was closed by the Hearing Examiner in this matter.

Michael Broaddus, an appellant, stated he was not aware of the emails until they were forwarded to him by the City.

Ms. Riordan noted that one of the parties addressed the subject matter of the appeal with Deputy Mayor Balducci on two occasions.

Ms. Balducci described two conversations with Erin Powell-Dilloo, who works with Ms. Balducci's husband at REI. Sometime during the summer of 2007, Ms. Balducci met Ms. Powell-Dilloo, who brought up the matter by stating her interest in retaining trees. Ms. Balducci informed Ms. Powell-Dilloo that the matter was quasi-judicial and therefore they could not discuss it. The second conversation was on Saturday, February 2, 2008 at the REI store party. Ms. Powell-Dilloo mentioned the appeal and noted her opposition to the proposed tree removal. Nothing more was said on the matter.

Responding to Mayor Degginger, Ms. Kolouškova stated her objection to any comments made outside of the open record hearing. City staff (respondents) and the appellants had no comment on the communication.

Ms. Riordan reviewed the rules and procedures for the Limited Public Hearing on the appeal of the Hearing Examiner's decision approving D.R. Horton's application for a Planned Unit Development (PUD). The appellants are Michael and Colleen Broaddus, Erin Powell-Dilloo, and George Dilloo. The 1.007-acre site, addressed as 1004 Bellevue Way SE and 1012 Bellevue Way SE, is zoned R-10 (10 units per acre) and is within a Transition Area Design District.

The Limited Public Appeal Hearing is confined to the issues decided by the Hearing Examiner after taking testimony at hearings held on November 15th and December 6th, 11th, 12th, and 19th in 2007. The appeal contains one issue that was not decided by the Hearing Examiner and is therefore not appropriate in the Council's consideration of the appeal. That issue is the claim that the City is barred by the doctrines of estoppel reliance, or a special relationship with appellants Dilloo, from granting the PUD without requiring the retention of all significant trees on the east side of the Torello property.

Ms. Riordan said the respondents to the appeal are the applicant, D.R. Horton, and the Director of Planning and Community Development. She noted that staff will provide a report covering the history of the application and addressing the issues raised in the appeal. The parties will have the opportunity to present oral argument based on the Hearing Examiner's record. The appellants will have 15 minutes to present their arguments and will speak first. If they wish, they may reserve a portion of their time for rebuttal argument following the conclusion of the respondents' presentation.

The respondents will have 15 minutes to present their arguments. At the conclusion of the respondents' testimony, the appellants will present rebuttal argument if they have set aside the time.

The Council may ask questions of any party, City staff, or any other person about any matter contained in the record. However, new material not contained in the record made before the Hearing Examiner may not be presented. After all argument is presented and Councilmembers have asked any questions they may have, the Council will have the opportunity to deliberate and render a decision, either tonight or at a subsequent meeting.

Ms. Riordan explained that 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 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. In this context, evidence is material if there is a reasonable probability that the presence or absence of the evidence would alter the decision by the fact finder. Evidence is substantial where there is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the decision.

Responding to Councilmember Noble, Ms. Riordan confirmed that responses to Council's questions do not count toward the 15-minutes of presentation provided for the parties.

Ken Thiem, Senior Land Use Planner, provided the staff report on the Torello planned unit development (PUD) of 10 units on a 1.007-acre site. He described the application, the Hearing Examiner's decision, and the issues raised in the appeal.

Mr. Thiem explained that the public hearing was held before the Hearing Examiner on November 15, 2007, for the Torello proposal, which merged PUD and design review applications with a SEPA (State Environmental Protection Act) exemption. Appeals of the design review decision and SEPA exemption were filed on January 30, 2008. The Hearing Examiner's decision dismissed the SEPA exemption appeal for lack of jurisdiction; denied the appeal of the design review decision; and approved the PUD, subject to conditions.

An appeal of the Hearing Examiner's decision on the PUD was filed, which is the nature of this closed record hearing before the Council tonight. The staff report focuses on the facts as they relate to the appeal of the PUD, which involves three issues: 1) The application of Comprehensive Plan Policy S-SW-9, which deals with the retention of significant trees; 2) Legal issues relating to estoppel waiver and public duty doctrine, and 3) Whether the Hearing Examiner's decision creates a safety hazard for retained trees.

Mr. Thiem explained that the site is approximately 10 blocks south of Bellevue's downtown, on the east side of Bellevue Way. Properties to the north and south of the site, between downtown and 112th Avenue NE, are all zoned multifamily. Properties to the east, northeast and west are zoned single family. Bellevue High School occupies the site to the northeast.

The project site is zoned R-10 and is located within a transition area to single-family zoning and use. The application proposes 10 multifamily detached townhomes. A 6,270-foot buffer is proposed on the east side of the site, next to existing single-family homes. The applicant proposes to retain 30 significant trees on the site. Comprehensive Plan Policy S-SW-9 applies to the site's development and states, "Retain significant trees adjacent to the single-family area east of future multifamily development along the east side of Bellevue Way between SE 10th Street and SE 11th Street."

Land Use Code requirements applicable to the retention of significant trees are found in Section 20.20.520.F.1. This section addresses the retention of 15 percent of the tree diameter inches within the site interior, excluding site perimeter landscaping. This section further references the Transition Area Section (LUC 20.25B.040.C), which requires a 20-foot wide landscape buffer between multifamily and single-family development. It also requires the retention of all significant trees within the first 15 feet of the 20-foot landscape buffer. The code requires the planting of indigenous species within, and comprising at least 50 percent of, the buffer.

Mr. Thiem described a drawing of the project's landscape plan. Additional buffers are proposed along the north and south property boundaries. The southern buffer is 18 feet and the northern buffer is 20 feet. The required buffer next to the single-family zoning has an average width of 33

feet and varies from 28 to 38 feet wide.

Mr. Thiem reviewed a drawing of the site's tree retention plan. The Hearing Examiner imposed conditions related to the protection of retained trees requiring: 1) Arborist supervision in the retained vegetation area (RVA) and during construction, 2) No damage to tree roots in sitting node areas, 3) An annual report from a certified arborist for three years, 4) Construction fencing covering the transition area buffer, 5) Monitoring by an arborist who shall insure that disruption to tree roots does not endanger the survival of retained trees, 6) Removal of all invasive species in the transition area using hand tools and under an arborist's supervision, and 7) Replacement of removed plants with like size and type of plant.

Responding to Deputy Mayor Balducci, Mr. Thiem said that a professional survey confirmed that there is not a 40-percent slope on the site.

Responding to Councilmember Chelminiak, Mr. Thiem said the staff report contains a topographical map of the site.

Responding to Councilmember Lee, Mr. Thiem said the arborist will be hired by the applicant. The arborist will provide recommendations regarding how to manage the retained trees. The City will ask the arborist to share his or her findings.

→ Deputy Mayor Balducci moved to open the Limited Public Hearing, and Councilmember Noble seconded the motion.

→ The motion to open the Limited Public Hearing carried by a vote of 7-0.

Michael Broaddus spoke on behalf of the appellants which include himself, Colleen Broaddus, Erin Powell-Dilloo, and George Dilloo. He asked to reserve three minutes for rebuttal.

Mr. Broaddus said the appellants are opposed to D.R. Horton's plans to remove trees for two reasons. First, they believe there is a site-specific policy approved by the City Council in 1996 that protects the trees. Second, the appellants believe that D.R. Horton is creating a safety hazard by compromising the root systems of some of the retained trees.

Regarding Comprehensive Plan Policy S-SW-9, Mr. Broaddus said the appellants feel that the City is disregarding this policy. The Hearing Examiner said the policy does not protect any more trees than the regulations that were in effect in 1996 before the policy was adopted. The appellants feel it is appropriate for the City Council to determine whether the policy is meaningful. The appellants feel that the policy is meaningful and that it was intended to protect the stand of significant trees adjacent to their properties. They believe this was done in exchange for increased zoning for the Torello PUD, which was discussed at a public hearing in 1996. Many citizens showed up at that hearing to advocate for the protection of trees. At that hearing, City staff discussed tree regulations in effect at the time, which were in substance the same as the regulations in effect today. They protected just some of the adjacent trees.

Mr. Broaddus observed that the Planning Commission wants to do more than protect just some of the trees and to encourage tree preservation. The Commission proposed a policy specifying that the adjacent trees would be retained. The City Council approved that policy, along with the rezoning of the Torello site. The policy and the rezone were adopted together. The appellants feel that both should be enforced together. They feel it is not fair for D.R. Horton to benefit from the zoning without also protecting adjacent trees.

Mr. Broaddus acknowledged that D.R. Horton is saving three to five more trees than would be required under the city code. He feels D.R. Horton is trying to demonstrate that the PUD is better than traditional development. Mr. Broaddus said of the 41 trees in the continous stand, D.R. Horton is cutting down 14 and invading the drip lines of seven others. This leaves less than half of the trees as fully protected.

Mr. Broaddus said the Torello PUD barely complies with the minimum requirements of the code. He read from the Hearing Examiner's decision, "The plan does not really offer a great deal in terms of conservation of natural features over and above what those regulations dictate. The site is small, and the open space provided is right at the 40-percent limit for a PUD. Only a few existing trees are saved beyond the code's requirements. The 10-unit density could be achieved in other ways that would preserve more open space and save more trees. The plan makes little allowance for the construction process to exceed the boundaries of Tract B, and some risks are taken by invading the drip lines of trees."

Mr. Broaddus said D.R. Horton argues that Policy S-SW-9 is like all Comprehensive Plan policies and provisions in that general compliance is sufficient. Mr. Broaddus said the policy specifically regulates the Torello site and was adopted along with the rezone that increased the allowable density. The law requires that D.R. Horton comply with Policy S-SW-9 as would be required by any development regulation.

D.R. Horton argues that the appellants are reading the word "all" into the policy, and that they are asserting that the policy protects the protection of all significant trees on the Torello site. Mr. Broaddus countered by saying that the appellants are not opposed to the removal of a number of significant trees on the site that are separate from the continous stand of trees. The policy does not protect those individual trees, but it protects the trees in the continous stand.

Mr. Broaddus feels this is the only interpretation of the policy that gives it any meaning. Before the policy was adopted, the tree regulations protected just some of the trees. He opined that the policy must have intended to do more than that. The policy contains no exceptions, is not limited to protecting just some of the trees, and by its own terms requires that significant trees adjacent to the appellants' properties be retained.

Mr. Broaddus said the appellants are asking the City Council to keep its promises and enforce Policy S-SW-9 to save the trees.

Regarding the safety hazard, Mr. Broaddus said city code requires that the drip line of the retained trees be completely fenced around the trees. He said D.R. Horton is invading the drip lines of seven trees. Mr. Broaddus feels that the reason the Hearing Examiner did not address

this issue is that D.R. Horton took the position that the City of Bellevue has no regulations protecting drip lines, and that the City has no regulations to protect trees at all. Mr. Broaddus characterized the hazard as a 65-percent drip line invasion for two trees. For another tree, the drip line invasion goes into the root plate, which is near the trunk and needed to maintain the tree's stability.

Mr. Broaddus described an illustration (Exhibit 38 of the Hearing Examiner's report) depicting the drip line invasion of seven trees. The invasion occurs on the west side of the trees, which is the windward side of the tree and therefore vulnerable to storms.

Responding to Mayor Degginger, Mr. Broaddus confirmed that the exhibits he is showing are all from the Hearing Examiner's record.

Continuing, Mr. Broaddus said the Hearing Examiner recognized that there were some risks being taken by invading the drip line. Mr. Broaddus said the safety hazard is a result of D.R. Horton's violation of the city code requiring drip line protection. The appellants feel it is inappropriate for the safety hazards to be imposed on themselves and on future residents. The Hearing Examiner required an arborist to insure that the damage to tree roots does not endanger the survival of the trees. The appellants feel this is not possible because D.R. Horton's own arborist does not guarantee against failure of the trees.

If the trees do fail and damage adjacent homes or injure or kill residents, the City is potentially liable for not requiring D.R. Horton to comply with City conditions. Mr. Broaddus encouraged the City to eliminate the safety hazard and avoid potential liability by requiring D.R. Horton to comply with the City code and protect the drip lines.

Ms. Powell-Dilloo said that she and her husband have lived in the Bellecrest neighborhood since May 2002. Before deciding to live in Bellevue, she sought information regarding any planned development activities that would alarm them in any way. She enjoys bird watching and wanted their new home to be near trees. At that time, Ms. Powell-Dilloo met with Heidi Bedwell, a planner with the City, on April 4, 2002. Ms. Bedwell was professional and helpful, and shared zoning maps, Comprehensive Plan policies, and land use maps relevant to the house that the Dilloos were interested in buying. Ms. Bedwell said the house was next to the urban forest named in Policy S-SW-9 of the Comprehensive Plan, and that the trees were to be retained.

Ms. Powell-Dilloo met twice with Ms. Bedwell, who said with confidence that the trees on the Torello property would be retained. Ms. Bedwell said Policy S-SW-9 was unusual and that provisions of this type were uncommon in the Comprehensive Plan. She provided a copy of the policy, which Ms. Powell-Dilloo has kept in her files since that time. It is provided in the record as Exhibit 17. Based on this information, the Dilloo purchased their house.

Due to recent communications and meetings, as well as the Hearing Examiner's decision, Ms. Powell-Dilloo and her husband are no longer certain that promises made by the City will be honored. She asked the City to retain the trees as promised in the Comprehensive Plan. She asked the Council to not allow D.R. Horton to build houses that destroy this Bellevue Way SE urban forest, which the City Council agreed to retain in 1996. Approving the Torello PUD

application would allow for the destruction of this valuable community and enriching urban forest. Ms. Powell-Dilloo noted that trees clean the air, improve water quality, prevent erosion, save energy, raise real estate values, add oxygen to the world, absorb and store greenhouse gases, help reduce traffic noise, and provide habitat for birds and animals.

Mayor Degginger indicated that the appellants have used 12 of their 15 minutes.

Ms. Powell-Dilloo said the appellants feel that the City in a Park should save the trees.

Lacey Madche, Legal Planner, provided opening testimony for the respondents which are D.R. Horton (Applicant) and the Director of the Department of Planning and Community Development. Ms. Madche addressed the application of the Comprehensive Plan to this matter. Policy S-SW-9 requires retention of significant trees adjacent to the single-family area east of the Torello site. This policy is the primary issue before the Council. The appellants argue that the policy requires retention of all significant trees. This is contrary to the Director's recommendation, the Hearing Examiner's decision, and the City's development regulations governing tree retention.

Ms. Madche explained that a Comprehensive Plan is generally a statement of community goals, which are implemented through development regulations found in the Land Use Code. The code requires the retention of significant trees in the interior and buffer areas of a site. Ms. Madche referenced Land Use Code Section 20.20.900, which is also provided in Exhibit 46 of the record. The applicant is retaining in excess of the requirements of the code for the site interior.

Because the Torello site is within a transition area, buffer landscaping including tree retention is required under LUC 20.25B.040 (also provided in Exhibit 46). Generally the buffer requirements for property in transition areas would be 20 feet, and within the first 15 feet of the 20 feet there must be 100 percent retention of the significant trees. If the applicant had not voluntarily extended the buffer in this regard from 20 feet to 33 feet, the number of significant trees required to be retained would be 18. In this case, the applicant is proposing a 33-foot average buffere width and retaining 100 percent of significant trees within the buffer. Pursuant to this increased buffer width along with the retained significant trees in the interior, the applicant is proposing to retain a total of 30 trees.

With respect to the PUD, the expanded buffer is important because it ultimately provides tree retention for the transition area. Because the applicant is proposing to retain significant trees in excess of the requirements of the code, the Hearing Examiner properly concluded that with respect to tree retention, the proposed PUD is superior to that of a traditional development.

Ms. Madche noted that the appellants are not pleased with the number of trees to be retained, and are seeking an interpretation of Policy S-SW-9, which is contrary to the actual language of the policy and to the requirements of the Land Use Code.

The appellants argue that the intent of the Planning Commission was to retain all significant trees. The PCD Department disagrees and supports the findings of the Hearing Examiner. Exhibit 73 details a conversation of the Planning Commission in which a rezone of the property

to allow multifamily development was discussed. The Hearing Examiner noted in his findings that modifying the policy language from "encourage" to "retain" does not imply that the Commission intended for all significant trees within the stand to be retained. If the Commission had concluded that existing tree retention regulations were inadequate, or inconsistent with Policy S-SW-9, it is reasonable to infer from general practice that the Commission would have sought a code amendment simultaneously with the policy discussion or directly following it, with respect to Policy S-SW-9. Alternatively, the Commission could have recommended that a rezone condition or a concomitant zoning agreement be executed to address tree retention of all significant trees within the stand. Ms. Madche noted that neither of these actions were taken.

Ms. Madche said the appellants assert that the policy as applied by the Hearing Examiner is inconsistent with the City's tree regulations. The Hearing Examiner properly concluded that the Comprehensive Plan and the City's development regulations are in fact consistent, can be read in harmony, and that both require the retention of significant trees. The Department of Planning and Community Development concurs with this position.

Ms. Madche encouraged the Council to review PCD's statement of appeal, which details the rules of construction when interpreting Comprehensive Plan policies and Land Use Code regulations. It is important to note that the Comprehensive Plan does not directly regulate site-specific land use activities. Instead the City's Land Use Code serves as a basis for the regulation of private property. The Comprehensive Plan is a guide, and not a document designed for making specific land use decisions. Any conflicts that might occur between the two sources are resolved in favor of the more specific provision, which in this case is the Land Use Code.

In its consideration of this matter, Ms. Madche encouraged the Council to also review other applicable Comprehensive Plan amendments, which are noted on page 5 of PCD's statement on appeal. The policy at issue in the appeal does not require a reduction in density. Review of the policies demonstrates a balance between development capacity and tree retention.

Duana Kolouškova, attorney for D.R. Horton, spoke on behalf of the applicant's proposal. She referred Council to issue number 3 presented by the appellants regarding whether the Hearing Examiner's conditions adequately protect the trees that are to be retained on the Torello site (D.R. Horton property). She respectfully requested that the Council bear in mind when reviewing the issue that the application concerns private property that is governed by R-10 zoning [10 units per acre] and subject to PUD standards. This is important because D.R. Horton had a number of options as to how to develop the property. The application proposes a PUD, which maximizes density consistent with the City's Comprehensive Plan policies while balancing the interests of the adjacent community.

Ms. Kolouškova explained that D.R. Horton proposed a PUD in which D.R. Horton retains a fairly significant number of trees, beyond the City's requirements. She opined that the Hearing Examiner's decision somewhat minimized the retention of a few additional significant trees, as if that were a minor fact. The site is small and fairly difficult to work with under R-10 zoning. Within this context, D.R. Horton's proposal retains 35 percent more significant trees than required. In addition D.R. Horton is retaining all other trees, outside of the building pads, as well as all native vegetation. The proposal removes all invasive vegetation and replaces it with native

plants. Cognizant of the wishes of adjacent neighbors, D.R. Horton's proposal retains and provides native growth as opposed to lawns, patio, and play areas. The open space is consolidated in an area that will protect trees to the east of the property without compromising the quality of the development or the interests of all property owners.

Turning to the issue of whether the trees are being adequately protected, Ms. Kolouškovа said the appellants argue that the oversized graphic presented to the Council should govern the Council's decision. She noted that this is an engineering standard that comes into play during clearing and grading review, which is not an issue before the Council. The engineering standards are imposed by PCD and the building official during the clearing and grading review.

At that time, the applicant and City look further into whether there is an invasion of the drip lines and if so, to what extent. The plans are then refined further to incorporate the review and recommendations. Ms. Kolouškovа noted that the appellants have stated their concerns regarding the drip lines. Conversely, it is possible that there will be less invasion of drip lines than predicted at this time. The appellants' expert stated in his report that a healthy tree can tolerate removal of at least a third of its roots within the drip line without any injury at all. The appellants' arborist also stated that a drip line is a convenient guide and an easy measurement.

Both arborists agree that nothing supersedes actual arborist supervision, which is what the Hearing Examiner implements in one of his conditions of approval. When the City Council takes action to implement the actual code standard, under Section 20.20.900. the Council will see that the standard for the PUD is not a specific set of drip lines-based requirements. Instead, the standard is that the applicant shall utilize tree protection techniques approved by the PCD Director in order to provide for the continued healthy life of retained significant trees. This is what the Hearing Examiner's report is requiring of D.R. Horton. D.R. Horton will comply with the conditions of approval to perform the work under the supervision of an arborist, who shall ensure that any damage to tree roots does not endanger a tree's health. Additionally, three years of reporting by the arborist is required, and there are fairly stringent replacement standards.

Noting Councilmember Lee's concerns, Ms. Kolouškovа said that all of the conditions are enforced by the City.

Based on the standard just addressed, Land Use Code Section 20.20.900, the applicant requests that the Council uphold the Hearing Examiner's conditions of approval. Ms. Kolouškovа asked the Council to review the statement provided on behalf of the applicant and in support of the application. She noted for the record that there are comments taped to lapel pins in the audience this evening. Ms. Kolouškovа and the applicant object to any infusion of public comment that could result from these, and request that there be no prejudice from Councilmembers as a result in their consideration of the appeal.

Ms. Kolouškovа asked the City Council to uphold the Hearing Examiner's decision with conditions.

Responding to Councilmember Davidson, Mr. Broaddus said there are 41 trees within a continuous canopy, which overlaps the 20-foot buffer zone and extends beyond it, and which is

adjacent to the appellants' properties. Dr. Davidson noted his understanding that all trees in the buffer zone will be retained.

Mr. Thiem described the tree retention plan, which shows a thin line parallel to the site's eastern boundary. This line represents the width of the required buffer. The actual buffer proposed by the applicant is the darker line, which is what the City and the applicant are calling the buffer. D.R. Horton's proposal retains all of the trees within this expanded buffer.

Councilmember Chelminiak referred to Exhibit 46 and asked Mr. Broaddus to identify the trees he considers included in the continuous canopy. Ms. Kolouškova noted that Exhibit 37 shows the trees to be retained and those to be removed.

Councilmember Chelminiak clarified his interest in identifying the 14 trees considered to be part of the continuous canopy. Mr. Broaddus said Exhibit 38 shows the trees to be retained and removed, including the 14 trees within the canopy.

Responding to Councilmember Lee, Mr. Thiem said the Tree Retention Plan shows only the existing trees. All trees inside the buffer will be retained, and those outside the buffer will be removed. The width of the buffer varies from 28 feet to 38 feet, with an average width of 33 feet. Ms. Madche noted that Exhibit 40 provides a list of the tree numbers as reflected on the drawings, along with a note indicating whether a tree will be removed or retained.

Responding to Mr. Lee, Mr. Thiem said a significant tree is one that is eight inches or greater in diameter, measured approximately four feet from finished grade. For some species, the threshold is discounted by 0.5. In other words, a 16-inch diameter Alder is counted as eight inches in the calculation of diameter inches, and Alder under 16 inches in diameter do not meet the definition of significant.

Ms. Madche said the Comprehensive Plan does not require retention of all significant trees. It simply requires retention of significant trees, as governed by the standards in the Land Use Code.

Responding to Mayor Degginger, Ms. Madche said that Policy S-SW-9 references the specific location that is the subject of the appeal. It does not apply to other areas. Responding to Mr. Degginger, Ms. Madche said that if a single-family home were developed on the site, the owner/developer would be allowed to remove all significant trees.

Deputy Mayor Balducci described the difference between the Council's usual role as policymakers versus their role in this matter as judges who must follow specific rules and laws in considering the appeal. This matter does not allow the Council to consider certain types of information that it would be able to incorporate into making a policy decision.

Responding to Ms. Balducci, Ms. Madche said that Comprehensive Plan Policy S-SW-9 and the Land Use Code are consistent in terms of their references to the retention of significant trees. Many Land Use Code regulations implement Comprehensive Plan policies. In further response, Ms. Madche said that the PCD Director's position is that the assurances provided in Policy S-SW-9 were not meant to exceed or supersede the provisions of the Land Use Code.

Responding to Ms. Balducci, Ms. Koloušková said that both parties' arborists addressed the potential excavation into the drip lines of trees, and more detailed information is provided in the record on this issue. Ms. Koloušková reiterated that the applicant is retaining more trees than required by the Land Use Code. The Hearing Examiner's condition requiring an arborist's supervision is aimed at monitoring whether excavation into the drip lines will result in damage to trees.

Referring to Ms. Balducci's previous question regarding Policy S-SW-9, Ms. Koloušková said that the City reviewed the Land Use Code's tree retention section (20.20.900) in 2006 and did not make any changes. This detail is reflected in the Hearing Examiner's record.

Responding to Deputy Mayor Balducci, Mr. Broaddus concurred that the minutes of the Planning Commission's meetings do not differentiate between some or all significant trees in its discussions about tree retention. However, the appellants feel the intent was to protect all significant trees because there were already policies in place to protect some, but not all, trees.

Responding to Councilmember Noble, Ms. Madche said that Exhibit 44 includes the reference that a healthy tree can tolerate disruption of approximately one-third of its roots.

Responding to Mr. Noble, Mr. Broaddus said the appellents believe that the Hearing Examiner's conditions do not comply with Land Use Code provisions requiring the protection of drip lines. The record indicates that seven trees will experience invasion of the drip lines under D.R. Horton's proposal, which Mr. Broaddus said is in violation of the Code. In further response, Mr. Broaddus said that Policy EC-21 specifies that drip lines should be protected.

Responding to Councilmember Noble, Ms. Koloušková said that the referenced policy, EC-21, is not a City Code provision but rather an engineering standard adopted by municipal government and implemented through staff's review of clear and grade plans. This policy has not previously been before the Hearing Examiner because it is applied in the processing of clear and grade applications, and this matter is not addressing a clear and grade application. The issue of the appeal is whether the proposal complies with PUD standards. The applicant will address and comply with any issues that arise during a future clear and grade permit review.

In further response to Mr. Noble, Mr. Broaddus cited case law indicating that the application must comply with the R-10 zoning and the site-specific Comprehensive Plan Policy S-SW-9, in instances in which a site-specific Comprehensive Plan policy exists.

Responding to Councilmember Chelminiak, Mr. Broaddus said that Policy S-SW-9 applies to additional properties between SE 10th and SE 11th Streets, on the east side of Bellevue Way SE.

Mr. Chelminiak noted that the policy refers to significant trees, but not to a stand of trees. If the appellants are arguing that significant trees must be retained, he questioned why they are not arguing that a tree in the middle of the property should be retained. Mr. Broaddus said the policy specifically refers to the trees adjacent to the appellants' properties between SE 10th and SE 11th Streets. Exhibit 42 indicates which trees are within the canopy, and which are to be removed.

Responding to Mayor Degginger, Mr. Broaddus said Policy S-SW-9 applies to an area between SE 10th and SE 11th Streets, which includes approximately seven lots including the Torello site.

Responding to Mr. Chelminiak's previous question, Ms. Kolouśková said the policy does not define parameters for determining what is adjacent in terms of protecting adjacent trees.

Responding to Councilmember Lee, Mr. Thiem described a map showing the landscape perimeter area of the proposed project. The Land Use Code requires the retention of significant trees within 15 feet of the site's eastern property boundary. The applicant proposes to save trees within a buffer averaging 33 feet wide.

→ At 9:56 p.m., Deputy Mayor Balducci moved to extend the meeting to 10:30 p.m. Mayor Degginger seconded the motion.

→ The motion to extend the meeting carried by a vote of 7-0.

Responding to Ms. Balducci, Mr. Thiem said 18 trees are required to be retainined within the site perimeter transition area buffer. The applicant's proposal protects 28 trees because it retains a wider buffer than required. Ms. Balducci questioned the accuracy of the Hearing Examiner's findings regarding three to five trees.

Ms. Kolouśková explained that inside of the perimeter/transition buffer, the City requires the retention of 15 percent of all diameter inches of significant trees. The Hearing Examiner's reference to three to five trees is derived from the calculation of diameter inches using this formula. Ms. Kolouśková referred Ms. Balducci to Exhibits 37 (Applicant's tree retention plan) and 46. Ms. Madche noted that page 34 of the Hearing Examiner's report, as well as the staff report, includes calculations pertinent to the tree retention requirements as well.

Responding to Councilmember Lee, Ms. Kolouśková reiterated that the applicant's proposal retains all significant trees within the required 15-foot perimeter. The concept of perimeter area is defined under the transition area requirements of the Land Use Code. Mr. Thiem concurred with this explanation.

As closing remarks, Mr. Broaddus encouraged the Council to review the language of Policy S-SW-9, and to consider that there is no dispute that the continous tree canopy is adjacent to the property. The appellants believe that the policy intended for the tree canopy to be protected.

→ Councilmember Chelminiak moved to close the Limited Public Hearing, and Deputy Mayor Balducci seconded the motion.

→ The motion to close the Limited Public Hearing carried by a vote of 7-0.

Noting the late hour, Mayor Degginger suggested continuing discussion of the matter to a future meeting.

→ Deputy Mayor Balducci moved to continue further discussion and consideration of the appeal, and Councilmember Lee seconded the motion.

→ The motion to continue consideration of the appeal carried by a vote of 7-0.

Mayor Degginger noted that the issue remains a quasi-judicial matter, and Councilmembers are not allowed to review or receive any comments regarding the application or appeal.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions

(a) Ordinance No. 5813 amending the 2007-2008 biennial budget by increasing the General Fund appropriation by $882,000 and establishing an effective date.

Ms. Hawn reviewed that Ordinance No. 5813 amends the 2007-2008 biennial budget by $882,000 to add staffing in the Police and Fire Departments. The proposal was previously discussed with the Council on April 14.

→ Deputy Mayor Balducci moved to adopt Ordinance No. 5813, and Councilmember Chelminiak seconded the motion.

Councilmember Davidson spoke in support of the motion.

→ The motion to adopt Ordinance No. 5813 carried by a vote of 7-0.

(b) Resolution No. 7740 making certain findings and authorizing execution of a Development Agreement to Allocate Square Footage for Wright Runstad Development in Bel-Red with Wright Runstad & Company and WR-SRI 120th LLC. *[Discussed with Council and a public hearing was held on April 21, 2008.]*

Land Use Director Carol Helland recalled previous Council discussions regarding a proposal by Wright Runstad to execute a Development Agreement with the City affecting Wright Runstad's future development in the Bel-Red area.

→ Deputy Mayor Balducci moved to approve Resolution No. 7740, and Councilmember Lee seconded the motion.

→ The motion to approve Resolution No. 7740 carried by a vote of 7-0.

12. Unfinished Business: None.

13. Continued Oral Communications: None.

14. New Business: None.

15. Executive Session: None.

16. Adjournment

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

Myrna L. Basich
City Clerk

/kaw