

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

May 8, 2013
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chairman Carlson, Commissioners Ferris, Hamlin, Laing, Sheffels, Tebelius, Turner

COMMISSIONERS ABSENT: None

STAFF PRESENT: Paul Inghram, Nicholas Matz, Department of Planning and Community Development; Catherine Drews, Development Services Department

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:33 p.m. by Chairman Carlson who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Turner, who arrived at 6:39 p.m.

3. PUBLIC COMMENT – None

4. APPROVAL OF AGENDA

A motion to approve the agenda was made by Commissioner Laing. The motion was seconded by Commissioner Hamlin and it carried unanimously.

5. COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS, BOARDS AND COMMISSIONS – None

6. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram reported that some key study sessions with the City Council are slated for May 13. He said they include station area planning and the Comprehensive Plan update, which will involve sharing information about the joint forum, the public outreach activities that have occurred, and seeking direction on the overall work program.

Mr. Inghram reminded the Commission about the online media tool, Best Ideas for Bellevue, that started on May 1. He noted that to date there have been a limited number of participants but the comments received have been very interesting. Microsoft and Crossroads Mall have come on board as sponsors.

Answering a question asked by Commissioner Ferris, Chairman Carlson said the Shoreline

Master Program will be presented to the Council on May 28. He invited all the Commissioners to attend the meeting and be a part of the presentation.

7. PUBLIC HEARING

A. 2013 Comprehensive Plan Amendments

i. Bellevue Apartments

A motion to open the public hearing was made by Commissioner Tebelius. The motion was seconded by Commissioner Turner and it carried unanimously.

Senior Planner Nicholas Matz briefly explained the two-step Comprehensive Plan amendment process. He noted that the Commission would be asked to recommend initiating or not initiating each of the three proposals, with the Council making the final decision.

Mr. Matz said the Bellevue Apartments are located at the northwest corner of the intersection of 140th Avenue NE and NE 8th Street. The privately initiated application proposes to amend the designation for the 1.84-acre site from Office to Multifamily-High. The applicant has also submitted a concurrent rezone application. The area around the property is mostly built up with commercial and multifamily developments as well as an elementary school. The property was designated as and rezoned to Office in 1981. The Office designation came with the requirement for site development to receive a conditional use approval should the residential use exceed 50 percent of the gross floor area of the building; design review was required because the site is located within a transition area. The allowed density for residential within the Office designation is 20 units per acre, and the current development is at that density.

Continuing, Mr. Matz explained that if approved the site could be rezoned to allow multifamily redevelopment at a density of up to 30 units per acre. The applicant is seeking to have the property zoning aligned with its land use and to add density in the form of additional dwellings; the applicant estimates that between eight and 12 units could be added.

Mr. Matz said the recommendation of staff was for inclusion of the Bellevue Apartments Comprehensive Plan amendment in the 2013 annual work program, and to not expand the geographic scope of the proposal. The staff have concluded that the proposal does address significantly changed conditions resulting from the unanticipated consequences of adopted policy. Higher density multifamily development has emerged as a major residential land use pattern in the area, including on the subject site which was originally zoned for Office. A number of neighborhood service and convenience uses have been developed in close proximity of the subject site. The King County Metro Rapid Ride B Line has been added to NE 8th Street, providing a greatly enhanced form of transit serving the site. Additionally, the city has adopted design standards and an administrative design review process which are now applicable to the site. The decisions made in the past that resulted in the development of the subject property in its current configuration occurred prior to the adoption of the Growth Management Act, and none of the decisions anticipated that the city would subsequently adopt design standards and an administrative review process which will allow the question of high-density residential on the site to be considered consistent with the Comprehensive Plan.

The subject site is bounded by streets on the east and south. There is an office complex to the north, and the adjacent multifamily lacks similarities and conditions that would argue in favor of expanding the geographic scope.

The staff have concurred that the change will likely prove consistent with the current general policies in the Comprehensive Plan and will focus opportunities for the property to redevelopment in compliance with the Wilburton/NE 8th subarea plan as well as the Comprehensive Plan.

Commissioner Ferris suggested the implementation of post-GMA design standards as a significantly changed condition under the decision criteria could apply to every land use policy adopted prior to GMA implementation. Mr. Matz allowed that the argument could be made in general, but clarified that the staff were making it specifically in regard to the subject property only. At the time the site was developed an attempt was made to allow it to go either office or residential; the fact that it ended up using the Office designation to produce residential units at a certain density was in accord with what was allowed at the time. The decision-making process undergone at the time did not anticipate the addition of Rapid Ride or the subsequent mix of uses.

Mr. Inghram clarified that rather than changing the zoning at the time the site was developed, a combination of Office zoning and the conditional use process was used to gain the permit process that allowed the apartments. Now that design review standards are in place, that type of permit process is no longer needed for the subject property.

Commissioner Sheffels said she served on the Wilburton/NE 8th subarea CAC. She said at the time the substation, Texaco station and Walgreens uses were all in place. The design standards were not in place, and the CAC did not labor over its decision for what the designation should be for the Bellevue Apartments site.

Chairman Carlson asked if there is a change the Foothills apartment complex would want to acquire the Bellevue Apartments site and expand its development onto the site. Mr. Matz said staff was not in a position to be able to answer the question.

Commissioner Hamlin said he liked the fact that the Rapid Line B Line was being considered as a factor, but he suggested that things like that come and go and as such should only cautiously be cited as a changed condition. He said he hopes the transit service will be in place for years to come, but if for some reason it were to be eliminated, it could no longer be highlighted as a changed condition. With the service in place, it certainly has a positive impact on the subject property and surrounding area, and makes the proposal much more valid. Mr. Matz clarified that beyond the Rapid Ride B Line, the staff concluded that NE 8th Street is a major arterial available to bus rapid transit and it makes sense to allow for higher zoning adjacent to the arterial.

Ms. Nina Tsai McKay, whose family owns the Bellevue Heights Apartments, said she along with her parents immigrated to Seattle 35 years ago. She said the family acquired and operated a few single family rental units in south Seattle and in 1990 purchased the land on NE 8th Street which has become the main focus of the family business. Over the years the business has grown slowly, carefully and thoughtfully. Bellevue Heights has proved to be a good investment and is generally rented out to capacity. Since the development came on line the surrounding neighborhood and businesses have grown. Many of the tenants are young professionals working for Microsoft and they appreciate how close the apartments are to public transportation and other amenities. It has been 20 years since the apartments were constructed and additional units need to be added to accommodate the growth of the city. As before, new units will be added carefully and thoughtfully consistent with the classic design and landscaping that currently exists.

Mr. Joseph Tovar, 540 Dayton Street #202, Edmonds, spoke representing the Tsai family. He thanked the staff for providing the details of the request. Building 1 and Building 2 on the

property account for a total of 39 units that were built in 1993 pursuant to the zoning that was in place at the time. The subarea was reviewed in 1992 during which time city reviewed the zoning that had been put in place in 1981 and made no changes. Accordingly, the zoning for the subject property is 30 years old. The access driveways on NE 8th Street and 140th Avenue NE are shared with adjacent multifamily and office developments via easements across the Tsai's property. The proposal would not result in any additional driveways. Some of the parking on the subject property is located below the structures and some is surface. The perimeter of the three-story development is heavily landscaped. He agreed with the staff conclusion that the decision criteria have been met by the application. The criteria regarding changed conditions are subjective at best and must be made on a case-by-case basis, but there have been changes on the ground, in policy and in the way the city processes high-density development applications. The proposal encourages infill development on an underutilized site served with adequate urban services, and it would be compatible with the surrounding built environment. If the proposal is recommended for inclusion in the work plan, there will in time be a more detailed analysis and an additional public hearing by the Commission.

Commissioner Tebelius asked what specific changes occurred in terms of the surrounding development since the apartments were developed. Mr. Tovar said a Comp Plan amendment was approved in 2001 for the Walgreens site. Additionally, the plan expected that more of the northwest quadrant of NE 8th Street and 140th Avenue NE would develop with office uses, but that has not happened. The pattern has in fact become multifamily, and that is a changed condition.

Chairman Carlson asked if NE 8th Street had five lanes at the time the Bellevue Heights Apartments were built. Mr. Inghram said the street was rebuilt in 1992 or 1993. He said he did not know if it was five lanes before then or not. Chairman Carlson suggested the widening of NE 8th Street was done with the intent of making it a major corridor.

Commissioner Laing asked for clarification of how a multifamily development came to be on an Office-zoned property. He said it was his understanding that in 1981 the zoning was Office, and in 1992 the zoning was carried forward, and something in the code allowed for multifamily in the Office zone. Mr. Tovar said in 1981 and still in 1992 when the project was built a conditional use permit was required for multifamily in an Office zone, and the maximum density allowed was 20 units per acre. In order to gain control over where the driveways are located, as well as control over drainage, contours, drainage and building design, a conditional use permit was required along with a concomitant agreement. Both of those were creatures of the 1990s; now the streamlined design review process is in place.

Chairman Carlson asked if the intent is to add a floor in order to gain the additional units. Mr. Tovar said a couple of different options have been investigated. Originally the area at the west end of the building was looked at, but the design review folks at the city have suggested building where the parking lot is that fronts NE 8th Street as an alternative. No final decision has been made, but going up has been ruled out.

A motion to close the public hearing was made by Commissioner Sheffels. The motion was seconded by Commissioner Turner and it carried unanimously.

ii. Bel-Kirk Office Park

A motion to open the public hearing was made by Commissioner Sheffels. The motion was seconded by Commissioner Turner and it carried unanimously.

Mr. Matz said the Bel-Kirk Office Park is located at 11100 NE 33rd Place. The site is near both single family and multifamily areas as well as Office, Office/Limited Business and Light Industrial areas. The privately initiated application seeks to amend the map designation on the 7.62-acre site from Light Industrial to Office. The applicant has also submitted a concurrent rezone application. The site is developed with an existing two-building office complex located between NE 33rd Street and the Burlington Northern/Sante Fe rail corridor approximately fourth-tenths of a mile northwest of the intersection of SR-520 and I-405. If adopted, the Comprehensive Plan amendment would allow for the site to be rezoned to allow for general office redevelopment, which is essentially what already exists on the site. The stated purpose of the applicant is to align the Comprehensive Plan designation with the existing land use.

Continuing, Mr. Matz said in the opinion of staff the LI designations in the area occurred because of the confluence of road and rail access. The site served as the Bel-Kirk drive-in movie theater from approximately 1965 to 1985. The speculation is that the site developed with an office use because of the market and access to the site for industrial uses has moved on.

The recommendation of staff is to include the amendment application in the 2013 work program without expanding the geographic scope. The North Bellevue subarea plan did not anticipate that the land use designations and road infrastructure would adapt away from an industrial orientation. Advancing the site into Final Review will not threaten other light industrial land in the area, nor will it influence policy for appropriately retaining industrial land in the city. In 2001 a nearby Comprehensive Plan amendment approved an amendment from light industrial to multifamily on a site which had already been developed with long-time multifamily land use. The new Kirkland transit-oriented development site is nearby. Those are indicators of changing access and land use patterns. The repurposing of the rail corridor speaks to a pattern of adaptive land use changes whose effects had not been anticipated by the subarea plan.

The property is bounded on the east and north by existing multifamily housing. The rail corridor creates a substantial buffer. The independent warehouses in the vicinity that are zoned LI are developed as light industrial, so there is no reason for expanding the geographic scope.

Mr. Matz said the request will likely be consistent with policy implementation that focus opportunities for properties to redevelop in compliance with the specific subarea plan as well as the Comprehensive Plan.

Mr. Matz confirmed Commissioner Sheffels' assumption that when the property was designated LI the railroad was still in operation.

The attention of the Commissioners was drawn to the written comments received and it was noted that separate comments had been received from the owners of the property and the owners of the buildings on the property. Mr. Matz clarified that the Comprehensive Plan amendment applicants are the property owners.

Commissioner Ferris said it would appear that approving the amendment would make it easier for the owners of the property zoned and developed as light industrial to seek a similar change. Mr. Matz said he could not speculate as to what might happen on that site in the future. Unlike the subject property, the property to the southwest clearly has light industrial uses and is designated for the same.

Mr. Jack Burns, 5400 Carillon Point, Kirkland, said his family are the property owners and the applicants. He said the family has owned the property since 1963 at the time the drive-in theater was developed on the site. In about 1986 the property was redeveloped to its current two office

buildings of approximately 93,000 square feet. The goal behind the proposed action is to align the property designation and zoning with the current use of the property. There is no intent to expand the current office buildings, nor is there any plan to return the site to a light industrial use. To the west and north of the property is the Evergreen Office Park. To the immediate east of the property is the railroad off a high bank and the steep slope limits further use of the property. Immediately to the south of the property is a major parking lot with pedestrian stairs accessing the railroad tracks and in Mr. Burns' opinion likely the housing on the other side of the tracks, creating a public access to the office buildings. The area marked LI along Northup Way is in part developed with office uses. Because no change in use is planned for the subject property, there will be no change in the availability of light industrial property in the immediate vicinity.

Commissioner Sheffels asked if the pedestrian stairway is located on the subject property. Mr. Burns said it is on someone else's property to the north of his property. They originate on the property that is serving as a parking lot.

Answering a question asked by Commissioner Turner, Mr. Burns said if approved the amendment will expand the list of potential uses allowed on the property.

Mr. Martin Selig, 3203 165th Place NE, said he is a co-trustee along with Mr. Burns in the trust that owns half of the land. He noted that the name Bel-Kirk Office Park was chosen by the owners of the improvements, not the property owners. He shared with the Commissioners some photos of the site and pointed out that as developed the site bears no resemblance to a light industrial development. By way of contrast he showed some pictures of light industrial developments. With regard to significant changed circumstances, he cited the changes being made to SR-520. The improvements to the intersection of SR-520 and I-405 that were completed a few years ago also represent major changes to the area. Additionally, the rail corridor has been designated to become a pedestrian trail.

Mr. Mike Schechter, a partner at Foster Pepper in Seattle, spoke on behalf of Rosen Bel-Kirk Associates and Rosen Properties, owner of the improvements at the Bel-Kirk Office Park. He opposed adding the proposed Comprehensive Plan amendment to the 2013 work program because he stated it does not meet the Threshold Review requirements. Comprehensive planning and land use zoning is meant to regulate the built environment for the public good. The applicant has made it clear there is no intended redevelopment, expansion or change in use of the property. The amendment will, if approved, result in private gain due to the conditions in the ground lease between Mr. Rosen and his property group and the applicants and their property group. Under the language of the code, a site-specific Comprehensive Plan amendment can only be proposed by the property owner, and in this case the applicant owns the land but not the improvements, nor do they have the permission of the owner of the improvements, nor can they control what happens to the improvements under the lease. A proposed amendment cannot be considered if it raises policy or land use issues that are more appropriately addressed by an ongoing work program approved by the City Council. The proposed action would be more appropriately addressed as part of the overall Comprehensive Plan update process which is under way. City resources should not be devoted to enterprises, including Comprehensive Plan amendments, that are solely for private gain. The last Comprehensive Plan update was done in 2004, a year following the announcement that the Burlington Northern/Sante Fe rail corridor would be abandoned; there was ample opportunity for the city to look at the issue in 2004 and the decision was made not to rezone the subject property from light industrial.

Answering a question asked by Chairman Carlson about what the development on the property appears to say about how the property is zoned, Mr. Schechter said it does not matter. Often

there are uses going on inside what appear to be office buildings that are in fact light industrial uses. The uses could include pottery, small equipment manufacturing or apparel manufacturing. Such uses are allowed under the current light industrial zoning, and the change to Office could not allow some of those uses. The issue would be more appropriately addressed in the major Comprehensive Plan update.

Mr. Stan Rosen said his concern is that there are certain uses that are allowed under the current zoning, technological uses and others, that could be allowed to locate in the building as things currently stand. He said he owns the building and has the right to use it under the current zoning. The uses in place in the building were bargained for. There is a personal agreement in place with the landowner that says values are based on the zoning. Changing the zoning as proposed will result in higher value, and that is the motivation behind the application.

Commissioner Turner asked if there is anything illegal about what is being requested under the proposed Comprehensive Plan amendment. Mr. Schechter said the Rosen's believe the proposal violates the lease agreement that is in place. It interrupts the quiet enjoyment of the property, it disturbs the Rosen's use of the property, and it potentially illegally affects the rents that are owed in a number of different ways.

Ms. Mimi Rosen, 2310 130th Avenue NE, Suite 202, pointed out that the proposed Comprehensive Plan amendment was submitted within six months of when the buy/sell valuation provision of the property is due to come up.

A motion to close the public hearing was made by Commissioner Sheffels. The motion was seconded by Commissioner Hamlin and it carried unanimously.

iii. Overlake Investors

A motion to open the public hearing was made by Commissioner Hamlin. The motion was seconded by Commissioner Sheffels and it carried unanimously.

Mr. Matz said the Overlake Investors Comprehensive Plan amendment proposes to amend the map designation on the 0.8-acre site from Bel-Red Medical Office to Bel-Red Commercial/Residential. The applicant has submitted a concurrent rezone application. The privately initiated application involves the property on the west side of 116th Avenue NE. The site was reviewed during the Bel-Red planning process between 2006 and 2009 that resulted in a new subarea plan and new zoning categories for the entire subarea. The subject site was previously zoned Office, but during the Bel-Red planning process the zoning was changed to Bel-Red Medical Office, which allows for hotel-type and senior living residential facilities, medical equipment manufacturing, a range of services, including medical professional services in buildings having heights of up to 70 feet and density of up to FAR 1.0. The Bel-Red Commercial/Residential allows for density up to FAR 2.0, but limits professional medical office square footage to a maximum of 20,000.

Mr. Matz said the recommendation of staff is not to include the proposed Comprehensive Plan amendment in the 2013 work program. Given that the current designation has only been in place since 2009, it cannot be argued that economic conditions constitute a significantly changed condition relative to a site-specific Comprehensive Plan amendment. One option would be to hold consideration of the designation for the site until the five-year update that is built in to the Bel-Red zoning; that work will get under way in 2014.

Continuing, Mr. Matz said in the opinion of staff the proposal does not address significantly

changed conditions. The Bel-Red subarea plan facilitates redevelopment at various densities. The applicant has suggested there are unanticipated consequences to the designations as a result of the severe economic downturn and its effect on the forecasts for redevelopment growth in Bel-Red, but the staff do not believe the economic downturn was focused solely on Bel-Red. The subarea plan that has been in place only since 2009 anticipates that there will be variation in the rates of community growth over the long term. The current zoning for the site represents a significant increase to building intensity over the Office zoning that was in place previously.

If the Commission elects to advance the amendment to Final Review, the geographic scoping should not be expanded. The Bel-Red Medical Office runs from the hospital district to SR-520 and from I-405 to 124th Avenue NE, leaving no obvious place to draw an expansion line.

No written public comments have been received regarding the application.

Ms. Kim Faust, 11415 Slater Avenue NE, Kirkland, noted that the current Bel-Red zoning limits FAR to 1.0 and building height to 70 feet. The FAR density limit makes it impossible to reach the allowed height limit. When the Bel-Red plan was adopted the economy was moving along and land values were increasing. When the economic downturn happened, all development stopped. In an effort to move forward toward implementing the city's vision for the Bel-Red corridor, it will be critical to have incentives for developing in the corridor. The subject property is well-served with infrastructure that is already in place, whereas properties in other parts of the subarea are going to need a lot of infrastructure improvements before they can develop to the densities envisioned by the subarea plan. There is capital in place and ready to be used to develop the subject site during the current development cycle. If forced to wait until the five-year review in 2014, there is a good change an opportunity will be lost. The subject property should be reviewed sooner rather than later. Neighboring property owners are all supportive of the development plans for the site. Either the Bel-Red Medical Office zone should be amended to allow for density of up to FAR 2.0, or the designation for the subject property should be changed to Bel-Red Commercial/Residential. The potential for Sound Transit to locate a rail maintenance and storage yard in the Bel-Red corridor is a changed condition in that it will take up available land and will diminish the potential development capacity.

Chairman Carlson asked where Sound Transit will locate its maintenance facility. Mr. Inghram said Sound Transit is currently studying three different locations through an Environmental Impact Statement. One of the potential locations is in the Bel-Red corridor roughly halfway between 116th Avenue NE and 120th Avenue NE.

Commissioner Hamlin asked if the subject property owner was involved in the Bel-Red planning efforts and at that time asked for a potential density increase. Ms. Faust said they were involved and encouraged densities above FAR 1.0. The Bel-Red Medical Office zone is the only zone that does not include a density bonus incentive.

Answering a question asked by Commissioner Turner, Ms. Faust said consideration has been given to developing a medical office building of 35,000 square feet on the site. Unfortunately, it has not been possible to line up tenants. With a larger building, a potential tenant could be brought on board, or a mixed use building could be developed with some multifamily.

Mr. Matz said staff believes the Comprehensive Plan amendment process is not the best process in which to discuss increasing the FAR allowed in the Bel-Red Medical Office zone. The proper vehicle for giving that option consideration will be the five-year program review of the Bel-Red subarea.

Commissioner Ferris asked where the disconnect identified by the applicant came about between the allowed height and the allowed FAR. Mr. Matz said the answer to that lies in the application of the zoning to the whole Dogwood Park area and the genesis of its platting. The area was rezoned from single family to office, then to Bel-Red Medical Office with the intent of seeing properties assembled for redevelopment. There is a disconnect between the FAR and building height on small sites; that disconnect disappears where properties are assembled and become larger.

Ms. Faust disagreed. She noted that even with a larger property, the density will be limited to FAR 1.0 and the 70-foot height limit will still not be achievable.

Commissioner Laing asked if the Commission could ultimately recommend what amounts to a text amendment that would simply change the FAR for the Bel-Red Medical Office zone. He said while it is laudable to hope there will be parcel assemblages, but if those assemblages do not come about the development pattern will be less than ideal. Mr. Matz pointed out that the subject property in 2005 was in fact four separate lots. The aspirational intent is happening. The provision that establishes the FAR is housed in the Land Use Code and it would require a Land Use Code amendment to change it, and the proper vehicle for doing that will be the five-year review.

Mr. Inghram said language calling for the review of the Bel-Red corridor says it should occur at approximately the five-year mark. Mr. Matz said the matter before the Commission is a privately initiated Comprehensive Plan amendment. Other than geographic scoping, the question cannot be broadened. The Commission could as part of its recommendation to the Council ask for initiation of a Land Use Code amendment aimed at making the change. The Commission could also recommend including the issue in the five-year plan review.

Mr. Nick Gill, 2810 Eastlake Avenue East, Seattle, said he only found out about the proposal a week ago and intended to write a letter to the city. He said he represents institutional medical facilities as well as smaller medical uses, including developers. He said that although he does not currently represent any landowners in the Bel-Red Medical Office zone, he has talked to several of them. He allowed that the zoning is somewhat confusing. With a height limit of 70 feet and an FAR of 1.0 the result will either be tall skinny buildings or smaller buildings. The zone is ripe for development, especially for medical uses. The city should be proactive in trying to gain momentum toward getting developers to redevelop the zone.

A motion to close the public hearing was made by Commissioner Turner. The motion was seconded by Commissioner Tebelius and it carried unanimously.

****BREAK****

8. STUDY SESSION

A. Consider Recommendations on the 2013 Comprehensive Plan Amendments

i. Bellevue Apartments

A motion to recommend inclusion of the Bellevue Apartments Comprehensive Plan amendment application for the 2013 annual Comprehensive Plan work program was made by Commissioner Ferris. The motion was seconded by Commissioner Laing and the motion carried 6-1 with Commissioner Tebelius voting no.

ii. Bel-Kirk Office Park

A motion to recommend inclusion of the Bel-Kirk Office Park Comprehensive Plan amendment application for the 2013 annual Comprehensive Plan work program was made by Commissioner Laing. The motion was seconded by Commissioner Sheffels.

Commissioner Ferris asked how soon the zoning would be in place, assuming the Council ultimately approves the amendment. Mr. Matz said with a concurrent rezone, the process kicks in as soon as the Council takes action, which is expected to occur before the end of the year. Conservatively, the rezone would be in place by the mid part of 2014.

The motion carried unanimously.

iii. Overlake Investors

A motion to recommend no further consideration of the Overlake Investors Comprehensive Plan amendment application for the 2013 annual Comprehensive Plan work program was made by Commissioner Tebelius. The motion was seconded by Commissioner Hamlin.

Commissioner Laing reiterated his comment that there is no need to wait for the five-year plan review before taking action. There have been questions raised about the zoning in the corridor and that fact that it does not work well in every aspect. He said he would like the Commission to consider sending some communication to the Council regardless of whether or not the Overlake Investors Comprehensive Plan amendment is included in the 2013 work program. The economy is starting to move forward and it is time to review the zoning and make whatever tweaks are needed. Waiting for the five-year review could cause some development to miss the current cycle. Mr. Matz said the issue could be raised in the Commission's transmittal memo to the Council.

Commissioner Hamlin concurred. He said the applicant made a good case with regard to the zoning. He noted, however, that the proposal does not meet the decision criteria, particularly with regard to changed conditions.

Commissioner Tebelius pointed out that the Commission's plate is quite full for the year and suggested there would be no problem in waiting until 2014 to review the Bel-Red corridor plan.

Chairman Carlson said he was mildly surprised at the comments of staff that the proposal did not incorporate exactly what the city is looking for. Mr. Matz acknowledged the applicant's assertions about a conflict between height and FAR, but reiterated that is not the issue at the heart of the proposed Comprehensive Plan amendment. The request is to change the land use designation for a specific site to a more intense use that the Bel-Red subarea plan envisions as appropriate for a different part of the subarea. The designation in place allows for as much as twice as much density as was allowed before the Bel-Red study was completed, and it is intended to allow for medical office uses that support the Medical Institution zone where there are concentrations of density and an anticipated light rail station. The Bel-Red Medical Office zone is intended to be supportive of medical office uses but at a lower intensity. The Bel-Red Commercial/Residential zone actually limits the medical office component allowed, and that would be a problem in terms of visualizing medical office use in the area.

Commissioner Ferris said he supported not moving the Comprehensive Plan amendment forward. He said the Bel-Red Medical Office is the right designation for the site. Where the disconnect exists is with the height and the FAR. The Commission should in its transmittal to

the Council propose not waiting for the five-year plan review but instead moving forward seeking a text amendment to consider an 2.0 FAR in the Bel-Red Medical Office zone. It also would be nice if there were a way to make minor adjustments without having to go through a long process.

Mr. Inghram said the Commission could in its transmittal encourage the Council to consider modifying the FAR limits in the Bel-Red Medical Office zone.

Commissioner Laing said while the application seeks a change to Bel-Red Commercial/ Residential, it was clear from the comments made that what is really desired is an adjustment in the allowed FAR. All similarly situated properties face the same issue. He said his preference would be to amend the application to have it reflect what the applicant really wants. Mr. Matz said the Comprehensive Plan amendment process is deliberately narrow, but it is the property owner's choice to make application. It does not, however, preclude the Commission from asking the Council to direct the Commission to review and possibly amend the FAR limits for the zone. Action by the Council to deny the Comprehensive Plan amendment would trigger a three-year wait for the applicant before another Comprehensive Plan amendment could be filed for the site, though that delay can be stayed by the applicant withdrawing the application voluntarily. Mr. Inghram added that the Council has the authority to initiate a Comprehensive Plan amendment or a Land Use Code amendment at any time.

Commissioner Turner agreed with Commissioner Laing and agreed the Commission should ask the Council to direct a review of the FAR limits for the Bel-Red Medical Office zone.

Commissioner Sheffels said she favored a general review of the zone over spot changes that affect specific sites, particularly given that the Bel-Red subarea plan has only been in place for four years.

The motion to recommend no further consideration of the Overlake Investors Comprehensive Plan amendment application for the 2013 annual Comprehensive Plan work program carried unanimously.

A motion to raise in the transmittal memo the question of the disconnect between the allowed height and the FAR limit in the Bel-Red Medical Office zone, and to ask the Council to direct the Commission to develop a recommendation, was made by Commissioner Sheffels. The motion was seconded by Commissioner Hamlin.

Commissioner Ferris said he would like to add to the transmittal memo a recommendation to take action in 2013 rather than waiting for the five-year plan review in 2014. The unintended consequence of the disconnect between the FAR and the allowable height is that the zone could end up with large surface parking lots and four-story buildings, which was not the intent of the Bel-Red plan. During the Bel-Red study, what was heard most often from property owners and developers was that the height and FAR density was not enough.

Commissioner Sheffels agreed to add the recommendation not to wait until 2014 to her motion.

The motion carried unanimously.

Mr. Matz said the transmittal memo will be drafted and shared with the Commissioners to make sure the specifics are accurately captured.

B. Medical Cannabis Collective Gardens LUCA

Legal Planner Catherine Drews explained that marijuana is a Schedule 1 drug under the Controlled Substance Act and its possession, transportation and distribution is illegal under federal law. In the 1990s, passage in Washington state of the Medical Cannabis Act allows qualifying patients with debilitating or terminal diseases to possess a limited amount of marijuana for medical purposes. The Act did not, however, put into place a mechanism by which people could access the medicine. In 2011 the legislature tried to remedy that issue by setting up a comprehensive scheme to regulate medical marijuana dispensaries. Governor Gregoire contacted the United States Attorney for the Western District of Washington, inquiring about possible federal prosecution of state employees involved in certain regulatory functions. The Attorney General responded in the affirmative. As a result, the Governor vetoed substantial portions of the Act, including provisions related to regulating medical dispensaries. The Governor left in place the provision allowing for medical cannabis collective gardens.

As it reads, state law allows up to ten qualifying patients with documentation from a healthcare provider to pool their resources to grow marijuana for their needs. The number of plants is limited and the amount of usable cannabis a collective garden may possess is limited.

In May 2012 the Council responded to the uncertainty associated with the regulation of medical cannabis collective gardens by adopting Ordinance 6058. The ordinance implemented interim zoning regulations regarding medical cannabis collective gardens; it covers a period of six months, allowing the Council time to address more permanent zoning regulations. The Council heard testimony from proponents of medical cannabis commercial enterprises, which are really dispensaries even though they are often referred to cooperatives, access points and portals. The Council was clear about not wanting dispensaries in the city while wanting to make sure the medicine is accessible to Bellevue residents. The planning principles adopted by the Council are intended to guide the work of the Commission in moving forward in developing regulations.

Commissioner Sheffels said there does not appear to be any requirement for patients having access in Bellevue to medical marijuana to actually be Bellevue residents. Ms. Drews said that is not covered by the adopted principles but is certainly something that could be brought to the attention of the Council in the recommendation. Chairman Carlson and Commissioner Tebelius concurred that the idea is a good one, but pointed out that regulating it would be problematic, particularly since the Governor has vetoed any sort of a registry.

Ms. Drews briefly reviewed the proposed schedule for drafting permanent regulations for medical marijuana collective gardens. She noted that the expedited schedule is the result of the fact that the interim regulations will expire on November 7, 2013.

Commissioner Ferris asked how the Council anticipates making medical cannabis available to Bellevue residents in light of the fact that they do not want to allow dispensaries. Ms. Drews answered that medical cannabis patients can grow their own, can have a designated provider, and by participating in a collective garden, qualified patients may share what they grow with other qualified patients who are members of the collective garden. The notion of the collective garden is to allow ten qualified patients to come together to grow, process and distribute medical marijuana among the members of the garden. The Medical Marijuana Act also allows a qualified

patient to designate another person as a provider, and that person could be outside of the collective garden model.

Commissioner Laing asked if there could be a single gardener for a collective garden. Ms. Drews said she did not know if the definition of "collective" would encompass a single person. A collective would need at least two persons. Qualified patients are allowed to grow medical marijuana for themselves without being part of a collective garden.

Chairman Carlson asked how people using marijuana under the state's recreational marijuana law get their pot. Ms. Drews said the system is not yet established. Under I-502, a state system will be set up along the lines of the liquor control system. Persons over the age of 21 wanting marijuana would need to obtain it from a state-licensed seller. They will be allowed to purchase up to an ounce. Medical marijuana patients certainly could get their medicine from that source, unless the qualified patient is a minor. Chairman Carlson suggested that once a distribution system is put in place, the whole idea of collective gardens may become superfluous.

Commissioner Ferris asked if I-502 stores will be allowed in Bellevue. Ms. Drews said the Washington State Liquor Control Board is in the process of working with a consultant to draft rules for both retail locations, producers and growers, each of which will have to be state licensed. I-502 does not impact the medical marijuana law. Recreational users can only possess one ounce of marijuana, but medical marijuana patients can possess up to 24 ounces and 15 plants.

Commissioner Sheffels pointed out that recreational users who purchase marijuana will have to pay tax on the purchase. She asked if there will be any tax revenues associated with collective gardens. Ms. Drews said collective gardens are not retail stores. A requirement for a business license for collective gardens is under consideration.

Commissioner Tebelius commented that the Internal Revenue Code prohibits bartering, which is really what a collective garden will entail. Those who grow the marijuana in the collective garden in effect will barter their services in exchange for the marijuana. The Code says that is clearly a taxable event. The IRS shies away, however, from such efforts where they are de minimis, and a collective of ten may fall into that category. Some kind of control will need to be maintained, and that is why licensing will be so important.

Commissioner Tebelius pointed out that within the provisions the collective gardens must have some ability to control who has access. She said she is convinced that if the city allows the gardens, the day will come when everyone will wonder why they were allowed because they will be ripe for criminal activity, including violent criminal activity. If the state control board is going to ultimately require licensing, it would be best for the city not to go down the path of the collective gardens, allowing the state to shoulder the responsibility instead.

Commissioner Hamlin noted that according to the state Department of Revenue the sale of medical cannabis is a retail event and as such the selling price is subject to retail sales tax. Additionally, the seller is subject to the business and occupation tax under the reselling

classification, even where the product is sold by a medical cannabis dispensary, and sales of medical cannabis are not eligible for the retail sales tax exemption provided for prescription drugs.

Commissioner Tebelius pointed out that a collective garden, if not licensed, would not fall under those requirements. A garden is not the same as a dispensary.

Ms. Drews reiterated that the Council was very clear about not wanting to allow dispensaries in the city. She added that there are people in the industry who will argue that a collective garden is really a distribution point. Mr. Inghram said he has read about some collective gardens that have rotating memberships in which someone signs up and then a day later someone else signs up. Ms. Drews said another common practice is a back room with five or six stalls set up that will all have different providers serving as designated providers for the specific transaction.

Chairman Carlson said he is aware of several cases in which people with their own grow operations were invaded by people with guns. Anyone growing marijuana in their homes in substantial amounts are armed. Collective garden locations likely will attract similar criminal activity.

Commissioner Laing suggested there is a disconnect in the designated provider language. If allowed at all, collective gardens would not be permitted to locate within a 1000 feet of a school, but because under the state statute a designated provider is a person 18 years of age or older, a high school student could in fact become a designated provider. Home invasion robberies are concerning, but so is allowing 18 year olds to couriering around with marijuana.

Commissioner Sheffels asked if the Commission has been directed to draft regulations that allows collective gardens, or if the Commission is free to recommend against allowing them. Ms. Drews said the Council has been clear about wanting Bellevue citizens to have access to medical cannabis. The recommendation of the Commission will need to take into consideration the principles provided by the Council. The city is free under state law to establish zoning and local controls that are appropriate for Bellevue. There is a wide range of approaches used by cities in the area. Seattle is wide open in allowing medical cannabis businesses provided they comply with all local laws and regulations; Kent does not allow collective gardens in any zone; Edgewood prohibits collective gardens in all land use districts but allow for the production, processing and retailing of recreational marijuana; and Tacoma has deemed the production, manufacture, processing, delivery, distribution and possession or use of cannabis a public nuisance.

Answering a question asked by Chairman Carlson, Commissioner Laing explained that just because state allows a jurisdiction to do something does not mean it requires a jurisdiction to do something.

Commissioner Ferris observed that the Council principles are clear that the Planning Commission is to provide a recommendation to the Council concerning only the regulation of medical cannabis collective gardens. The Commission is not, therefore, charged with addressing

the dispensary issue or anything other than the gardens. If the Commission were to come back with a recommendation against allowing cannabis collective gardens, the charge made by the Council will not have been carried out. There are a myriad of concerns regarding the whole cannabis issue, but the Commission has not been given the option of addressing them all.

Commissioner Sheffels reminded the Commissioners that several years ago when the Commission was charged with developing regulations concerning adult entertainment and strip clubs, the Commission put so many regulations on the uses that there are none in the city. A similar approach could be applied to the collective gardens by imposing tremendous hurdles for anyone wanting to have a collective garden. Mr. Inghram said the medical cannabis subject is different from the adult entertainment subject in that there is no constitutional issue involved. Where medical cannabis is concerned, the city has the ability to allow or to prohibit.

Commissioner Hamlin pointed out that by being too restrictive those with verified medical need will be severely restricted in obtaining the product. He said he favored allowing collective gardens in the Light Industrial and General Commercial zoning districts. If allowed anywhere, they should be prohibited within 1000 feet of a school.

Chairman Carlson commented that under I-502 both the growing and the distribution of marijuana is controlled by the state. The collective garden notion allows private parties to come together to form growth areas for marijuana at a time when the product will be legally available under the control of the state. Ms. Drews reminded the Commissioners that I-502 addresses recreational marijuana and it is still an unknown what the federal response will be. The Medical Cannabis Act is different from I-502, and it is under that Act that collective gardens fall. There are currently no licensed collective gardens in Bellevue, though Greenside Medical has leased space in the old Bill the Butcher location at 10600 Main Street with the intent to operate a patient-to-patient network which they say is in compliance with the Act.

Commissioner Sheffels observed that once the business opens medical marijuana will in fact be available to Bellevue residents. Ms. Drews said the problem is the business is not in the correct land use district and is seeking to open without the proper land use or building permits and approvals. The use will be subject to code enforcement should a complaint be lodged or if a life/safety issue is discovered.

Commissioner Turner said he could see no reason the city absolutely has to allow collective gardens. The Bellevue residents who have a medical need for the product must be getting it from areas outside the city currently, and that could continue. Referring to the map of potential collective garden sites, he said they appear to be along main arterials where there is lots of traffic and in full view of everyone. Ms. Drews said the Council has been clear about not allowing collective gardens in residential districts. The four districts named in the interim regulation do not have any residential component.

Commissioner Sheffels asked if the collective gardens could be required to be indoors only. Ms. Drews said that could be done.

Commissioner Laing said he has had friends and relatives with severe illnesses treated with cannabis, albeit in pill form. Clearly there are people for whom medical marijuana is a very important part of their therapy, and the city should be sensitive to that. There are likely others in the community who have been growing their own and smoking marijuana since before any of the initiatives were passed and who probably will continue to do so regardless. He said his concern was more on the nature and location of the operation and who has actual physical access to the product. The interim ordinance does not go far enough in addressing some of the concerns raised by the Commission. The best approach would be to designate a specific area where collective gardens can be located, and the logical choice is the Medical Institution district along 116th Avenue NE. Light industrial areas often are tucked away and lack a lot of eyes on the street, and as such may lend themselves to some of the concerns raised. The Medical Institution location would obviate the need to keep the gardens 1000 feet away from schools. Some specifics regarding hours of operation should be included in the regulations, and designated providers should be restricted to persons at least 21 years of age.

Chairman Carlson pointed out that medical marijuana has been legal in the state for 15 years and yet there are no collective gardens in Bellevue. Within a year or two there will be distribution outlets for marijuana of all types, medical and recreational. He said he could see no reason to rush forward in presenting alternative places for people to farm marijuana when they will soon be able to buy in the equivalent of a state liquor store. He said he most feared collective gardens serving as ways to get around taxing authorities and becoming magnets for thieves.

Mr. Inghram said the next step in the process will be discussing whether or not to apply the same logic to retail outlets. He allowed that the Commission could elect to determine separate regulations should apply to the growing, production and retail sale of marijuana in the city. Ms. Drews said the Council is also seeking from the Commission a recommendation on the appropriate land uses for the I-502 uses. She said she would provide the Commissioners with copies of the minutes of the Council meeting at which that direction was given.

Commissioner Hamlin said he could support the interim proposal in that it has sufficient restrictions. He said he was not against permitting the collective gardens only in the Medical Institution zone, but would favor allowing the I-502 uses and the medical marijuana uses in the zones spelled out in the interim regulation, which could be done by simply making the interim regulation permanent.

Commissioner Tebelius said she could not imagine the Council asking the Commission to address the legal sale of marijuana to non-medical clients before the state and the Justice Department have resolved the issues. Mr. Inghram said the Commission has not been tasked with solving the problems associated with recreational marijuana, and there is no ordinance being proposed to be brought forward to the Commission on that issue. The Commission has been asked to develop regulations regarding medical marijuana, but everyone recognizes that the next step will be implementation of I-502. It could be valuable for the Commission in its deliberations and its recommendation to the Council to consider I-502.

Commissioner Tebelius said it would not be a valuable exercise because there are so many outstanding issues it is impossible to comprehend what they all are. The Commission should focus on the collective gardens. The Commission should tailor the regulations very narrowly with regard to where the gardens should be allowed.

Commissioner Tebelius asked if there is a state statute that determines who can write prescriptions for medical marijuana. Ms. Drews said 6951A regulates the healthcare providers who can make the determination and limits them to some osteopathic physicians, medical doctors, advanced registered nurse practitioners and naturopaths. There is also a limited list of conditions for which medical marijuana prescriptions can be written.

Commissioner Tebelius asked how the city will be able to know who has valid prescriptions and therefore can be allowed to participate in a collective garden. Ms. Drews said the Commission could absolutely include in the regulations a requirement for participants to provide and maintain at the site copies of all valid qualified patient documentation.

Commissioner Tebelius asked if a designated provider is also someone who is entitled to medical marijuana. Ms. Drews said designated providers can be qualified patients, but there is no requirement for them to be qualified patients. Commissioner Tebelius asked if the city could require registration for designated providers as well. Ms. Drews said that could be included.

Commissioner Tebelius pointed out that the directive from the Council to the Commission to take up the medical marijuana issue was handed down almost a year ago, and since then they have not been pounding on the Commission's door trying to get the issue resolved. She said one approach would be to go back to the Council with the suggestion it would be best to wait until the state works out the details.

Chairman Carlson offered to have a conversation with the Councilmember Robertson, the Council liaison to the Commission, about the pace of the project. There was consensus in favor of his doing that.

Commissioner Laing commented that there are probably limits on the number of times the interim regulations can be extended, and that may be one reason the Council wants the Commission to focus on the topic. State-level regulations on the recreational marijuana issues are anticipated to be out by the end of the year. He agreed that it would make sense to wait for the state to finish its deliberating before moving ahead with local regulations.

Commissioner Laing said if the proposition that cannabis has important medicinal properties for the benefit of people is accepted, it is questionable why it should be treated different from every other kind of medicine. There are untold numbers of persons in the city who must take lifesaving medications every day, and they must obtain those medications at a pharmacy. It makes little sense to treat cannabis as a medicine differently.

Chairman Carlson said the fact is the medical community does not recognize cannabis as a medicine and that is one main reason why the product is not available through pharmacies.

Commissioner Ferris noted that indoor farming is not something the Commission has considered as a land use. He suggested that given the city's focus on sustainability and energy conservation, requirements such as the recycling of water and limits on power usage could make indoor gardening very difficult to accomplish. Commissioner Sheffels added that state-of-the-art security measures should be required. Ms. Drews said the Commission could also consider limiting the overall number of collective gardens allowed in the city.

Mr. Inghram asked if an impact fee could be associated with the collective garden use. Ms. Drews said she would look into that and come back with an answer.

- 9. OTHER BUSINESS - None
- 10. PUBLIC COMMENT - None
- 11. APPROVAL OF MINUTES

A. March 13, 2013

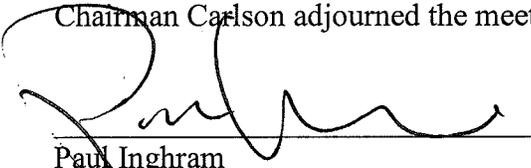
A motion to approve the minutes was made by Commissioner Turner. The motion was seconded by Commissioner Ferris and it carried without dissent; Commissioner Tebelius abstained from voting.

- 12. NEXT PLANNING COMMISSION MEETING

A. May 22, 2013

- 13. ADJOURN

Chairman Carlson adjourned the meeting at 9:58 p.m.



Paul Inghram
Staff to the Planning Commission

7-24-2013
Date



Diane Tebelius
Chair of the Planning Commission

7-24-13
Date

* Approved and corrected June 26, 2013