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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4387

AN ORDINANCE approving the application of Overlake Fund for a conditional use permit for a hotel to be located at 605 - 114th Avenue SE.

WHEREAS, Overlake Fund has applied to the City for a conditional use permit to construct a hotel to be located at 605 - 114th Avenue SE, the intersection of SE 6th Street and 114th Avenue SE; and

WHEREAS, on September 5, 1991; October 24, 1991; December 10, 1991; and December 12, 1991, public hearings were held thereon by the Hearing Examiner Pro Tempore pursuant to notice required by law; and

WHEREAS, on April 3, 1992, the Hearing Examiner Pro Tempore recommended denial of said application and made and entered findings of fact and conclusions based thereon in support of his recommendation; and

WHEREAS, on April 23, 1992, the applicant filed an appeal to the City Council of the recommendation of the Hearing Examiner; and

WHEREAS, on June 22, 1992, the City Council conducted a limited public hearing on the appeal, at which all interested parties had an opportunity to be heard; and

WHEREAS, following the limited public hearing on the appeal, the City Council determined that the appeal should be granted and that the application should be approved, subject to conditions; and

WHEREAS, the City Council now desires to enter findings of fact, conclusions and its decision as hereinafter set forth; and

WHEREAS, the City of Bellevue 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 makes and enters the following findings of fact:

1. The Applicant, Overlake Fund, requests a conditional use permit to construct a 75-foot-high, 7-story, 238-room hotel, with parking for 346 vehicles on the first level of the hotel structure and a proposed 3-level parking structure on the

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south side of the proposed development. The development would be located on a 6.982-acre parcel located at 605 - 114th Avenue SE, at the intersection of SE 6th and 114th Avenue SE in Bellevue (the "site").

2. The site is in the South Bellevue subarea, and is located in an Office and Limited Business (OLB) land use district. Hotels are permitted in this district. The height limit in the OLB district is 45 feet, provided this limit may be exceeded to a maximum of 75 feet with a conditional use permit if the property is located within 475 feet of the right-of-way of I-405. The site is located within 475 feet of the right-of-way of I-405.
3. Among the proposals considered by the City of Bellevue were "Scheme A" (aka "Alternative A") and "Scheme D", both of which are described in the City staff report. During a pre-hearing conference on September 5, 1991, prior to the public hearing, the parties agreed that Scheme A was vested, but disagreed whether Scheme D was vested for the purpose of the public hearing. The hearing was adjourned to allow time for the parties to resolve the dispute. The parties were unable to reach agreement about whether Scheme D is a vested proposal, but arrived at a stipulation that allowed the hearing to proceed.
4. During the reconvened public hearing on October 24, 1991, a stipulation was received into the record, which states, in part, that:

The City continued to maintain its position that the only vested proposal is Alternative A and Scheme D is not vested, and Overlake Fund continued to maintain that Scheme D is vested. However, the City acknowledges, and the Overlake Fund agrees, that the hearing may proceed without deciding those issues; and that the Examiner and Council may consider the application using Alternative A as the "proposal" for the purposes of SEPA, the SEPA regulations, the Environmental Procedures Code, and the Land Use Code. The City and Overlake also agreed that the applicant may present evidence on Scheme D and the Examiner and the Council have authority in their discretion to condition Alternative A based on the modifications in Scheme D, if either decision-maker determines that Scheme D adequately mitigates the adverse environmental impacts of alternative A. The City contends that Scheme D does not mitigate the adverse impacts, and the Overlake Fund

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contends that Scheme D does adequately mitigate the adverse impacts.

5. In addition to Scheme D, the applicant presented evidence on a modified version of Scheme D, which it calls Scheme G. Scheme G is like Scheme D, except that it does not include a street vacation along 114th Avenue SE, and the hotel and access drive would be shifted west, resulting in a further disturbance of the wetland.
6. The Examiner considered evidence regarding Scheme A, Scheme D, and Scheme G at the public hearings on October 24, 1991; December 10, 1991; and December 12, 1991.
7. Approximately 6.2 acres (89 percent) of the site consist of wetlands adjacent to Sturtevant Creek, a tributary of the Mercer Slough/Kelsey Creek system which empties into Lake Washington. The wetlands have statewide significance and are subject to the state shoreline regulations and the City's Land Use Code Shoreline Overlay District. Sturtevant Creek is considered a Type A riparian corridor and about 6.2 acres (89 percent) of the site are identified as Type A wetlands. The remainder of the site is filled. Scheme A would result in the disturbance of approximately 1.5 acres of wetland. Wetland disturbance would be limited to approximately .6 acres under Scheme D and approximately .73 acres under Scheme G.
8. This site is located west of I-405 and is bounded on the east by 114th Avenue SE, on the north by SE 6th Street, on the south by wetland preserved on the site of the Bellevue Gateway office building, and on the west by the Lincoln Plaza office building.
9. Property to the east is zoned PO (Professional Office) and is developed with a METRO park and ride lot. Property to the north and west are also zoned OLB. To the north is a 2-story office building over parking (the James Center) and to the west is Lincoln Plaza, a 3-story building complex of 2-story structures over one level of parking. Property to the south is zoned OLB with conditions and is developed with Bellevue Gateway, a 4-story office building.
10. The original proposal, Scheme A, provided for a building 75 feet in height, with a building pad of 79,585 square feet and wetland disturbance of 1.5 acres. Scheme D would increase the height to 86.61 feet (requiring a variance), but would reduce the building pad to 62,000 square feet and the wetland

disturbance to .6 acres. Under Scheme G, wetland disturbance would be reduced to .73 acres.

11. Under Scheme D or G, the hotel structure would be bent into an L-shape and would feature two additional floors, and a gabled roof intended to shield the mechanical equipment. The length of the building pad would be reduced from 572 feet to 385 feet. The building would have 11 floors, with a building height of 75 feet plus 15 feet for mechanical equipment. A variance would be required to exceed the 75-foot height limit permitted with approval of a conditional use permit. A shoreline variance to exceed the 35-foot height limit would be required for all proposals. Design review approval and a shoreline substantial development permit would also be required for all proposals. Both the shoreline variance and the substantial development permit require approval of the Department of Ecology.
12. There would be three access points. Primary access to the lobby and the service access would be located off 114th Avenue SE. Access to the parking garage would be near the south property line. Parking for 346 vehicles would be provided in a continuous lower parking level, under the entry deck level, and in a 4-level parking garage. The parking garage would extend to a height of 28 feet above grade at the edge of the SE 6th Street right-of-way.
13. Exterior finish materials include painted concrete and synthetic stucco with walls at the plaza level featuring a granite or ceramic tile finish. Glass is proposed to be tinted bronze or gray with dark anodized frames. Railings would be painted galvanized steel and grills would be painted ornamental iron.
14. Section 20.25C of the Land Use Code provides that all development within the OLB district is subject to design review and must have a unity of design, including wall and roof materials, roof slopes and window patterns. The specific design standards relating to landscaping, lighting and signage will apply to development on the site.
15. Section 20.25E of the Land Use Code requires that development on the site conform with requirements of the Shoreline Overlay District.
16. An Environmental Impact Statement ("EIS") was prepared for the proposed development. The Draft EIS was issued on June 23,

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1989, and the Final EIS was issued on October 4, 1989. The Comprehensive Plan Goals and Policies which provide substantive authority under SEPA are those which were in effect on the date that the Draft EIS was issued, June 23, 1989.

17. On August 22, 1991, the Department of Design and Development issued its staff report and recommendation on the application. The Department recommended that the application be denied, but further recommended that it be remanded to the Hearing Examiner for consideration of a design alternative meeting the following four basic criteria:
 - (1) Wetland intrusion not to exceed .6 acres;
 - (2) Building height of 45 feet plus area for mechanical equipment;
 - (3) Front yard setback relief from the minimum 50 feet of not more than 10 feet; and
 - (4) A mitigation plan for on-site which includes enhancements to Sturtevant Creek and off-site which includes the enhancement of existing wetland based on a ratio of 1.25:1.
18. At the December 12, 1991, hearing on the application, the City staff modified its previous recommendation for a denial and remand to a recommendation of approval of the vested application modified to achieve the Scheme D configuration and subject to certain conditions. That modified recommendation was subsequently reduced to writing in memoranda from the Director of Design and Development dated December 17, 1991 (Record, Book 1, pages 1032-1034) and January 30, 1992 (Record, Book 1, pages 1055-1056). The new recommendation modified the previous recommendation of a 45-foot height limit to a recommended height limit of 75 feet plus additional height for mechanical equipment screening. The modified recommendation continued to provide for wetland intrusion not exceeding .6 acres (or .73 acres in the event of the approval of Scheme G) and called for other wetland protections.
19. The application is subject to the Natural Determinants Element of the Comprehensive Plan of the City of Bellevue. Relevant policies provide:

21.D.100.C.5

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Development in waterways, floodplains and wetlands should be prohibited except where development can be accomplished in a manner which:

- a. Assures the protection and safety of persons and property, public and private;
- b. Preserves and protects the existing natural environment;
- c. Will not result in the degradation of waterways, floodplains and wetlands.

21.D.100.D.5

Preserve and maintain wetlands in their natural state.

21.D.100.D.6

Preserve aquatic and riparian habitats in their natural state and rehabilitate similar areas that have been degraded.

21.D.200.D.1

Regulate land use and development in a manner which protects natural topographic, geologic, vegetational and hydrologic features.

21.D.200.D.2

Promote soil stability and use of the natural drainage system by retraining critical areas of existing native vegetation.

20. Because of the inherent nature of the site, any development will necessarily impact the wetlands. The analysis and redesign that has occurred through the conditional use process has resulted in a final alternative to the original proposal which has reduced wetland disturbance from 1.5 acres to .6 or .73 acres, which provides for creation of on-site replacement capacity for any floodplain reduction resulting from the development, and which provides for on-site and off-site wetland mitigation and enhancement. Off-site enhancement is to be at a ratio of 1.25:1.
21. The application is also subject to the South Bellevue Subarea Element of the Comprehensive Plan. Comprehensive Plan Policy 21.V.11.100 provides for retaining and enhancing vegetation within wetland areas. By reducing total wetland coverage, the

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alternative as now recommended by the Department of Design and Development will minimize disturbance of wetland vegetation.

22. Relevant policies of the Shoreline Master Program Policy Element of the Comprehensive Plan provide:

21.U.056

Uses and activities in unique fragile areas should be discouraged unless measures can be satisfactorily undertaken to mitigate all related adverse impacts.

21.U.102

Existing natural resources should be conserved ...

- b. Wildlife habitat should be protected, improved and, if feasible, increased.
- c. Unique and fragile areas should be so designated and maintained. Access and use should be restricted if necessary for the conservation of these areas.

21.U.308 Wetlands

- a. Economic uses and activities should minimize and cluster that water-dependent portion of their development along the wetland shoreline and place inland all facilities which do not require a water's edge location.
- e. Economic development should be designed to preserve the aesthetics and natural amenities of the wetland area and to be compatible with appropriate existing developments in the vicinity.

Because of the nature of the site, any development will necessarily impact the wetland and the wetland habitat. The design alternatives now recommended by the Department of Design and Development will reduce these impacts by reducing the total amount of wetland disturbed, and will provide for a mitigation plan including enhancements to Sturtevant Creek and the wetlands.

23. The application is also subject to the Urban Design Element of the Comprehensive Plan, including Comprehensive Plan Policy 21.Q-1, providing that the City should have an image of quality and distinction in the harmonious blending of the

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natural and built environment; Comprehensive Plan Policy 21.Q-4D, providing that the City should have attractive gateways established at all principal entrance points; Comprehensive Plan Policy 21.Q.42, providing that each gateway shall have a special image created through special site design, building design, artwork and landscape features. Other applicable policies include Comprehensive Plan Policy 21.Q-43, regarding views; Comprehensive Plan Policy 21.Q-3, regarding vehicular and pedestrian routes; Comprehensive Plan Policy 21.Q.56, regarding boulevards; and Comprehensive Plan Policy 21.Q-62, providing:

I-90, I-405 and SR-520 serve as linear "gateways" to the City. Therefore, all development abutting freeway corridors should utilize special features such as closely spaced major scale planting, unobtrusive signage, shielded lighting and terraced building massing to present the City in a graceful manner. Attention should be given to the harmonious treatment of buildings within a development as well as a blending of characteristics between various sites. Vegetation and architectural forms should be the prominent image from the freeway, not surface parking. Color is encouraged as an accent, but not as a dominant characteristic.

Section 2. Based on the above findings of fact, the City Council hereby makes and enters the following conclusions:

1. This application presents foursquare the confounding issues, both on practical and policy levels, inherent in the development of sensitive lands. On one hand, the law recognizes that, in most cases at least, some economic development of land must be permitted. On the other hand, the City is both authorized and obligated, under state law and its own regulations and policies, to protect and preserve sensitive areas such as wetlands. In considering an application of this type, then, the decision-maker must balance these often conflicting interests. This process must necessarily result in the acceptance of some level of environmental impact. Likewise, it will generally result in development considerably less intensive than might be appropriate on land not classified as sensitive.
2. The 7-acre site which is the subject of this application contains 6.2 acres of wetland, almost 89 percent of the site. The original proposal would have disturbed 1.5 acres of wetland, or almost 25 percent of the total. The alternative proposal as now recommended by the Department of Design and

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Development contains conditions which would reduce wetland coverage to .73 acres. (The Council has concluded that there is no potential for the vacation of a portion of 114th Avenue S.E., which is essential to Scheme D, so that Scheme D is not feasible.) This represents a substantial reduction from the original proposal. Further, the proposal will have a substantially lower impact on wetlands than similarly situated, adjacent parcels which were developed prior to adoption of the Natural Determinants Policies.

3. Additionally, because the alternative as recommended by the Director of Design and Development would be required to provide an on-site wetland mitigation plan and an off-site enhancement plan providing new wetlands for wetlands lost in a ratio of 1.25:1, the development will not result in any net loss of wetlands, and would likely result in a net gain.
4. The alternative now recommended by the Department of Design and Development will comply with the Natural Determinants Element of the Comprehensive plan. The conditions and mitigation measures proposed will adequately assure the protection and safety of persons and property, public and private; will preserve and protect the existing natural environment; and will not result in the degradation of waterways, floodplains and wetlands. It will also substantially comply with Comprehensive Plan 21.D.100.D.5, requiring the preservation and maintenance of wetlands in their natural state. Although, as with any development on a wetland site, some natural wetlands will be lost, this loss has been minimized through design modification and will be balanced by a provision of additional wetland or wetland enhancement. The alternative as now recommended by the Department of Design and Development will also comply with Comprehensive Plan Policies 21.D.100.D.6, 21.D.200.D.1 and 21.D.200.D.2.
5. The alternative now recommended by the Department of Design and Development will also comply with Comprehensive Plan Policy 21.D.11.100, South Bellevue Subarea, requiring the retention and enhancement of existing vegetation in wetland areas. Although the alternative will result in the loss of some existing wetland, that loss has been minimized through design modification, and mitigation and conditions requiring the provision of new wetland will substantially enhance existing vegetation. A natural net gain in wetland vegetation may result.

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6. The alternative as now proposed by the Director of Design and Development will comply with Comprehensive Plan Policy 21.U.056, Shoreline Master Program Policy Element, providing that uses in unique and fragile areas should be discouraged unless measures can be satisfactorily undertaken to mitigate all related adverse impacts. Although there will necessarily be impacts on the wetland, so that they have not all been eliminated, these impacts have been substantially mitigated. This has been accomplished by:

- 1) Design modifications to reduce impacts to the minimum practicably feasible; and
- 2) Providing for provision of additional wetlands to compensate for those impacted.

The alternative as now recommended by the Department of Design and Development also complies with Comprehensive Plan Policy 21.U.102, requiring that existing natural resources be conserved, and 21.U.308, generally providing that economic uses and development should minimize their wetland impact and be designed to preserve aesthetics and natural amenities in wetland areas, and be compatible with appropriate existing developments in the vicinity. Wetland impacts have been reduced, through design modification, to the minimum reasonably consistent with economic development of the site. Further, this application is subject to design review which will assure that it be compatible with nearby development.

7. The alternative now recommended by the Department of Design and Development is also consistent with the Urban Design Element of the Comprehensive Plan of the City. Relevant policies provide that the City should have an image of quality and distinction and the harmonious blending of the natural and built environment; should have attractive gateways established at all principal entrance points to the City, with each gateway having a special image created through special site design, building design, artwork and landscape features; that vehicular and pedestrian routes should serve as visually appealing connections between activity centers and open space; and that development abutting freeway corridors should utilize special design features to present the City in a harmonious manner.
8. The application is subject to design review, and most of these factors would be dealt with in that process. More generally, the original staff report expressed concern about the height

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of the building, in relation to existing buildings and in relation to the building as a gateway to the City. While, ideally, a somewhat shorter building would be optimum, somewhat increased height is a reasonable tradeoff for the substantial reduction in wetland impact of the project. The height as recommended by the Department of Design and Development does not inherently conflict with the above cited urban design element, which contain no specific height limitations. A building of the recommended height can still present a community image of quality and distinction and provide an attractive gateway as provided in the Urban Design Element. This can be accomplished and assured through the required design review process.

Section 3. The City Council further concludes as follows:

1. The conditional use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property; and
2. The conditional use will be served by adequate public facilities including streets, fire protection, water, storm water control and sanitary sewers; and
3. The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property; and
4. The conditional use has merit and value for the community as a whole; and
5. The conditional use is in accord with the Comprehensive Plan; and
6. The conditional use complies with the Land Use Code requirements of the underlying use district; and
7. The conditional use complies with all other applicable criteria and standards of the Bellevue City Code, except insofar as certain variances or other approvals may be required as indicated in the staff report.

Section 4. Regarding the appeal hearing, the City Council concludes:

1. The appellant has carried the burden of proof and produced evidence sufficient to support the conclusion that the appeal should be granted; and
2. The recommendation of the Hearing Examiner is not supported by the preponderance of the evidence.

Section 5. The appeal of the applicant is granted and the application is approved, to be located at 605 - 114th Avenue S.E., more particularly described as follows:

The southeast 1/4 of the Southeast 1/4 of the Southeast 1/4 of Section 32, Township 25 North, Range 5 East W.M., lying Westerly of that portion conveyed to the State of Washington for highway purposes by instruments recorded under Recording Nos. 4342009, 4913771, 4342069, 7104130348 and 7104210101;

EXCEPT the West 3.80 feet thereof;
AND EXCEPT the North 30 feet thereof conveyed to the City of Bellevue for road as recorded under Recording Nos. 5723576 and 7104130348;
Situate in the City of Bellevue, County of King, State of Washington.

provided said approval is subject to the following conditions:

1. The application approved is the vested application modified to be consistent with the design intent of the Scheme G configuration, and subject to the following parameters:
 - a. Building height is limited to 75 feet plus 15 feet for mechanical equipment screening. The design shall include a pitched roof formed to provide screening for mechanical equipment, elevated overrides, vents, etc. which will be located above the 75-foot height. Approval is dependent upon the applicant establishing that the proposed pitched roof form has essential mechanical equipment screening by demonstrating the following: 1) the space created by the pitched roof form is not habitable space, and 2) the quantity and nature of the mechanical equipment elements is such that consolidation of these on or in the building is not feasible, and therefore a general screening device such as the proposed pitched form is required to provide adequate visual screening.

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Alternatively, the applicant shall propose a roof mechanical screening design, which complies with the height restrictions stated above.

- b. Front yard setback relief from the 50 feet established by the Land Use District is to be no less than 20 feet from the property line to the garage structure. South of the garage structure, the setback from the property line of the building may be reduced by both the curve of the property line, and by the abrupt realignment of the right-of-way, concluding in an effective setback to approximately 1 foot at the south end of the building. Through design review, the Design and Development Department will review plans demonstrating that maximum attempt has been made to preserve setback, with no less than 20 feet between property line and building along both the north and east portions of the garage structure.
- c. Wetland intrusion shall not exceed .73 acres as shown on Scheme G. Because of the many constraints affecting this development proposal, the Storm & Surface Water Utility will consider a proposal which would create replacement capacity on-site for any minimal reduction in the floodplain capacity caused by the building. Given that the application was filed prior to the natural determinants regulations, the Utility will consider a plan for on-site wetland enhancement which would include recapturing active floodplain capacity through limited excavation, replanting and restoration procedures.
- d. Applicant will provide a mitigation plan satisfactory to the City for 1) on site wetland mitigation which includes enhancements to Sturtevant Creek and 2) off site wetland mitigation which includes the enhancement of existing wetlands based on a ratio of 1.25:1.
- e. The refinement of design plans shall be accomplished through the design review process.
- f. The ultimate design solution for this site must appropriately mitigate the significant adverse environmental impacts identified in the EIS and must satisfy each of the decision criteria for approval of a conditional use permit. Issues to be considered are the impact on the floodplain and the wetland, the bulk and scale of the building and its relationship with the street, the impact of the building within the context of

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existing development in the vicinity of the site and within the foreground of an identified gateway to the City. The intent of the City is to provide the applicant an opportunity to redesign its vested proposal, through a modified Scheme G design, and to provide guidance through the parameters to find the above and developing design solutions which will satisfy these objectives.

- g. The design of the parking lot may be modified through the administrative design review process if such modifications can provide for more a graceful relationship between the garage and the street. This can be accomplished by creating a terrace structure, or by introducing significant landscaping into the design of the parking structure to break down the mass of the building, or through other design solutions that accomplish the same result. Additional intrusion into the wetland may be permitted if the applicant demonstrates that it is necessary to accomplish this improved parking structure design, so long as the overall wetland disturbance for the project does not exceed 1 acre.

Section 6. This ordinance shall be recorded with the King County Department of Records and Elections.

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Section 7. This ordinance shall take effect and be in force five days after its passage and legal publication.

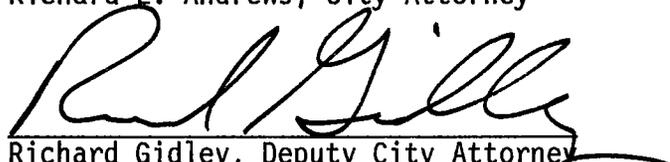
PASSED by the City Council this 13th day of July, 1992,
and signed in authentication of its passage this 13th day of
July, 1992.

(SEAL)

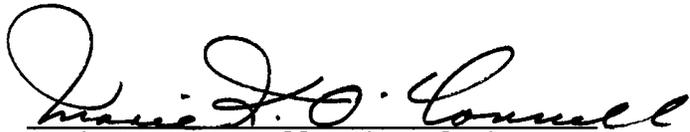

Cary Bozeman, Mayor

Approved as to form:

Richard L. Andrews, City Attorney


Richard Gidley, Deputy City Attorney

Attest:


Marie K. O'Connell, City Clerk

Published July 17, 1992