

## CITY COUNCIL AGENDA MEMORANDUM

### SUBJECT

Resolution No. 8248 authorizing the City Manager to execute a Development Agreement with Kelsey Creek Center, LLC, which agreement allows for a proportionate reduction in transportation impact fees, based on occupancy of the remodeled shopping center.

### FISCAL IMPACT

Under the applicable impact fee rates that went into effect on January 1, 2010, the redevelopment envisioned at the Kelsey Creek Shopping Center would require the owner to pay \$637,069.59 in transportation impact fees at the time of building permit issuance (Bellevue City Code Chapter 22.16). The Development Agreement would allow for a proportionate reduction in a portion of the impact fees, with a total possible reduction of \$454,580.37, based on the occupancy of the new and remodeled portions of the Center as of June 30, 2012. According to city code and state law, the total amount of impact fees offset under the Development Agreement may not be recovered from other development through impact fees, but instead shall be made up by other city funds.

The total amount of reduction (\$454,580.37) represents 18% of the \$2.5 million in impact fee revenue projected for the 2011-12 biennium within the 2011-2017 Capital Investment Program (CIP). Although some of this reduced revenue could be recouped through sales tax revenue from retail tenants in the new and remodeled space, occupancy is not anticipated until the middle of 2012, and thus the amount of such additional revenue in the current biennium is unlikely to be significant. The Council is anticipated to discuss the CIP and CIP funding issues in the coming months, and the reduced amount of impact fees allowed through this Development Agreement would be incorporated into revenue projections for those future discussions.

### STAFF CONTACT

Kate Berens, Deputy City Attorney, 425-4616  
Carol Helland, Land Use Director, Development Services Department, 452-2724  
Eric Miller, Capital Programming Manager, Transportation Department, 452-6146

### POLICY CONSIDERATION

Should the City enter into a Development Agreement with the owner of the Kelsey Creek Shopping Center in order to encourage redevelopment of the Center by June 2012? The Development Agreement is the last in several steps facilitating redevelopment of the Kelsey Creek Center. Past actions include revisions and updates to the Concomitant Zoning Agreement removing barriers to redevelopment, and approval of design review and other permits for redevelopment of the old K-Mart building on the site. The Development Agreement creates an

incentive for occupancy of the remodeled site by providing a proportionate reduction of impact fee rates, down to 2009 levels, based on the percentage of tenants open to the public by June 2012.

## **BACKGROUND**

The City Council has identified revitalization of neighborhood shopping centers as a top neighborhood and City priority. The City has been working on multiple fronts to address the many issues that these retail centers face.

The Kelsey Creek Center has had more than half of its retail space vacant for about 10 years. Costco leased the site in 2001 to develop a new store, but concluded several years ago that site size and parking limitations prohibited them from meeting their development objectives. Costco and the owner are amenable to terminating Costco's leasehold interest, creating an opportunity for the owner to pursue new development opportunities.

The City and the owner have been working over the past several years to facilitate redevelopment. To date, these efforts have led to a modification of the applicable concomitant zoning agreement and design review approval for redevelopment and site updates. Following the redevelopment work, approximately 127,000 square feet of new retail development will exist on site, as well as improvements to site landscaping and parking improvements. Under the terms of the previously approved Concomitant Zoning Agreement, off-site mitigation was approved and improvements to the existing Kelsey Creek box culvert under the parking area are required to enhance safety and functionality of the culvert. In addition to these changes facilitating redevelopment, creating an incentive for early occupancy of the remodeled Kmart building through the proposed Development Agreement serves the city's ultimate objective of returning this Center to a vibrant neighborhood asset.

Bellevue City Code section 22.16.080 allows for a reduction in transportation impact fees through a development agreement if the City Council finds that the public interest is served by the reduction, and so long as public funds other than impact fee funds are used to cover the adjustment to fees. State law allows the City to enter into a development agreement following a public hearing. Notice of tonight's public hearing was published in the City's Weekly Permit Bulletin and by the Clerk's Office. Following the public hearing, staff is requesting action on the proposed resolution.

## **EFFECTIVE DATE**

If approved by the Council, this Resolution will be effective immediately.

**OPTIONS**

1. Hold the public hearing, discuss the matter, and adopt Resolution No. 8248 authorizing the City Manager to execute a Development Agreement with Kelsey Creek Center, LLC, which agreement allows for a proportionate reduction in transportation impact fees, based on occupancy of the remodeled shopping center.
2. Hold the public hearing, discuss the matter, do not adopt Resolution No. 8248, and provide alternative direction to staff.

**RECOMMENDATION**

Hold the public hearing, discuss the matter, and adopt Resolution No. 8248 authorizing the City Manager to execute a Development Agreement with Kelsey Creek Center, LLC, which agreement allows for a proportionate reduction in transportation impact fees, based on occupancy of the remodeled shopping center.

**MOTION**

Move to open the public hearing.

Move to close the public hearing.

Move to adopt Resolution No. 8248 authorizing the City Manager to execute a Development Agreement with Kelsey Creek Center, LLC, which agreement allows for a proportionate reduction in transportation impact fees, based on occupancy of the remodeled shopping center.

**ATTACHMENTS**

Proposed Development Agreement  
Resolution No. 8248

**DEVELOPMENT AGREEMENT BETWEEN  
PMF INVESTMENTS, LLC AND THE CITY OF BELLEVUE  
*Kelsey Creek Center***

**I. PREAMBLE**

This DEVELOPMENT AGREEMENT (“Agreement”) between KELSEY CREEK CENTER, LLC, a Washington limited liability company (“Owner”) and THE CITY OF BELLEVUE, WASHINGTON (“City”), a municipal corporation of the State of Washington, is entered into pursuant to the authority of RCW 36.70B.170 through .210, under which a local government may enter into a development agreement with an entity having ownership or control of real property within its jurisdiction.

**II. RECITALS**

WHEREAS, the Property (as defined below) was originally developed as part of the 1969 Lake Hills annexation under Ordinance No. 1326; and,

WHEREAS, the Property was rezoned in 1987 from Neighborhood Business (NB) to Community Business (CB) with an associated Concomitant Zoning Agreement and developed with the Kelsey Creek Shopping Center; and

WHEREAS, long-term tenant K-Mart vacated an approximately 106,200 square foot building on the Property in 2002; and

WHEREAS, subsequent efforts to re-tenant the former K-Mart building have been unsuccessful, despite numerous efforts; and

WHEREAS, community engagement regarding the Kelsey Creek Shopping Center since at least 2002 has indicated a strong community desire for restoration of retail and other neighborhood serving uses of the former K-Mart building on the site, and improvements to site conditions; and

WHEREAS, the Property was rezoned in 2010 to, among other things, repeal the 1987 Concomitant Zoning Agreement and replace it with the Concomitant Zoning Agreement recorded at auditor’s file no. 20100518000442, records of King County, Washington (the “2010 CZA”); and

WHEREAS, Owner applied for and received approval of Design Review (DR) permit No. 10-121806 LD (the “Design Review Permit”) on March 31, 2010 to redevelop and expand the former K-Mart building and add two additional buildings that will be re-tenanted with uses to serve the surrounding neighborhood with commercial services. The DR also authorizes

significant improvements to the shopping center design, landscaping and pedestrian environment; and

WHEREAS, in the redevelopment of Kelsey Creek Shopping Center, Owner will be expending substantial resources to reconstruct and upgrade the Kelsey Creek culvert on the site and implement off-site mitigation, all in accordance with the 2010 CZA, and will be constructing significant improvements to City sidewalks and street facilities on 148<sup>th</sup> Avenue NE and Main Street, all at the Owner's sole cost; and

WHEREAS, significant neighborhood and community interest exists to eliminate vacancies and encourage redevelopment of Kelsey Creek Shopping Center will be furthered by the terms of this Development Agreement. Such redevelopment will benefit the community through reactivation of retail and commercial uses in the former K-Mart building, and will benefit the City and the public through implementation of the improvements to Kelsey Creek (and associated mitigation) identified in the 2010 CZA, construction of substantial improvements to City streets and sidewalks identified in the Design Review Approval, and realization of the fiscal benefits associated with restoration of new commercial uses at the site; and

WHEREAS, the first construction permit for redevelopment of the Kelsey Creek Shopping Center site is now ready to issue, and Owner intends to commence construction upon approval and execution of this Development Agreement and issuance of all necessary permits; and

WHEREAS, the City of Bellevue City Council held a public hearing on the proposed development agreement on June 6, 2011 after providing legally sufficient notice;

**NOW, THEREFORE**, in consideration of the mutual agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the City and Owner hereby agree as follows:

### III. AGREEMENT

1. **Property.** The property subject to this Agreement is that certain property located in the City of Bellevue, King City, Washington, and more particularly described in Exhibit A attached hereto (the "Property").

2. **Project.** Owner proposes to develop on the Property approximately 127,000 s.f. of new retail uses, as depicted in the Design Review Permit (the "New Retail Project"). The Property also includes 46,422 s.f. of existing retail uses, 27,335 s.f. of existing office uses and 397 parking stalls (the "Existing Development"). The New Retail Project and the Existing Development are collectively referred to herein as the "Center."

3. **Transportation Mitigation.** As the sole transportation-related mitigation for the New Retail Project, the Owner agrees to implement all of the transportation improvements described in the Design Review Permit and any associated permits required to implement the New Retail Project and pay impact fees as determined under Bellevue City Code (BCC) chapter

22.16, as such impact fees may be adjusted under this Section 3 (collectively the “Transportation Mitigation”). No additional Transportation Mitigation shall be required by the City in connection with the New Retail Project as approved in the Design Review Permit.

### 3.1.1 Impact Fees.

(a) **Calculation of Adjustment:** The New Retail Project is subject to an impact fee calculated pursuant to BCC chapter 22.16 (the “Transportation Impact Fee”). The Transportation Impact Fee payable for the New Retail Project is \$637,069.59. Of that total Transportation Impact Fee, \$454,580.37 represents the amount due as a result of the adjustment to impact fee rates adopted by the City Council in Ordinance 5872 and applicable as of January 1, 2010 (the “2010 Impact Fee Portion”). Pursuant to the provisions of BCC 22.16.080.G, the City has authority to adjust or reduce the Transportation Impact Fee based on a finding that the public interest is served by such adjustment and that public funds other than those collected for the impact fee fund will be used to offset such adjustment. The City has determined and hereby finds that the timely development and occupancy of the New Retail Project as set forth in this Development Agreement will result in significant public benefits supporting a reduction to the Transportation Impact Fee, including but not limited to the benefits identified in the Recitals above. The adjustment shall be determined as follows: the 2010 Impact Fee Portion shall be reduced by a percentage that is equal to the percentage of occupancy of the New Retail Project as of June 30, 2012. The percentage of occupancy of the New Retail Project shall be determined based on the ratio of that area within the New Retail Project for which temporary or final certificates of occupancy have been issued and tenants are open to the public for business as of June 30, 2012, as compared to the total area of the New Retail Project as approved in the Design Review Permit (approximately 127,000 s.f.).

(b) **Payment:** The City shall defer collection of the 2010 Impact Fee Portion pursuant to the timing modifications provisions of BCC 22.16.070C. If any portion of the 2010 Impact Fee Portion remains due after the adjustment allowed in subsection (a) above for the New Retail Project, such portion shall be due 60 days following submission of an invoice to Owner calculated consistent with subsection (a) above (the “2010 Impact Fee Portion Invoice”). If Owner has not paid the full amount of the 2010 Impact Fee Portion Invoice by the due date shown thereon, the full amount of the 2010 Impact Fee Portion (\$454,580.37) shall immediately become due and payable.

(c) **Appeal:** Nothing in this Agreement is intended to alter the timing of or procedures for appealing the determination of the total Transportation Impact Fee, which appeal shall be governed by BCC 22.16.095 (now or as hereafter amended). In the event of a dispute as to the proper amount of the 2010 Impact Fee Portion Invoice, Owner may pay the requested sum under protest and must pursue any such dispute through the appeal procedure outlined in BCC 22.16.095 (now or as hereafter amended) and complete such procedures prior to filing any court action disputing the amount of 2010 Impact Fee Portion Invoice or any portion thereof. For purposes of applying the time to appeal provisions of BCC 22.16.095, the date of determination of the 2010 Impact Fee Portion shall be the date of the 2010 Impact Fee Portion Invoice. FAILURE TO FILE AN APPEAL OF THE DETERMINATION OF THE AMOUNT OF THE 2010 IMPACT FEE PORTION INVOICE WITHIN THE TIME REQUIRED AND IN THE MANNER REQUIRED BY BCC 22.16.095 (NOW OR AS HEREAFTER AMENDED) SHALL

BE DEEMED A WAIVER OF OWNER'S RIGHT TO DISPUTE THE AMOUNT OF THE 2010 IMPACT FEE PORTION IN ANY VENUE.

**4. General Provisions.**

4.1 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

4.2 Binding On Successors; Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Owner and upon the City. The parties acknowledge that development of the Property likely will involve sale and assignment of portions of the Property to other persons who will, subject to this Agreement, own, develop and/or occupy portions of the Property and buildings thereon. Upon such assignment, the assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and Owner shall thereafter be released of liability hereunder as to that portion of the Property so transferred; provided, however, that the proportional amount of 2010 Impact Fee Portion so assigned shall be subject to approval of the City of Bellevue prior to Owner being released from liability. This Agreement shall be recorded against the Property as a covenant running with the land and shall be binding on Owner, its successors and assigns.

4.3 Interpretation; Severability. The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the City's authority to enter into such agreements, and this Agreement shall be construed to reserve to the City only that police power authority which is prohibited by law from being subject to a mutual agreement with consideration. If any provisions of this Agreement are determined to be unenforceable or invalid by a court of law, then this Agreement shall thereafter be modified to implement the intent of the parties to the maximum extent allowable under law. If a court finds unenforceability or invalidity of any portion of this Agreement, the parties agree to seek diligently to modify the Agreement consistent with the court decision, and no party shall undertake any actions inconsistent with the intent of this Agreement until the modification to this Agreement has been completed. This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement

4.4 Authority. The City and Owner each represents and warrants it has the respective power and authority, and is duly authorized, to execute, deliver and perform its obligations under this Agreement.

4.5 Time Of Essence. Time is of the essence of this Agreement in every provision hereof.

4.6 Integration. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. This Agreement may not be amended except by an instrument in writing executed by the parties hereto.

4.7 Recording. This Agreement, upon execution by the parties and approval of the Agreement by resolution of the City Council, shall be recorded with the Real Property Records Division of the King City Records and Elections Department.

4.8 Notice. All notices and demands of any kind which a party under this Agreement requires or desires to give to any other party shall be in writing and either (i) delivered personally, (ii) sent by reputable overnight courier delivery service, such as Federal Express, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the City: City of Bellevue, Washington  
450 110<sup>th</sup> Avenue NE  
P.O. Box 90012  
Bellevue, Washington 98009-9012  
Attn: \_\_\_\_\_

with copy to: Office of the City Attorney  
City of Bellevue, Washington  
450 110<sup>th</sup> Avenue NE  
P.O. Box 90012  
Bellevue, Washington 98009-9012

If to Owner: Kelsey Creek Center, LLC  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to: McCullough Hill, PS  
701 Fifth Avenue  
Suite 7220  
Seattle, WA 98104  
Attn: John C. McCullough

Notice by hand delivery shall be effective upon receipt. If sent by overnight courier service, notice shall be deemed delivered one (1) business day after sent. If deposited in the mail, notice shall be deemed delivered three (3) business days after deposited. Any party at any time by notice to the other party may designate a different address or person to which such notice or communication shall be given.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2011.

CITY:

CITY OF BELLEVUE,  
a Washington municipal corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to Form:  
Lori M. Riordan, City Attorney

By: \_\_\_\_\_  
Mary Kate Berens  
Deputy City Attorney

OWNER:

KELSEY CREEK CENTER, LLC,  
a Washington limited liability company

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_





**LIST OF EXHIBITS**

Exhibit A	Legal Description of Property

**PLEASE PUBLISH ON May 20, 2011**

Notice of Public Hearing

Kelsey Creek Shopping Center Development Agreement  
(RCW 36.70B.170)

NOTICE IS HEREBY GIVEN that the Bellevue City Council will hold a public hearing on Monday, June 6, 2011, at 8:00 PM in the City Council Chambers to consider the following:

Request by Kelsey Creek Center LLC to enter into a Development Agreement with the City of Bellevue to allow for a proportionate reduction in transportation impact fees, up to a total maximum reduction of \$454,580. The actual amount of reduction would be based on that proportion of the remodeled Kelsey Creek shopping center that is occupied by tenants and open to the public by a date specified in the Agreement. Public funds, other than impact fees, would then be used to cover the amount of impact fee reduction allowed under the agreement. Property location is 15015 Main Street.

The City Council may direct the City Manager to enter into a Development Agreement or not direct the City Manager to enter into a Development Agreement.

Written comments must be addressed to the Bellevue City Council in care of Kate Berens, Deputy City Attorney, City Attorney's Office, P.O. 90012, Bellevue, WA 98009-9012. Additional information may be obtained from this person at (425) 452-4616 or at [kberens@bellevuewa.gov](mailto:kberens@bellevuewa.gov).

Affidavit of posting has been filed with the City Clerk for the Bellevue City Council.

Dated this 19th day of May 2011.



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Myrna L. Basich  
City Clerk

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 8248

A RESOLUTION authorizing execution of a Development Agreement with Kelsey Creek Center, LLC, providing for a proportional adjustment to transportation impact fees for development at Kelsey Creek Shopping Center.

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

Section 1. The City Manager or his designee is hereby authorized to execute a Development Agreement with Kelsey Creek Center, LLC pursuant to the provisions of Bellevue City Code chapter 22.16 and RCW 36.70B to allow for an adjustment to transportation impact fees for development at Kelsey Creek Shopping Center, a copy of which Development Agreement has been given Clerk's Receiving No. \_\_\_\_\_.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2011, and signed in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

(SEAL)

\_\_\_\_\_  
Don Davidson, DDS  
Mayor

Attest:

\_\_\_\_\_  
Myrna L. Basich, City Clerk