

ORIGINAL

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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4541

AN ORDINANCE reclassifying an 82 acre parcel of property located north of Eastgate Way, south of Kamber Road, east of Puget Power transmission lines and west of Bellevue Community College, commonly referred to as the Sunset Park Corporate Campus, on application of Wright Runstad & Company.

WHEREAS, Wright Runstad & Company applied to the City to rezone an 82 acre parcel of property located north of Eastgate Way, south of Kamber Road, east of Puget Power transmission lines and west of Bellevue Community College, commonly referred to as the Sunset Park Corporate Campus, by amending certain conditions of that certain Concomitant Zoning Agreement adopted pursuant to Ordinance No. 4010 and given Clerk's Receiving No. 14463; and

WHEREAS, on March 25, 1993, a public hearing was held on the rezone application before the Hearing Examiner for the City of Bellevue pursuant to proper notice as required by law; and

WHEREAS, by Order dated March 31, 1993, the Hearing Examiner notified interested parties of certain additional submittals for the record and allowed written responses by April 12, 1993; and

WHEREAS, on April 23, 1993, the Hearing Examiner recommended approval of certain requested amendments to the Concomitant Zoning Agreement and denial of certain requested amendments to the Concomitant Zoning Agreement and made and entered findings of fact and conclusions based thereon in support of his recommendation; and

WHEREAS, the City Council concurs in the findings of fact and conclusions of the Hearing Examiner, except as expressly provided hereinafter, and has determined that the public use and interest will be served by reclassifying the property by modification of certain conditions of the Concomitant Zoning Agreement; 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 adopts the findings of fact and conclusions based thereon, made and entered by the Hearing Examiner in

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support of his recommendation to the City Council approving in part and denying in part the reclassification request with regard to the hereinafter described property located north of Eastgate Way, south of Kamber Road, east of Puget Power transmission lines and west of Bellevue Community College, commonly referred to as the Sunset Park Corporate Campus, as set forth in "Findings, Conclusions and Recommendation of the Hearing Examiner for the City of Bellevue in the Matter of the Application of Wright Runstad & Company (Sunset Park Corporate Campus) For a Reclassification, File No. REZ 92-9555;" provided, that the following findings of fact and conclusions are modified to read as follows:

FINDINGS OF FACT

21. Reclassifications in Bellevue now usually contain a separate condition reserving to the City the discretion to subordinate any affordable housing regulatory agreement to the interests of the lender and mortgage insurer. The 1989 reclassification of this property did not contain such a condition.

22. The ability of the Owners to obtain financing for the housing element is hampered without subordination of any affordable housing regulatory agreements. Some Federal lending and mortgage insurance programs absolutely require subordination of such agreements.

24. The provisions of the Concomitant Zoning Agreement pertaining to the quantity and income levels of affordable housing units should be amended to provide the Owners with greater financing alternatives for the project while at the same time retaining an acceptable quantity and mixture of affordable units. A requirement of 20% affordable housing for the site with 10% moderate and 10% low income housing units meets this requirement; provided that the 10% low income affordable housing component should be required only if financial subsidies can be obtained for the project as provided in amended conditions 6 and 7 hereinafter set forth. In the absence of financial subsidies, the 20% affordable housing requirement should be met with the provision of moderate income units.

CONCLUSIONS

16. The inability to obtain financing amounts to a changed circumstance regarding development of the property, although Applicant never represented that financing was available at the time of the 1989 reclassification proceedings nor was that factor a subject of any interest in the City Council discussion of Ordinance No. 4010 and the Concomitant Zoning Agreement. Alternatively, a change in the affordable housing condition is appropriate in order to allow reasonable development of the property. Either way, the requirement of LUC 20.30A.140.b is met.

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21. The Hearing Examiner rejects Applicant's claim that Ordinance 4269 should supplant the housing set aside requirements of Ordinance 4010 by virtue only of being a later enactment. Were that to be followed, any later enactment deemed to be relevant by a developer, proponent or opponent of a change in land use could be used retroactively to upset whatever may have previously been established as the governing limits to a given development. In this case for example, if the 1989 reclassification required a set aside of 12% of total housing units for households of moderate income, would that be automatically suspect because Ordinance 4269 requires a 10% set aside? The uncertainty this could create and the mischief this might allow is too much to comprehend.

23. The contention of those who testified in opposition to a change in the 1989 conditions on the grounds that "a deal had been struck" is rejected. The essence of this claim is the sanctity of contract. However, any contract is subject to mutually agreed upon amendments if the 1989 proceedings are deemed a simple contract. The 1989 City Council debate over the terms of Ordinance No. 4010, Findings No. 10-12, supra, was a quasi-judicial proceeding and not a bargaining session.

28. Changed circumstances, the recent requirement of public and private lenders that re-sale of a development foreclosed upon or otherwise taken back by a lender not be subject to any affordable housing regulatory agreements, dictate this new condition. (LUC 20.30A.140.b): This change in lending policies was recognized by the City in 1992 (Finding No. 20) with respect to then pending reclassifications wherein the City determined to allow subordination of affordable housing regulatory agreements at the option of the City.

Section 2. The following described property located north of Eastgate Way, south of Kamber Road, east of Puget Power transmission lines and west of Bellevue Community College, commonly referred to as the Sunset Park Corporate Campus, is hereby reclassified from R-10 and OLB with conditions to R-10 and OLB subject to the revised conditions which follow:

That portion of Section 10, Township 24 North, Range 5 East, W.M., in King County, Washington, described as follows:

- I. Lot 1: Lot 1 of that certain Boundary Line Adjustment No. 90-5248 recorded in King County, Washington under Recording No. 9012049030.
 - A. Parcels 1, 2, 3, 4, and 5: Lots 1, 2, 3, 4 and 5, respectively, of that certain Binding Site Plan recorded in King County, Washington in Volume 154 of Plats, Pages 77-80 under Recording No. 9012180243.

- II. Lot 2: Lot 2 of that certain Boundary Line Adjustment No. 90-5248 recorded in King County, Washington under Recording No. 9012049030.
 - A. Parcels 6, 7, 8, 9 and 10: Lots 6, 7, 8, 9 and 10, respectively, of that certain Binding Site Plan recorded in King County, Washington in Volume 154 of Plats, Pages 77-80 under Recording No. 9012180243.
- III. Lot 3: Lot 3 of that certain Boundary Line Adjustment No. 90-5248 recorded in King County, Washington under Recording No. 9012049030.
- IV. Lot 4: Lot 4 of that certain Boundary Line Adjustment No. 91-6989 recorded in King County, Washington under Recording No. 9109249009.
- V. Lot 5: Lot 4 of that certain Boundary Line Adjustment No. 91-6989 recorded in King County, Washington under Recording No. 9109249009.

1. Conditions 5, 6, 7, 8, 9 and 16 of that certain Concomitant Zoning Agreement adopted pursuant to Ordinance No. 4010, given Clerk's Receiving No. 14463 and recorded in King County, Washington under Recording No. 8906120619, are hereby amended to read as follows:

5. Twenty percent (20%) of the total number of housing units constructed in the project shall be "affordable" to low and moderate income households in the ratio set forth in conditions 6 and 7 below. The definition of moderate and low income affordable units shall be as set forth in Land Use Code (LUC) 20.50.010.

6. The provision of the twenty percent (20%) affordable housing requirement shall be as follows:

a. Of the seventy-six (76) housing units to be built in the first residential phase, ten percent (10%) must be affordable units and may be set aside solely for moderate income households. The remaining required affordable units may be delayed until the second residential phase.

b. Twenty percent (20%) of the housing units built in the second residential phase must be affordable units. In addition, affordable units equal in number to twenty

percent (20%) of the total number of housing units built in the first residential phase, less the actual number of affordable units built in that phase, shall be built in the second residential phase. Owners may elect to include any remaining required affordable housing units in the second residential phase.

c. The Owners shall involve a developer or other organization specifically in the business of affordable housing for the second residential phase of development.

d. If the twenty percent (20%) affordable housing requirement for the entire project has been provided in the first two residential phases, subsequent phases would not be required to provide additional affordable housing units.

7. The twenty percent (20%) affordable housing requirement shall be divided equally (10%/10%) between low and moderate income units, subject to the following:

a. The ten percent (10%) low income requirement shall be required only if financial subsidies to allow development of low income units rather than moderate income units are available to the Owners for the project.

b. The City shall have the responsibility to locate subsidies for the low income housing component of the project.

c. The City shall have until one-hundred and eighty (180) days prior to the Owners' obtaining construction financing to locate low income housing subsidies, or until November 1, 1993, whichever occurs later.

d. If low income housing subsidies cannot be located within the time period specified in condition 7.c above, the low income housing requirement shall no longer be applicable and twenty percent (20%) of all housing units shall be for moderate income housing.

8. The affordable housing units provided pursuant to this agreement shall remain "affordable units" for the lifetime of the project. The provision for the total affordable units is

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required to occur on-site. The provisions of LUC 20.20.128.E, Alternative Compliance Methods, shall not apply to this site.

9. Before any building permit is issued, the Owners shall sign any necessary agreements with the City to implement the affordable housing requirements set forth in this agreement. The City may agree, at its sole discretion, to subordinate any affordable housing regulatory agreement for the purpose of allowing Owners to obtain financing for development of the property, consistent with any applicable provision of the Land Use Code in effect at the time the permit(s) is issued; provided however, that the City shall effect said subordination in the event a Federal financing program is to be used and said program requires, by statute, rule or decisional law, such subordination as a condition for financing.

16. The existing vegetation on the eastern property line shall be retained. The width of the retention buffer on the R-10 portion of the property shall be no less than the requirement for transition to a single family district current at the time of Building Permit application submittal. The buffer shall be no less than 30 feet in width on the OLB portion and shall average 40 feet in width on the OLB portion of the property. The stand of Douglas Fir and Madrona trees on the southeast portion of the site shall be retained in a dimension of at least 75 feet in width. The limits of the buffer shall be determined with the Master Plan review. A Native Growth Protection Easement shall be recorded for the buffer. Provided, however, that Owner may seek approval of the Design and Development Department for construction and maintenance of an access road through the Native Growth Protection Easement and, provided further, that consideration of such approval shall require appropriate and effective means of abatement of noise, light and glare which could affect surrounding uses and property and, provided further, that in no event shall any such access road, except for required emergency access, connect with any thoroughfare on the property of Bellevue Community College. Such access will be allowed only if its design demonstrates protection and preservation of the treed skyline and if it adequately buffers the subject property from adjacent properties and uses.

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This reclassification from R-10 and OLB with conditions to R-10 and OLB with revised conditions is conditioned on full compliance by the Owners of said property and their heirs, assigns, grantees or successors in interest, with the terms and conditions of that certain Amendment to Concomitant Zoning Agreement executed by the Owners, which has been given Clerk's Receiving No. 19271 and which is adopted by reference into this ordinance as if it was fully set forth herein. That certain Concomitant Zoning Agreement adopted pursuant to Ordinance No. 4010, given Clerk's Receiving No. 14463, and recorded in King County, Washington under Recording No. 8906120619, shall remain in full force and effect except to the extent it is expressly amended by said Amendment to Concomitant Zoning Agreement.

Section 3. This Ordinance shall take effect and be in force five days after its passage and legal publication.

PASSED by the City Council this 28th day of June, 1993, and signed in authentication of its passage this 28th day of June, 1993.

(SEAL)

Margot Blacker
Deputy Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Richard L. Kirkby, Assistant City Attorney

Attest:

Myrna L. Basich, City Clerk

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