

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Schedule for final adoption of Bel-Red code amendments, and outline of catalyst project proposal, endorsement of staff recommendation to clarify the existing conditions section of the code in response to public comments.

STAFF CONTACT

Matthew Terry, Director, Department of Planning & Community Development, 452-6191
Kate Berens, Deputy City Attorney, City Attorney's Office, 452-4616
Carol Helland, Land Use Director, Development Services Department, 452-2724

POLICY ISSUES

Should the Bel-Red Land Use Code amendment be modified to include provisions for catalyst projects? Do the catalyst project provisions outlined here strike the appropriate balance between incenting early redevelopment in the Bel-Red area and having that development contribute to the overall park, stream restoration, and affordable housing strategy? Does the Council endorse the staff recommendation to include modest process clarity revisions to the existing conditions provisions of the code?

DIRECTION NEEDED FROM COUNCIL

<input type="checkbox"/>	Action
<input checked="" type="checkbox"/>	Discussion
<input checked="" type="checkbox"/>	Information

Staff seeks Council direction on whether to include enabling language in the Land Use Code and other development codes to support catalyst project incentives, and endorsement of modest clarity revisions to the existing conditions provisions of the Bel-Red.

Staff will return on May 11, 2009 seeking Council direction on whether to proceed with a Development Agreement implementing the catalyst project incentives for the property owned by Wright Runstad, and with a comprehensive package of code amendments and zoning to implement the Bel-Red corridor policies.

BACKGROUND/ANALYSIS

The City staff have completed work on the Bel-Red code package. The Council has reviewed and provided direction on the development regulations and zoning proposed for Bel-Red. This session will focus on the catalyst project provisions of the Land Use Code and response to public comments received since the last Council engagement on this package. Council direction on this topic will allow staff to finalize work on a code package, so that the Council can take final action on the Bel-Red implementing ordinances.

Catalyst Project Proposal.

The Planning Commission completed its review of the Bel-Red code package in May of 2008. One of the major issues that surfaced during their review of the incentive zoning system was whether the City's proposal, in combination with the proposed LID for Bel-Red transportation improvements, the proposed changes in the transportation impact fee, and the on-site requirements for developer funded infrastructure, would stifle development planned for the Bel-Red area.

The City sought peer review of the incentive zoning proposal from a ULI technical assistance panel. That panel concluded that incentive zoning at a \$15 rate was feasible, so long as developers received some credit for developer funded infrastructure. The City's independent economic analysis, conducted by Property Counselors, confirmed this ULI conclusion. Property Counselors' work demonstrates that development feasibility for office development is enhanced in the near term if incentive zoning rates are reduced. Over the longer term, as the area matures, these incentives can be phased out without significantly impacting development feasibility.

City staff have been working over the last several months to develop a catalyst project proposal that would accomplish the following objectives:

1. Leverage private investment in the Bel-Red area earlier than it would otherwise occur, and in a form that advances the Bel-Red vision
2. Demonstrate that the current light industrial market had matured, supporting the office and residential mixed use development contemplated in the Bel-Red plan
3. Provide the right balance of early year incentives for office and residential redevelopment with high upfront development costs, recognizing that later development feasibility is enhanced as redevelopment occurs
4. Focus on projects that are large enough to establish a market environment for redevelopment in the Bel-Red area that will support momentum towards the mixed use vision contemplated by the City
5. Create a level playing field so that other potentially transformational projects can take advantage of the catalyst project incentives.

The City staff proposes to create enabling language in the Land Use Code and other development codes for catalyst projects. The specific terms applicable to projects that qualify as catalysts would be accomplished through a development agreement, authorized under RCW 36.70B, where those terms can be tailored to the unique attributes of a specific site.

The enabling language in the Land Use Code would include the following:

- Criteria establishing a catalyst project. These criteria would require the project to be located in a node; be larger than 4 acres in size; have an average FAR greater than 2.0; require significant infrastructure development; and apply for a Master Development Plan approval within 18 months of a Sound Transit East Link Project record of decision
- Language authorizing a reduced in-lieu Tier 1 incentive zoning payment, in recognition of the significant developer-funded public infrastructure required to support the redevelopment project
- Language authorizing extended vesting of the MDP and associated land use and environmental approvals for a period not to exceed 15 years

- Language deleting the proportional requirement for construction of residential development on sites greater than 30 acres in the OR-1 and OR-2 land use districts. A residential requirement for the Spring District would be included in a proposed development agreement.

The City's Transportation Standards Code would be amended to allow extended vesting (of up to 5 years) under the City's concurrency ordinance, but would include a cap of 1 million square feet on the amount of development that could be vested at any point in time.

The City's local improvement district (LID) code would be amended to provide for acceptance of a single-payer LID for public improvements required to support redevelopment, but retaining the City Council's discretion to form the LID based on a City Council finding of financial and economic feasibility.

These ordinances will enable the City to tailor incentives for catalyst projects through a development agreement.

Wright Runstad, owner of a significant parcel within the OR-1 and OR-2 districts in the west node of the Bel-Red area, anticipates development of a large mixed-use project referred to as the "Spring District." The Spring District could qualify as a catalyst project, and early development of the Spring District would represent the kind of market-driving development considered necessary to trigger larger redevelopment of Bel-Red in the manner envisioned in the City's Comprehensive Plan. Wright Runstad and City staff have developed key terms to be included in a development agreement that would apply the tailored catalyst project incentives to the Spring District. The terms of that proposal are described in Attachment 1.

Public comment received since March 16, 2009

Comment letters from OPUS and Groen, Stephens and Klinge have been received. In addition, Walter Scott provided comments to Council during oral communications at the April 4 meeting. Original comment submittals and responses are included in Attachment 2.

Staff recommend a modest revision to the existing conditions section of the Bel-Red Code in response to a process issue raised in the Groen, Stephens and Klinge comment letter. The code language is presented in Attachment 3. It is the position of staff that the legal rule articulated by Mr. Klinge is not required to be included in the Bel-Red code to ensure consistency with state law. (For a full discussion of this issue, refer to staff response to Issue One of the Klinge letter.) However, inclusion of the revised language would provide process clarity to the discontinuation section of the code. Unless alternative direction is provided, the revision will be incorporated into the final Bel-Red code package.

Schedule for final Council action on the Bel-Red code package.

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| May 4, 2009 | City Council discussion and direction to staff on whether to include catalyst project enabling language in the Land Use Code and other development codes, and whether to endorse staff recommended clarifying language to the existing conditions section of the code. |
| May 11, 2009 | Final Council review of the Bel-Red Code package, including the Land Use Code, general LUC consistency amendments, Noise control code and Sign |

Code amendments to achieve consistency with the Bel-Red code, and a legislative rezone ordinance; and
City Council review of a draft development agreement with Wright Runstad, including direction to initiate environmental review and the required public notice for a hearing on this proposal

- May 18, 2009 Council action adopting the Bel-Red Code package, including the Land Use Code, general LUC consistency amendments, noise control code and sign code amendments to achieve consistency with the Bel-Red code, and a legislative rezone ordinance.
- June 8, 2009 Council public hearing on the Wright Runstad Development Agreement. Council action on the Development Agreement and related ordinance amendments (TSC, LID, Environmental Procedures Code) could occur any time following the public hearing and expiration of the SEPA notice and appeal period.
- June 22, 2009 Council action to approve an interlocal agreement with King County providing for a transfer of development rights for 75 residential units and payment of \$750,000 to the City of Bellevue.

RECOMMENDATION

Direct the staff to incorporate catalyst project enabling language in the Land Use Code and other development codes, and to bring the final implementation package back to Council for final approval.

ATTACHMENTS

1. Term sheet for Wright Runstad Development Agreement
2. City response to comment letters
3. Existing conditions revisions recommended by staff in response Klinge letter

Attachment 1

Outline of catalyst project incentives as applied to the Wright Runstad property

The Land Use Code and other City development codes contain enabling language that allow qualifying projects to execute a development agreement with the City applying specific catalyst project incentives to a development proposal. Wright Runstad proposes to execute a development agreement (DA) with the City for property they own in the OR-1 and OR-2 districts, located in the west node within the Bel Red area.

The specific terms proposed to be included in that agreement are:

- 1) **Spring District Development Components.** The Development Agreement shall provide that the MDP for the Spring District will demonstrate a minimum FAR of 2.5. In addition, the MDP will include in the first phase a public mini-park a minimum of one acre in size and other active recreation space as depicted in the Spring District concept plan.
- 2) **Incentive zoning fee reductions.** The DA will establish an alternative fee-in-lieu rate for Tier 1 for office and residential development as follows: the rate for the first 750,000 square feet of development would be \$3.75 per square foot; the rate would be set at \$4.00 per square foot for every Tier 1 bonus square foot of development thereafter.
- 3) **Vesting.** The DA would include language providing for extended vesting of the Land Use code, related incentive zoning fees, and associated SEPA determinations for a period running from the execution of the DA to approval of a Master Development Plan. If the MDP is approved by the City, then the vesting period is extended for an additional 15 years. Within this 15 year period, however, the DA would include language that applied any changes to development standards or design guidelines to any permit required for the project applied for after Sound Transit East Link Light Rail (East Link) service is operational at a station located in the Spring District. The extended vesting period would not apply to the building code, drainage codes, transportation impact fees or other codes or standards.
- 4) **Residential phasing requirement.** The DA would impose a requirement for 20% of the site area (as opposed to 20% of gross floor area under the current draft of the code) approved under the MDP to be designated for residential uses. The requirement would be enforced as follows:
 - a. Wright Runstad would designate residential development areas equal to 20% of their site area (adjusted for proportional share of infrastructure supporting the site) as part of their master development plan. These areas would be restricted to residential uses and associated allowed uses consistent with the Land Use Code through a covenant running with the land.

- b. If the residential land is owned by Wright Runstad or an affiliated entity at the time that East Link service is operational at a station located on this site, and if no residential development is completed or construction is underway then a residential development project equal to 20% of the square footage of land developed with office uses will be developed before any further office development is allowed on property subject to the MDP
 - c. If the residential land is sold by Wright Runstad to an unrelated entity, the prohibition against additional office development prior to development of the required residential is eliminated; although the residential land would remain restricted in its use.
 - d. The timing of Wright Runstad's sale of the residential land would be structured to ensure that any sale is not timed merely to avoid the requirement described in (b) above.
- 5) **Concurrency.** The DA would provide for vesting of concurrency capacity for a 5-year term following design review approval of any phase of the MDP, provided that no phase or combination of phases could vest development capacity under the City's concurrency ordinance for more than 1,000,000 sq ft of office development. Current vesting under the concurrency ordinance is for one year, which is extended by any active building permit or building permit application. Unless and until amended, the development caps with the BROTS agreement would continue to apply to development proposed on this site.
- 6) **Developer-funded LID.** The DA would obligate the City to accept a petition for a single-payer LID for infrastructure designed to serve the development, but would retain the City Council's discretion to accept or reject the petition to form the LID based on the Council's determination of economic or financial feasibility. Any petition filed by Wright Runstad would be limited to property they own and for which they have an approved MDP, and may require financial security in a form acceptable to the city.
- 7) **Proportional compliance for existing uses.** In the event that Wright Runstad pursues modifications to existing buildings on the site, the otherwise applicable requirement for some proportional compliance would be deferred pending the City's decision on the MDP application. If the MDP is approved, the requirement for proportional compliance would be eliminated. If the MDP is denied, than Wright Runstad would complete any proportional compliance deferred by application of this section.

The DA would be assignable, and would run with the land.

Response to Comments from The OPUS Group

Earlier this year, Bel-Green Development and The OPUS Group submitted letters concerning the dimensional standards related to the eastern triangle area in Bel-Red between Bel-Red Road and 156th Avenue NE. The comments and concerns raised in their letters were addressed in the Council materials for the March 2, 2009, Council meeting. OPUS provided a follow up letter, attached here, on March 27 that reiterates some of their concerns. The letter addresses issues with the requirements for lot coverage, sidewalk oriented development, maximum façade length, upper floor step-back, and prohibited building materials. All but the regulations related to prohibited building materials were previously raised and discussed by Council on March 2. Regulations related to prohibited building materials were discussed by Council on March 16.

Maximum impervious surface coverage

OPUS states that the limitation of 75% lot coverage prevents them from achieving the higher density development envisioned by the new Subarea Plan. They advocate for a limit of 90% to 95%.

The proposed 75% maximum impervious surface coverage is an important component of the Bel-Red Subarea Plan's objectives to support natural drainage practices, reduce impacts to local streams, and increase the amount of green space. By allowing taller, more intense development along with a reduced impervious surface coverage, the plan balances higher, transit supportive densities with a goal of reducing environmental impacts and restoring water quality. Additionally, when covered with vegetation, underground buildings, such as parking areas, will be allowed to be constructed under the require vegetated area allowing developments to maximize the use of the site below grade.

Entrances and transparency on 156th Avenue NE

OPUS objects to the requirement for sidewalk oriented development along 156th Avenue and states that retail tenants will object to having store entrances face the undeveloped open space at the Unigard site.

The requirement for building entrance and transparency on 156th Avenue NE is a deliberate attempt to keep buildings oriented to the sidewalk. If changed to only require "interesting materials and design at the sidewalk," staff is concerned that the result will be a street lined with the backs of buildings. The requirement does not prevent buildings from also having an internal entrance as OPUS suggests, but simply forces the building design to balance public access from both the street and an internal courtyard. There are numerous examples in the region, including suburban locations, of retail stores – including Walgreens – that provide building entrances and windows facing the public street while also providing surface parking and other entrance locations.

While 156th Avenue NE is proposed to have required sidewalk oriented development, it is not proposed to have required ground floor uses. Sidewalk oriented development is characterized as ground floor building frontages with entries from the sidewalk and a

high degree of transparency. This increases the visual and physical interaction between people inside and outside the buildings and results in “eyes on the street.” It does not require specific uses at the sidewalk level and allows for interruption in transparency.

OPUS suggests that the requirement would force residential townhome type of development with individual street front entrances. While townhomes are a desirable building type, it is not the case that they would be required by the code. Various forms of multifamily development could work. The standard would require a building entrance from 156th Avenue, but it would not force a particular type of residential development. Staff recommends no additional change to this requirement.

Maximum façade length

The May public hearing draft of the Land Use Code set a maximum building façade length along 156th Avenue NE at 150 feet and required a minimum spacing between buildings of 40 feet. As discussed during Council’s review of the building heights for this area, the intent of the Planning Commission was to set standards that would prevent a solid wall of development at this transitional edge of the Subarea that faces the Unigard open space. OPUS argues for providing additional flexibility of the size and spacing of the building spacing.

This issue was discussed extensively at the March 2 Council Study Session. Unless Council indicates a new interest, staff recommends no additional change to this requirement.

Upper floor step-back requirement

OPUS advocates to allow the upper portions of buildings to align with lower portions as a means to maximize the buildable FAR (floor area ratio). They note how the requirement will force a smaller internal courtyard and push buildings more toward the center of the site.

This too was discussed extensively at the March 2 Council Study Session, including review of the potential building heights through visual analysis. Upper floor step-backs are commonly used in Downtown Bellevue and in other jurisdictions as a means to mitigate the massing and visual impact of taller buildings. At that Study Session, Council provided direction to maintain the upper floor step-backs as proposed. No additional changes to this requirement are recommended.

Prohibited building materials

Section 20.25D.130(E) prohibits certain building materials that are deemed to be incompatible with the envisioned uses and building form for the Bel-Red area. OPUS asks for greater flexibility, suggesting that some of the prohibited materials, when used properly, can create interesting and varied facades. This issue was raised during Council’s March 16 Study Session.

The prohibited materials section lists materials that are not permitted on a building face

visible from public rights of way, while these materials may be used in interior courtyards and rears of buildings for cost savings. Adopted Bel-Red Policy S-BR-19 states: *Encourage the use of building materials that are of high quality and durability, are appropriate for the area climate, and have a sense of permanence.*

The list of materials was developed based on 25 years of development review. Unfinished materials wear poorly over time. Fake or faux materials, such as synthetic rock or Styrofoam architectural details (often seen as a carved or sculpted cornice), lack the integrity of authentic materials. These materials can easily be damaged and the patched result often does not meet the original appearance. Lap or shingle siding is out of character with Bel-Red's commercial, mixed uses and high and mid-rise building forms. Lap and shingle siding generally look out of scale on buildings taller than 35 feet. The list of prohibited materials reflects the desire to create a district with a sense of place and permanence, and is environmentally sustainable – including how materials are manufactured, recycled, and employed with state of the art techniques. While listed as prohibited, the code does allow for exceptions through the design review process where use of such materials can be shown to be consistent with intent of the standards and guidelines.



March 27, 2009

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RE: Bel-Red Comprehensive Plan Land Use Code Amendments

Dear Council Members,

As stakeholders in the Walgreens site at Bel-Red Road and NE 24th Street, also known as the Uwajamaya site, we sincerely appreciate all the efforts you, the city staff and the planning commission have gone through to develop the new Bel-Red Comprehensive Plan and Land Use Code amendments. We have spent considerable time studying the impact of the Code changes on our proposed development for the site. It is our opinion that the proposed Land Use Code (LUC) Amendments do not support the City's vision of affordable and market rate urban density at the Walgreens site and probably at other sites in the corridor. While we have only studied the Walgreens site, we are confident that many of the problems that we have encountered will create similar difficulties throughout the Bel-Red district. We strongly urge the City Council to withhold authorization of the Bel-Red Land Use Code Amendments until further study and refinement confirms that they are achieving the vision that has been established in the Comprehensive Plan.

The Walgreens site is the at the north end of the super-block from NE 20th to NE 24th Streets and from Bel-Red Road to 156th Avenue NE. This site is surrounded by local arterials and has for decades been a very successful community retail site. It has potential to also be a good housing site. The traffic counts are high, the Microsoft corporate offices and other offices are nearby and there is a large single family community east of 156th. Many years from now when light rail is completed, and if the cost of private transportation is much higher than it is today, the area might develop into a walking community. In the foreseeable future (10-15 years), parking will be required for retail and residential to be financially viable. Community retail must have enough convenient parking near the entry to the store to entice customers who are only looking for short term parking. The majority of the parking can be placed below grade as long as some short-term parking exists at the entry door.

The proposed amendments, while seeking to provide clarity, have become burdensomely prescriptive. By this letter, Opus is asking again that the City of Bellevue reconsider several of the proposed Land Use Amendments. The new Zoning Map that has been approved for this area allows a Floor Area Ratio of up to 4.0 on this site. From our examination of the impact of the Land Use Regulations, we have determined that it will be extremely difficult to achieve an FAR of even 2.0 on this site with any practical configuration of uses. A short discussion of each challenge follows:

75% Impervious - 25% Pervious Surface:

The primary obstacle to achieving a higher density is the requirement to have 25% of the site as pervious area [Section 20.25D.080A]. Leaving ¼ of a site as un-built area makes achieving a viable density extremely difficult. We fully support the City's concept that this district would be different from other areas by including a lot of green space within a denser urban environment, but a 25% pervious requirement is too restrictive and the Code needs to be re-written to allow more flexibility in achieving the City's aims. Something in the 90% to 95% impervious would be best. Allowing some green space on the roofs of buildings is not an alternative in this market because it is very expensive and will force rents above the market.

Sidewalk Oriented Development on 156th Avenue NE:

The second major obstacle to re-developing this site is the requirement to have sidewalk oriented development along the west side of 156th Avenue NE [Section 20.25D.130 C]. This section mandates that primary entrances for the ground floor uses shall be oriented to the public right-of-way and that a minimum of 70% for retail and 40% for residential of the street frontage shall be transparent glass or screens. This requirement ignores the existing conditions and tries to impose an unrealistic vision into the urban fabric. All of the other street frontages where this requirement is imposed have similar conditions across the street or around the corner. This block along 156th Avenue is completely isolated and has no supporting conditions anywhere nearby. 156th Avenue is a noisy and busy street with no on-street parking. It is not pedestrian friendly. Across the street is a passive open area. No retailer will want to locate a store's primary entrance on this street where there is no vehicle parking at the retailer's front door. At a recent meeting, we were told by the planning staff that they envision mostly residential in this area with minimal retail. They envision townhomes or entrances to residential lobbies similar to townhomes found at the base of buildings in Vancouver B.C. and on NE 10th in downtown Bellevue. The streets in Vancouver where townhomes are found are much less traveled than 156th; even NE 10th in the downtown does not carry nearly the traffic. Would you rent or buy a townhome on 156th at this location? We strongly question whether townhomes are a viable use along this busy street, and further question whether it is appropriate that the Land Use Code be this restrictive in its application. We believe the consequence of this requirement is that no new development will occur on this site in the foreseeable future (10-15 years) negating all the effort to re-write the Comprehensive Plan for this area.

Facade length on 156th:

The 40 foot opening along 156th and the maximum facade length of 150 feet requirements [Section 20.25D.80.A, Note 17] leave no flexibility if one building is less than 150ft in length and a second one should be 200 feet to maximize the remaining land. Again this drives down the FAR potential and reduces density opportunities. Let the 40 foot gap serve to breakup the buildings and create modulation. This section needs further refinement to determine if the codes can provide the desired control on development while allowing more flexibility in the design.

Stepback requirements:

The step backs above 40 feet [Section 20.25D.80.A, Note 15] contribute to the loss of buildable FAR because they force the major portion of the buildings into the site 15 feet (NE 24th and Bel-Red) to 50 feet (156th Ave NE). If density is desired the upper portions of the building should be allowed to align with the lower portion at the retail/ground level. This alignment can be seen in downtown Bellevue at all the recent mixed use projects. Another problem with the stepbacks is they force the buildings to move toward the center of the site thus reducing the space between buildings. A large open plaza with parking convenient for the retail is desired, but the stepbacks force a smaller plaza with less green area. The facade length and the stepback requirements seem unnecessary to achieve the scale and modulation that is sought. They are too prescriptive and create a far larger burden than any advantage gained.

Prohibited materials:

We also see considerable difficulty for developers arising from the Design Guidelines [Section 20.25D.130(E)]. Most of the materials listed as prohibited for facades facing public right-of-ways (there are three public right-of-ways at the Walgreens site), when used properly, can create interesting and varied facades. For example, the new faux brick and stone products recently developed, when properly installed, are hard to differentiate from real brick or stone. Cementitious materials, such as Hardie board and plank, are durable and have become industry standard for our damp northwest climate. They provide an excellent "residential look" and therefore are commonly used in multi-family design. Architectural foam (EIFS/Dryvit) can provide interesting detailing over windows and at cornices. All these prohibited materials provide cost effective yet quality exteriors and, more importantly, are the materials found on buildings that have the rent/sales structure available in the Bel-Red area. Non-prohibited materials, such as colored precast concrete, granite and glass curtainwall, will make the residential buildings too expensive for the market.



Developers need to build to the market, be sensitive to community desires and construct to codes. The proposed LCU Amendments will not permit this to happen in the foreseeable future. Opus does support the vision for dense urban centers combining housing and retail. Unfortunately the proposed LUC Amendments will result in very inefficient and expensive housing/retail space. If it can be financed, it will not be affordable to the Bel-Red market. This area will always be a community that supports the “downtown” and should provide housing and retail that is affordable. Please carefully consider the proposed LUC Amendments before making them official. Should you decide to take more time to study the amendments, we suggest the planning staff be directed to meet directly with the developers who have to work with these codes, the local market conditions and the lending institutions. Together we can find solutions for dense urban developments that can meet the City’s vision and yet are affordable for today’s market.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Taber".

Andy Taber
Senior Real Estate Director
Opus Northwest, L.L.C.

CC: Planning Commission
Matt Terry
Patti Wilma
Paul Inghram

Response to Comments Received on Behalf of Dave Robertson

Charles Klinge submitted a letter on behalf of his client, Dave Robertson, an owner of property located in the Bel-Red Corridor. The letter provides comments on the Existing Conditions section of the Bel-Red Code. The staff response to the issues raised are presented below, and a copy of the letter is included for reference purposes.

***Issue One:** Mr. Klinge maintains that the Land Use Code amendments fundamentally change the City's nonconforming use rules such that the rule applied to Bel-Red is more restrictive than the current code. He further maintains that the proposed rule is unreasonable and inconsistent with the law.*

It was the intention of the Bel-Red Steering Committee to fundamentally change the City's nonconforming use rules for properties located in Bel-Red. The Committee engaged in significant deliberation to develop a strategy for accommodating traditional light industrial (LI) uses and service uses with a light industrial character. The full deliberations were summarized in the Final Report of the Steering Committee dated September 2007, and excerpts are provided below.

The Committee acknowledged the need to manage a graceful transition from existing uses to those envisioned in the long term. The Committee listened to concerns expressed by existing businesses (such as Coca-Cola bottling plant) that had been in the area for some time, and were interested in remaining. The Committee eventually decided on a strategy that allowed existing uses to continue, but recognized that market forces were likely to reduce the demand for these uses over time. The strategy was summarized as follows:

- Existing LI and Services uses will be allowed and may be continued by future owners
- No new LI or Service uses will be allowed
- Expansions to existing LI and Service structures will be permitted
- Discontinued LI and Service use may not be re-established
- Destroyed LI and Service uses may be reconstructed

Responding to concerns of property owners regarding application of the nonconforming label to their uses and properties, the Committee recommended that existing LI and Service uses not be considered "nonconforming" under the provisions of the Land Use Code (LUC). Accordingly, the staff developed a new zoning term and approach to address existing conditions in the Bel-Red Corridor consistent with the Committee recommendation.

The term "nonconforming" is not used in the Bel-Red code. Existing structures and uses are permitted to expand. A fixed threshold establishes when an

alteration triggers required improvements to eliminate the need for cost estimates that complicate permitting and code administration. Routine repair and maintenance is not considered an alteration that counts toward the threshold that triggers improvements; and site improvements that enhance accessibility, structural stability, and environmental performance are exempt from counting toward the threshold. The scope of the improvements that are required is modest (such as landscaping and paving of gravel parking areas), and cost of the improvements are capped. Lastly, LI and Service structures are allowed to be reconstructed, even if they are totally destroyed. These provisions are consistent with the strategy developed by the Steering Committee, and are more lenient than the nonconforming provisions contained in the existing LUC.

With regard to the process used to evaluate whether an existing use has been discontinued, development review staff will maintain its current practice when applying the existing use provisions in Bel-Red. Based on observation, staff will determine whether a use has been discontinued and therefore not allowed to re-establish. The burden of proof will then shift to the property owner to demonstrate that discontinuation was not intended. Mr. Klinge asserts that the Bel-Red discontinuation provisions must be brought into alignment with the general LUC requirements governing discontinuation of nonconforming uses in order to comply with state law. Staff have every intention of complying with the terms of state law, and staff do not agree that the legal test is required to be included in the code. However, language mirroring the discontinuation provisions of the general nonconforming section would add process clarity to the Bel-Red discontinuation provisions. As a result, staff is recommending that the clarity revisions shown in Attachment 3 proposed sections 20.25D.060.F.3.a and G.4.a be included in the final Bel-Red code package.

Issue Two: *Mr. Klinge asserts that the Bel-Red compliance threshold, or trigger, applied to remodeling is too restrictive and should be the same as the rule applied to the Downtown area - namely, allow remodeling within the same footprint and do not trigger compliance with new standards until expansion of floor area exceeds 50%.*

The Bel-Red existing structure and site provisions are appropriately distinguished from the downtown nonconforming provisions. The existing conditions in the downtown were fundamentally different from the existing conditions in Bel-Red. The downtown was composed of a building stock that contained low rise commercial structures, single family homes that had been converted to accommodate service and retail uses, and low rise residential structures. The long term vision was high intensity office, high density residential and civic uses. Expansion and alteration of the existing building stock in the downtown was not seen as a threat to achieving the long term vision. The downtown nonconforming provisions were developed to allow buildings with very low replacement values to expand without triggering compliance requirements that were disproportionate to

the value of the improvement, and were narrowly tailored to the downtown circumstances.

The Bel-Red corridor is composed of building stock that contains warehouses, manufacturing, and service uses. These buildings tend to have a higher replacement value. Reinvestment in the form of alterations and improvements is more costly and typically the improvements are intended to extend the building life for a more considerable length of time. Under these types of circumstances, nonconforming uses are generally disfavored and regulated out of existence over time. The Steering Committee expressed a preference to allow these existing uses to continue, but to require controls to be in place to ensure that these uses slowly transformed to be more compatible with the long term vision as improvements and alterations were made. The existing structure and site provisions are narrowly tailored to the Bel-Red circumstances. Routine maintenance and repair does not count toward the threshold that triggers improvements; and site improvements that enhance accessibility, structural stability, and environmental performance are exempt from counting toward the threshold. No changes to the code are recommended in response to this issue.

Issue Three: *Mr. Klinge asserts that the LUC amendments for existing conditions should promote clarity, certainty, and fairness for property owners and businesses to avoid the inconsistent implementation by individual staff persons.*

The Bel-Red code was drafted with a goal of clarity and regulatory certainty. The Bel-Red code contains numerous changes to address customer feedback regarding how to improve on the general nonconforming use sections of the code. The proportionate compliance calculation is viewed as complicated by clients, so staff recommended a clear threshold. An intermediate appeal opportunity was provided for the Director determination of whether a use constitutes an existing condition, so that applicants would not have to wait for a final permit decision. Figures were added to clarify code intent, and cross references to the existing conditions provisions were included in the use charts and standards. No clarity changes to the code are recommended in response to this issue beyond the process clarification language recommended by staff in response to Issue One.

Issue Four: *Mr. Klinge asserts that the LUC amendments should clarify and expand the appeal rights to provide property owners and businesses a formal and immediate process for challenging staff determinations.*

The appeal process in the Bel-Red code does expand on what is available in the current nonconforming provisions, and the existing standardized appeal process remains intact. As discussed in Issue Three above, an intermediate appeal opportunity was provided from the Director determination of whether an existing condition has been maintained over time, so that applicants would not have to wait for a final permit decision. See proposed LUC section 20.25D.060.D.3.

Applicants can also request a formal code interpretation which includes an appeal opportunity to the Hearing Examiner. The appeal processes were all standardized during the regulatory reform amendments to the LUC in 1995. Creating a new appeal process, with new decision criteria, would undermine the goal of clarity and regulatory certainty and add no significant new benefit that is not already available to an applicant. No appeal changes to the code are recommended in response to this issue.



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April 14, 2009

Bellevue City Council
Attn: Mayor and City Council Members
City of Bellevue
P.O. Box 90012
Bellevue, WA 98009

**Re: Bel-Red Land Use Code Amendments
Comments on Behalf of Robertson Development Co. LP et al.
ISSUES WITH PROPOSED EXISTING CONDITIONS CODE**

Dear Mayor Degginger and Council Members:

This firm represents Robertson Development Co. LP and its General Partner Dave Robertson with respect to his property interests in the Bel-Red Corridor. Mr. Robertson is a major property owner in the Bel-Red Corridor as a partner in properties located at the northeast corner of 132th Avenue NE and Bel-Red Road and other locations. The purpose of this letter is to express serious concerns about the treatment of nonconforming uses and development in the proposed Bel-Red Land Use Code Amendments. The following issues need to be further addressed by the Council and each is further discussed below in this letter:

Issue One: The proposed Land Use Code Amendments fundamentally change the City's *nonconforming use* rules such that the rule applied to Bel-Red is more restrictive than the current Code. The proposed rule is unreasonable and inconsistent with the law.

Issue Two: The Bel-Red compliance threshold, or trigger, applied to remodeling is too restrictive and should be the same as the rule applied to the Downtown area—namely, allow remodeling within the same footprint and do not trigger compliance with new standards until expansion of floor area exceeds 50%.

Issue Three: The Land Use Code Amendments should promote clarity, certainty, and fairness for property owners and businesses to avoid the inconsistent implementation by individual staff persons.

Issue Four: The proposed Land Use Code Amendments should clarify and expand the appeal rights to provide property owners and businesses a formal and immediate process for challenging staff determinations.

Introduction

The Bel-Red Corridor redevelopment will be an ongoing effort in the City for at least the next 20-25 years. The City is establishing the framework for that redevelopment, but ultimately the redevelopment of individual parcels needs to proceed based on a combination of factors—primarily market forces and property owner desires. The Land Use Code should facilitate redevelopment, not force redevelopment. If the City attempts to force redevelopment, then the Bel-Red plan will fail because the result will be ongoing conflicts that will destroy planning and turn the Bel-Red Corridor into a property rights battleground. The City recognizes that some properties will not redevelopment for 20-25 years or more, so the key is to create a Land Use Code for existing conditions that promotes clarity, certainty, and fairness for property owners and businesses. With these points in mind, the issues listed above are further discussed. For your convenience, the current code provisions and proposed Bel-Red Amendments are attached.

ISSUE ONE: The proposed Land Use Code Amendments fundamentally change the City's *nonconforming use* rules such that the rule applied to Bel-Red is more restrictive than the current Code. The proposed rule is unreasonable and inconsistent with the law.

The current City Land Use Code contains a general provision for nonconforming structures, uses, and sites at LUC § 20.20.560. A separate provision applies to the Downtown area, LUC § 20.25A.025. Each has an identical provision applying to *nonconforming uses* as follows:

1. A nonconforming use may be continued by successive owners or tenants, *except where the use has been abandoned*. No change to a different use classification shall be made unless that change conforms to the regulations of this Code.
2. If a nonconforming use of a structure or land is discontinued for a period of 12 months *with the intention of abandoning that use*, any subsequent use shall thereafter conform to the regulations of the district in which it is located. *Discontinuance of a nonconforming use for a period of 12 months or greater constitutes prima facie evidence of an intention to abandon.*

LUC § 20.20.560.B., § 20.25A.025.B (emphasis added). The bold portions create the rule that a nonconforming use may be continued unless abandoned, and then in subpart (2) the rule also requires “the intention of abandoning that use” and discontinuance for more than 12 months. The bold italicized words above are deleted in the proposed Bel-Red *nonconforming uses* provision as follows:

- a. Discontinuance. If an existing use of a structure or exterior improved area is discontinued for a period of 12 months, any subsequent use shall thereafter conform to the regulations of the district in which it is located.

Proposed LUC § 20.25D.060.F.3 (page SS 2-37 of Council Study Session packet, 3/16/09). Thus, the proposed Bel-Red code provision makes a change, which in fact is a very substantial change that is inconsistent with the law. The change eliminates the rule that the property owner must **intend to abandon** the nonconforming use, and the result is that the nonconforming use is **automatically lost** when a business is discontinued for 12 months regardless of the property owner's intention.

A quick example demonstrates the hardship caused by the proposed change in the rule that would be unique to the Bel-Red Corridor. A tenant with a nonconforming use is leasing a building, but discontinues the business and vacates the building with 13 months left on the lease. However, the tenant continues to pay rent for the remaining 13 months. During that time, the tenant still controls the property and the landlord cannot re-lease the site to a new tenant. **Yet, when the landlord regains control of the site in 13 months, the proposed Bel-Red provision would mean that the nonconforming use is automatically lost.** A similar problem occurs when the landlord is unable to re-lease the site for a similar use before the 12 month cut-off or re-releases the site but the tenant cannot move-in before the cut-off. The general City code would allow the nonconforming uses to continue in these examples, **but the Bel-Red code automatically destroys the nonconforming use rights without notice or due process.**

Importantly, the Courts have rejected an automatic 12 month cut-off of nonconforming use rights. *Andrew v. King County*, 21 Wn. App. 566 (1978). In the *Andrew* case, the court rejected King County's nonconforming use code that contained language essentially identical to the proposed Bel-Red language: "If any nonconforming use . . . is discontinued for a continuous period of more than one year," then the nonconforming use is lost. *Id.* at 572. The *Andrew* court ruled that the County needed to prove intent to abandon and an overt act to eliminate a nonconforming use, and found that, "cessation of a use for the one-year period . . . is only **prima facie evidence** of an intent to abandon the nonconforming use." *Id.* (emphasis added). The current Bellevue City Code precisely tracts the statement of the law in the *Andrew* case, that discontinuance for more than a year is merely *prima facie* evidence of abandonment.

The City's use of "*prima facie*" here means that, at a quasi judicial hearing, the City would only need to show that the use has been discontinued for 12 months to meet its initial burden of proof and the City would automatically prevail **unless the property owner provided rebuttal evidence** showing that discontinuance for 12 months did not represent intention to abandon. If the property owner provided sufficient rebuttal evidence, then the hearings officer would issue a decision based on imposing the ultimate burden of proof on the City. The State Supreme Court recently ruled, consistent with the *Andrew* case, that an ordinance calling for automatic abandonment for discontinuance for more than one year is unenforceable in *City of University Place v. McGuire*, 144 Wn.2d 640 (2001). The Bel-Red provision renews the automatic cut-off of rights after 12 months that the courts rejected 30 years ago, and thus, it must be changed.

Resolution to Issue One: In summary, the proposed Bel-Red nonconforming use provision must be changed to be consistent with the current general Land Use Code provision, which is also necessary to comply with existing law.

ISSUE TWO: The Bel-Red compliance threshold, or trigger, applied to remodeling is too restrictive and should be the same as the rule applied to the Downtown area—namely, allow remodeling within the same footprint and do not trigger compliance with new standards until expansion of floor area exceeds 50%.

The general City Code provision relating to allowed changes and proportional compliance for existing buildings is Section 20.20.560. That provision triggers compliance with new development standards based on *replacement value*. Remodeling of the structure that is 30% or less of replacement value is allowed outright. Remodeling that exceeds 100% of replacement value requires that the building be brought into conformance with all current requirements. The in between situation, where remodeling exceeds 30%, but is no more than 100%, of replacement value requires Proportional Compliance. Proportional Compliance requires more work to figure out what must be done to bring the site into conformance and the cost, and then requires the “proportion” of that work to be done that is equal to the proportion of new improvements to replacement value. So, remodeling that equals 75% of replacement value requires 75% of the compliance work to be done without regard to cost.

The Downtown Special Overlay District contains a separate and more favorable provision on these issues at Section 20.25A.025. For nonconforming *structures, remodeling without expansion is allowed outright* without regard to the cost of that remodeling. The Code then has a trigger based on expansion of the *floor area* that has certain limited requirements if the expansion is up to a 50% increase in floor area. Expansion over 50% in floor area requires compliance with site development provisions and other requirements. Thus, the Downtown area has a simple and more property owner friendly rule that only forces compliance with the new development standards when expansion exceeds 50% of current floor area.

The proposed Bel-Red Code creates a totally new rule to determine when changes or remodeling triggers compliance with new development standards. The Bel-Red Code does not follow the favorable provision in the Downtown that allows any remodeling within the existing building footprint. The Bel-Red Code also does not follow the 30% of replacement value rule for the rest of the City. Instead, the Bel-Red Code creates a new trigger based on “value” of changes exceeding \$150,000. Value is not defined except to say that value is up to the Director who is to promulgate rules. It is unclear what is intended here in using value instead of construction cost, or instead of basing it on the current rule of replacement value. However, the bigger issue is why not treat Bel-Red like the Downtown and allow any remodeling within the same footprint? The same policy reasons would seem to apply, and the Downtown seems to be redeveloping just fine.

Resolution to Issue Two: In summary, the proposed Bel-Red provisions should be changed to be consistent with the Downtown rule. The Bel-Red rule should allow remodeling within the same footprint outright. The Bel-Red rule should also allow expansion of floor area of up to 50% before triggering compliance with new standards.

ISSUE THREE: The Land Use Code Amendments for existing conditions should promote clarity, certainty, and fairness for property owners and businesses to avoid the inconsistent implementation by individual staff persons.

The current nonconforming code provision is totally unsatisfactory as applied to property owners and business tenants. The current code is unclear and thus promotes uncertainty about how to comply, which means that City staff has too much discretion in implementing the code. The result is that City staff often demands improvements to “comply” with the proportional compliance provision that appear wholly unreasonable to the property owner or business tenant. The Bel-Red Land Use Code Amendments do not improve the clarity or certainty of the Code, so the result will be continued conflicts.

First, the proposed Land Use Code Amendments contain a definition of “existing use” and “existing development” at subpart B of § 20.25D.060. The definition is inconsistent with other parts of the Code. The definition is based on a use or development in existence on the date of adoption, “and not discontinued.” This language does not contain the additional qualification that only discontinuance for 12 months would cause loss of existing use rights, and as explained above, even that rule is inconsistent with the current Code and the law.

Second, subpart D mandates that the: “applicant shall submit documentation to show that the existing condition was permitted when established and has been maintained over time.” To understand the problem, attention must first be turned to “existing condition” which includes “existing uses” and “existing development.” It is normal for the property owner to show that a use when established was legal under the old zoning code to demonstrate the nonconforming status, but the proposed provision goes far beyond that requirement in two respects. The initial problem is that this provision is linked to “existing development” and so the provision seems to be creating this new massive burden to show that everything done on the property—the buildings, the parking, the landscaping—complied with the City Code on the date when the improvement was done or modified. There is nothing like this in the current City Code. Plus, this requirement is inconsistent with subpart G.1. which states that, “Existing development may remain unless specifically limited by the terms of this paragraph.”

The next problem is the requirement to demonstrate that the “existing condition was maintained over time and not discontinued.” The property owner or business tenant as the applicant is required to submit documentation with examples given such as income tax records, business licenses, insurance policies, dated aerial photos, etc. Why would the City want to accept confidential income tax records or insurance policies and be faced with liability for improper disclosure to the public? What is the point of all this documentation? Another problem is that the landlord may not have this information for a tenant that is gone or left long ago, such as utility bills and business licenses (but the City would have those documents). A new business tenant would clearly not have old records by another business.

The entire premise here is unclear and backwards since, as explained below, the City would bear the burden of demonstrating that a use was discontinued or a building not permitted. Plus, the

typical situation would be a new tenant or prospective tenant that comes to the City to investigate or apply for remodeling to open a new business at the location. These provisions seem to require that tenant to submit basically an entire application dedicated to "proving up" the existing use and/or development before the tenant can even think about submitting a remodeling permit. In short, the proposed Code provisions will stifle leasing to new business tenants by creating new hurdles, generating new confusion, and causing delays.

Please read proposed Section 20.25D.060. The Council members should be able to readily understand what is intended in these provisions without any reliance upon staff. If any of the Council members find these provisions unclear, then the Section is too unclear to be imposed on the public.

Resolution to Issue Three. In summary, the proposed Bel-Red Section 20.25D.060 should be re-written to provide clear provisions that will add clarity and simplicity to help promote, rather than stifle, the ongoing economy in the Bel-Red area until redevelopment occurs in due time.

ISSUE FOUR: The proposed Land Use Code Amendments should clarify and expand the appeal rights to provide property owners and businesses a formal and immediate process for challenging staff determinations.

The proposed Bel-Red Section 20.25D.060 has an appeal provision that seems to apply only to the question of whether staff is correct in determining an existing use or development. *See* 20.25.060.D.3. The remainder of the Section provides no other appeal rights. The provision creates two problems.

First, the proposed appeal provision is totally inadequate to achieve any results. The appeal provision states that the Director's determination of "whether a use constitutes an existing condition" can be appealed according to Process II at LUC 20.35.250. Then, Process II allows an appeal after "the date of publication of the decision." The inference is that staff would be issuing a formal decision that gets published, but in reality, the staff decision would more likely be an over the counter or email discussion that might not look at all like a formal decision. Is that appealable or not? Plus, the provision as written would apply only to a decision on "existing use," and not apply at all to a decision on "existing development." The Process II approach is also too formal and slow for these purposes.

Second, the appeal does not make it clear that the case law holds that the City has the burden of proving that a use has been abandoned, and that the City cannot simply rely upon discontinuance for 12 months when the property owner provides evidence of no intent to abandon. With respect to improvements on the property, the City would also bear the burden of proof that a violation occurred.

The solution is to adopt a new appeal provision that would apply to the entire Existing Conditions Section as a new Subpart H in place of D.3 as follows:

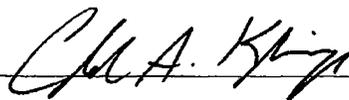
1. Any property owner, prospective tenant, or tenant aggrieved by any staff determination, whether formal or informal, may seek review by the Director (or by an Assistant Director designated for this purpose). The request for review need not be in any particular form, but should describe the problem in sufficient detail to allow the Director's review. The Director's decision shall be made as soon as possible but within seven days at the longest.
2. The Director's decision may be appealed pursuant to LUC Section 20.35.250 Appeal of Process II decisions, except that the Hearing Examiner in such an appeal shall hear the matter *de novo*, shall not afford any deference to the Director's decision, and shall impose the ultimate burden of proof on the City.
3. These decisions by the Director and Hearing Examiner shall be made based on the Code, but to the extent the Code or application thereof is not clear, the Director or Hearing Examiner shall favor the rights of the property owner and tenant.

Resolution to Issue Four. To resolve this issue, the City Council should adopt the above appeal provision to apply to the entire Section and in place of the proposed Section 20.25D.060.D.3.

Thank you for considering these issues and please do not hesitate to contact me if you have any questions, and I am of course available to meet with your or staff to discuss these issues.

Sincerely,

GROEN STEPHENS & KLINGE LLP



Charles A. Klinge
klinge@GSKlegal.pro

cc: Paul Inghram, Bellevue Planning & Community Development
✓ Carol Helland, Bellevue Development Services
Lori Riordan, Bellevue City Attorney
Coca-Cola Bottling Co., Attn: Darin M. Croston
Wright Runstad & Company, Attn: Jessica Powers
Todd R. Woosley
Dave Robertson

CURRENT CODE

BELLEVUE CITY CODE -- CURRENT

20.20.560 Nonconforming structures, uses and sites.

A. Nonconforming Structures.

1. Repair of an existing nonconforming structure is permitted.
2. Remodeling of a nonconforming structure is permitted, provided the fair market value of the remodel does not exceed 100 percent of replacement value of the structure over any three-year period. If remodeling exceeds 100 percent of replacement value over any three-year period, the structure shall be brought into compliance with existing Land Use Code requirements.
3. A nonconforming structure may not be expanded unless the expansion conforms to the regulations of this Code. However, in single-family districts, an expansion may extend along existing building setbacks, provided the area affected by the expansion is not a critical area or critical area buffer.
4. If a nonconforming structure is destroyed by fire, explosion, or other unforeseen circumstances to the extent of 75 percent or less of its replacement value as determined by the Director for the year of its destruction, it may be reconstructed consistent with its previous nonconformity. If such a structure is destroyed to the extent of greater than 75 percent of its replacement value, then any structure erected and any related site development shall conform to the regulations of this Code.

B. Nonconforming Uses.

1. A nonconforming use may be continued by successive owners or tenants, except where the use has been abandoned. No change to a different use classification shall be made unless that change conforms to the regulations of this Code.
2. If a nonconforming use of a structure or land is discontinued for a period of 12 months with the intention of abandoning that use, any subsequent use shall thereafter conform to the regulations of the district in which it is located. Discontinuance of a nonconforming use for a period of 12 months or greater constitutes prima facie evidence of an intention to abandon.
3. A nonconforming use may be expanded only pursuant to an Administrative Conditional Use Permit if the expansion is not more than

20 percent or 20,000 square feet, whichever is less, or by a Conditional Use Permit if the expansion is over 20 percent or 20,000 square feet.

C. Nonconforming Sites.

1. A nonconforming site may not be changed unless the change conforms to the regulations of this Code, except that parking lots may be reconfigured within the existing paved surface.
2. Upon the restoration of a structure demolished by fire, explosion or other unforeseen circumstances to greater than 75 percent of its replacement value on a nonconforming site, the site shall be brought into conformance with existing Land Use Code requirements.
3. For remodels of an existing structure made within any three-year period which together exceed 100 percent of the replacement value of the previously existing structure as defined by the Director, the site shall be brought into compliance with existing Land Use Code requirements. For remodels within any three-year period which exceed 30 percent of the replacement value, but do not exceed 100 percent of replacement value, proportional compliance shall be required, as provided in subsection D of this section. Remodels within any three-year period which do not exceed 30 percent of replacement value shall not be required to comply with the requirements of this paragraph.
4. Upon expansion of any structure or complex of structures within a single site, which is over 50 percent of the existing floor area, the site shall be brought into compliance with existing Land Use Code requirements. If the expansion is 50 percent or less, the site shall be brought into proportional compliance with existing Land Use Code requirements as provided in subsection D below.

D. Proportional Compliance.

1. A Conformance Plan may be required to identify the site nonconformities as well as the cost of individual site improvements; provided, that the Director may authorize utilization of unit cost estimates from a specified construction cost index.
2. Required improvements for a nonconforming site: The percentage of required physical site improvements to be installed to reduce or eliminate the nonconformity of the site shall be established by the following formula:
 - a. Divide the dollar value of the proposed site improvements by the replacement value of the existing structure(s) as determined by the Director up to 100 percent.

- b. That percentage is then multiplied by the dollar amount identified by the Conformance Plan as necessary to bring the site into compliance.
- c. The dollar value of this equation is then applied toward reducing the nonconformities. Example:

Value of existing structure(s) excluding mechanical systems = \$20,000

Value of proposed improvements excluding mechanical systems = \$5,000

\$20,000 divided into \$5,000 equals 25%

Cost identified in Conformance Plan equals \$4,000

25% times \$4,000 equals \$1,000

\$1,000 would be applied toward reducing the nonconformities

- d. The Director shall determine the type, location and phasing sequence of the proposed site improvements.
3. This section shall apply to sidewalks and other frontage improvements and other requirements outlined in BCC 14.60.110, which shall be incorporated into the compliance plan.

E. Exceptions.

1. **Downtown.** The provisions of this section shall not apply in the Downtown Special Overlay District, Part 20.25A LUC. Refer to LUC 20.25A.025 for the requirements for nonconforming uses, structures, and sites located within the Downtown Special Overlay District.
2. **Critical Areas Overlay District.** The provisions of this section do not apply to structures or sites nonconforming to the requirements of Part 20.25H LUC. Refer to LUC 20.25H.065 for the requirements for such nonconforming structures and sites.
3. **Shoreline Overlay District.** The provisions of this section do not apply to uses, structures or sites nonconforming to the requirements of Part 20.25E LUC. Refer to LUC 20.25E.055 for the requirements for such nonconforming uses, structures and sites. (Ord. 5683, 6-26-06, §§ 16, 17; Ord. 5480, 10-20-03, § 10; Ord. 5089, 8-3-98, § 19; Ord. 4979, 3-17-97, § 7; Ord. 4973, 3-3-97, § 201; Ord. 4816, 12-4-95, § 301; Ord. 4638, 4-4-94, § 1; Ord. 4075, 10-23-89, § 1)

DOWNTOWN SPECIAL OVERLAY DISTRICT

20.25A.025 Nonconforming uses, structures and sites.

A. Nonconforming Uses.

1. A nonconforming use may be continued by successive owners or tenants, except where the use has been abandoned. No change to a different use classification shall be made unless that change conforms to the regulations of this Code.
2. If a nonconforming use of a structure or land is discontinued for a period of 12 months with the intention of abandoning that use, any subsequent use shall thereafter conform to the regulations of the district in which it is located. Discontinuance of a nonconforming use for a period of 12 months or greater constitutes prima facie evidence of an intention to abandon.
3. A nonconforming use may be expanded only pursuant to an Administrative Conditional Use Permit if the expansion is not more than 20 percent or 20,000 square feet, whichever is less, or by a Conditional Use Permit if the expansion is over 20 percent or 20,000 square feet.

B. Nonconforming Structures.

1. A nonconforming structure may be repaired or remodeled, provided there is no expansion of the building, and provided further, that the remodel or repair will not increase the existing nonconforming condition of the structure.
2. A nonconforming structure may be expanded; provided, that the expansion conforms to the provision of the Land Use Code, except that the requirements of LUC 20.25A.115, Design Guidelines – Building/Sidewalk Relationships, shall be applied as described in paragraphs B.3 and B.4 of this section.
3. For expansions made within any three-year period which together do not exceed 50 percent of the floor area of the previously existing structure, the following shall apply:
 - a. Where the property abuts a street classified as a 'D' or 'E' right-of-way, the expansion is not required to comply with LUC 20.25A.115; and

- b. Where the property abuts a street classified as an 'A', 'B' or 'C' right-of-way the expansion shall be in the direction of the classified street so as to reduce the nonconformity of the structure, except that an expansion which is no greater than 300 square feet in area and which is for the purpose of loading or storage is exempted from this requirement.
4. For expansions made within any three-year period which together exceed 50 percent of the floor area of the previously existing structure, the structure shall be brought into conformance with LUC 20.25A.115.
5. If a nonconforming structure is destroyed by fire, explosion, or other unforeseen circumstances to the extent of 75 percent or less of its replacement value as determined by the Director for the year of its destruction, it may be reconstructed consistent with its previous nonconformity. If such a structure is destroyed to the extent of greater than 75 percent of its replacement value, then any structure erected and any related site development shall conform to the regulations of this Code.

C. Nonconforming Sites.

1. A nonconforming site may not be changed unless the change conforms to the requirements of this Code, except that parking lots may be reconfigured within the existing paved surface. This paragraph shall not be construed to allow any parking lot reconfiguration that would result in a parking supply that does not conform to the minimum/maximum parking requirements for the Downtown, LUC 20.25A.050.
2. A structure located on a nonconforming site may be repaired or remodeled, provided there is no expansion of the building, and provided further, that the remodel or repair will not increase the existing nonconforming condition of the site.
3. Expansions of a structure located on a nonconforming site, made within any three-year period which together do not exceed 50 percent of the previously existing floor area, do not require any increase in conformance with the site development provisions of this Code, except as otherwise provided in paragraph B.3. of this section.
4. Expansion of a structure located on a nonconforming site made within any three-year period which together exceed 50 percent of the floor area of the previously existing structure shall require compliance with the site development provisions of this Code.
5. For expansions of a structure on a nonconforming site made within any three-year period which together exceed 20 percent of the replacement value of the previously existing structure:

- a. Easements for public sidewalks shall be provided, unless the Director of the Department of Transportation determines such easements are not needed; and
- b. A six-foot-wide walkway shall be provided from the public sidewalk or street right-of-way to the main building entrance, unless the Director of Planning and Community Development determines the walkway is not needed to provide safe pedestrian access to the building. (Ord. 5480, 10-20-03, § 13; Ord. 5091, 8-3-98, §§ 6, 7; Ord. 4973, 3-3-97, § 103; Ord. 4816, 12-4-95, § 203)

PROPOSED BEL-RED CODE

B. Use Chart Described.

In Chart 20.25D.070, land use classifications and standard Land Use Code reference numbers are listed on the vertical axis. City of Bellevue land use districts are shown on the horizontal axis.

1. If no symbol appears in the box at the intersection of the column and the row, the use is not allowed in that district, except for short-term uses, which are regulated under Part 20.30M LUC (Temporary Use Permits), subordinate uses which are regulated under LUC Section 20.20.840, and existing uses which are regulated under LUC Section 20.25D.060.
2. If the symbol "P" appears in the box at the intersection of the column and row, the use is permitted subject to applicable general requirements of Chapter 20.20 LUC for the use and the district specific requirements of this Part 20.25D LUC.
3. If the symbol "C" appears in the box at the intersection of the column and the row, the use is permitted subject to the Conditional Use provisions specified in Part 20.30B or 20.30C LUC in addition to any applicable general requirements for the use and land use district.
4. If the symbol "A" appears in the box at the intersection of the column and the row, the use is permitted subject to the Administrative Conditional Use provisions as specified in Part 20.30E LUC in addition to any applicable general requirements for the use and land use district.
5. If a number appears in the box at the intersection of the column and the row, the use is permitted through the applicable review process and subject to the special limitations indicated in the corresponding Notes.
6. If a "/" appears in the box at the intersection of the column and the row:
 - a. The process or note indicated in front of the slash (i.e., P/ or 1/ applies outside of the node described in the column; and
 - b. The process or note indicated behind the slash (i.e., /P or /1) applies inside the node described in the column.

20.25D.060 Existing Conditions.

A. Purpose.

Many existing uses and developments would not be allowed pursuant to the Bel-Red Land Use District Charts (refer to LUC Section 20.25D.070) and district specific standards and guidelines in Part 20.25D that are in effect to implement the policies of the Bel-Red Subarea Plan. The purpose of this section is to allow the continued operation of existing light industrial and service uses, and existing developments that were legally established when the Bel-Red Subarea Plan was adopted on [insert

Plan adoption date]. An additional purpose of this section is to allow limited expansion of existing uses and ~~structures~~ developments that ~~is~~ are compatible with residential and higher intensity mixed use development that was introduced with the adoption of the Plan.

B. Types of Existing Conditions - Definitions.

A site may be considered an existing condition because it contains either an existing use or existing development as defined in this paragraph and based on documentation provided pursuant to paragraph D of this section.

1. Existing Use. The use of a structure or land which was permitted when established, in existence on [insert Plan adoption date] and not discontinued or destroyed, but is not otherwise allowed under LUC 20.25D.070.
2. Existing Development. A structure or site development which was permitted when established, in existence on [insert Plan adoption date] and not discontinued or destroyed, but does not otherwise comply with Part 20.25D LUC.

C. Applicability.

1. This Section 20.25D.060 LUC applies only to existing conditions occurring within a Bel-Red Land Use District.
2. The nonconforming provisions of LUC 20.20.070 and 20.20.560 do not apply within the Bel-Red Land Use Districts.
3. Expansions or modifications of an existing use or development shall comply with any applicable requirements of Part 20.25H LUC – Critical Areas Overlay District. In the event of a conflict between this Part 20.25D LUC and Part 20.25H LUC, the requirements of Part 20.25H LUC Critical Areas Overlay District shall control.
4. Modifications to signs associated with an existing use or development shall comply with any applicable requirements of the Sign Code, Title 22B.10 BCC.

D. Documentation.

The applicant shall submit documentation, which shows that the existing condition was permitted when established and has been maintained over time. The Director shall determine based on Paragraph 1 and 2 below whether the documentation is adequate to support a determination that the use and development constitute an existing condition under the terms of this section. The Director may waive the requirement for documentation when an existing condition has been clearly established.

1. Existing Condition Permitted when Established. Documentation that the condition was permitted when established includes, but is not limited to the following:

- a. Building, land use or other development permits; or
 - b. Land Use Codes or Land Use District Maps.
2. Existing Condition Maintained Over Time. Documentation that the existing condition was maintained over time, and not discontinued or destroyed as described in this Section 20.25D.060 includes, but is not limited to the following:
- a. Utility bills;
 - b. Income tax records;
 - c. Business licenses;
 - d. Listings in telephone or business directories;
 - e. Advertisements in dated publications;
 - f. Building, land use or other development permits;
 - g. Insurance policies;
 - h. Leases; and
 - i. Dated aerial photos.
3. Appeal of Director Determination. The Director determination of whether a use constitutes an existing condition may be appealed pursuant to LUC Section 20.35.250 Appeal of Process II decisions.

E. Regulations Applicable to all Existing Conditions.

1. Ownership. The status of an existing condition is not affected by changes in ownership.
2. Maintenance and Repair. ~~Normal Routine~~ maintenance and repairs associated with existing conditions are allowed. Routine maintenance includes those usual acts to prevent decline, lapse, or cessation from a lawfully established condition. Routine repair includes in-kind restoration to a state comparable to its original condition within a reasonable period after decay has occurred.

F. Regulations Applicable to Existing Uses.

1. Operations.
 - a. Existing Uses May Continue to Operate. Operations associated with an existing use may continue, subject to the provisions of this Section F.

b. Existing Uses – Hours of Operation. The hours of operation associated with an existing use located in land use districts which permit residential uses may only extend into the period of 9:00 p.m. to 6:00 a.m. subject to Administrative Conditional Use approval. Existing uses which currently operate between these hours may continue without ACU approval, as long as the hours of operation between 9:00 p.m. and 6:00 a.m. are not expanded.

2. Expansions. Existing uses may expand under certain circumstances as described in this paragraph:

a. Expansions of Floor Area. Floor area associated with existing uses may be expanded in conformance with this code.

b. Expansions of Exterior Improved Areas. Exterior improved areas associated with an existing use may be expanded by increasing the amount of land used. Exterior areas supporting the existing use may be expanded.

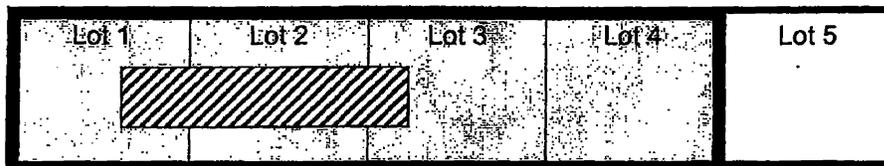
c. Limitations on Expansion.

i. No expansion of hazards. No expansion in operations shall be permitted that increases the use or on-site quantity of flammable or hazardous constituents (e.g. compressed gases, industrial liquids, etc.), or that increases the amount of waste generated or stored that is subject to the Washington Hazardous Waste Management Regulations Chapter 70.105.210 RCW as currently adopted or subsequently amended or superseded. The Director may in consultation with the Fire Marshal modify the requirements of this paragraph if the Director determines that the expansion will not increase the threat to human health and the environment over the pre-expansion condition.

ii. Expansions within Nodes (BR-MO-1, BR-OR-1 and 2, BR-RC-1, 2, and 3) and Residential Land Use Districts (BR-R). Refer to LUC 20.25D.060.F.2.c Figure 1 below. Floor area or exterior improvements associated with an existing use may be expanded when proposed within the limits of property held in a single ownership in existence on [insert Plan adoption date] pursuant to an Administrative Conditional Use approval.

20.25D.060.F.2.c - Figure 1

Expansions within nodes and residential Land Use Districts



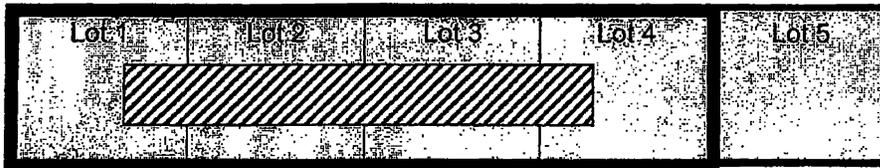
-  Limits of property held in a single ownership as of (date)
-  Area occupied by existing use as of (date)
-  Area where existing use may expand in conformance with this code

iii. Expansions outside Nodes and in Non-Residential Land Use Districts (BR-MO, BR-OR, BR-GC, BR-CR, and BR-ORT). Refer to LUC 20.25D.060.F.2.c Figure 2 below. Floor area or exterior improvements associated with an existing use may be expanded beyond limits of property held within a single ownership in existence on [insert Plan adoption date] pursuant to an Administrative Conditional Use approval and the following limitations:

- (1) The property proposed for expansion is abutting at least one of the property lines of the existing use as they existed on [insert Plan adoption date].
- (2) The regulations applicable to the property proposed for expansion would have allowed the use as of [insert Plan adoption date].

20.25D.060.F.2.c - Figure 2

Expansion outside nodes and in non-residential Land Use Districts



-  Limits of property held in a single ownership as of (date)
-  Area occupied by existing use as of (date)
-  Area where existing use may expand in conformance with this code

3. Loss of Existing Use Status.

- a. **Discontinuance.** If an existing use of a structure or exterior improved area is discontinued for a period of 12 months, any subsequent use shall thereafter conform to the regulations of the district in which it is located.
- b. **Accidental Destruction.** When a structure containing an existing use is damaged by fire or other causes beyond the control of the owner, the use may

be re-established. The structure may be repaired and/or reconstructed in accordance with applicable city codes.

c. ~~Intentional Destruction. When a structure containing an existing use is intentionally damaged by fire or other causes within the control of the owner of that structure that houses the existing use, the re-establishment of the existing use is prohibited.~~

d. ~~Relinquishment. An existing use is relinquished when the existing use is replaced with an allowed use pursuant to LUC 20.25D.070. Upon relinquishment, the existing use rights no longer apply and the existing use may not be re-established.~~

G. Regulations Applicable to Existing Development.

1. Existing Development May Remain. Existing development may remain unless specifically limited by the terms of this paragraph.
2. Permitted Alterations to Existing Development. Existing development may be altered, provided that the alteration conforms to city codes and the existing development conforms to proportional compliance requirements contained in paragraph 3 below.
 - a. Three Year Period. Alterations made within a three year period will be viewed as a single change for the purposes of determining required improvements.
 - b. Value of Changes. The value of alterations is determined by the Director based on the entire project and not individual permits. The Director shall promulgate rules for determining the value of alterations in the context of LUC 20.25D.060.
3. Proportional Compliance. An existing development associated with an existing, permitted, or conditional use, may be altered consistent with the requirements set forth below:
 - a. ~~Threshold Triggering Required Improvements. The standards of this paragraph shall be met when the value of the proposed changes to an existing development exceed \$150,000 as of [insert Plan adoption date]. The threshold established here will be reviewed annually, and, effective January 1 of each year, may be administratively increased or decreased by an adjustment to reflect the current published annual change in the Seattle Consumer Price Index for Wager Earners and Clerical Workers as needed in order to maintain accurate construction costs for the region. Routine maintenance and repair does not constitute an alteration, and does not count toward the threshold. The following alterations and improvements are exempt from being de-not-counted toward the threshold:~~
 - i. Alterations required as a result of a fire prevention inspection;

- ii. Alterations related to the removal of architectural barriers as required by the Americans with Disabilities Act, or the Washington State Building Code (RCW 19.27), now or as hereafter amended;
 - iii. Alterations required for the seismic retrofit of existing structures;
 - iv. Improvements to on-site stormwater management facilities in conformance with Chapter 24.06 BCC, now or as hereafter amended;
 - v. Alterations that reduce offsite impacts (including but not limited to noise, odors, dust, and other particulate emissions); and
 - vi. Alterations that meet LEED, Energystar or other industry recognized standard that results in improved mechanical system, water savings, or operational efficiency.
- b. Required Improvements. When alterations meet the threshold in subsection a above existing development shall be brought toward compliance in the following areas:
- i. Landscape development requirements as set forth in LUC 20.25D.110 and LUC 20.20.520 and required landscape treatments as set forth in LUC 20.25D.130;
 - ii. Circulation and internal walkway requirements, as set forth in LUC 20.25D.120 and LUC 20.20.590;
 - iii. Surface parking lot landscaping as set forth in LUC 20.25D.110 and LUC 20.20.520 standards that apply to the site; and
 - iv. Required paving of surface parking, outdoor storage, and retail display areas.
- c. Timing and Cost of Required Improvements.
- i. Required improvements shall be made as part of the alteration that triggered the required improvements;
 - ii. The value of required improvements shall be limited to 20 percent of the value of the proposed alteration. The applicant shall submit evidence as required by the Director that shows the value of proposed improvements associated with any alteration; and
 - iii. Required improvements shall be made in order of priority listed in paragraph 3.b above unless a deviation in priority order is approved by the Director as necessary to accommodate a function that is an essential component of the existing development.

4. Loss of Existing Development Status.

- a. Discontinuance. If an existing development is discontinued or abandoned for a period of 12 months, any subsequent development shall thereafter conform to the regulation of the district in which it is located.
- b. Accidental Destruction. When an existing development is damaged by fire or other causes beyond the control of the owner, the existing development may be re-constructed. The existing development may be repaired and/or reconstructed in its original configuration. Changes to the footprint and exterior proposed as part of the repair and/or reconstruction must conform to this code.
- ~~c. Intentional Destruction. When an existing development is intentionally damaged by fire or other causes within the control of the owner of the existing development, reconstruction of the existing development is prohibited.~~

20.25D.070 Land Use Charts.

The following charts apply to Bel-Red. The use charts contained in LUC 20.10.440 do not apply within the Bel-Red land use districts.

From: Inghram, Paul
Sent: Friday, April 17, 2009 1:51 PM
To: Walter Scott
Cc: Council; Sarkozy, Steve; Miyake, Brad; Basich, Myrna; Terry, Matthew; Stroh, Dan; Helland, Carol; Brennan, Mike
Subject: April 6 Council Comments on Bel-Red

Mr. Scott,

I'd like to follow up with you regarding the concerns you expressed to Council on April 6. You noted concern for the Bel-Red existing use provisions including the concept of an "E" in the use charts, and asked how the existing use provisions would apply. For the Pella Windows site on 116th Avenue you suggest that it should be designated BR-CR rather than BR-R to provide greater flexibility to accommodate a grocery store and other commercial uses.

Following the Planning Commission's recommendation, staff heard similar comments from others about the "E" notation and other aspects of the existing use provisions. With the more recent version of the draft Bel-Red Land Use Code issued on January 5, and subsequently further updated, the "E" notation was removed from the land use charts. To make it more clear that the existing use provisions in section 20.25D.060 apply to any existing use established at the time of the amendment additional language was added replacing the "E"s. Other refinements have also been proposed to help clarify how the regulations would apply. I hope that these changes go a long way toward addressing your concerns. The most recent version of the draft land use code was presented to the Council on March 16 and is available at:

<http://www.bellevuewa.gov/Agendas/CityCouncilAgendaStudySession3-16-09.pdf>

Regarding your question about what would happen if an existing use were to leave, under the proposed existing use provisions, you would be able to replace that use in a period of up to 12 months. The use would not need to be exactly the same as the prior use, but would need to fit into same standard land use classification (e.g. wholesale trade). Under the proposed provisions, other uses that are on the site could also be expanded to take over space vacated by a use.

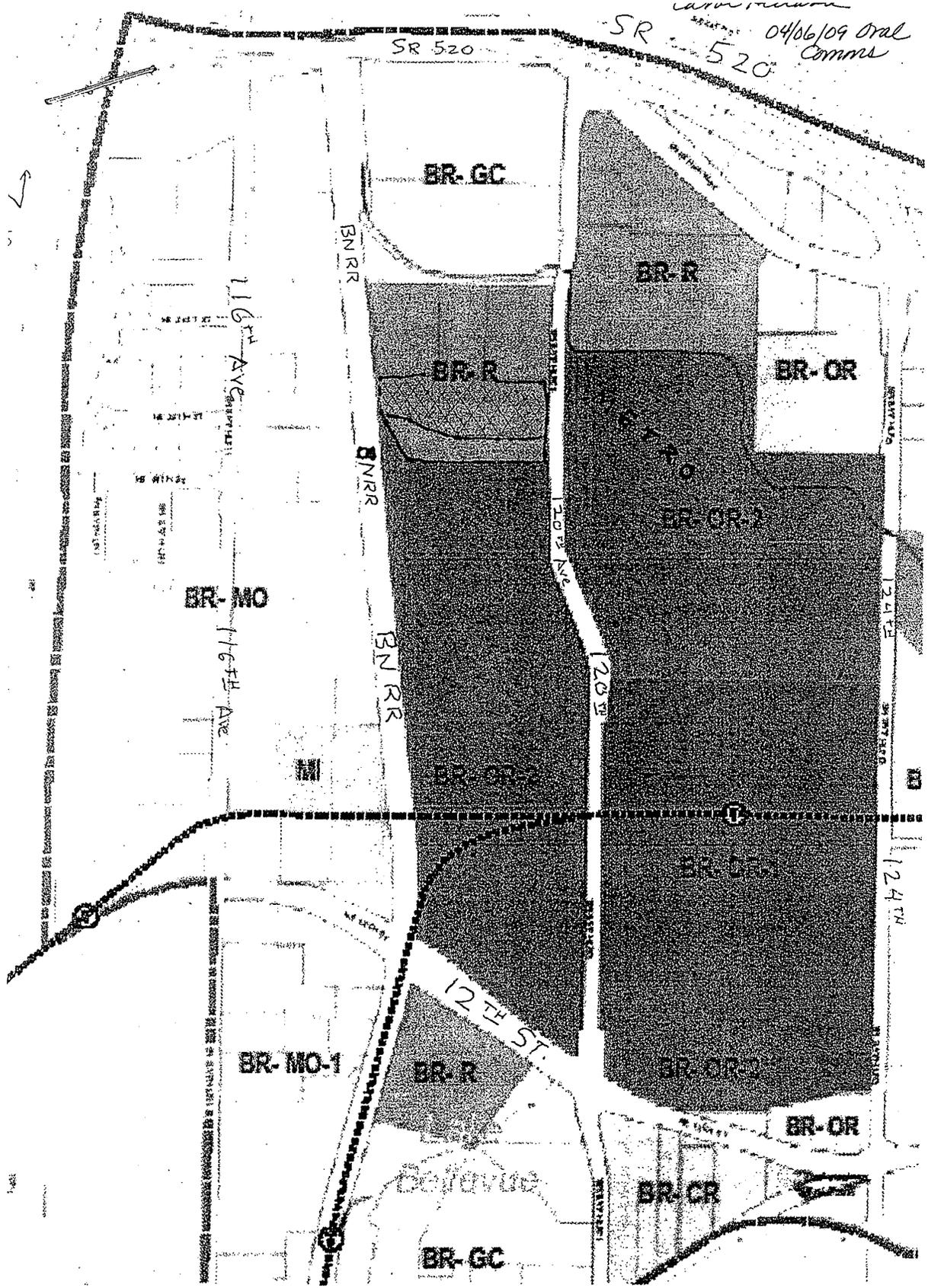
In regard to the designation proposed for the Pella Window site in the BR-R district, the Council considered your request and reviewed the site in detail on January 20. The agenda material for that meeting is available at: <http://www.bellevuewa.gov/Agendas/CityCouncilAgendaStudySession1-20-09.pdf>

Council direction at that time was to retain the proposed BR-R designation, while directing several changes to the BR-R regulations that expand the size and flexibility for commercial uses. These changes were incorporated into the draft that Council reviewed during the March 16 Study Session, and are explained in greater detail in the Council materials for which the link is provided above.

I appreciate your comments and your participation in the Bel-Red planning effort. Please let me know if I can answer other questions about the existing use provisions, the proposed designations for Bel-Red, or any other aspects of the plan.

Paul Inghram, AICP
Comprehensive Planning Manager
City of Bellevue
425-452-4070

SR 520
04/06/09 Oral
Comms



April 6, 2009

City of Bellevue

RE: #1- Pella Windows, 1919 – 120th Ave NE
#2 – Design Market, 1018-1048 116th Ave NE

Dear City Counsel Members,

Excerpt from Letter to the city counsel dated August 12, 2008 and resubmitted February 17, 2009 from Walter Scott.

B. Existing uses/Flexibility:

As you are aware, this has, by far, been the most frequently testified issue by the attending public. When the chair of the Planning Commission asked Paul (7-23-08 hearing) if existing uses would be permitted to continue, he answered “yes”. When another member of the planning commission asked another version of the same question later in the meeting, the answer was “yes, every use chart has an ‘E’ when there is an existing use”. This appeared to satisfy the commissioners’ questions but it really isn’t true and, ultimately, will not satisfy the City Council. The details of grandfathering existing uses will need to be fully vetted.

Pella home improvement building: For example, our Pella home improvement building (See attached map – “Pella”) has three tenants; Pella, R & R Party Rentals & Avad Home Electronics which wholesales for installation to & by contractors and retails to homeowners for self-installation of large screen TV’s and home theater systems. For example, if Avad were to relocate, for how long would this location be grandfathered as a wholesale and retail electronics store? And, what are the odds of such a specific use being replaced with another use so specific? There are many problems, such as this, that have not been adequately worked out by staff, which need to be fully understood by the Council. With regard to Paul’s second response that: “all existing uses are indicated”, you will note from the following discussion that “E’s” are not placed reliably in all of the use reference chart matrix. For example, Pella Windows, who manufacture and sell to retail and contractors, windows, doors and other products related to home improvement, and Avad Electronics, as previously discussed above, are not represented by an “E” in reference chart 20.25D.070 “Wholesale and Retail Uses in Bel-Red Land Use Districts”. First, given our current use, regarding the use category (use code “57) – Home Furnishings”, shouldn’t this category be labeled as an “E” for existing? More significantly, why wouldn’t these categories be permitted outright? Are they not consistent with the “vision” of retail intermixed with residential? Does this not add to the texture and quality of the environment where people shop close to their homes? If you do not provide for more flexibility for retail in most size ranges (excluding Big-box, Costco-style uses); then those who do not have cars will not live in these BR-R residential areas. Moreover, we note that the “food/grocery” store category in this BR-R zoning, is

limited to 20,000 sf. As you know, many successful residential developments are anchored on the ground floor by grocery stores such as Whole Foods or Safeway that are in the minimum range of 40-50,000 sf. The quality of these developments are well known. From the fact that food stores in many communities are the nexus of the community, why would you purposefully limit the success of such developments by limiting the locations of such food stores? Do you not wish to encourage such development? What is the specific goal you are trying to achieve by limiting food stores to 20,000 sf, which is essentially limiting food stores to convenient stores? As for our electronics wholesaler/retailer, under "Computers and Electronics" (no use number provided, page 144/28), in our opinion this should also be permitted ("P"), but at a minimum should be shown as an "E" for Existing.

→ **Proposal: Pella: Revise the proposed zoning from the current proposed zoning of "BR-R"(residential) to "BR-CR" (commercial-residential).** This "Pella" site is directly across the street (120th Ave) from the Metro Bus maintenance facility; Given the longer term reality of Metro, the more likely scenario for earlier transition /redevelopment of this property would be a slightly relaxed (in terms of uses and retail size limits) designation to "CR" We do not speak for other owners but our proposed BR-CR area are those parcels west (across 120th Ave NE) from Metro and south of those parcels adjoining Kelsey Creek (see map attached). These 2-3 parcels are not adjacent to the West Tributary proposed/ bike ped path and therefore do not benefit from the idea proposed above for a connecting bike/ped loop. Revising this area from BR-R to BR -CR is almost the same zoning so it would work as a transition area, just allowing more flexibility for retail.

Bellevue Design Market: With regard to our other project in the Bel-Red re-zone area, the **Bellevue Design Market** (1018-1048 116th Ave NE, adjacent to Whole foods, across the street from Overlake hospital- see attached map) with proposed zoning BR-MO-1, there are several existing uses which, in our opinion, should be permitted, however at a minimum should include an "E" for Existing in the tables. In particular, with regard to 20.25D.070 Wholesale & Retail uses under general merchandise, products, supplies, materials & equipment (use code 51), we have "Merry-go-Round" which sells infant/juvenile furniture, baby strollers, car seats and many other associated products. Under the category of "Hardware - General merchandise, Dry Goods and Variety" (use code 53) we have Bellevue Art & Frame which has been in the shopping center for 20 years specializing in arts/crafts, paint, variety products, toys etc. This should at least be and "E" for Existing. Under "Furniture, Home furnishings" (Use code 57), we have Kasala furniture, Soho for the Home (now partially "Relax the Back"), Arnolds Appliances. For "Eating and Drinking Establishments" (use code 58) we have "Subway Sandwiches" and "Three pigs Barbeque".

Under Hardware, Paint, Tile & Wallpaper (5251), we have several retailers including, "California Closets" & "Alexander Lighting" ("Rodda Paint") who have in the past or now sell such accessories and in any event, these are consistent with a Bellevue Design Market concept. For "Apparel and Accessories (56)" Merry-go-round sells children's and infant clothing and blankets. These uses should be considered "P" for permitted given the

long continuing and well known theme for the Bellevue Design Market, which is a regional retail draw to the general area. Nonetheless, at a minimum, these should be labeled "E" for existing but are currently blank in BR-MO-1.

Conclusion: With the exception of big box categories (killer retailers that use massive land areas on one level and large parking ratios) I can not understand why the City of Bellevue would not encourage as much retail as possible in the commercial and residential districts. Retail is the glue and texture that makes work and residential areas interesting, livable and ultimately successful. I look forward to hearing your thoughts on these subjects. This Bel-Red rezone is such a huge area that larger areas are painted by the broad rezone brush, than would normally be the case. Our idea is that this could benefit from some "fine-tuning". Our visions are the same for the Bel-Red Corridor. It is the interim that concerns us.

Thank you.

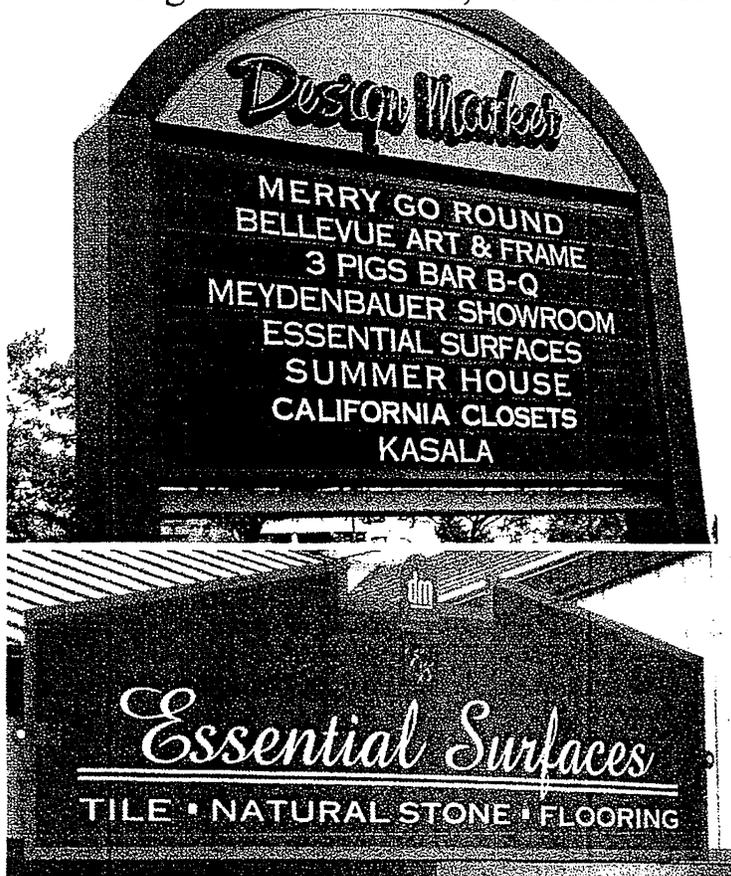
Sincerely yours,

Walter Scott

#1 - Pella Windows Building; 1919-120th Ave NE, Bellevue



#2 - Design Market Center; 1018-1048 116th Ave NE, Bellevue



20.25D.060 Existing Conditions.**A. Purpose.**

Many existing uses and developments would not be allowed pursuant to the Bel-Red Land Use District Charts (refer to LUC Section 20.25D.070) and district specific standards and guidelines in Part 20.25D that are in effect to implement the policies of the Bel-Red Subarea Plan. The purpose of this section is to allow the continued operation of existing light industrial and service uses, and existing developments that were legally established when the Bel-Red Subarea Plan was adopted on [insert Plan adoption date]. An additional purpose of this section is to allow limited expansion of existing uses and developments that are compatible with residential and higher intensity mixed use development that was introduced with the adoption of the Plan.

B. Types of Existing Conditions - Definitions.

A site may be considered an existing condition because it contains either an existing use or existing development as defined in this paragraph and based on documentation provided pursuant to paragraph D of this section.

1. Existing Use. The use of a structure or land which was permitted when established, in existence on [insert Plan adoption date] and not discontinued or destroyed, but is not otherwise allowed under LUC 20.25D.070.
2. Existing Development. A structure or site development which was permitted when established, in existence on [insert Plan adoption date] and not discontinued or destroyed, but does not otherwise comply with Part 20.25D LUC.

C. Applicability.

1. This Section 20.25D.060 LUC applies only to existing conditions occurring within a Bel-Red Land Use District.
2. The nonconforming provisions of LUC 20.20.070 and 20.20.560 do not apply within the Bel-Red Land Use Districts.
3. Expansions or modifications of an existing use or development shall comply with any applicable requirements of Part 20.25H LUC – Critical Areas Overlay District. In the event of a conflict between this Part 20.25D LUC and Part 20.25H LUC, the requirements of Part 20.25H LUC Critical Areas Overlay District shall control.
4. Modifications to signs associated with an existing use or development shall comply with any applicable requirements of the Sign Code, Title 22B.10 BCC.

D. Documentation.

The applicant shall submit documentation, which shows that the existing condition was permitted when established and has been maintained over time. The Director shall determine based on Paragraph 1 and 2 below whether the documentation is adequate to support a determination that the use and development constitute an existing condition under the terms of this section. The Director may waive the requirement for documentation when an existing condition has been clearly established.

1. Existing Condition Permitted when Established. Documentation that the condition was permitted when established includes, but is not limited to the following:
 - a. Building, land use or other development permits; or
 - b. Land Use Codes or Land Use District Maps.
2. Existing Condition Maintained Over Time. Documentation that the existing condition was maintained over time, and not discontinued or destroyed as described in this Section 20.25D.060 includes, but is not limited to the following:
 - a. Utility bills;
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 - d. Listings in telephone or business directories;
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 - i. Dated aerial photos.
3. Appeal of Director Determination. The Director determination of whether a use constitutes an existing condition may be appealed pursuant to LUC Section 20.35.250 Appeal of Process II decisions.

E. Regulations Applicable to all Existing Conditions.

1. Ownership. The status of an existing condition is not affected by changes in ownership.

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F. Regulations Applicable to Existing Uses.

1. Operations.

- a. Existing Uses May Continue to Operate. Operations associated with an existing use may continue, subject to the provisions of this Section F.
- b. Existing Uses – Hours of Operation. The hours of operation associated with an existing use located in land use districts which permit residential uses may only extend into the period of 9:00 p.m. to 6:00 a.m. subject to Administrative Conditional Use approval. Existing uses which currently operate between these hours may continue without ACU approval, as long as the hours of operation between 9:00 p.m. and 6:00 a.m. are not expanded.

2. Expansions. Existing uses may expand under certain circumstances as described in this paragraph:

- a. Expansions of Floor Area. Floor area associated with existing uses may be expanded in conformance with this code.
- b. Expansions of Exterior Improved Areas. Exterior improved areas associated with an existing use may be expanded by increasing the amount of land used. Exterior areas supporting the existing use may be expanded.

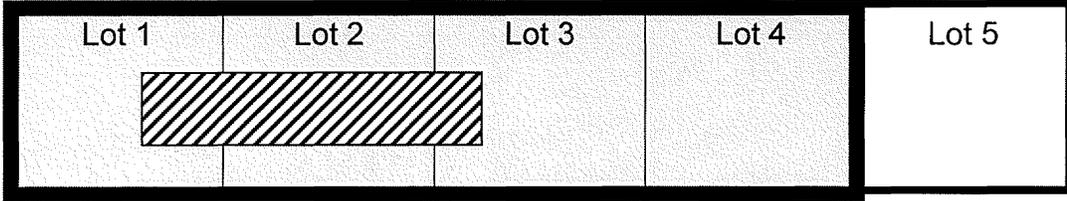
c. Limitations on Expansion.

- i. No expansion of hazards. No expansion in operations shall be permitted that increases the use or on-site quantity of flammable or hazardous constituents (e.g, compressed gases, industrial liquids, etc.), or that increases the amount of waste generated or stored that is subject to the Washington Hazardous Waste Management Regulations Chapter 70.105.210 RCW as currently adopted or subsequently amended or superseded. The Director may in consultation with the Fire Marshal modify the requirements of this paragraph if the Director determines that the expansion will not increase the threat to human health and the environment over the pre-expansion condition.
- ii. Expansions within Nodes (BR-MO-1, BR-OR-1 and 2, BR-RC-1, 2, and 3) and Residential Land Use Districts (BR-R). Refer to LUC 20.25D.060.F.2.c Figure 1 below. Floor area or exterior improvements associated with an existing use may be expanded when proposed within the limits of property held in a single ownership in existence on [insert

Plan adoption date] pursuant to an Administrative Conditional Use approval.

20.25D.060.F.2.c - Figure 1

Expansions within nodes and residential Land Use Districts



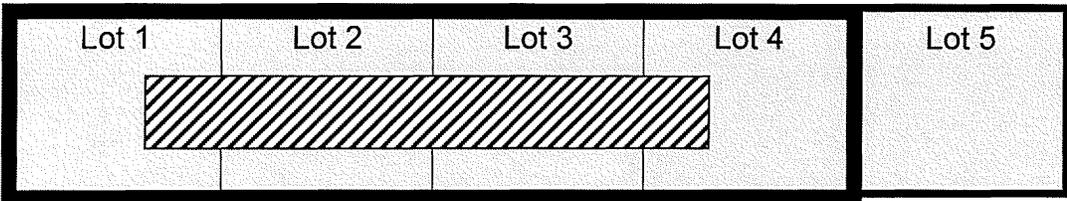
-  Limits of property held in a single ownership as of (date)
-  Area occupied by existing use as of (date)
-  Area where existing use may expand in conformance with this code

iii. Expansions outside Nodes and in Non-Residential Land Use Districts (BR-MO, BR-OR, BR-GC, BR-CR, and BR-ORT). Refer to LUC 20.25D.060.F.2.c Figure 2 below. Floor area or exterior improvements associated with an existing use may be expanded beyond limits of property held within a single ownership in existence on [insert Plan adoption date] pursuant to an Administrative Conditional Use approval and the following limitations:

- (1) The property proposed for expansion is abutting at least one of the property lines of the existing use as they existed on [insert Plan adoption date].
- (2) The regulations applicable to the property proposed for expansion would have allowed the use as of [insert Plan adoption date].

20.25D.060.F.2.c - Figure 2

Expansion outside nodes and in non-residential Land Use Districts



-  Limits of property held in a single ownership as of (date)
- 

Area occupied by existing use as of (date)



Area where existing use may expand in conformance with this code

3. Loss of Existing Use Status.

- a. Discontinuance. If an existing use of a structure or exterior improved area is discontinued for a period of 12 months with the intention of abandoning that use, any subsequent use shall thereafter conform to the regulations of the district in which it is located. Discontinuance of an existing use of a structure or exterior improved area for a period of 12 months or greater constitutes prima facie evidence of an intention to abandon.
- b. Accidental Destruction. When a structure containing an existing use is damaged by fire or other causes beyond the control of the owner, the use may be re-established. The structure may be repaired and/or reconstructed in accordance with applicable city codes.
- c. Relinquishment. An existing use is relinquished when the existing use is replaced with an allowed use pursuant to LUC 20.25D.070. Upon relinquishment, the existing use rights no longer apply and the existing use may not be re-established.

G. Regulations Applicable to Existing Development.

1. Existing Development May Remain. Existing development may remain unless specifically limited by the terms of this paragraph.
2. Permitted Alterations to Existing Development. Existing development may be altered, provided that the alteration conforms to city codes and the existing development conforms to proportional compliance requirements contained in paragraph 3 below.
 - a. Three Year Period. Alterations made within a three year period will be viewed as a single change for the purposes of determining required improvements.
 - b. Value of Changes. The value of alterations is determined by the Director based on the entire project and not individual permits. The Director shall promulgate rules for determining the value of alterations in the context of LUC 20.25D.060.
3. Proportional Compliance. An existing development associated with an existing, permitted, or conditional use, may be altered consistent with the requirements set forth below:
 - a. Threshold Triggering Required Improvements. The standards of this paragraph shall be met when the value of the proposed changes to an

existing development exceed \$150,000 as of [insert Plan adoption date]. The threshold established here will be reviewed annually, and, effective January 1 of each year, may be administratively increased or decreased by an adjustment to reflect the current published annual change in the Seattle Consumer Price Index for Wager Earners and Clerical Workers as needed in order to maintain accurate construction costs for the region. Routine maintenance and repair does not constitute an alteration, and does not count toward the threshold. The following alterations and improvements are exempt from being counted toward the threshold:

- i. Alterations required as a result of a fire prevention inspection;
 - ii. Alterations related to the removal of architectural barriers as required by the Americans with Disabilities Act, or the Washington State Building Code (RCW 19.27), now or as hereafter amended;
 - iii. Alterations required for the seismic retrofit of existing structures;
 - iv. Improvements to on-site stormwater management facilities in conformance with Chapter 24.06 BCC, now or as hereafter amended;
 - v. Alterations that reduce offsite impacts (including but not limited to noise, odors, dust, and other particulate emissions); and
 - vi. Alterations that meet LEED, Energystar or other industry recognized standard that results in improved mechanical system, water savings, or operational efficiency.
- b. Required Improvements. When alterations meet the threshold in subsection a above existing development shall be brought toward compliance in the following areas:
- i. Landscape development requirements as set forth in LUC 20.25D.110 and LUC 20.20.520 and required landscape treatments as set forth in LUC 20.25D.130;
 - ii. Circulation and internal walkway requirements, as set forth in LUC 20.25D.120 and LUC 20.20.590;
 - iii. Surface parking lot landscaping as set forth in LUC 20.25D.110 and LUC 20.20.520 standards that apply to the site; and
 - iv. Required paving of surface parking, outdoor storage, and retail display areas.
- c. Timing and Cost of Required Improvements.

- i. Required improvements shall be made as part of the alteration that triggered the required improvements;
- ii. The value of required improvements shall be limited to 20 percent of the value of the proposed alteration. The applicant shall submit evidence as required by the Director that shows the value of proposed improvements associated with any alteration; and
- iii. Required improvements shall be made in order of priority listed in paragraph 3.b above unless a deviation in priority order is approved by the Director as necessary to accommodate a function that is an essential component of the existing development.

4. Loss of Existing Development Status.

- a. Discontinuance. If an existing development is discontinued or abandoned for a period of 12 months with the intention of abandoning that use, any subsequent development shall thereafter conform to the regulation of the district in which it is located. Discontinuance of an existing development for a period of 12 months or greater constitutes prima facie evidence of an intention to abandon.
- b. Accidental Destruction. When an existing development is damaged by fire or other causes beyond the control of the owner, the existing development may be re-constructed. The existing development may be repaired and/or reconstructed in its original configuration. Changes to the footprint and exterior proposed as part of the repair and/or reconstruction must conform to this code.