

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5625

AN ORDINANCE amending Ordinance No. 5609, determining the public advantage in vacating the plat known as the Fox Addition Plat located in the City of Bellevue, Washington and vacating the same subject to certain conditions; and providing alternative options to BV-Holdings LLC dba BV-Wasatch Holdings, LLC ("Wasatch") for acceleration of the vacation and transfer of title to the vacated right of way known as NE 9<sup>th</sup> Street; and relinquishing utility easements.

WHEREAS, on June 20, 2005 the City Council held a public hearing and subsequently approved Ordinance No. 5609 vacating the Fox Addition Plat subject to certain conditions; and

WHEREAS, Ordinance No. 5609 conditioned the vacation upon satisfaction of certain requirements for granting of easements and construction of the mid-block vehicular connection, installation of enhanced landscaping, installation of widened sidewalks and reservation of utility easements; and

WHEREAS, pursuant to the terms of Ordinance No. 5609 the vacation is not effective and title is not transferred until fulfillment of these requirements in full; and

WHEREAS, Ordinance 5609 contemplates that the City's retaining title to NE 9<sup>th</sup> Street ensures satisfaction of these requirements; and

WHEREAS, since passage of Ordinance 5609, the City was advised that retaining title to NE 9<sup>th</sup> Street to secure satisfaction of these requirements prior to vacation and transfer of title to NE 9<sup>th</sup> Street makes it difficult for Wasatch to obtain construction financing; and

WHEREAS, the sidewalk and landscaping improvements required by Ordinance 5609 cannot be installed until project construction is nearly complete, since sidewalk and landscaping are typically among the last items installed; and

WHEREAS, the City Council believes it is the best interest of the City and its citizens that this project continue to completion and that there are other means of securing completion of the requirements of Ordinance 5609; and

WHEREAS, the posting of security devices is a means of securing completion of the conditions required by Ordinance 5609; and

WHEREAS, such security devices would cover the cost of installing the improvements if developer did not complete the conditions of Ordinance 5609; and

WHEREAS, the City Council is willing to accept security devices as an alternative means of securing completion of the conditions of Ordinance 5609; and

WHEREAS, the City Council approval is required to amend the plat vacation ordinance to provide for the transfer of title to NE 9<sup>th</sup> Street immediately if security devices are provided in lieu of specific performance; and

WHEREAS, easements in favor of the Bellevue Sewer District for sanitary sewer pipeline purposes, to which the City is successor in interest, were executed in 1958 with regard to Lot A of Bellevue Realty Redwood Addition, and recorded under King County Recording Number 5179958; and

WHEREAS, easements for utilities together with a right of ingress and egress were executed in favor of the City of Bellevue and recorded under King County Recording Numbers 8003070315 and 8003070316; and

WHEREAS, an easement for sidewalk, slope landscaping, lighting and utilities was executed in favor of the City of Bellevue and recorded under King County Recording Number 20020612001621; and

WHEREAS, the aforementioned easements are no longer needed by the Bellevue Utilities Department and the Bellevue Transportation Department; now, therefore,

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

Section 1. Section 1 of Ordinance No. 5609 is amended as follows:

Section 1. The Fox Addition plat, legally described as "FOX ADDITION TO BELLEVUE, according to the Plat thereof recorded in Volume 49 of Plats, Page 39, record of King County Washington" located in Bellevue; King County Washington is hereby vacated subject to the fulfillment of all following conditions:

- 1. Mid-Block Connection. 106<sup>th</sup> Avenue NE to 108<sup>th</sup> Avenue NE.** Wasatch shall record a Public Access Easement with King County Records and the Bellevue City Clerk for public access that will provide a mid-block vehicular and pedestrian connection between 106<sup>th</sup> Avenue NE and 108<sup>th</sup> Avenue NE as depicted on the Road Plan(the "Connector Road"). Wasatch shall execute the Covenant Regarding Public Access Easement within 30 days of the effective date of the Plat Vacation Ordinance. The easement for the Connector Road shall be no less than 36 feet wide throughout its length, but the final alignment and corridor design (such as roadway width, street lighting, sidewalk width and sidewalk materials) will be determined during the Design Review process. In addition, the applicant shall agree to grant to the City a public, non-exclusive ingress and egress easement on and above the connector road. The Public Access Easement may be granted in phases concurrent with development of the superblock. If the development does not proceed, the obligation to complete the Connector Road and provide the Public Access easement still remains and shall

run with the land. Provided, that Wasatch or its successors or assigns, may, at its sole discretion, accelerate the timing of the plat vacation and transfer of title to NE 9<sup>th</sup> Street by either i) providing a security device for the construction of the Connector Road improvements; or ii) execution and recordation of the Public Access Easement for the Connector Road. In the event Wasatch elects to record the Public Access Easement prior to construction of the Connector Road, the public right to access shall commence as the phases of the improvements are completed. The Public Access Easement for its entire length shall be executed and recorded and the Connector Road shall be constructed no later than the date of the 10<sup>th</sup> anniversary of the effective date of the plat vacation ordinance.

2. **Landscaping.** Wasatch shall provide enhanced landscaping along NE 10<sup>th</sup> Street as shown on the plans submitted for Design Review, dated December 22, 2004. The "enhanced" landscaping shall consist of additional landscape area beyond the 4 foot wide landscape strip already required for Design Review approval, and is illustrated on the Design Review plans as an additional 4 foot to 10 foot wide landscape strip between the public sidewalk and the patio walls for the townhouse units facing onto NE 10<sup>th</sup> Street. If Wasatch elects to accelerate the timing of the plat vacation and transfer of title to NE 9<sup>th</sup> Street, Wasatch, its successors or assigns shall provide a security device in a form acceptable to the City for completion of the landscaping improvements. This security device will satisfy any design review approval requirement for bonding for this segment of landscaping improvements.
3. **106<sup>th</sup> Ave NE Sidewalk.** Wasatch shall provide a widened sidewalk along 106<sup>th</sup> Avenue NE as shown on the plans submitted for Design Review, dated December 22, 2004. The "widened" sidewalk shall consist of additional width beyond the 12 foot walk (plus a minimum 4 foot wide landscape strip) already required for Design Review approval, and is illustrated on the Design Review plans as expanding to an average of 26 feet as it continues south to the corner of 106th NE and NE 9th Place. If Wasatch elects to accelerate the timing of the plat vacation and transfer of title to NE 9<sup>th</sup> Street, Wasatch, its successors or assigns shall provide a security device in a form acceptable to the City for completion of the sidewalk improvements. This security device will satisfy any design review approval requirement for bonding for this segment of sidewalk improvements.  
  
Said requirement for security devices may be satisfied by one or more security device.
4. **Utilities.** The City of Bellevue hereby relinquishes the 15 foot-wide water easement and 4" AC water main under the planned development back to the 8" tee on 108<sup>th</sup> Avenue NE, and hereby relinquishes the 15 foot-wide sewer easement and the 8" concrete sewer main under the planned development back to the 8" manhole on 108<sup>th</sup> Avenue NE.

Section 2 is hereby amended to read as follows:

Section 2. The City Clerk is directed to record a certified copy of this ordinance with the King County Department of Records and Elections. The City Manager or his designee is hereby authorized to execute the Covenant Regarding Public Access Easement in substantially the form of the Covenant given Clerk's Receiving No. 39532. Further, the City Manager or his designee is directed to take any other action necessary to vacate the plat known as the Fox Addition plat upon evidence of satisfactory completion of all conditions of vacation as required in Section 1 of this ordinance including, but not limited to, the ingress and egress easements, and payment of all costs of acquisition services needed to convey title including the costs of final survey, appraisals, recording fees, escrow, title insurance, processing fees and any other costs related to the vacation of the property, except as otherwise agreed by the parties. If Wasatch elects to accelerate the timing of the plat vacation and transfer of title to NE 9<sup>th</sup> Street as described in Section 1, the plat shall be vacated for all purposes upon execution and recordation of the Covenant Regarding Public Access Easement and Public Access Easement, and the provision of the security devices for landscaping and sidewalk improvements.

Section 3. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

Passed by the City Council this 19<sup>th</sup> day of September, 2005, and signed in authentication of its passage this 19<sup>th</sup> day of September, 2005.

(SEAL)

  
Genrie B. Marshall, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

  
Jerome Y. Roache, Assistant City Attorney

Attest:

  
Myrna L. Basich, City Clerk

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