



MEMORANDUM

DATE: May 1, 2013

TO: Chair Carlson and members of the Bellevue Planning Commission

FROM: Paul Inghram AICP, Comprehensive Planning Manager 452-4070
pinghram@bellevuewa.gov
Nicholas Matz AICP, Senior Planner 452-5371
nmatz@bellevuewa.gov

SUBJECT: May 8, 2013, Public Hearings on 2013 site-specific Annual Comprehensive Plan Amendment (CPA) Threshold Review and Geographic Scoping

PLANNING COMMISSION ACTION

On May 8, 2013, the Planning Commission is scheduled to hold public hearings to consider the 2013 site-specific applications for CPA under Threshold Review. The Planning Commission is asked to recommend whether the applications should be initiated into the 2013 Comprehensive Plan amendment work program under LUC 20.30I.140 and to recommend the appropriate geographic scope for each application in accordance with LUC 20.30I.130.A.1.a.ii.

A map showing the location of the three applications is included in Attachment 1. The Threshold Review criteria are included in Attachment 2. A staff report providing analysis of each application and a staff recommendation was posted online on April 18, made available to the applicants, and mailed to the Planning Commission. ***Please bring your copies of the staff reports to the meeting.***

At the meeting, the Planning Commission will be asked to open a public hearing for each application. Staff will provide a brief review of the request and the staff recommendation, followed by public testimony. After the Commission conducts all three public hearings, the Commission will be asked to deliberate on each request and make individual recommendations.

Sample motion language (for reference):

I move to recommend *initiation/no further consideration* of the [name] Comprehensive Plan amendment application for the 2013 Annual Comprehensive Plan work program, and *expanded/not expanded* through geographic scoping [to include the named properties].

BACKGROUND

The 2013 list of initiated applications has been established to consider amendments to the Comprehensive Plan. The list is the tool the city uses to consider proposals to amend the Comprehensive Plan. Such consideration is limited to an annual process under the state Growth Management Act.

Threshold Review action produces proposed amendments for the annual CPA work program. This 2013 annual CPA work program consists of four steps:

Threshold Review

1. Planning Commission study sessions and public hearings to recommend whether initiated proposals should be considered for further review in the annual work program (*current step-May*);
2. City Council action on Planning Commission recommendations to establish the annual work program (late spring);

Final Review

3. Planning Commission study sessions and public hearings to consider and recommend on proposed Comprehensive Plan Amendments (summer-fall);
4. City Council action on Planning Commission recommendations to adopt amendments (fall).

THRESHOLD REVIEW DECISION CRITERIA

The Threshold Review Decision Criteria for a proposed Comprehensive Plan Amendment are set forth in the Land Use Code in Section 20.30I.140. Based on the criteria, Department of Planning and Community Development staff recommendations are shown below in summary, and in detail in the report materials previously provided to Commissioners along with the April 18, 2013, notice of Threshold Review public hearing.

RECOMMENDATIONS SUMMARY

1. Bellevue Apartments 12-132257 AC (13902 NE 8th St)
 - **Staff recommendation:** Include in CPA work program; do not expand geographic scope
 - Proposed map change from Office to Multifamily High
 - 1.84-acre site
2. Bel-Kirk Office Park 13-106131AC (11100 NE 33rd Pl)
 - **Staff recommendation:** Include in CPA work program; do not expand geographic scope
 - Proposed map change from Light Industrial to Office
 - 7.26-acre site
3. Overlake Investors 13-106273 AC (1835 116th Ave NE)
 - **Staff recommendation:** Do not include in CPA work program; do not expand geographic scope
 - Proposed map change from Bel-Red Medical Office to Bel-Red Commercial/Residential
 - 0.80-acre site

PUBLIC NOTICE AND COMMENT

The application was introduced to the Planning Commission during study session on March 27, 2013. Notice of the Application was published in the Weekly Permit Bulletin on March 7, 2013, and mailed and posted as required by LUC 20.35.420. Notice of the May 8, 2013, Public Hearing before the Planning Commission was published in the Weekly Permit Bulletin on April 18, 2013 and included notice sent to parties of record.

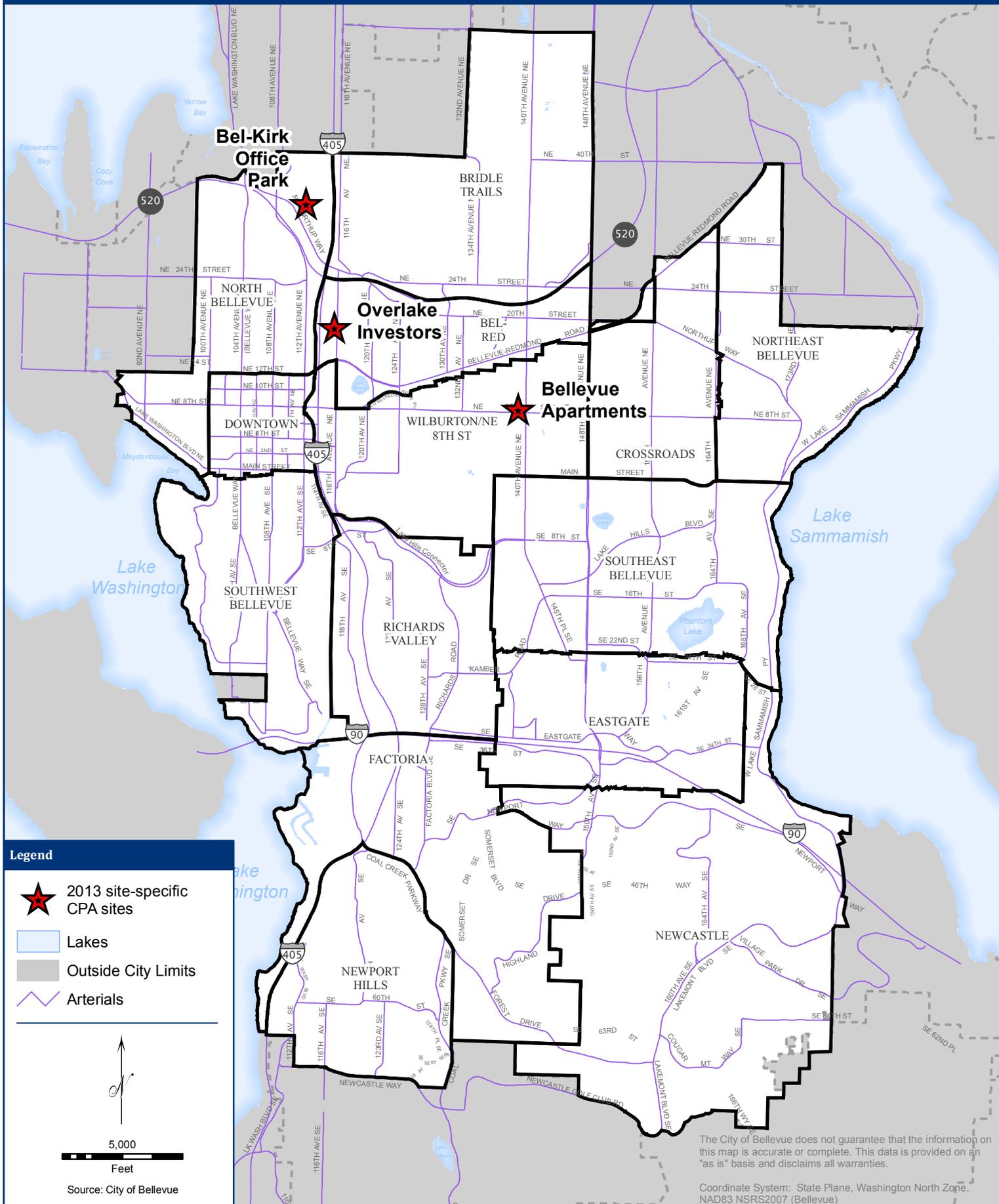
Public comments received before April 18 were included in the staff report materials previously sent to Commissioners. Public comments received after that date and to May 1 are included in Attachment 3.

ATTACHMENTS

Attachment 1 contains the staff report recommendation, any written public comments that have been received to date, a vicinity map, and the applicant's application materials.

1. 2013 site-specific CPAs citywide map
2. Threshold Review Decision Criteria (LUC 20.30I.140) and Consideration of Geographic Scoping (LUC 20.30I.130.A.1.a.ii)
3. Additional public comments received through May 1, 2013 (Bellevue Apartments, Bel-Kirk)

2013 Comprehensive Plan Amendments



ATTACHMENT 2

20.30I.140 Threshold Review Decision Criteria

The Planning Commission may recommend inclusion of a proposed amendment to the Comprehensive Plan in the Annual Comprehensive Plan Amendment Work Program if the following criteria have been met:

- A. The proposed amendment presents a matter appropriately addressed through the Comprehensive Plan; and
- B. The proposed amendment is in compliance with the three year limitation rules set forth in LUC 20.30I.130.A.2.d; and
- C. The proposed amendment does not raise policy or land use issues that are more appropriately addressed by an ongoing work program approved by the City Council; and
- D. The proposed amendment can be reasonably reviewed within the resources and time frame of the Annual Comprehensive Plan Amendment Work Program; and
- E. The proposed amendment addresses significantly changed conditions since the last time the pertinent Comprehensive Plan map or text was amended. Significantly changed conditions are defined as:

LUC 20.50.046 Significantly changed conditions. Demonstrating evidence of change such as unanticipated consequences of an adopted policy, or changed conditions on the subject property or its surrounding area, or changes related to the pertinent Plan map or text; where such change has implications of a magnitude that need to be addressed for the Comprehensive Plan to function as an integrated whole. This definition applies only to Part 20.30I Amendment and Review of the Comprehensive Plan (LUC 20.50.046); and

- F. When expansion of the geographic scope of an amendment proposal is being considered, shared characteristics with nearby, similarly-situated property have been identified and the expansion is the minimum necessary to include properties with those shared characteristics; and
- G. The proposed amendment is consistent with current general policies in the Comprehensive Plan for site-specific amendment proposals. The proposed amendment must also be consistent with policy implementation in the Countywide Planning Policies, the Growth Management Act, other state or federal law, and the Washington Administrative Code; or
- H. State law requires, or a decision of a court or administrative agency has directed such a change.

(ii) Consideration of Geographic Scope

Prior to the public hearing, the Planning Commission shall review the geographic scope of any proposed amendments. Expansion of the geographic scope may be recommended if nearby, similarly-situated property shares the characteristics of the proposed amendment's site. Expansion shall be the minimum necessary to include properties with shared characteristics...



April 30, 2013

Planning Commission
 City of Bellevue
 450 110th Ave NE
 Bellevue, WA 98001

Dear Commissioners:

I represent the Tsai family LLC, owner of the Bellevue Heights Apartments at 13902 NE 8th Street in Bellevue, and applicant for 2013 Comprehensive Plan Amendment No. 12-132257 AC. We agree with the staff analysis that the Tsai application meets the criteria in Bellevue code for inclusion in the 2013 work program, and respectfully request that the Planning Commission reach the same conclusion in making your recommendation to the City Council.

The 1.84 acre property is at the northwest quadrant of the intersection of NE 8th Street and 140th Ave NE. See aerial photo in Attachment A. The Tsai family developed the site in 1993 as a three story apartment complex served by a combination of underground and surface parking. The Tsai property shares driveways on both fronting streets with adjacent multifamily and office properties to the west and north, respectively.

As the staff report states, the last time the City considered the land use designation for this property was in 1992, which in turn was based on pre-existing land use policies and zoning dating from 1981. We agree with the staff that neither the 1992 plan designation nor the 1981 zoning designation anticipated that Bellevue would subsequently adopt design standards and an administrative review process for high density residential infill. The fact that the City now has modern and GMA-compliant design standards and review processes is a significant changed circumstance since 1992.

In addition, as the staff report notes, this proposal does address significantly changed conditions resulting from the unanticipated consequences of adopted policy, particularly that: (1) high density multifamily, rather than office, has emerged as the predominant land use pattern in the northwest quadrant of NE 8th/140th Ave NE intersection; (2) commercial uses have developed immediately to the east in the northeast quadrant of the intersection (a Texaco service station) and in the southwest quadrant (a Walgreen's Pharmacy); and (3) a utility substation has located in the southeast quadrant. The photographs in Attachment B illustrate the development that now exists in these quadrants.

In addition, as you can see in the photograph in Attachment A, new Metro Rapid Ride transit service has been established on NE 8th Street with a stop and transit shelter immediately abutting the Bellevue Heights Apartments.

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 T: 425. 263.2792

540 Dayton Street, #202, Edmonds, WA 98020
 Website: www.iosehtovar-faicn.com

A hearing on the merits of the requested CPA would occur only if the City were to decide to include this proposal on the 2013 work program, and at that time the staff would provide a more detailed analysis for consistency with the goals and policies of the Comprehensive Plan. However, the preliminary staff conclusion included in your packet is that the Tsai CPA will "likely prove consistent with current general policies in the comprehensive plan."

We agree with the staff's preliminary assessment, and would especially like to call your attention to three specific comprehensive plan policies:

Housing Policy HO-17: "Encourage infill development on vacant or underutilized sites that have adequate urban services and ensure that the infill is compatible with the surrounding neighborhoods."

Land Use Policy LU-9: "Maintain compatible use and design with the surrounding built environment when considering new development or redevelopment within an already developed area."

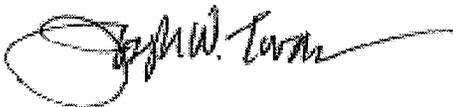
Transportation Goal 2: "To reduce the use of single-occupant vehicles, by creating a land use pattern that allows for shorter vehicular trips and the use of alternative travel options."

In conclusion, we believe that:

1. Significant change has occurred since the City last looked at land use policy for this property in 1992.
2. That 1992 policy decision did not foresee the intervening circumstances over the last twenty years.
3. The Tsai proposal would "encourage infill development on an underutilized site with adequate urban services."
4. The City's current design guidelines and process would allow infill of the Tsai property to be "compatible with the surrounding built environment."
5. Accommodating an additional increment of housing at the Bellevue Heights Apartment site would enable up to twelve additional families to have direct access to "alternative travel options," namely the Rapid Ride Line in NE 8th Street.

My clients and I will be at your hearing on May 8 and would be happy to respond to any questions you may have.

Sincerely,



Joseph W. Tovar, FAICP

Attachments

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Attachment A

Aerial photo of Bellevue Heights Apartments and Vicinity



Photograph of the existing Bellevue Heights Apartments



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Attachment B 1



NW quadrant of NE 8th St./140th Ave NE - Bellevue Heights Apartments



NE quadrant of NE 8th St./140th Ave NE – Texaco station and office building

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Attachment B2



SE quadrant of NE 8th St./140th Ave NE - Midlakes Power Substation



SW quadrant of NE 8th St./140th Ave NE – Walgreen's pharmacy w/drive-through

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FOSTER PEPPER PLLC

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April 30, 2013

Bellevue Planning Commission
City of Bellevue Planning & Community Development
Bellevue City Hall
P. O. Box 90012
Bellevue, WA 98009-9012

Re: Bel-Kirk Office Park Comprehensive Plan Amendment Application
File Number 13-106131 AC

Dear Planning Commission Members:

I am the attorney representing Rosen Bel-Kirk Associates L.L.C. and Rosen Properties ("Rosen Properties"), owner of the improvements at the Bel-Kirk Office Park. On behalf of my client, we urge you to recommend against the City Council placing the referenced proposal on the annual comprehensive plan amendment work plan. The proposal to amend the Bel-Kirk Office Park's designation from Light Industrial to Office should not be included in the annual work plan for several reasons.

The proposed amendment does not meet the threshold review criteria under LUC 20.30I.140. This is not surprising as the submittal from Jack Burns and Martin Seelig to amend the property's comprehensive plan designation is merely an attempt to game the real estate value of the property before an option period for the property begins in early 2014. The option price will be based on appraised value of the property, which, as you know, is significantly influenced by the property's comprehensive plan designation and zoning. Also, several of the property's owners have not expressly authorized the filing of the application; these owners include parties who have equal rights to the ground with Mr. Burns, and Rosen Properties, as owner of the property improvements.

Addressing the specific threshold review criteria, the Bel-Kirk Office Park proposal does not meet several of the criteria that are required in order for the Planning Commission to be able to recommend further study of the proposal. LUC 20.30I.140. In particular, the proposal does not meet the following criteria for the reasons discussed below:

LUC 20.30I.140.C. The proposed amendment does not raise policy or land use issues that are more appropriately addressed by an ongoing work program approved by the City Council.

The proposal seeks to remove additional land from the Light Industrial designation further isolating the few remaining Light Industrial parcels along the SR 520 corridor in North Bellevue. Rather than making a piecemeal decision that limits the Planning Commission and

City Council's ability to undertake community-wide analysis, the City should examine North Bellevue's Light Industrial designations comprehensively.

LUC 20.30I.140.D. The proposed amendment can be reasonably reviewed within the resources and time frame of the Annual Comprehensive Plan Amendment Work Program.

City resources should not be devoted to enterprises, including comprehensive plan amendments, that are solely for private gain. The applicant's proposal, by his own admissions, is not likely to result in redevelopment or other public benefit from a change in comprehensive plan designation and zoning. There is no development proposed to follow if an amendment and rezone are adopted. The proposal only seeks to increase the appraised value of the property in order for the ground owner to gain leverage over the improvement owner in their private real estate dealings. Public dollars and time should not be wasted on such an enterprise. If appropriate for review, North Bellevue Light Industrial lands (and the area generally) should be and can be considered as a whole in the next comprehensive plan update cycle that is now underway for the required 2014 update.

LUC 20.30I.140.E. The proposed amendment addresses significantly changed conditions since the last time the pertinent Comprehensive Plan map or text was amended. See LUC 20.50.046 for the definition of "Significantly Changed Conditions".

The Land Use Code defines Significantly Changed Conditions as "Demonstrating evidence of change such as unanticipated consequences of an adopted policy, or changed conditions on the subject property or its surrounding area, or changes related to the pertinent plan map or text; where such change has implications of a magnitude that need to be addressed for the Comprehensive Plan to function as an integrated whole." LUC 20.50.046.

The Comprehensive Plan had its last major update in 2004, but the alleged "significantly changed conditions" suggested by the applicant pre-date the Comprehensive Plan. BNSF announced the end of freight service to the Eastside Corridor in 2003. Many of the 2 and 3 story offices along Northrup Way that the applicant identifies as changed conditions are 20 to 30 years old. Similarly, the 2004 Comprehensive Plan identified the area around the SR 520 corridor (particularly Bel-Red) as a potential area for change to mixed use. There have barely been changed conditions with regard to this parcel, let alone significantly changed conditions.

G. The proposed amendment is consistent with current general policies in the Comprehensive Plan for site-specific amendment proposals. The proposed amendment must also be consistent with policy implementation in the Countywide Planning Policies, the Growth Management Act, other state or federal law, and the Washington Administrative Code.

Advancing this proposal to annual review threatens other Light Industrial-designated land as it further erodes the already limited base of similarly zoned properties in the Northrup Way area without undertaking comprehensive review. This approach is contrary to the goals and policies of the Comprehensive Plan and the Growth Management Act. Similarly, the stated need to protect single-family zones from encroachment rings hollow given that the subject site has as

much buffer (if not more) neighboring residential zones as the light industrial zone in Eastgate. Those properties are across the street from residential zones, not separated by a forested rail/trail corridor. A property like the Bel-Kirk Office Park should not be singled out for disparate treatment simply because of the economic interests of one of the owners.

In addition to not meeting the review criteria, a site specific amendment, such as the one here, may only be proposed by the property owner or authorized agent. LUC 20.30I.A.2.C. The Bel-Kirk Office Park property is not solely owned by Jack Burns or Martin Seelig. The ground is owned by several parties, including Marsele Burns, Raylah Holm, Annice B. Seelig, and the S.F. Burns Testamentary Trust. To our knowledge, Mr. Burns only represents the S.F. Burns Testamentary Trust, but the application materials contain no authorization from any of the co-equal land owners. Moreover, the landowners have no authority to unilaterally seek a rezone that impacts the improvements they do not own. Rosen Properties, owner of the improvements, strongly objects to this application at this time and has not authorized it either explicitly or implicitly.

Under separate cover, we will be informing the ground owners that their application to the City is a violation of the ground lease and the improvement owners' rights. If Mr. Burns and Mr. Seelig do not withdraw this application voluntarily, Rosen Properties may seek injunctive relief against them in King County Superior Court.

The Planning Commission should recommend to the City Council that the City not involve itself in this dispute. Placing this item on the annual work plan is not likely to result in redevelopment of the property or other significant change in current use, which ultimately means a waste of City resources as staff, Commission, and Council time are diverted to a rezone that is solely for the economic enrichment of the property owner and not for any public benefit. We trust you will make the appropriate recommendation to the City Council, asking that they decline to include the Bel-Kirk Office Center in this year's annual review.

We look forward to discussing this issue with you at your public hearing on May 8th. Thank you for your service and your consideration of these important issues.

Very truly yours,

FOSTER PEPPER PLLC



Michael S. Schechter

Matz, Nicholas

From: Sue Kincaid <sakincaid@comcast.net>
Sent: Saturday, April 06, 2013 1:10 PM
To: Matz, Nicholas
Cc: Rob Austin; Jim Austin
Subject: Bil Kirk Office Park

Re: File Number 13-106131-AC

Dear Mr. Matz,

Would you please send me more information re the Permit for 11100 NE 33rd Pl that has to do with a map change of 7.26 acres from Light Industrial to Office, as it might impact the parcels directly across the street on NE 33 Place.

Thank you,

Sue Kincaid

1 May 2013

Chris Salomone, Director
Department of Planning & Community Development
City of Bellevue
Bellevue, Washington

Subject: File Number 12-132257-AC, Application to Revise Bellevue
Comprehensive Plan

Dear Director Salomone:

Regarding the subject application to change the land use map designation for the property located at the northwest corner of NE 8th St. and 140th Ave. NE, I urge you to deny this application for the following reasons:

1. There is no reason to change the land use and zoning on this property as the existing "O Land Use Designation" provides the property owner with ample opportunities for development under this designation. The attached Table 2 provides a brief summary of the permitted and conditional use developments that are allowed under the current City land use code.

2. More intense development would undoubtedly add additional vehicle traffic to NE 8th and 140th NE; this is especially undesirable since these arterials and the NE 8th/140thNE intersection are already crowded during peak traffic hours.

3. The existing land-use designation for this property is reasonable; and existing nearby developments is consistent with the "O" land use.

4. There is no need to develop further high-density residential capacity in this very small area, as the City has already taken into account recent population, housing, and employment growth objectives by their rezone of the entire 900 acres in the Bel-Red corridor, which the City has designated as one of the primary growth areas for future City development. New residential growth planned for the Bel-Red area will more than accommodate future growth projections. In addition, Bel-Red development is envisioned to include affordable housing. Furthermore, the Bel-Red area

will be serviced by light rail, with 2 stations within the area; this transit service will be far more effective for new residents in the area than a small satellite area in the proposed location.

Sincerely yours,

A handwritten signature in black ink that reads "David F. Plummer". The signature is written in a cursive style with a large, prominent 'D' and 'P'.

David F. Plummer

14414 NE 14th Place
Bellevue, WA 98007-4001

Attachment: Table 2. Permitted Uses in 'O-Zoned' Areas of Bellevue

Table 2. Permitted Uses In 'O-Zoned' Areas of Bellevue

<i>Type Development</i>	<i>Description</i>
Residential Dwellings	Two to four, and five or more units/structure Senior citizen dwellings
Manufacturing	Medical/optical goods; computer software
Recreation	Library, art galleries; nature exhibitions; athletic fields; skating, bowling & athletic clubs; camping sites and hunting clubs; public & private parks; museums; aquariums; art galleries; botanical gardens; zoos
Transportation & Utilities	Right-of-way; yards; terminals and maint. Shops; Airports, terminals, heliports; Accessory parking, park & ride; Radio and TV broadcast studios; Satellite dishes; electrical utilities facilities
Wholesale/Retail	Auto & truck sales; fuel service stations; Clothing stores; eating & drinking establishments
Services	Finance, insurance & real estate offices Funeral & crematory services; family child care services; Medical offices & clinics; judicial and related functions; Military & correctional institutions; Primary & secondary education, universities & colleges; Special trade/vocational schools; Religious and social services; computer program & data processing services
Resources	Agricultural products production; veterinary clinics; forestry & timber production; mining & quarrying; oil & gas extraction

Source: Bellevue Land Use Code

May 1, 2013

Bellevue Planning Commission
Bellevue City Hall
P.O. Box 90012
Bellevue, WA 98009-9012

Re: Bel-Kirk Office Park Comprehensive Plan Amendment Application
File Number 13-106131 AC

Dear Planning Commission Members:

We felt it necessary to respond to the letter dated April 30, 2013 from Michael Schechter on behalf of Rosen Bel-Kirk Associates LLC (hereafter "Rosen"). Because time is paramount in getting this response to you, we will make our points in summary fashion.

1. The fact that there is a private lease agreement between the parties is irrelevant to your consideration of whether the comprehensive plan should be amended to reflect the actual use of the property. In approximately 1986, the property was built out as office space, approximately 93,000 square feet in two buildings. A brief look at the property confirms that its current use has no indicia of a light industrial use.
2. While Rosen suggests that the change of the comprehensive plan designation is done to "game the real estate value," he fails to inform you that the private agreement between the parties gives the land owners the first option to purchase the lessee's improvements. Rosen's ability to purchase the land is secondary only.
3. Rosen's claim that the proposal "seeks to remove additional land from the Light Industrial designation" is disingenuous. As noted earlier, the property is currently built out as approximately 93,000 square feet of office space in two (2) buildings. There are no plans by anyone to return the property to light industrial use. As important, the property immediately to the west is built out as office space and several of the properties to the south on the east side of Northup way are also devoted to office and related business type uses.
4. The claim that the proposal has not been properly authorized is inaccurate as well. The allegedly unidentified owners are my sisters, one of whom is Martin Seelig's wife. We have been fully authorized by them to make this application. Additionally, there is no place on the form for the Owners' to sign and indicate their individual authorization. Rather, the application requires only a certification that the signer is authorized to act as agent for the owners. Finally, the owners were identified on the Environmental checklist. If the Planning

Commission determines that a formal authorization is required of each ownership interest, it can be promptly provided.

5. This proposal is not intended to result in the redevelopment of the property. More importantly, Rosen does not suggest that he wants to return the property to light industrial uses. Rather, he uses that concern as a ploy to disregard the reality of the use of the site under consideration and those surrounding it. The proposal is intended to recognize the property's current use and expand the types of uses that are compatible with its current development.
6. Only a landowner may seek a change to the comprehensive plan designation of a specific site. A lessee, such as Rosen, has no right or standing to do so. Consequently, Rosen's statement that he has "equal rights to the ground" is simply mistaken and erroneous.
7. Rosen's claim that the City should not get in the middle of a private dispute is equally as misleading. The City would not be involved. Further, there is no provision in the private lease between the parties that restricts the right of the landowner to petition for a change to the comprehensive plan or a zoning change or in any way grants Rosen, the Lessee, the right to restrict the owners' right to do so. The threat of an injunctive suit is disingenuous at best. Such a suit would not involve the City. Finally, an injunction will issue only if an applicant can demonstrate irreparable injury. Here, even if Rosen should prevail, money damages are entirely adequate to redress any damage suffered. Most importantly, any dispute between the parties is not a land use issue. Consequently, it is irrelevant to issues before the Planning Commission.
8. Finally, it appears that Rosen's primary goal is to coerce the owners' to withdraw their application by threatening litigation and by asking the Planning Commission to reject the recommendations of its staff. Rosen is attempting to stifle public debate and coerce the applicants to abandon their constitutional right to address and speak publicly about the land use issues presented by their application.

The name of the property and the project name tells it all. It is the "Bel-Kirk Office Park" not the Bel-Kirk Industrial Park. We urge the Commission to accept the staff recommendation and add this project to its annual work plan.

Very truly yours,

Jack R. Burns