

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT:

Ordinance No. ~~2051~~ granting the appeal of the denial of a Planned Unit Development and Preliminary Conservation Subdivision with conditions, on the application of David Shih and the Shih Family Trust, Application No. 08-135645 and No. 11-1-3630 LO, and granting the Planned Unit Development and Preliminary Conservation Subdivision, known as Kimberlee Park III, with additional conditions.

FISCAL IMPACT:

Council action on the Ordinance will not have a fiscal impact on the City.

STAFF CONTACT:

Lori M. Riordan, City Attorney, 452-6829
City Attorney's Office

POLICY CONSIDERATION:

Whether Council should adopt the proposed ordinance granting an appeal, overturning the Decision of the Hearing Examiner for denial, and approving the Planned Unit Development and Preliminary Conservation Subdivision with conditions.

BACKGROUND

David Shih and the Shih Family Trust seek to divide a 7.47 acre parcel, zoned R-3.5, into 17 buildable lots, two private road tracts, one drainage tract and four Native Growth Protection (NGPA) tracts. Proposed lot sizes range from 5,043 square feet to 9,844 square feet. The proposed plat is located within the Critical Areas Overlay District (streams and steep slopes). A Critical Areas Land Use Permit was approved administratively.

The site is a roughly "L-shaped" parcel lying between I-405 to the west and Lake Washington Boulevard SE to the east, in the Newport Hills Subarea. The site contains 3.99 acres of critical area, leaving 3.48 buildable acres.

The application was filed on November 21, 2008 and the City issued a Determination of Non-Significance under the State Environmental Policy Act on May 12, 2011. The hearing before the Examiner was initiated on June 16, 2011 and was completed in subsequent hearing sessions held on June 23, 29, and 30, 2011. The record closed on July 8, and the Hearing Examiner's decision was issued on July 38 2011 granting the DNS appeal and denying the Planned Unit Development permit and Preliminary Plat application.

The Hearing Examiner issued findings of fact and conclusions of law and his decision denying the PUD and Preliminary Conservation Subdivision on July 28, 2011, and a second order affirming the decisions on August 31, 2011. Following filing of the appeal, the Kimberlee Park Community Club and individuals Roger and Janelle Chiu, Scott and Risa Traverso, and Barry and Kimberly Wolborsky submitted a motion to intervene, which was granted by Council on February 6, 2012. The limited public hearing on the appeal was concluded on March 19, followed by a brief Council discussion. Further discussion was postponed to April 9, 2012.

On April 9, 2012 the Council undertook deliberations on the appeal issues and concluded that the appellant met its burden to prove that the Hearing Examiner's Decision was not supported by substantial evidence in the record. A majority of Council determined that the Hearing Examiner failed to give the required weight to the expertise of the staff reviewing the application, used the wrong legal standards to consider the evidence and apply Conclusions of Law, and failed to adequately consider and apply precedent of prior Hearing Examiner Decisions as well as prior council decisions regarding compatibility. Pursuant to the standards set forth in LUC 20.35.150 Council voted to grant the appeal, overturn the Decision of the Hearing Examiner, and approve the Planned Unit Development and Preliminary Conservation Subdivision.

A proposed ordinance is attached to this memorandum for Council's consideration. It includes adoption of some of the Hearing Examiner's Findings and Conclusions, adopts additional Findings of Fact and Conclusions of Law, and sets forth all conditions to be included in the approval of this Planned Unit Development and Preliminary Conservation Subdivision.

EFFECTIVE DATE

If adopted, this Ordinance will become effective on May 15, 2012.

OPTIONS

1. Approve Ordinance No. 6057, granting the appeal, overturning the Decision of the Hearing Examiner for denial, and approving the Planned Unit Development and Preliminary Conservation Subdivision with conditions on the Application of David Shih and the Shih Family Trust for Kimberlee Park III, a 7.47 acre parcel, zoned R-3.5, to be divided into 17 buildable lots, two private road tracts, one drainage tract and four Native Growth Protection (NGPA) tracts.
2. Do not approve Ordinance No. 6057 and refer the matter to Staff with directions for an alternative Ordinance.

RECOMMENDATION

Approve Option 1, Ordinance No. 6057, granting the appeal, overturning the Decision of the Hearing Examiner for denial, and approving the Planned Unit Development and Preliminary Conservation Subdivision known as Kimberlee Park III, with conditions.

MOTION

I move adoption of Ordinance No. 6057, granting the appeal, overturning the Decision of the Hearing Examiner for denial, and approving the Planned Unit Development and Preliminary Conservation Subdivision with conditions on the Application of David Shih and the Shih Family Trust for Kimberlee Park III, a 7.47 acre parcel, zoned R-3.5, to be divided into 17 buildable lots, two private road tracts, one drainage tract and four Native Growth Protection (NGPA) tracts.

ATTACHMENTS

Minutes of March 19, 2012 City Council Regular Session

Minutes of April 9, 2012 City Council Regular Session are provided under Tab 8(a)

Ordinance No. 6057

- (a) Minutes of February 27, 2012 Extended Study Session
Minutes of March 5, 2012 Study Session
Minutes of March 5, 2012 Regular Session
- (b) Resolution No. 8373 authorizing execution of a professional services agreement with KPFF Consulting Engineers, in an amount not to exceed \$231,020, to design and permit: 1) modifications to the Meydenbauer Bay Marina to provide the deed-required transient moorage slips; and, 2) replacement of the Clyde Beach Park swim dock.
- (c) Motion to award Bid No. 12034 to Skyline Landscape, as the lowest responsible and responsive bidder, in the amount of \$47,065.75, for replacing the irrigation system at McCormick Park West.
- (d) Ordinance No. 6047 authorizing: 1) execution of a grant agreement with the Washington State Department of Transportation to accept \$5,600,000 in federal Surface Transportation Program grant funds to construct the NE 4th Street Extension from 116th to 120th Avenues NE; 2) execution of a grant agreement with the Transportation Improvement Board to accept \$3,000,000 in state Corridor Program funds toward acquisition of right-of-way for the NE 4th Street Extension project (TIB grant); 3) amending the 2011-2012 general Capital Investment Program (CIP) Plan to increase the appropriation by \$3,000,000 in grant funds.
- (e) Resolution No. 8374 authorizing the City Manager to sign and certify the annual report documents, City of Bellevue 2011 Compliance Report and 2012 Stormwater Management Program, as required by the National Pollutant Discharge Elimination System Phase II Municipal Stormwater Permit, for submittal to the Washington State Department of Ecology.
- (f) Motion to award Bid No. 12030 for 152nd Avenue SE Roadway Subgrade Spot Repairs, to Westwater Construction Company, as the lowest responsible and responsive bidder, in the amount of \$166,200 (CIP Plan No. D-64).

9. Public Hearings

- (a) *Limited public appeal hearing on the Hearing Examiner's Decision on the application of David Shih (Kimberlee Park III) for a Planned Unit Development and Preliminary Conservation Subdivision to divide 7.47 acre parcel into 17 buildable lots, two private road tracts, one drainage tract and four Native Growth Protection Area Tracts. File Nos. 08-135645 LK and 11-103630 LO.
 - (1) Rules and Procedure

City Attorney Lori Riordan provided an overview of the rules governing the limited public appeal hearing on the Hearing Examiner's Decision related to the Kimberlee Park III application. This hearing is limited to the issues decided by the Hearing Examiner after taking testimony during hearings held on June 16, 23, 29, and 30, 2011, on whether to approve the application. The Hearing Examiner issued findings of fact, conclusions of law, and a decision on July 28, 2011, denying the PUD (Planned Unit Development) and preliminary conservation subdivision known as Kimberlee Park III. A second order affirming the decision was issued on August 31, 2011. The site is located at 11050 SE 60th Street in the Newport Hills Subarea.

The applicant/appellants are David Shih and the Shih Family Limited Partnership. Following filing of the appeal, the Kimberlee Park Community Club and individuals Roger and Janelle Chiou, Scott and Rita Traverso, and Barry and Kimberly Wolborsky submitted a Motion to Intervene, which was granted by the City Council on February 6, 2012.

In addition to the oral arguments provided at tonight's meeting and the Hearing Examiner's record, the parties to the appeal were allowed to submit written materials to the City Clerk by 1:00 p.m. on Wednesday, March 14. The City Attorney's Office has reviewed these briefs to ensure that they comply with the Council's Rules, and any information not contained in the Hearing Examiner's record has been redacted. These written materials were provided to Councilmembers with their packets on Thursday, March 15.

City Attorney Riordan advised that the Mayor give Councilmembers the opportunity to disclose, on the record, any ex parte communications they may have had with any of the parties to the appeal, or any others supporting or opposing the application. If ex parte communications are disclosed, the Councilmember should state the names of the persons with whom the communications occurred, whether the communication was written or oral, and the substance of the communication. If a written or voicemail communication exists, they should be put into the record. Parties will be offered the opportunity to rebut the substance of any of the ex parte communications.

Mayor Lee asked Councilmembers to disclose any ex parte communications regarding the Kimberlee Park III application and appeal.

Mayor Lee said he and Mr. Shih have known each other for more than 40 years. However, they have not discussed this matter.

Councilmember Chelminiak said he has not had any ex parte communications.

Councilmember Davidson said he has not had any ex parte communications.

Deputy Mayor Robertson said she has not had any ex parte communications.

Councilmember Balducci said she has not had any ex parte communications.

Councilmember Stokes said he has not had any ex parte communications.

Councilmember Wallace said he has not had any ex parte communications.

- Councilmember Chelminiak moved to extend the meeting to 10:30 p.m., and Councilmember Davidson seconded the motion.
- The motion to extend the meeting carried by a vote of 7-0.

Ms. Riordan described the format for the hearing. Following the staff report, the parties will have the opportunity to present their arguments within 15 minutes. The appellants may reserve a portion of their time to be used for rebuttal argument after the conclusion of the intervenors' presentation. The Council may ask questions of any party, staff, or any other person about any matter contained in the record. However, new material not contained in the Hearing Examiner's record may not be presented.

After all argument is presented and the Council has completed its questions and discussion, the Council may render a decision tonight or at a subsequent meeting. Ms. Riordan said that the appellant bears the burden of proof. The Council may grant the appeal or grant the appeal with modifications if the appellants have carried the burden of proof and the City Council finds that the decision of the Hearing Examiner is not supported by material and substantive evidence. In all other cases, the appeal shall be denied. Ms. Riordan said the City Council shall accord substantial weight to the decision of the Hearing Examiner.

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 when there is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the decision.

Responding to Mayor Lee, Rich Hill, legal counsel for Mr. Shih, indicated that he would like to reserve three minutes for rebuttal.

(2) Staff Report

Reilly Pittman, Development Services Planner, reviewed the process to date. The goal of the project is to create 17 new lots for new single-family homes on this site in the Newport Hills Subarea. Approvals were required for a preliminary plat for a conservation subdivision, Planned Unit Development (PUD), and Critical Areas land use permit through the State Environmental Policy Act (SEPA). The project site is adjacent to I-405 and SE 60th Street. The site and vicinity are zoned Single-Family Residential, R-3.5 (3.5 units per acre).

Mr. Pittman explained that the site is adjacent to Kimberlee Park I and Kimberlee Park II, which have lots ranging from 9,542 square feet to 24,590 square feet. Neighbors to the south tend to have larger homes and lots greater than 35,000 square feet. Both neighborhoods are zoned R-3.5

Mr. Pittman showed photos and maps of the area. He noted that a portion of the access to the Kimberlee Park III site on 110th Avenue SE will direct traffic through the existing neighborhood to connect to Lake Washington Boulevard to the east. The project site is 7.47 acres, and 53 percent of the site is encumbered by steep slope critical areas, a stream, and the buffers that protect both of those critical areas. The project proposes to establish more than 54 percent of the site as Native Growth Protection Area tracts. A stream dissects the site.

Mr. Pittman said the application was reviewed as a conservation subdivision because the property contained more than one acre of critical areas. This type of development allows certain zoning dimensional standards to be modified. The conservation subdivision designation reduced the 10,000 square foot lot requirement of the R-3.5 zone to 6,500 square feet. However, the applicant requested, through the PUD, to further reduce the lot area to a minimum of 5,043 square feet, with an average area of 6,449 square feet. The applicant also proposed to reduce the required lot width from 70 feet to a minimum of 45 feet.

Mr. Pittman said no other modifications were requested. The project proposed 17 single-family residential lots for a gross density of two units per acre. The site qualifies for a maximum of 18 units per acre due to the critical areas restrictions. The PUD mechanism allows an applicant to request bonus density, but none was requested in this case.

Mr. Pittman described additional features of the proposal including a private road to access some of the lots, a pedestrian trail connection, and the extension of 110th Avenue SE. The proposed homes meet the minimum height limit for the R-3.5 zone, and the facades facing east toward existing homes vary from one to two floors in height. The home designs were changed to allow for the maintenance of the existing grade. The homes incorporate tiered foundations to better fit the topography of the site, and three house types were proposed.

Mr. Pittman said that, after four public hearings and a request for reconsideration, the Hearing Examiner recommended that the proposed application for the PUD and preliminary plat be denied, but affirmed the SEPA Determination of Non-Significance (DNS). The Hearing Examiner said the basis for denying the PUD was that the applicant failed to carry the burden of proof on the issue of compatibility of the proposed development with neighboring development. The Hearing Examiner stated that the preliminary plat was denied for failure to make appropriate provisions for drainage. Mr. Pittman said that denial of the PUD and the preliminary plat are the subjects of the appeal. The SEPA appeal is not before the Council tonight.

Responding to Deputy Mayor Robertson and Councilmember Chelminiak, Mr. Pittman clarified the elevations of the different facades of the development. Three-story facades face west toward I-405, while one- to two-story facades face the street and existing development.

Responding to Ms. Robertson regarding the Development Services Director's interpretation that found compatibility on the perimeter and in design, Mr. Pittman said this is consistent with past interpretations by the Director with regard to PUDs. He said that this application proposes individual, residential single-family lots. A proposal for attached homes or townhouses would be a different use and would not be considered as compatible. Mr. Pittman said the proposal

provides landscaping around the site perimeter and preserves a large natural area.

Mayor Lee questioned the Hearing Examiner's recommendation to deny the preliminary plat based on the failure to make appropriate provisions for drainage. Mr. Pittman said that, as part of the application for the plat, the Utilities Department completes a preliminary conceptual review to give a preliminary approval to proceed with the development. If the project was approved, the next stage would be for the applicant to submit for utilities permitting and plat infrastructure permitting. This is the point at which the conceptual becomes reality in terms of whether or not the project can be built.

In further response to Mr. Lee, Mr. Pittman said that, after PUD approval, the applicant would have to go through the City's amendment process in order to modify the PUD.

→ Councilmember Balducci moved to extend the meeting until 11:00 p.m., and Mayor Lee seconded the motion.

→ The motion carried by a vote of 7-0.

Deputy Mayor Robertson said that her understanding of preliminary plat approval is to look at the general design and to determine whether it is in the public use and interest. All of the details are then to be worked out before final plat approval. Mr. Pittman confirmed this understanding. Ms. Robertson questioned what would happen if a preliminary plat were granted but the applicant could not later demonstrate that it complied with drainage requirements. Mr. Pittman said the project would not receive final plat approval, and the applicant would have to revise the preliminary approval to reflect a project that meets Code requirements.

(3) Motion to Open the Hearing

→ Councilmember Davidson moved to open the Limited Public Appeal Hearing, and Councilmember Stokes seconded the motion.

→ The motion to open the hearing carried by a vote of 6-0, with Deputy Mayor Robertson temporarily away from the dais.

(4) Argument from Appellants

Richard Hill, McCullough Hill Leary, said he is the attorney for the applicant, David Shih. He noted his previous request to reserve three minutes for rebuttal.

Mr. Hill explained that Mr. Shih would like to build 17 new single-family homes in Newport Hills. The property includes environmentally sensitive areas, and staff recommended the use of the PUD mechanism. As a result of this mechanism, more than half of the site will be protected as Native Growth Protection Areas. The homes will be clustered on the least sensitive portions of the site, and only two departures from the Land Use Code were needed for this PUD. These are lot size and lot width. The homes are consistent with the provisions of the underlying R-3.5 Code

with respect to density, height, and setbacks.

Mr. Hill said that staff recommended approval of the PUD and of the related conservation subdivision. The Hearing Examiner denied both. On appeal, Mr. Shih is asking the City Council to reverse the Hearing Examiner's decision and to adopt staff's recommendation.

Mr. Hill said the appeal raises two legal issues, one related to the PUD and the other to the subdivision. In implementing growth management, many jurisdictions, including Bellevue, have encouraged the use of the PUD mechanism. The clustering of housing on the least sensitive portions of the site allows, on the one hand, open space and environmentally sensitive areas to be protected without, on the other hand, reducing overall residential density.

The Hearing Examiner denied the PUD because he concluded it failed to comply with the compatibility requirements of the Code. Mr. Hill said his decision should be reversed because it is erroneous. City staff conducted a compatibility analysis, which was consistent with past analyses in Bellevue for many years.

Mr. Hill said that Mr. Pittman testified before the Hearing Examiner on June 30 and defined compatibility as "the ability to exist in an integrated and harmonious state." Staff determined that the PUD was compatible based on the following factors: 1) Proposed PUD involves single-family homes meeting the density, setback and height limits of R-3.5 zoning; 2) Proposal includes significant vegetation and preservation of most of the large trees on the site; 3) Proposal requires plat landscaping to enhance vegetation on each lot; 4) Proposal maintains overall single-family density; 5) Proposal maintains a similar road and lot layout pattern as the neighboring development; 6) True lot width and lot areas are reduced, but this is offset by larger setbacks and perimeter landscaping; 7) Due to grade and landscaping, there will be limited or no visibility of the proposed homes from the surrounding neighborhood; and 8) The design proposed is residential in character and responds to the design of the neighboring properties.

Mr. Hill said that determinations of compatibility have been used by City staff for years, and have specifically been upheld in three Hearing Examiner decisions cited in his brief (Parkwood Lanes, Hillside Property, and the Enclave at Fox Glen). The importance of the PUD mechanism in Bellevue is stated explicitly in the Newport Subarea Comprehensive Plan, Policy F-NH-5, "the use of the PUD mechanism is encouraged in Newport Hills to preserve open space and environmentally sensitive areas."

By contrast with the staff analysis, the Hearing Examiner's analysis was unprecedented and legally erroneous. Instead of evaluating whether the proposal was compatible as defined by staff and Hearing Examiner precedent, the Hearing Examiner in this case focused on whether the proposal (from the Hearing Examiner Decision) "exceeded the limits of differentness that can be tolerated in an existing neighborhood." Mr. Hill asserted that this definition was created out of whole cloth. He said he has never seen it anywhere, and it is not related to any definition in the Land Use Code or a dictionary. Relying solely on the fact that the proposed lots were smaller and narrower than the surrounding lots, and that the homes were thereby closer together, the Hearing Examiner found the PUD exceeded the limits of differentness that cannot be tolerated.

Mr. Hill said this is inconsistent with years of staff analysis and past Hearing Examiner decisions, and it strikes at the heart of the City's PUD mechanism, which encourages departure from lot size and width requirements in exchange for the preservation of open space and sensitive areas. Mr. Hill said that, if the decision is affirmed, the use of the PUD mechanism in Bellevue will be dealt a blow, because if there is enough neighborhood opposition, any PUD could be denied. All PUD lots are clustered and have development standards that vary somewhat from surrounding neighborhoods.

Mr. Hill said that Bellevue has never mandated a sameness test for single-family development, and it should not begin to do so now. He said the Hearing Examiner decision should be reversed, and the PUD should be approved.

As to the second issue, Mr. Hill said the Hearing Examiner denied the subdivision because he concluded there was an inadequate provision for drainage. The Hearing Examiner decision should be reversed because he has placed the cart before the horse. The City has a well-defined process for drainage plan review set forth in City Code 20.45A.070, which states: "The review and decision of the City on an application for a subdivision shall consist of the following stages." The stages are listed as review and decision upon the preliminary plat, review and decision upon the engineering plans for the plat improvements, and review and decision upon the final plat. This is the process that the City followed in this case.

The preliminary plat application included the submission of conceptual drainage plans. The City's drainage review determined the project is feasible and that technical details can be worked out when final engineering plans are submitted. Mr. Hill noted that the Hearing Examiner made a finding on this point. The City's approval makes clear that there is an explicit condition that no implied approvals of utilities engineering result from this preliminary plat. The City's approval states that changes to site layout may be required to accommodate utilities, and this condition is also made clear in City Code 20.45A.170. Approval of the plat by the Hearing Examiner does not constitute approval of engineering plans. That decision is made after preliminary plat approval.

Mr. Hill said the Hearing Examiner reversed stages one and two of the process, requiring engineering plans review before preliminary plat approval. He said the Hearing Examiner has no authority to deny a preliminary plat on that basis.

Mr. Hill noted that the project opponents asked a number of questions of the Hearing Examiner. Many are worthy and appropriate to be considered at stage two, as the Code anticipates, which is the stage of reviewing the final engineering plans. All of these questions are pertinent to stage two of the process, but not to stage one.

Mr. Hill emphasized that no construction on this plat will be allowed until review and approval of the engineering plans is completed. He said that the applicant followed the process outlined by the Code. It is inappropriate to penalize the applicant for doing what the Code directs him to do. Mr. Hill said it was inappropriate for the Hearing Examiner to deny the subdivision on the basis

that the applicant was following the Code.

Mr. Hill said it is appropriate for staff, and for the Council in making its decision, to condition the subdivision on compliance with all applicable drainage and Utility Code criteria, including answering the questions raised during the public hearing. However, the Hearing Examiner's decision to deny the subdivision should be reversed.

Mr. Hill thanked the Council for its consideration of this appeal.

(5) Argument from Intervenors

David Bricklin, attorney, spoke on behalf of the intervenors. He said he would like to emphasize the role of the City Council in these proceedings as established by City Code. He said the Council, in this context, is like a judge of a court of appeals. Mr. Bricklin said this is a more limited role than the usual Council role. Lawyers talk about issues of fact and issues of law. Factual issues include, in this case, the compatibility of the project, attention to the storm drainage system, lot size, and vegetation. City Code states that the Council has a very limited role with regard to these issues.

Mr. Bricklin said the record could contain conflicting evidence in terms of testimony on both sides of any issue. As the City Council in an appellate role, the Council is not to go back and consider how they might have decided the issue originally if it had participated in the public hearing. Mr. Bricklin said that the City Council's role is to ensure that there is substantial evidence in the record to support the Hearing Examiner's decision.

Mr. Bricklin said that the evidence in the record clearly demonstrates that the Hearing Examiner's factual findings are supported.

Mr. Bricklin displayed slides of Kimberlee Park I and II, as well as the land proposed for Kimberlee Park III. Development on the latter site is supposed to be compatible with existing development. Mr. Bricklin said there is substantial evidence in the record, including drawings of the proposed housing, to support the Hearing Examiner's factual determination that there is not compatibility.

Mr. Bricklin said that the Hearing Examiner's determination that the PUD should not be approved is not a rejection of PUDs in general. The City has approved other PUDs, most of which were isolated from existing development. The City Code addresses compatibility in a number of areas, and indicates that infill projects should be compatible and consistent with surrounding development. Mr. Bricklin said this applies to the housing design, and not just to lot size or setbacks.

Mr. Bricklin said that Bellevue's Code does not define compatibility as it is defined in the dictionary. Instead it refers to the character, appearance, size, scale, mass, and architectural design of the proposed homes. These are factors that the Hearing Examiner quoted and relied on when he made his factual determination that the proposal is not consistent with existing

development.

Mr. Bricklin said the proposed subdivision has uphill homes looking down on existing development. The landscaping involves a 6-foot sapling every 30 feet, but existing trees are removed. Mr. Bricklin said the Hearing Examiner understood these ramifications and decided that the development was not compatible with existing development. Mr. Bricklin said the housing designs are not compatible, the proposed homes have smaller lots, and there are three-story structures adjacent to large lot development.

Mr. Bricklin said the argument was made in the written material submitted by the applicant that the Hearing Examiner not only put the burden of proof on the applicant to demonstrate compatibility, but that the Hearing Examiner wrongly thought that the applicant had to make that showing at the public hearing, and that the Hearing Examiner ignored the evidence in the written record that preceded the hearing. Mr. Bricklin said this is not the case. Conclusion of Law 13 indicates that the Hearing Examiner referred to the entire record with regard to the lack of evidence in support of compatibility anywhere in the record, not just based on the live testimony.

Mr. Bricklin addressed the stormwater issue. The argument he hears being made is that the applicant and City will look at the stormwater issue later during final design review, and that nothing needs to be done now. Mr. Bricklin said that, while Bellevue's Code does not require final engineering drawings at this point, it requires more than what was presented. The Code requires that the applicant demonstrate that there has been adequate provision made for the treatment of stormwater. Mr. Bricklin the Hearing Examiner quoted that provision and applied it.

The Hearing Examiner said he did not require final engineering drawings but he required adequate provision. Mr. Bricklin said there was too much evidence that adequate provision had not been made in this situation. This included stormwater vaults, which were indicated to be too small. There is evidence that the drainage ways down the steep hillsides would fail. The Hearing Examiner referred to scary hillsides sitting on top of I-405, not where you want stormwater problems. The Hearing Examiner did not require final design drawings, but indicated that the applicant needed more documentation than what was initially submitted.

Mr. Bricklin said that City staff did not visit the site, which is stated in the record. He noted a finding that staff did not have qualifications in stormwater engineering. The Hearing Examiner had the benefit of hearing testimony from two highly qualified hydrogeologists. Mr. Bricklin said the City Council's role is not to take over for the Hearing Examiner, whose job is to listen and consider the evidence and to make a decision.

Mr. Bricklin said the Hearing Examiner found that the stormwater analysis lacked any consideration for containing the volume of water or for managing water quality.

Mr. Bricklin asked that the Hearing Examiner's decision be affirmed.

(6) Rebuttal and Motion to Close Hearing

Mr. Hill said that, with regard to compatibility, staff identified eight issues that it relied on to make its analysis in a way that is consistent with the way staff as applied compatibility on PUDs to date. He said the Hearing Examiner relied on two facts, the lots are narrower and the lots are smaller. That could be said of virtually every PUD that has been approved in Bellevue.

With respect to storm drainage, Mr. Hill said there is no question that there is a conceptual storm drainage plan. However, the City reviewed the conceptual plan and determined that the project is feasible. With regard to the size of the storm vault, the record shows that the reviewer determined that it was sized to substantially increase the storm vault in the stormwater detention trap that is saved in the subdivision. Mr. Hill said the City's plans reviewer was confident that, at stage two, the Code-mandated stage for reviewing this issue, the City Code could and would be complied with. If not, the site layout would need to be modified, or the PUD would have to go back to be reconfigured.

Mr. Hill asked that the Hearing Examiner's decision be reversed. He said the proposed PUD complies with the City's approval of PUDs over the past two decades.

→ Councilmember Chelminiak moved to close the hearing, and Deputy Mayor Robertson seconded the motion.

→ The motion carried by a vote of 7-0.

(7) Council Discussion

Councilmember Balducci asked whether Hearing Examiner decisions are precedent setting. Catherine Drews, Legal Planner, said they are precedent setting within the City.

Ms. Balducci asked whether staff analysis not derived from Code is precedent setting. Ms. Drews said that each project is unique. However, staff's approach has been consistent in how it reviews compatibility issues.

Ms. Balducci questioned whether the fact that staff conducts its analyses in the same way using the same criteria is, in and of itself, binding on future projects. Ms. Drews said she could not say that it is binding, but it is the practice of the Development Services Department.

Responding to Ms. Balducci, Ms. Drews said that past PUD-related Hearing Examiner decisions are available for review. Ms. Drews observed that the closed record applies to the facts and evidentiary findings that the Hearing Examiner makes regarding a specific case.

Councilmember Balducci questioned language that PUDs must be "compatible and respond to the surrounding vicinity." Ms. Drews said the two concepts have different meanings. One speaks to the perimeter of the PUD and its compatibility, and the other relates to the general character of the PUD itself. Ms. Drews explained that the first provision requires that the perimeter of the

PUD be compatible with the existing land use or property that abuts or is directly across the street from the subject property. Compatibility includes, but is not limited to, size, scale, mass, and architectural design. A second provision requires that the design is compatible with and responds to the existing or intended character, appearance, quality of development, and physical characteristics of the subject property and immediate vicinity.

Councilmember Balducci observed that PUDs generally have smaller lots than the surrounding area due to the nature of PUDs. Responding to Ms. Balducci, Mr. Pittman said there are smaller lots in other PUDs. Some PUDs are one large lot with attached housing.

Responding to Councilmember Chelminiak, Mr. Pittman confirmed that, typically, conditions on PUDs are applied through the Hearing Examiner process after staff completes its analysis and makes its determination.

Responding to Councilmember Davidson, Ms. Drews said the Council's decision can be appealed to Superior Court.

Deputy Mayor Robertson said she did not find anything in the PUD Code that sets the relative sameness or differentness of the homes. Mr. Pittman confirmed that perimeter character and the general character are the only two PUD decision criteria that speak to character. Responding to Ms. Robertson, Mr. Pittman confirmed that the Code's compatibility reference to size, scale, mass and architectural design applies to the perimeter.

With regard to the process, Ms. Robertson said her understanding of the standard of review is that if the facts and decision of the Hearing Examiner are based on substantial evidence, they stand. She has not heard anyone address issues of law or issues of interpretation of the Code. Her expectation would be that the Council would look at issues of Code interpretation on a de novo basis, without regard to what the Hearing Examiner did on a Code interpretation.

City Attorney Riordan said the Council does not re-weigh the evidence, but a quasi-judicial proceeding does look at conclusions of law de novo. For example, if the Council concluded that there was substantial evidence in the record to agree with the findings of fact that were decided by the Hearing Examiner, it would leave those undisturbed. However, if the Council concluded that the law does not support the conclusions of the Hearing Examiner, the Council would apply what it determined to be the correct standard of law.

Responding to Mayor Lee, Ms. Riordan said the Hearing Examiner's role is to weigh the evidence and to determine credibility based on his or her interaction with the witnesses and parties. Staff members are professionals with certain expertise. However, that does not necessarily mean that the Hearing Examiner would find the staff interpretation of the Code to be correct.

In that context, Ms. Riordan said the City Council's role as the appellate body is to look at the evidence that was presented to the Hearing Examiner, and his or her factual findings based on that evidence. The Council's role is to make a determination about whether there are substantial

facts that would convince a fair-minded person as to the accuracy of the findings. The Council would then determine whether the law supports the legal conclusion that the Hearing Examiner has drawn from the facts established in the record.

Councilmember Stokes observed that staff's work is based on facts, and this work is included in the record. The Hearing Examiner may or may not make a judgment as to their credibility. Ms. Riordan concurred with this understanding.

Mayor Lee questioned whether it is accurate that staff did not visit the site, as mentioned during the earlier arguments. Mr. Pittman said "staff" refers to members of multiple departments, and some do visit a site. As Land Use Planner, he has been to the site numerous times. Other departments might not require a site visit due to more detailed Codes. In further response, Mr. Pittman said he could not determine character compatibility without visiting a site.

Councilmember Stokes noted the complexity of the matter and suggested recessing at this point, and continuing the discussion to another meeting.

Responding to Councilmember Wallace, Mr. Pittman said the Code is not detailed about house design. Mr. Wallace observed that staff and the Hearing Examiner made different determinations about compatibility, and Mr. Pittman concurred.

Responding to Mr. Wallace, Mr. Pittman said the Land Use Code does not contain a definition for compatibility. The PUD decision criteria addresses compatibility with regard to a number of characteristics.

Responding to Mr. Wallace, Ms. Riordan confirmed that the Council is in the position of interpreting compatibility consistent with how it reads the Code.

Mr. Wallace asked whether, if an applicant has a concept design for stormwater and the planner has a reasonable belief that there are opportunities to comply with the Stormwater Code, this is sufficient to move the project forward. Mr. Pittman confirmed that this is handled as conceptual approval, which will be verified during the later engineering and permit stage. The standard Stormwater Code applies to the project.

Mayor Lee noted a Council consensus to defer discussion and potential action to the April 9 Regular Session. He reminded Councilmembers to avoid ex parte communications.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions

- (a) Ordinance No. 6048 annexing to the City of Bellevue 786 acres known as the South Bellevue – Eastgate and Tamara Hills Annexation, located south of I-90 in the Newcastle Subarea Potential Annexation Area (PAA), by Direct Petition under RCW 35A.14.120.150.

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6057

AN ORDINANCE granting the appeal of the denial of a Planned Unit Development and Preliminary Conservation Subdivision, with conditions, on the Application of David Shih and the Shih Family Trust, Application No. 08-135645 and No. 11-1-3630 LO, overturning the Decision of the Hearing Examiner and granting the Planned Unit Development and Preliminary Conservation Subdivision with additional conditions.

WHEREAS, on June 16, 23, 29 and 30, 2011, the Bellevue Hearing Examiner conducted a hearing on the application of David Shih and the Shih Family Trust ("Shih") for a Planned Unit Development ("PUD") and Preliminary Conservation Subdivision, Application No. 08-135645 LK and No. 11-1-3630 LO; and

WHEREAS, on July 28, 2011, the Hearing Examiner issued Findings of Fact, Conclusions of Law and Decision; and

WHEREAS, On August 31, 2011, following a motion for reconsideration, the Hearing Examiner issued Revised Findings of Fact, Conclusions of Law and Decision; and

WHEREAS, on August 10, 2011 and September, 8, 2011, Shih timely appealed the denial of the Planned Unit Development and Preliminary Conservation Subdivision to the City Council; and

WHEREAS, the City Council conducted a hearing on the appeal on March 17, 2012; and

WHEREAS, the City has complied with 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 Revised Findings of Fact of the Hearing Examiner as set forth in "Findings of Fact, Conclusions of Law and Decision" issued on August 31, 2011, except the following Findings are not adopted as they are not supported by substantial evidence: No. 29, No. 30, No. 32, No. 33, No. 35, and No. 53.

Section 2. The City Council adopts and incorporates by this reference the Land Use Staff Report Dated May 12, 2011 and Attachments 1 through 11 thereto.

Section 3. The City Council adopts the following additional Findings of Fact supported by the record:

1. The site context for this proposed development is single-family residential, which is maintained by the proposal. No attached units are proposed and no multifamily rezoning is required. Additional density is allowed through the PUD process, but none was proposed. The proposed density meets the requirements of the land use code.
2. The perimeter of the project is landscaped to provide a buffer from the proposed development to the existing properties. Part of the Newport Hills subarea character is the large trees found there, which are maintained to a large extent by the project through the use of the PUD clustering of homes and preservation of sensitive areas.
3. The set-backs proposed are largely in conformance with the R-3.5 zoning requirements, the houses are located in similar locations on the lots of surround developments. Each lot has an individual driveway with a garage, which reflects the character of the surrounding neighborhood.
4. While lots in the existing Kimberlee Park developments are zoned R-3.5, most of Newport Hills is zoned R-5.
5. The project is designed with materials to ensure the level of quality standard required for a PUD which is not required in traditional plat development.
6. The home designs, as proposed provide a reasonable level of variation in exterior colors, siding types and placement on-site to respond to physical conditions, specifically by building the homes into the existing hillsides.
7. Although the homes as proposed are more vertical in design than many of the existing homes in the surrounding development, their square footage is in line with common home sizes in the Kimberlee Park neighborhood.
8. No two houses in Kimberlee Park I or II are architectural duplicates and 56 of the 58 homes in Kimberlee Park I are multi-story structures.
9. The planting plan submitted by applicant and approved by staff represents an enhanced level of landscaping greater than that provided for under Type 3 of the BLUC landscaping requirements.
10. The proposed location for on-site storm-water detention is large enough to accommodate a detention structure two or three times the size of that structure proposed in the preliminary plat application.

Section 4. The City Council adopts the Conclusions of the Hearing Examiner

as set forth in "Findings of Fact, Conclusions of Law and Decision" issued on, except the following Conclusions of Law are not adopted as they are not supported by substantial evidence in the record or are erroneous applications of the law to the facts or are erroneous interpretations of the law:

No. 10, No. 11, No. 12, No. 13, No. 15, No. 16, and No. 17.

Section 5. The City Council adopts the following additional Conclusions of Law based upon the above-adopted Findings of Fact:

1. The City Council may overturn the decision of a Hearing Examiner on appeal if the appellant has met its burden of proving that the Decision is not supported by substantial evidence in the record. Under the substantial evidence standard, there must be a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true.
2. While the Hearing Examiner's Decision is entitled to deference, the City Council is the highest local authority on the construction and application of the Bellevue City Code.
3. The City's Comprehensive Plan, adopted and updated in conformance with the state Growth Management Act, provides the guidelines and blueprint upon which permitting decisions are made. Conformity with the provisions of the Comprehensive Plan is one of the critical decision criteria for approval of a PUD and preliminary plat. As demonstrated in the Staff Report analysis of Comprehensive Plan Policy Review, (Attachment 10) this proposed development is consistent with and in conformity with numerous Comprehensive Plan Policies. The City Council, as the highest local authority on the interpretation and application of the Comprehensive Plan has established many policies to guide in-fill development in conformity with the requirements of the Growth Management Act.
4. The Newport Hills Subarea Plan, which guides the continued development of the Area, encourages the use of PUDs. Policy S-NH-5 encourages the use of PUDs to preserve the visual character of open space and protect environmentally sensitive areas in new subdivisions by clustering housing on the least sensitive portions of the site. The use of the PUD mechanism is appropriate in this circumstance to implement and fulfill the community visions as set forth in the Comprehensive Plan.
5. The City's codes do not require design review for single family residential structures and do not require variability in home designs.
6. While BLUC 20.30D.150(D) provides that "compatibility" includes consideration of the size, scale, mass and architectural design of proposed homes in PUDs with those on the perimeter of the site, it does

not equate “differentness” with “incompatible.” Nor is compatibility defined in common usage as requiring that two entities are the same.

7. Character can be characterized as qualities and features which distinguish one thing from another. Compatibility can be characterized as the ability to exist in an integrated and harmonious state. The character of the proposed PUD is single family homes which meet the setback and height limits of the setback and height limits of the R-3.5 development standards as adjacent lots are required to do.
8. Historically, the Hearing Examiner has found single-family and multi-family PUDs that are adjacent to existing single family homes to meet the compatibility criteria in the City’s codes. This includes finding that the mass and scale of three-story structures compatible with single-family ramblers. The City Council has approved of these findings in adopting the Findings, Conclusions and Decisions of the Hearing Examiner in instances where those decisions have been challenged.
9. The proposed homes with different size, scale mass and architectural design than the architecturally diverse homes in the perimeter developments are capable of existing in an integrated harmonious state with the existing developments.
10. BLUC 20.30D.160(E) requires that landscaping for the perimeter of the PUD be superior to that otherwise required by the code in order to enhance the visual compatibility of the development with the surrounding area. This does not mean that the landscaping must completely camouflage or screen the proposed development visually from view of the adjoining neighborhood. Some further landscaping would, however, enhance and ensure that there is visual compatibility of the development with the surrounding neighborhood. It would also ensure that the development is responsive to and compatible with the existing physical characteristics of the property.
11. Approval of a preliminary plat is not conditioned upon submittal and approval of engineering plans. LUC 20.45A.070 establishes that review of final engineering follows review and decision of the preliminary subdivision.
12. Approval criteria for a preliminary plat application do not include the requirement that the proposed infrastructure be “feasible”. The approval criteria instead provide that “adequate provision” for infrastructure be made, leaving the final approval of the feasibility of the design to later stages in the platting process.
13. Substantial evidence supports the conclusion that adequate provision for storm drainage detention has been demonstrated in the record before the Hearing Examiner.

Section 6. Based on the foregoing Findings of Fact and Conclusions, the City Council enters the following Decision:

Appellant has met its burden to prove that the Hearing Examiner's Decision was not supported by substantial evidence in the record. The Hearing Examiner failed to give the required weight to the expertise of the staff reviewing the application, and failed to acknowledge the testimony of all of the witnesses in his Findings of Fact as well as the content of the written record, including the Land Use Staff Report and Attachments thereto. The Hearing Examiner used the wrong legal standards to consider the evidence and apply Conclusions of Law. The Hearing Examiner failed to adequately consider and apply precedent of prior Hearing Examiner Decisions as well as prior Council decisions regarding compatibility. The appeal is hereby granted, and the Decision of the Hearing Examiner denying the Planned Unit Development and Preliminary Conservation Subdivision is hereby overturned. The Planned Unit Development and Preliminary Conservation Subdivision with conditions, is approved, subject to the following Conditions:

I. CONDITIONS OF APPROVAL

Codes & Ordinances

The applicant shall comply with all applicable Bellevue City Codes and ordinances including but not limited to:

Applicable Ordinances	Contact Person
Clearing and Grading Code- BCC 23.76	Savina Uzunow, 425-452-7860
Construction Codes- BCC Title 23	Bldg. Division, 425-452-6864
Fire Code- BCC 23.11	Adrian Jones, 425-452-6032
Land Use Code- BCC Title 20	Reilly Pittman, 425-452-4350
Noise Control- BCC 9.18	Reilly Pittman, 425-452-4350
Sign Code- BCC Title 22B	Reilly Pittman, 425-452-4350
Transportation Code- BCC 14.60	Ray Godinez, 425-452-7915
Right of Way Use Code- BCC 14.30	Tim Stever, 425-452-4294
Utility Code- BCC Title 24	Arturo Chi, 425-452-4119

A. GENERAL CONDITIONS

The following conditions apply to all phases of development.

1. Variance Restriction

Approval by the City of this plat and PUD (including dimensional modifications) is a determination that each lot can be reasonably developed in conformance with the Land Use Code in effect at the time of this approval without requiring a variance. No future variance application will be accepted.

PERMIT: 08-135645-LK
AUTHORITY: Land Use Code 20.45B.130.A.6
REVIEWER: Reilly Pittman, Development Services Department

2. Obtain Permits

The applicant shall obtain all other permits for infrastructure, utilities, building and other improvements. No construction may commence until the appropriate permit is issued.

PERMIT: 08-135645-LK, 11-103630-LO
AUTHORITY: Land Use Code 20.30P
REVIEWER: Reilly Pittman, Development Services Department

3. Structure Setbacks

The rear setback on all lots shall be 25 feet except for lots 7, 8, and 9 which have a 20-foot rear setback and is required to be noted on the face of the final plat.

PERMIT: 08-135645-LK
AUTHORITY: Land Use Code 20.30D.150
REVIEWER: Reilly Pittman, Development Services Department

4. Construction Hours

Noise related to construction is allowed from 7:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturday. Exceptions to the construction noise hours limitation contained in the Noise Control Code MAY be granted pursuant to BCC 9.18.020C.1 when necessary to accommodate construction which cannot be undertaken during exempt hours. Prolonged exposure to noise created by extended hour construction activity is likely to have a significant impact on inhabitants of surrounding residential properties during the proposed timeline for construction. In order to minimize detriment on residential uses in the immediate vicinity of the project, the Contractor shall not rely on City issuance of a blanket exemption from the Noise Control Code during the construction period. Allowances for short term work outside of normal construction hours shall be limited and will be reviewed on a case by case basis to verify necessity and ensure appropriate noise mitigation is utilized to protect surrounding uses and properties. Written requests for exemption from the Noise Control Code must be submitted two weeks prior to the scheduled onset of extended hour construction activity. Such request shall include a noise analysis prepared by a noise consultant, including recommendations for achieving the noise limitations of the Noise Ordinance for new residential construction.

PERMIT: 08-135645-LK, 11-103630-LO

AUTHORITY: Bellevue City Code 9.18.040
REVIEWER: Reilly Pittman, Development Services Department

5. Geotechnical Recommendations

The project shall be constructed per the recommendations of the geotechnical engineer as found in the submitted geotechnical report dated April 3, 2008 and the critical areas report addendum dated September 16, 2009.

PERMIT: 11-103630-LO
AUTHORITY: Land Use Code 20.30P.140
REVIEWER: Reilly Pittman, Development Services Department

6. Tree Protection Requirements

To mitigate adverse impacts to nondisturbed areas and trees to be retained during construction, conformance with BMP T101 for tree protection is required which includes:

- Clearing limits shall be established at the limit of nondisturbed areas and for retained trees within the developed portion of the site, outside of drip lines. Six-foot chain link fencing with driven posts, or an alternative approved by the Clear and Grade Inspector, shall be installed at the clearing limits prior to initiation of clearing and grading.
- No excavation or clearing should be performed within drip lines of retained trees, except as specifically approved on plans. All such work shall be done by hand to avoid damage to roots and shall be done under the supervision of an arborist approved by the city.

PERMIT: 08-135645-LK, 11-103630-LO
AUTHORITY: Land Use Code 20.20.520, Bellevue City Code 23.76.060
REVIEWER: Reilly Pittman, Development Services Department

7. Utilities

The Utilities Department has approved the Preliminary Plat proposal only. There are no implied approvals of the utility engineering. Changes to the site layout may be required to accommodate the utilities. All water, sewer & storm drainage design review, plan approval and field inspection shall be done through the Utility Developer Extension Agreement process, water application process, side sewer permit(s), and/or storm drainage connection permits.

PERMIT: 08-135645-LK
Authority: Bellevue City Code 24.02, 24.04, 24.06
Reviewer: Arturo Chi, Utilities Department

**B. CONDITIONS PRIOR TO ISSUANCE OF ANY PLAT
ENGINEERING/CLEAR AND GRADE PERMIT:**

1. Right of Way Use Permit

The applicant is required to apply for a Right of Way Use Permit before the issuance of any clearing and grading, building, foundation, or demolition permit. In some cases, more than one Right of Way Use Permit may be required, such as one for hauling and one for construction work within the right of way. A Right of Way Use Permit regulates activity within the city right of way, including but not limited to the following:

- Designated truck hauling routes.
- Truck loading and unloading activities.
- Hours of construction and hauling.
- Continuity of pedestrian facilities.
- Temporary traffic control and pedestrian detour routing for construction activities.
- Street sweeping and maintenance during excavation and construction.
- Location of construction fences.
- Parking for construction workers.
- Construction vehicles, equipment, and materials in the right of way.
- All other construction activities as they affect the public street system.

PERMIT: 08-135645-LK
AUTHORITY: Bellevue City Code 14.30
REVIEWER: Tim Stever, Transportation Department

2. Site (Civil Engineering) Plans

A street lighting plan and site (civil engineering) plan produced by a qualified engineer must be approved by the City prior to clear and grading permit approval. The design of all street frontage improvements must be in conformance with the requirements of the Americans with Disabilities Act and the Transportation Development Code, and the provisions of the Transportation Department Design Manual.

PERMIT: 08-135645-LK
AUTHORITY: Bellevue City Code 14.60.210; Transportation
Department Design Manual
REVIEWER: Ray Godinez, Transportation Department

3. Final Landscaping Plan

A final plat landscaping plan is required to be submitted which includes specific plant quantities and spacing listed in the plant schedule. Applicant's approved landscaping plan submitted in support of this preliminary plat application represents an enhanced Type 3 landscaping plan which establishes the minimum level of landscaping required. Additional plant quantities and species may be required to ensure sufficient density is achieved as stated in the report, and as shown on the approved landscaping plan.

PERMIT: 08-135645-LK, 11-103630-LO
AUTHORITY: Land Use Code 20.30D.150
REVIEWER: Reilly Pittman, Development Services Department

4. Trail and footbridge design, inspection, and easement

The trail is required to be composed of mulch or wood chips and is limited to 6 feet in width. The trail cannot result in the removal of any significant trees and will need to be meandered or modified to avoid tree removal. The location of the trail shall be inspected by Land Use staff prior to installation. The proposed footbridge shall be no more than 6 feet wide, matching the trail width, and any abutments shall be above the top-of-bank elevations. The trail shall be included within a 10' wide public easement within Native Growth Protection Area Tract C so that the trail can be used by residents of the surrounding neighborhood. Access easements to the trail along the extension of 110th Ave SE will be required. The trail will be maintained by the Homeowner's Association or owned in undivided interest by all owners of lots 1 through 17 of this subdivision.

PERMIT: 08-135645-LK, 11-103630-LO
AUTHORITY: Land Use Code 20.30D.150
REVIEWER: Reilly Pittman, Development Services Department

5. NGPA Fencing and Signage

The site plan submitted as part of the plat infrastructure permits shall depict split rail or other fencing on the perimeter of all NGPA tracts. One sign denoting the area is protected is required to be placed adjacent to every residential lot or spaced every 100 feet where fencing does not abut a residential lot. Signage and fencing will be verified during Land Use inspection of the landscaping and mitigation planting.

PERMIT: 11-103630-LO
AUTHORITY: Land Use Code 20.30P.140
REVIEWER: Reilly Pittman, Development Services Department

6. Utility Stream Crossing

Any sewer utility lines crossing the stream should be bored under the stream to prevent disturbance. If boring is not feasible, a full dewatering plan with turbidity monitoring, erosion control, etc. may be required as part of future infrastructure permits. Sufficient evidence will need to be presented in order to show that boring is not feasible.

PERMIT: 08-135645-LK, 11-103630-LO
AUTHORITY: Land Use Code 20.30P.140
REVIEWER: Reilly Pittman, Development Services Department

7. Installation Performance Sureties for Plat Landscaping and Mitigation

An installation performance surety is required based on 150 percent of the installed cost of the plat landscaping and mitigation planting. The amount of the surety is determined by a cost estimate submitted as part of the clearing and grading permit for plat infrastructure. The installation surety will be released upon successful Land Use inspection of the planting.

PERMIT: 11-103630-LO
AUTHORITY: Land Use Code 20.30P.140
REVIEWER: Reilly Pittman, Development Services Department

8. Maintenance Surety and 5-Year Monitoring

A maintenance surety for the mitigation planting is required based on the cost estimate for mitigation planting which includes all costs associated with maintenance and monitoring for 5 years for monitoring, maintenance activity, plant replacement, contingencies. The amount of the surety is determined by a cost estimate submitted as part of the clearing and grading permit for plat infrastructure. The maintenance surety will be released upon successful completion of the 5-year maintenance and monitoring period as detailed in the approved conceptual mitigation plan.

PERMIT: 11-103630-LO
AUTHORITY: Land Use Code 20.30P.140
REVIEWER: Reilly Pittman, Development Services Department

9. Final Mitigation Plan

The submitted mitigation plan is considered a conceptual mitigation plan. A final mitigation plan is required to be submitted as part of future clearing and grading permits which will document any changes since this plan was created, correct typos, and address the following:

- Ensure mitigation planting is at least 18,972 square feet in area based on the amount of critical areas and buffer being modified and ensure plans show all critical area and buffer modifications as

found in Attachment 8.

- Specify plant spacing which must be at least 9 to 12 feet on center for trees, 4 to 6 feet on center for shrubs, and 2 feet spacing for ground covers
- Ensure plant quantity is sufficient to achieve the required density and area coverage which should for each 1,000 square feet should generally achieve 8 trees, 30 shrubs, and 285 ground covers. At least 18,972 square feet must be planted.
- Separate any areas of temporary disturbance resulting from the sewer and storm lines crossing the stream or from road and trail construction. Show how these areas will be restored. Restoration of temporary disturbance is separate from mitigation.
- Areas of invasive species and debris removal must be identified.
- Update the plan to show the proposed development approved by this review.
- Provide a cost estimate to carry out the mitigation.

PERMIT: 11-103630-LO
AUTHORITY: Land Use Code 20.30P.140
REVIEWER: Reilly Pittman, Development Services Department

10. Hold Harmless Agreement

The applicant shall submit a hold harmless agreement in a form approved by the City Attorney which releases the City from liability for any damage arising from the location of improvements within a critical area buffer in accordance with LUC 20.30P.170. The hold harmless agreement is required to be recorded with King County prior infrastructure permit issuance.

PERMIT: 11-103630-LO
AUTHORITY: Land Use Code 20.30P.170
REVIEWER: Reilly Pittman, Development Services Department

C. PRIOR TO FINAL PLAT APPROVAL

1. Fire Hydrant Location, No Parking, and Cul-de-Sac

Provide a fire hydrant at an approved location at the turnaround for lots 1, 2, 3, 4, & 5 (IFC 508). The access road to the lots 6 through 17 will be posted on both sides "Fire Lane-No Parking" (IFC Bellevue Amendment 503). The cul-de-sac shall have a minimum paved surface diameter of 96 feet. (Bellevue Fire Department Development Standards 3.05).

PERMIT: 08-135645-LK

AUTHORITY: International Fire Code 508, International Fire Code
Bellevue Amendment 503, Bellevue Fire Department
Development Standards 3.05
REVIEWER: Adrian Jones, Fire Department

2. Street Frontage Improvement

All street frontage improvements and other required transportation elements including street lighting must be constructed by the applicant and accepted by the Transportation Department prior to final plat approval, except as provided for in BCC 20.40.490. Specific requirements are detailed below:

i. Site Specific Items:

- Extension of 110th Avenue SE with curb, gutter, five foot wide concrete sidewalk, street signing, and channelization. Width of street extension will match the existing street width of 110th Avenue SE.
- Five foot wide concrete sidewalk along the east side of the private portion of 110th Avenue SE.
- Cul-de-sac street end at the termination of the private portion of 110th Avenue SE.
- Street lights along the extended portion of 110th Avenue SE (as determined by the City's Street Light Engineer).
- 20 foot wide private road (SE 60th Lane) with curb, gutter and street signing connecting to SE 60th Street.
- Street light installation at the intersection of SE 60th Lane and SE 60th Street.
- Pavement widening and channelization along SE 60th Street to provide for a 24 foot wide street width (two 10 foot wide travel lanes plus a 4 foot shoulder along the northern side for pedestrian access). Length of pavement widening shall be from the intersection of SE 60th Lane to Lake Washington Boulevard SE.
- Intersection improvements at SE 60th Street and Lake Washington Boulevard SE to improve sight distance. This work will include installation of new pavement markings and traffic signs; removal of existing pavement markings and old traffic signs; removal of existing vegetation and restoration of greenscape as needed. The transportation inspector may require more work items during construction as deemed necessary by the engineer or the Transportation Inspector.
- Trail connection between 110th Avenue SE and SE 60th Street (including all needed public pedestrian access easements).

- Right of way dedication at the termination of the existing length of 110th Avenue SE.
- A private parking area for five passenger cars to be located west of the intersection of SE 60th Lane to SE 60th Street. Each space will require a 9 foot width by a 16 foot length. The parking area will be signed as private. Each space will be delineated by appropriate pavement markings. The City will not enforce parking restrictions here. This parking area cannot be located on city right of way.
- Hard surface trail (with stairs) connecting the SE 60th Street private parking area to lots 1 through 5.
- Sub grades for all private access roads shall be per DEV-8.

ii. Miscellaneous:

- Landings on sloping approaches are not to exceed a 10% slope for a distance of 20 feet approaching the back edge of sidewalks. Driveway grades must be designed to prevent vehicles from bottoming out due to abrupt changes in grade.
- The maximum cross grade of a street at the street end shall be 8%.
- Vehicle and pedestrian sight distance must be provided per BCC 14.60.240 and 14.60.241.
- The private road shall not be gated or obstructed and must remain open at all times for emergency and public service vehicles. A note to this effect shall be placed on the face of the final Subdivision map.
- The maintenance responsibility for both private access roads (110th Avenue SE extension and SE 60th Lane) will assigned to the appropriate homeowners (lots 1 through 5 will be responsible for maintenance and repair of SE 60th Lane; lots 6 through 17 will be responsible for maintenance and repair of the private portion of 110th Avenue SE). A note to this effect must be indicated on the face of the final Subdivision map.

PERMIT: 08-135645-LK
AUTHORITY: Bellevue City Code 14.60.100, 110, 130, 150, 170, 190, 210, 240, 241; Transportation Department Design Manual Sections 3, 4, 5, 7, 11, 14, 19
REVIEWER: Ray Godinez, Transportation Department

3. **Pavement Restoration**

Pavement restoration associated with street frontage improvements or to repair damaged street surfaces shall be provided as follows:

110th Avenue SE: Based on this street's excellent condition, it is classified with the City's overlay program as "Overlay Required." Street cutting is permitted only with extraordinary pavement restoration. Pavement restoration requirements are 25 feet from each side of the street cut for the full width of the street.

SE 60th Street: Based on this street's excellent condition, it is classified with the City's overlay program as "Overlay Required." Street cutting is permitted only with extraordinary pavement restoration. Pavement restoration requirements are 25 feet from each side of the street cut for the full width of the street.

PERMIT: 08-135645-LK
AUTHORITY: Bellevue City Code 14.60. 250; Design Manual Design Standard #21
REVIEWER: Tim Stever, Transportation Department

4. Impervious Surface

The maximum impervious surface coverage for each lot is required to be shown on the final plat. The impervious surface coverage based on the gross site area is also required to be shown and must be less than 50 percent.

PERMIT: 08-135645-LK
AUTHORITY: Land Use Code 20.30D.150
REVIEWER: Reilly Pittman, Development Services Department

5. Inspection of Landscaping and Mitigation Planting

An inspection by Land Use staff of all plat landscaping and mitigation planting is required prior to final plat approval. Additional plant quantities may be required to ensure sufficient density is achieved as stated in the report. This inspection will also check NGPA signage and fencing.

PERMIT: 08-135645-LK, 11-103630-LO
AUTHORITY: Land Use Code 20.30D.150
REVIEWER: Reilly Pittman, Development Services Department

6. Native Growth Protection Areas

Tracts C, D, F, and G are to be labeled as Native Growth Protection Area tracts on the final plat. The following note is required to be placed on the final plat:

NATIVE GROWTH PROTECTION AREA (NGPA) TRACT

DEDICATION OF NATIVE GROWTH PROTECTION AREAS (NGPA) ESTABLISHES, ON ALL PRESENT AND FUTURE OWNERS AND

USERS OF THE LAND, AN OBLIGATION TO LEAVE UNDISTURBED ALL TREES AND OTHER VEGETATION WITHIN THE AREA, FOR THE PURPOSE OF PREVENTING HARM TO, PROPERTY AND ENVIRONMENT, INCLUDING BUT NOT LIMITED TO CONTROLLING SURFACE WATER RUNOFF AND EROSION, MAINTAINING SLOPE STABILITY, BUFFERING AND PROTECTING PLANTS AND ANIMAL HABITAT, EXCEPT, FOR THE REMOVAL, OF DISEASED OR DYING VEGETATION WHICH PRESENTS A HAZARD OR IMPLEMENTATION OF AN ENHANCEMENT PLAN REQUIRED OR APPROVED BY THE CITY. ANY WORK, INCLUDING REMOVAL OF DEAD, DISEASED, OR DYING VEGETATION, IS SUBJECT TO PERMIT REQUIREMENTS OF THE CITY OF BELLEVUE CODES. THE OBLIGATION TO ENSURE THAT ALL TERMS OF THE NGPA ARE MET IS THE RESPONSIBILITY OF THE OWNERS OF LOTS 1 THROUGH 17. THE CITY OF BELLEVUE SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO ENFORCE THE REQUIREMENTS, TERMS, AND CONDITIONS OF THIS RESTRICTION BY ANY, METHOD AVAILABLE UNDER LAW.

PERMIT: 08-135645-LK, 11-103630-LO
AUTHORITY: Land Use Code 20.25H.030
REVIEWER: Reilly Pittman, Development Services Department

Section 6. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

1278-ORD
05/03/12

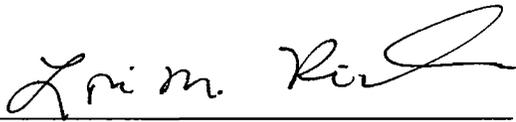
Passed by the City Council this _____ day of _____, 2012
and signed in authentication of its passage this _____ day of _____,
2012.

(SEAL)

Conrad Lee, Mayor

Approved as to form:

Lori M. Riordan, City Attorney



Attest:

Myrna L. Basich, City Clerk

Published _____