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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4033

AN ORDINANCE clarifying Phase II of Bond PUD No. 53 located on a .95 acre site at 14906 Bellevue-Redmond Road upon application of Bamco Trading, Inc. (David Cowper-Smith) for a vacation or modification of the PUD, and granting and denying appeals from the recommendation of the Hearing Examiner thereon.

WHEREAS, an application for reclassification of the property hereinafter described and for vacation or modification of Phase II of Bond PUD No. 53 on that property, located at 14906 Bellevue-Redmond Road in the City of Bellevue, was filed with the appropriate City officials; and

WHEREAS, on September 29, 1988, and November 17, 1988, a public hearing was held thereon before the Hearing Examiner upon proper notice to all interested persons; and

WHEREAS, on December 30, 1988, the Hearing Examiner denied the reclassification application and recommended modification of Phase II of Bond PUD No. 53, subject to certain conditions, on said property and made and entered findings of fact and conclusions based thereon in support of his recommendation; and

WHEREAS, the City of Bellevue Departments of Design and Development, Planning and Public Works and citizen Pamela Toelle appealed the Hearing Examiner's recommendation of December 30, 1988 modifying the PUD; and

WHEREAS, the applicant requested clarification of the Hearing Examiner's recommendation modifying the PUD by letters dated January 16, 1989, and March 6, 1989; and

WHEREAS, on March 23, 1989, the Hearing Examiner issued an Order Amending Decision and Revised Findings and Decision/Recommendation withdrawing his prior recommendation that the PUD be modified and instead recommending clarification of the conditions of Phase II of PUD No. 53; and

WHEREAS, on April 12, 1989, the Planning Department filed a request for clarification/appeal of the Hearing Examiner's Revised Findings and Decision/Recommendation of March 23, 1989; and

WHEREAS, the applicant did not appeal the Hearing Examiner's decision denying the reclassification application, and that application therefore has been denied; and

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WHEREAS, on May 15, 1989, a limited public appeal hearing was held on the appeals of Pamela Toelle and the Planning Department, upon proper notice to all interested parties; and

WHEREAS, on July 17, 1989, the matter was further considered by the City Council at a public meeting; and

WHEREAS, the City Council has determined that the appeal of Pamela Toelle should be sustained and the appeal of the Planning Department should be denied, and that Phase II of PUD No. 53 should be clarified, and desires to enter findings of fact and conclusions with regard thereto; and

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

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

Section 1. The City Council hereby makes and enters the following findings of fact:

a. The City Council adopts the findings of fact made and entered by the Hearing Examiner in support of his recommendation to the City Council in this matter as contained in his "Revised Findings and Decision/Recommendation of the Hearing Examiner for the City of Bellevue in the Matter of the Application of Bamco Trading, Inc. (David Cowper-Smith) for a Reclassification and Vacation of a PUD, HE-REZ-88-1869" dated March 23, 1989, insofar as they are not inconsistent with the following findings of fact.

b. In addition to those findings of the Hearing Examiner adopted herein, the City Council makes the following findings of fact:

1) The issue regarding the location of the line separating retail uses in the north of the site from office uses in the south was the subject of discussions by both the Planning Commission and the City Council at the time of consideration of approval of Phase II of PUD No. 53 and later during the discussion of the vacation of Phase III of PUD No. 53.

2) The minutes of the September 6, 1972 meeting of the Bellevue Planning Commission to discuss final approval of Phase II of PUD No. 53 indicate that "the original planned unit development called for B-1 zoning on the north approximately 130 feet and O zoning on the remainder to the south. The building the petitioner is presenting to the Commission extends into the office area designated by

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the preliminary planned unit development, however, the uses that are to be located in the subject portion of this building are indicated to be of O type uses." Because of the expanded scope of this proposal, the proposal was at that time denied by the Planning Commission.

3) During the City Council meeting on November 27, 1972 to consider final approval of Phase II of PUD No. 53, Councilmember Cole asked Mr. Jerry Hillis, attorney for the developer of the site, "Where the division of the zoning areas is." In response Mr. Hillis stated, "The B-1 zoning comes down approximately 130 feet from NE 20th, which is approximately the end of the commercial uses of that building. The office uses are in the south part of the building." Mr. Hillis also stated that, "One of the conditions of the PUD is, if there is ever a change in use, it has to be approved by the Planning Department. There would be no way for us to decide to put commercial use on the south side. Could not do that without approval of the City."

4) The minutes of the City Council meeting of August 19, 1974, to consider removal of Phase III from PUD No. 53, indicate in pertinent part that, "the approval of the preliminary PUD for the entire parcel and the approval of zoning for B-1L for the northerly 130 feet of Phases I and II and the approval of Phases I and II and final had conditions attached which referred to Phase III . . ."

5) The northerly 130 feet of Phase I of PUD No. 53 was rezoned from Office to B-1L pursuant to Ordinance No. 1694 on July 12, 1971. Section 1 of Ordinance No. 1694 provides that the north 130 feet of said property was so rezoned. Although it was the understanding of the parties that the northerly 130 feet of Phase II of PUD No. 53 would also be rezoned from Office to B-1L with the line dividing such uses coextensive with an extension of the line dividing the B-1L uses from the Office uses pursuant to the rezone of Phase I of PUD No. 53, the City Council never took final action to so rezone Phase II of PUD No. 53.

6) The record before the Planning Commission and the City Council during the processing of the application for preliminary and final approval of Phase II of PUD No. 53 indicates that one of the primary concerns regarding approval of the application was to preclude uses on the property that would attract junior high school students attending the Highland Junior High School across Bel-Red Road from the site.

7) The minutes of the April 7, 1971, Bellevue Planning Commission meeting to consider the owner's petition for preliminary approval of Phase II of PUD No. 53 indicate that the owner, Mr. Allan Bond, stated that, "their intent was to orient the businesses to the NE 20th side and the parking and protection to the south toward

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the junior high school. The buffering and parking on the Bel-Red was for the purpose of putting the least active uses next to the junior high school." Mr. Frank Armstead of Bellevue Schools, inquired, "What was to prevent hot dog stands, etc., in this property that would attract junior high students at recess. The roads and trees won't stop the kids from going in there. The school wants to go on record as being opposed."

8) The minutes of the April 26, 1971, meeting of the Bellevue City Council with regard to the public hearing to consider preliminary approval of Phase II of PUD No. 53 indicate concern with uses on the site attractive to junior high students across Bel-Red Road. Councilmember Rising noted the School District policy of opposing business uses adjacent to schools. Mr. Allan Bond stated that, "The proposed buildings are oriented to the north in order to protect Bellevue/Redmond Road and the junior high school."

9) The minutes of the November 1, 1972, meeting of the Bellevue Planning Commission with regard to final approval of Phase II of Bond PUD No. 53 indicate that Mr. Jerry Hillis, attorney for the owner of the site, stated that, "The major concern mentioned was the possibility of traffic from junior high school kids to the uses that might be put in the PUD and to make sure the development would be oriented to NE 20th. He further indicated that, "At the present time, the uses for the building are a furniture store, a savings and loan bank, and a chiropractor." Mr. Hillis further recommended, "The Commission include in their motion to approve the petition a condition that any uses other than the ones proposed in the plan be approved by the Planning Department and the Planning Commission."

10) The minutes of the November 27, 1972, meeting of the City Council with regard to final approval of Phase II of PUD No. 53 indicate that, "There was concern on this triangle, it is an isolated triangle, with the kind of uses to go in that triangle because of the possibility of attraction to children in the junior high school across Bellevue/Redmond Road. That was the original intent and the reason for the planned unit development so that the Planning Commission and the City Council could control the uses that would go on the subject property." The minutes further indicate that, "the major intent was that any use to the south would be office use and anything that opened to the south would be office use. To the north would be a B-1L use."

Section 2. The City Council hereby makes and enters the following conclusions:

a. The City Council adopts the conclusions made and entered by the Hearing Examiner in support of his recommendation to the City Council in this matter as contained in his "Revised Findings and

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Decision/Recommendation of the Hearing Examiner for the City of Bellevue in the Matter of the Application of Bamco Trading, Inc. (David Cowper-Smith) for a ReClassification and Vacation of a PUD, HE-REZ-88-1869," dated March 23, 1989, except that the City Council does not adopt conclusions No. 6 and 7 therein.

b. In addition to those conclusions of the Hearing Examiner adopted herein, the City Council makes the following conclusions:

1) It was the intent of the City Council in approving Phase II of Bond PUD No. 53 that retail uses be allowed in the northern portion of the property only and that the retail uses of the northerly portion of the property be separated from the office uses in the southerly portion of the property by a line which is an extension of the line dividing the retail uses on the northerly portion of Phase I of PUD No. 53 from the office uses in the southerly portion of the Phase I site as set forth in Ordinance No. 1694 approving the reclassification of the property which underlies Phase I of PUD No. 53. Although the northerly portion of Phase II of PUD No. 53 was not ever rezoned to B-1L, it is clear from the record that it was intended that retail uses would extend southerly only to a line which is an extension of the 130 foot line established in the reclassification of the Phase I property.

2) Of primary concern to the Planning Commission and the City Council, as well as the Bellevue School District, was that the uses allowed on the subject site not be attractive to junior high students attending Highland Junior High across Bel-Red Road. In that regard the City Council intended to restrict such uses and to maintain review authority over any significant changes in the uses of the site as finally approved for Phase II of PUD No. 53.

3) In order to provide a transition to Highland Middle School, control the kinds of uses and intensity of use across from the school, and avoid restaurant and retail uses that would be attractive to students at the Highland Middle School, the uses allowed in the portion of the existing building southerly of the 130-foot line set forth in Conclusion No. 1 above are limited to those uses allowed in the office zone as provided in the final approval of Phase II of PUD No. 53.

Section 3. The City Council hereby finds that there is substantial error in the revised recommendation of the Hearing Examiner, and that the recommendation was unsupported by material and substantial evidence in view of the entire record as submitted. Based on the foregoing Findings of Fact and Conclusions, the appeal of Pamela Toelle is sustained and the appeal of the Planning Department is denied.

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Section 4. Phase II of PUD No. 53, located on the following described property:

The East 375 feet of the West 405 feet of the North half of the Southwest quarter of the Northwest quarter of Section 26, Township 25 North, Range 5 East, W.M., lying Southerly and Southeasterly of County Road No. 966 and Northerly of Redmond-Bellevue Extension County Road, EXCEPT West 250 feet thereof; together with that portion of vacated County Road No. 966 which attached to said premises by operation of law under Ordinance No. 394 of the City of Redmond,

is hereby clarified as follows:

a. The intent of Ordinance No. 1873 granting final approval of Phase II of PUD No. 53 was that the line dividing office and retail use on the property be that line which is coincident with the extension of the line dividing the CB (formerly B-1L) and O use classifications on the adjacent Goodyear property under Phase I of PUD No. 53 as reclassified by Ordinance No. 1694 adopted by the City Council on July 12, 1971.

b. In order to provide a transition to Highland Middle School, control the kinds of use and intensity of use across from the school, and avoid restaurant and retail uses that would be attractive to students at the Highland Middle School, the uses allowed in the portion of the existing building southerly of the 130-foot line set forth in subparagraph a. above are limited to those uses allowed in the office zone as provided in the final approval of Phase II of PUD No. 53.

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

PASSED by the City Council this 17th day of July, 1989, and signed in authentication of its passage this 17th day of July, 1989.

(SEAL)

Nan Campbell
Nan Campbell, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Richard L. Kirkby
Richard L. Kirkby, Assistant City Attorney

Attest:

Marie K. O'Connell
Marie K. O'Connell, City Clerk

Published July 21, 1989