BEFORE THE HEARING EXAMINER FOR THE CITY OF BELLEVUE

In re the Proposed formation of a
Wilburton Connection Local Improvement District

) ) ) FINDINGS, CONCLUSIONS AND RECOMMENDATION TO
) ) ) THE CITY OF BELLEVUE

BACKGROUND

1. On September 20, 2010, the Bellevue City Council passed Resolution No. 8141, declaring it’s intent “to consider the formation of a local improvement district, to be known as the Wilburton Connection Local Improvement District (LID), for the purpose of constructing an extension to NE 4th Street between 116th and 120th Avenues NE and constructing improvements to 120th Avenue NE between NE 4th Street Extension and NE 8th Street; and setting a public hearing date to consider the formation of the Wilburton Connections LID.”

2. The following Policy Considerations were noted in Resolution No. 8141:

   a. “The action supports the implementation of the NE 4th Street Extension and improvements to 120th Avenue NE between NE 4th and NE 8th Streets, both identified as high priority projects in the Mobility and Infrastructure Initiative due to their connecting corridor roles between Downtown Bellevue and the Wilburton and Bel-Red Subareas. The projects are consistent with policies in the 2008 update to the Wilburton/NE 8th Subarea Plan, including improving local access and circulation (S-WI-25) and improving pedestrian/bicycle facilities on arterial streets (S-WI-28).” and,

   b. “The Wilburton Connections LID Formation Analysis (Executive Summary provided as Attachment 1) supports implementation of the Mobility and Infrastructure Initiative Finance Plan approved by Council on January 20, 2009 and formation of the Wilburton Connections LID, which is the first of two LIDs assumed in the MII Finance Plan. The proposed LID would reduce the current funding gap of $18 million for the NE 4th Street and 120th Avenue NE projects by approximately $10 million.”
3. Public Hearings were held to consider the formation of the Wilburton Connections LID on October 21 and on October 28, 2010. The format for each hearing included the following five phases: (1) City staff and their representatives or consultants presented evidence, including a staff report, power point presentations, other exhibits and testimony; (2) anyone in attendance could ask questions to City staff and their representatives or consultants about the evidence initially presented; (3) anyone in attendance could present relevant evidence, including testimony and exhibits; and, anyone who was unable to attend, could present written comments to be included in the record; (4) City staff and their representatives or consultants were given an opportunity to reply to the public response; and (5) anyone in attendance could ask questions to City staff and their representatives or consultants, about the reply evidence presented.

FINDINGS

1. Testimony from the City of Bellevue witnesses and exhibits, including the Staff Report, focused on the background and basis of the proposed LID, including: descriptions of existing conditions, proposed improvements, estimated costs of constructing those improvements, and, the appraisal methodology used to calculate the initial assessments.

2. The staff report (Exhibit 1), PowerPoint Presentation (Exhibits 2 and 20) and testimony from the city’s witnesses, provide a detailed overview of the project, including: (a) a map of the boundaries of the proposed LID, with numbered parcels; (b) a description of authority for this public hearing (RCW 35.43.140; (c) a description of the scope and purpose of this formation hearing; (d) a description of the nature and history of the proposed improvements, as well as the staff’s opinion of their benefits; (e) a description of the feasibility and formation study that was performed; (f) a description of community engagement activities and public noticing; (g) the staff’s recommendation; (h) and more, including numerous attachments. (Exhibit 1, Exhibit 2, and testimony).

3. The NE 4th and 120th Improvement segment one projects were developed through a number of planning processes which began with a review of the downtown Transportation Plan, which is part of the City’s Comprehensive Plan, at a period of unprecedented growth in downtown Bellevue.

4. The goal of the Transportation Element is to maintain and enhance mobility for residents and businesses through the creation and maintenance of a balanced system of transportation alternatives that: (a) provide a wide range of travel choices; (b) support the land use vision of the city; (c) protect our neighborhoods from adverse transportation impacts; (d) reflect the
regional role of the city in transportation issues; and (e) reduce the overall dependency on automobiles throughout the city. (Exhibit 5)

5. The Comprehensive plan looked at circulation to and from downtown Bellevue and the surrounding vicinities - especially, from I-405 and across I-405, as well as areas to the east of downtown Bellevue. The NE 4th Street extension plan was born during an amendment to the City Comprehensive Plan, which was adopted in 2006. However, because the NE 4th Street extension is not in downtown Bellevue, the City Council adopted an update to the Wilburton Subarea plan in February 2008, which specifically included the NE 4th Street extension project and the 120th Avenue segment one improvements.

6. A specific policy in the Comprehensive Plan indicated that once the NE 4th street extension was funded and constructed, a rezone could occur in portions of the Wilburton area.

7. In addition to those two planning efforts, the Bel-Red Subarea Plan was intended to dramatically change the historical light industrial land use and zoning in that area, to mixed-use and transit oriented development. That process identified multi-modal improvement that both depend upon, an enhanced regional connectivity of the transportation system between downtown, the Wilburton and Bel-Red areas, and the urban centers of the Redmond-Overlake area, and downtown Redmond.

8. All of those planning efforts were in support of one another and the circulation improvements that support those long-range land use plans. The connectivity projects, including the NE 4th Street extension and the 120th Avenue Improvement Segment one, which are the subject of this proposed Wilburton Connection LID, are related to many other projects that are within the Mobility Infrastructure Plan/Initiative.

9. The NE 4th Street extension, aka the City’s “Preferred Alternative” will begin at the T intersection of NE 4th Street and 116th Avenue NE; continue up the hill to the east and connect with 120th Avenue. It will be built as a five lane road, two through lanes in each direction, and a center turn lane with a new signal at 120th Avenue. (Exhibit 1, Tab D)

10. The existing 120th Avenue is a three to four lane road which will widen to five lanes, two in each direction with a center turn lane and turn pockets where necessary. There will also be a signal at NE 6th Street, which is another planned extension. (Exhibit 1, Tab E)

11. Both the NE 4th Street extension and 120th Avenue NE projects will include sidewalks, bike lanes, landscaping, street lighting and other amenities.

12. Through the NE 4th Street alternative analysis, the City considered seven or eight different alternatives that were scored against criteria which included roadway geometry, impacts to
adjacent properties, and access to adjacent properties, impacts on modifications to the
Burlington Northern Santa Fe railroad corridor, construction duration, and disruption from
construction and traffic operations.

13. The “preferred alternative” was selected by the City for several reasons. It had the least number
of parcels that were impacted – two off of 116th Avenue NE and two off of 120th and provided
the ability to modify an existing building structure, allowed continued retail use, had the least
overall cost, was most compatible with what was considered the Wilburton Village vision in the
Comprehensive Plan; and, reflected community input.

14. The traffic analysis began as a relatively high level analysis using existing traffic counts, which
were entered into the raw modeling data. That information was modeled by several consultants
city-wide, then subarea-wide, and also at the project level.

15. The Transpo-Group, hired as the City’s primary consultant, evaluated traffic in the Wilburton
area and the Bel-Red area, in terms of “existing traffic”; traffic in the “opening year” 2015
horizon; and, traffic in the year 2030 horizon. The Transpo-Group analyzed the 2030 horizon
with and without the project improvements, and its report, a memo titled “Summary of the
Wilburton Traffic Modeling project” includes a description of the alternatives, a discussion of
the travel forecasts, evaluations of both intersection and corridor operations, maps and charts
illustrating traffic volumes, levels of service and travel times, based on the various time
horizons (Exhibit 3).

16. Another transportation consultant, Pertee, was hired by Bob Macaulay of Macaulay &
Associates, to assess the transportation benefits resulting from the proposed roadway
improvements for the Wilburton Connections LID.

17. A brief summary of the most pertinent aspects of Pertee’s assessment of the transportation
benefits resulting from the proposed eastward extension of NE 4th Street from 116th Avenue NE
to 120th Avenue, and the related upgrading of 120th Avenue NE from NE 4th Street to NE 8th
Street was admitted into evidence. (Exhibit 4).

18. Mr. Kris T. Liljeblad, Director of Transportation Planning at Pertee, authored the brief
summary report to Mr. Macaulay, which Mr. Liljeblad described as an “…analysis prepared to
support your recommendations for drawing the boundaries for a Local Improvement District
(LID) to help finance the construction of the NE 4th Street Extension and the widening of 120th
Avenue NE.”

19. In the introductory section of his report, Mr. Liljeblad acknowledged that previous study by the
City of Bellevue indicates that the project benefits will include: (a) improved continuity in the
arterial roadway network; (b) expanded arterial traffic capacity; (c) reduced traffic volumes on congested roadways including NE 8th St and NE 12th St.; (d) improved bicycle and pedestrian connectivity to the local and regional system; and (e) improved intersection operations at major intersections in the study area.

20. Mr. Liljeblad disclosed that Perreet’s analysis was conducted to understand, more specifically, the change in traffic patterns and reduced congestion as a result of the project - especially along NE 8th Street east of 116th Avenue NE and 120th Avenue NE / NE 1st Street south of NE 4th Street, both of which will enjoy improved accessibility and significantly reduced traffic congestion and vehicular delays. (Exhibit 4)

21. The Perreet analysis was conducted based on field observations and travel demand model results provided by the City of Bellevue from the City’s BKR (Bellevue-Kirkland-Redmond) model. (Exhibit 4)

22. Staff testified that studies prepared by the “Transpo-Group” and “Perreet” are relatively consistent and, ultimately, do not modify or change the final result.

23. The NE 4th Street extension project will increase traffic on NE 120th because traffic will be diverted from other roadways to the newly expanded roads. The traffic on NE 120th between NE 4th and NE 8th will be increased and traffic at the intersection of NE 8th and 120th Avenue NE will be degraded. However, the City believes that the proposed roadway improvements will reduce traffic on key corridors and balance circulation throughout the entire Wilburton area.

24. Staff also believes that the transportation improvements will benefit freight, transit, pedestrian, and bicycles, as well as automobiles - for existing and future residents, by providing a new multi-modal corridor for local and regional connections.

25. Staff measured traffic benefits in several ways, including: level of service, cues at intersections, backups at intersections, and travel time throughout the corridors.

26. The proposed NE 4th Street extension and 120th Avenue NE improvements, are expected by staff to improve the travel times between approximately the mid-point of downtown Bellevue or the mid-point of 112th over to 116th, or over to 120th - because the improvements will create a more direct route than is now possible. Staff also expects the road improvements to redistribute traffic over the new roadway network and provide freight access with a direct link to the freeways.

27. Without the proposed improvements, staff expects increased congestion on key corridors, including NE 8th, NE 10th, NE 12th and Main Street; an inability to rezone properties located
within the Wilburton subarea; an increase in travel time on NE 8th Street, between 116th and 120th; and, challenges to pedestrians and bicyclists who want to travel from one side of I-405 corridor to the other.

28. Therefore, staff identified “general benefits” of the proposed projects to include: (a) increased connectivity between regional centers, including downtown Bellevue, Wilburton and the Bel-Red area; (b) support of economic growth in multiple areas, in downtown, Bel-Red and the Wilburton area; and, (c) improved mobility for all modes.

29. Although special benefits will be the focus of another hearing if the LID is formed and the proposed road improvement projects are completed, the City did hire a consultant, Macaulay & Associates LTD, to recommend an LID boundary and complete an economic feasibility study focusing on the two road improvement projects collectively known as the proposed Wilburton Connections Local Improvement District. (Exhibit 1, Tab F)

30. The Macaulay Executive Summary of the consulting assignment involving preliminary economic feasibility analysis for the proposed Wilburton Connections LID project, Bellevue, WA, was published on June 3, 2010, by Robert J. Macaulay, MAI, and a Washington State Certified – General Appraiser. (Exhibit 1, Tab G)

31. The Macaulay Summary of Formation Special Benefit/Proportionate Assessment Study – Narrative Discussion and Tabulations of Preliminary Assessments, was published on September 8, 2010, by Mr. Macaulay. (Exhibit 1, Tab H)

32. The special benefit analysis performed for the proposed LID had two key components: (1) to identify a potential LID boundary, and (2) to complete a preliminary special benefit/proportionate assessments study centered around two road improvement projects collectively known as the Wilburton Connections Local Improvement District. (Exhibit 1, Tab H).

33. To make estimates of probable increases in market value or special benefit resulting from the proposed LID, market sales of land and improved properties were researched, together with rental rate information on the various types of property found within the proposed LID boundary – which consist primarily of office and retail uses. Engineering and economic studies relating to the supply and demand, absorption and population growth trends were also reviewed. (Exhibit 1, Tabs G and H)

34. Special benefit to affected properties derives from “enhanced relative location” by the proposed road improvements, which results in reduced traffic congestion, improved “circuity” of traffic flow and enhancement of the neighborhoods’ reputation and aesthetic appeal. Also, with the
35. The Macaulay feasibility study acknowledged that:

“The nationwide economic recession, which began in 2007, is having a profound and long-lasting effect on commercial real estate markets. The tightening of both national and global credit markets and a resultant reduction in liquidity are adversely impacting both current and future investments in real estate. This has resulted in limited real estate sales activity over the last several years in the Bellevue vicinity. Reductions caused by the ongoing recession have been especially severe when contrasted with the economic boom which preceded it in the early years of this decade. As in the greater Seattle area, new development has been sharply curtailed and a number of large projects have been cancelled or put on hold in Bellevue and elsewhere in the “Eastside”. According to the March 2010 Puget Sound Economic Forecaster (PSEF), the regional economy is expected to begin to recover beginning in the second quarter of 2010. Current positive signs in the local market pertaining to new sales transactions and development activity remain limited.” (Exhibit 1, Tab G).

36. Recognizing that the definition of market value requires well-informed market participants, estimates are made of the value of individual parcels without the road improvement project and again with the project assumed complete, as of the same date. Estimated value ranges without and with the LID are refined into valuation conclusions by making the appropriate adjustments based on factors affecting market value of individual parcels. For each assessable parcel within the LID boundary, this basis of valuation results in a special benefit estimate, which is the difference in value before (or without) the project as compared to the same parcel after (or with) the project. Electronic data based on records of the King County Assessor’s office was provided by the City of Bellevue and forms the basis of the preliminary assessment roll spreadsheets which are integral parts of Macaulay feasibility study. (Exhibit 1, Tab G).

37. The purpose of a preliminary special benefit/proportionate assessment study is to provide a fair and proportionate allocation of preliminary assessments, based on highest and best use and market value of affected property, without as opposed to with the LID project completed. This study can then be utilized by the city and affected property owners to establish the LID boundaries and make a determination as to whether or not to form the district. (Exhibit 1, Tab G).

38. Mr. Macaulay relied on information provided by Kris Liljeblad, Director of Transportation Planning for the Perteet Company, to assist in performing his analysis.

39. Based, in part, on the Macaulay Report, potential special benefits identified by staff, include:
(a) up-zoning and increased density in the Wilburton area; (b) an improved connection between
downtown and the Bel-Red area; (c) increased access to regional freeways; (d) improved circulation; (e) enhanced and improved access for non-motorized modes to, from, and within the Wilburton district; and, (f) the opportunity to rezone properties located within the boundaries of the proposed LID from "General Commercial" to "General Commercial and Community Business" - which would allow mixed uses, increased density and increased building heights.

40. Mr. Macaulay testified that, based on a review of the market, discussions with brokers, and a review of sales, it is clear that, due to neighborhood characteristics and the separation from I-405, there is no special benefit to properties in downtown Bellevue.

41. Based on the Macaulay study, the total estimated special benefit for the proposed Wilburton Connection LID was determined to be approximately $13.5 million dollars. The City Council will use a preliminary assessment ratio of 75% of the special benefit, which is $10,175,000, to help pay the total estimated project costs.

42. During the special benefit analysis, right-of-way impacts are based on an assumption that a property owner whose right-of-way is acquired have been fairly compensated.

43. According to staff, the benefits study assumes that the right-of-way has been acquired and that property owners have been fairly compensated, so it does not deal with reduction in property value that may be caused by lack of or reduced access during construction of the road improvements; reduction in size of the properties through right-of-way acquisition; loss of income to businesses; or other impacts on customers attempting to access the properties. The proposed LID is consistent with the City’s finance policy.

44. The proposed LID boundaries were identified as NE 8th on the north, and properties north of that which have continuity of ownership, and are accessed from NE 8th between 116th Avenue and 120th Avenue NE; Interstate 405 on the west; Main Street and SE 1st Street roughly on the south; as well as properties fronting and gaining access along 120th Avenue NE on the east. (Exhibit 1, Tab I)

45. Staff also opined that when private contracts, like Covenants, Conditions and Restrictions ("CC&Rs"), restrict an owners’ or tenants’ use of property, and conflict with potential rezoning opportunities, the private contract can be modified, amended or eliminated by the parties to take advantage of the new development opportunities afforded by potential rezones.

46. Staff emphasized that access to some of the properties located within the boundary of the proposed LID will be improved through signalized intersections at NE 6th and NE 4th; and, that
the City can modify the preliminary plans for access throughout the corridor based on safety and efficiency issues.

47. Staff believes that the projects should reduce congestion and delay on various roadways and intersections in the vicinity, add to the east-west and north-south Street grid, balance circulation in the larger vicinity, improve air-quality, and support economic growth and development.

48. In January, 2009, the City Council adopted a finance plan for the Mobility and Infrastructure Initiative. The total revenue planned in the Initiative is $299 million dollars, which includes income of $56 million dollars from LID projects; as well as new Bel-Red taxes, grants, impact fees, general property taxes, and other revenues.

49. Staff has not calculated how much could be saved in acquisition, construction and economic impacts on properties adjacent to the proposed roads, if the 10 feet of right-of-way for the proposed bicycle lanes is eliminated, because both NE 4th Street and 120th Avenue NE are designated in the City’s Pedestrian and Bicycle plan to include those facilities.

50. According to staff, the charts showing property tax revenues as a part of the funding to be used in the Mobility and Infrastructure Initiative Finance Plan, were based on tax revenues projected as of January 20, 2009 and, therefore, do not reflect any recently proposed changes in the amount of property tax assessments.

51. Staff explained that the Bellevue City Council has adopted some of the funding mechanisms and is still in the process of determining whether other funding mechanisms may have to be modified through the budget process. General and local taxes are expected to cover nearly 50% of the projected costs and would be paid from a general funding source. State funding is expected to cover about 15% of the projected costs; and, regional funding is about 17% of the projected costs.

52. The local benefit is expected to be only about 20% of the projected costs, so about 80% of the funds are expected to come from non-local sources for these proposed transportation improvements.

53. From a policy perspective, the City Council expressly identified local improvement districts as a way to pay some of the projected costs when it adopted the Mobility Infrastructure Initiative. The City Council also adopted the Wilburton Subarea Plan, which states that rezone of the area is contingent upon the creation of access improvements; and, specifically establishes that those improvements an be funded by the City or through an alternative financing mechanism, such as an LID.
54. Formation of the Wilburton Connection LID is consistent with State and Local laws and implements current City policies.

55. In response to questions from Eddie Lin, an attorney with Perkins Coie, appearing on behalf of Best Buy Stores, staff clarified that (a) although Policy TR-109 in the Comprehensive Plan Transportation Element, allows the City to use Local Improvement Districts (LIDs) for funding transportation improvements only in exceptional circumstances such as when a group of property owners desires to accelerate development of an improvement or desires a higher standard of improvement than the City would otherwise provide. The City confirmed that there has been no specific written request to the City to form the Wilburton Connection Local Improvement District; and, that the NE 4th Street and the 120th Avenue NE projects are a regional priority, which are included in the City’s regional plans as well as other documents.

56. Staff clarified that it’s study did find that the Best Buy site is one of the core properties most benefited by the road improvement in the amount of about $7.00 per square foot, based on land value, including the improvements; which assumes that about 10,000 sq. feet of the improvements would be acquired and that the building would subsequently be retrofitted and function in the market under a similar current use; and which also assumes that the property owner was made whole due to the acquisition of the right-of-way.

57. Knowing now that Best Buy has a fixed lease with a fixed rental rate, which extends through 2023 with options to extend through 2043, does not change staff’s belief that a benefit will result from extending the road improvements to and through the site; because, under the statutes, the City looks at the fee simple interest to determine market value, and does not include an analysis of long-term leases.

58. Staff believes that the proposed road improvements will provide increased value to the Best Buy Store site after the road improvements are in place, including a $47 million dollar road project that runs right through the property where the Best Buy Store is located. Staff also believes that the site of the Best Buy Store will be dramatically improved for retail use; that potential access issues from the new road can be considered if the LID is formed; and that the benefit to the Best Buy Store will be similar to the benefit to the Home Depot.

59. Representatives of Best Buy and Home Depot disagree with the City on those issues.

60. Staff did not know that Best Buy has parking rights on the Home Depot site which will be effectively precluded by the construction of NE 4th extension through the parking lot that Home Depot shares with Best Buy; and, also did not know, or consider, that the Home Depot/Best Buy reciprocal parking agreement and their CC&Rs restrict the stores to single level retail.
However, the City believes that the ability to rezone the property to a more intensive use would benefit the properties and can be accomplished through negotiation of new CC&R agreements by parties.

61. Staff did, however, know about franchise agreements that affect some of the businesses in the proposed LID and stated that those agreements would be reviewed in more detail if the LID is formed.

62. Mr. Macaulay testified that very few businesses have been shuttered as a result of LID benefit analysis and taxes. In his experience most LIDs have benefited the properties within their boundaries by significantly enhancing development and population growth. However, Mr. Macaulay conceded that he has not been involved in an LID since the current 2007 recession.

63. In response to questions from Eddie Lin, from the Perkins Coie law firm, representing Best Buy, Mr. Macaulay agreed that having a fairly accurate preliminary footprint is critical to the preliminary LID formation study and analysis; and, that the Macaulay study was based on the City’s preferred alternative for NE 4th Street.

64. Mr. Macaulay knew, at the time of his analysis, that there are alternatives for the NE 4th and 120th Avenue project and was aware of the Mutual Materials, Bellevue School District bus barn alternative, but did not study it in depth.

65. Eric Miller from the City’s Transportation department clarified that if the LID is formed, a rezone would not automatically occur, even though it is a special benefit of the proposed LID. The City would have to go through a rezone process, hold public hearings, and the proposed rezone would have to be approved by a future City Council, based on criteria in the Land Use Code. Mr. Miller clarified that eligibility to rezone a property is created by the construction of project improvements in the proposed LID.

66. Larry Smith owns Parcels 18, 19 and 20 within the boundary of the proposed LID, expressed concern about approving an LID during a recession, because the community is already hurting and he does not see an end to it. Mr. Smith believes that the City is proposing a special benefit to justify taxing his properties, which takes capital away from operators who are already having a difficult time. Mr. Smith also feels that franchise agreements and site controls effect whether and when an LID should be considered.

67. In response to questions from Glen Amster, an attorney with the Lane Powell law firm, representing Home Depot, staff stated that enhanced traffic circulation generally adds value to a parcel; and that, conversely, enhanced congestion caused by a road improvement can reduce value to a parcel.
68. Staff confirmed that enhanced circulation to and from downtown Bellevue benefits the proposed LID by spreading-out some of the traffic, because of increased access points between areas to the east and downtown, across Interstate 405; and that, despite the general benefits to downtown properties, the downtown core is not included in the proposed LID because, as previously stated, special benefits to specific properties in the downtown core could not be determined.

69. Staff agreed that growth in areas near NE 8th and 120th Avenue NE will cause congestion that will impede shoppers, employees, freight, and other traffic from accessing those areas as well as the parcels located within the proposed LID.

70. Staff responded to questions from Brent Carson, an attorney with the Gordon Derr law firm, appearing on behalf of TRF Capital, which owns Parcel 34, which is developed as commercial shopping center west of 120th between NE 6th and NE 7th, by stating that the need for the two traffic projects in the proposed LID is driven by unprecedented growth in downtown Bellevue, a goal of unlocking development potential within the Wilburton area and the need to support growth in the Bel-Red area.

71. The Perpect study found that significant increases in dwelling units and jobs support the need for improvements at the intersection of NE 8th and 116th Avenue NE.

72. The Transpo report identifies future growth potential between 2009 and 2030, in the downtown, Wilburton and Bel-Red areas. Approximately 500 new jobs will be unlocked by the LID in the Wilburton area, compared to 30,000 new jobs in the downtown area and 18,000 new jobs in the Bel-Red area. Similar disparities are reported for the number of new dwelling units that will be built in the Wilburton area, compared to downtown Bellevue and Bel-Red, during comparable time periods. (Exhibit 3)

73. The Transpo analysis found that congestion increased at the intersection of NE 8th and 120th Avenue NE and, level of service decreased throughout the 120th Avenue NE corridor as a result of the proposed transportation improvements.

74. The Perpect Study found that the study year 2010 existing conditions at the intersection of NE 8th and 116th has a “C” service level; and that in 2015, without the road projects, the service level falls to “F” because of growth in several different areas, including the Wilburton area.

75. Staff agreed that significant transportation congestion can hurt retail development, and did consider the reduced circulation to Parcel 34 by the 120th Avenue NE project in its analysis.

76. A letter dated October 20, 2010, was received from attorney David Camp, of the SVCR law firm, on behalf of Whole Foods Market Place Pacific Northwest, Inc., (Whole Foods) and
admitted. (Exhibit 1, Tab O). Whole Foods leases four parcels of land for which it is responsible for payment of real estate taxes and assessments and also has the right to contest assessments. Whole Foods protests the formation of the LID, as currently proposed, and disagrees with many of the apparent assumptions and conclusions contained in the Macaulay report dated September 6, 2010 and other relevant materials, in connection with the project.

77. Whole Foods also disputes that the proposed LID creates a special benefit to Whole Foods parcels and is convinced that the proposed assessments are unfair to Whole Foods because they materially exceed any incidental special benefit that might be conferred. Whole Foods also objects to being included in the because: (a) its parcels are not in close proximity to the proposed improvements and, therefore, will not benefit from any aesthetic appeal that might be provided by the project improvements; (b) decreased traffic congestion along NE 8th Street and 116th Avenue NE does not necessarily confer a benefit upon retail parcels because storefront exposure to a high number of motorists is an important benefit to sales; and because, (c) to the extent an incidental special benefit may be conferred upon the Whole Foods parcels, it is significantly less than any special benefit conferred upon the core area; so, taxing Whole Foods at the same assessment rate as parcels in the core area is unfair. (Exhibit 1, Tab O).

78. A letter dated October 21, 2010 was received and admitted from attorney Donald Marcy, of the Caircross & Hemplemann law firm, on behalf of Eastridge Partners, LLC, who own two buildings located at 11811 1st Street and 11911 1st Street. Mr. Marcy requests modification of the LID boundary to remove properties located south of NE 1st Street, because those properties receive no benefit from the proposed improvements. The Eastridge Partners property is developed with office buildings and, he believes, the proposed road improvements do nothing to increase the value of those buildings. Mr. Marcy notes that properties south of NE 1st Street were excluded from the boundaries of the Wilburton/NE 8th study area, even though the owners asked the City to include them. If the City had granted the owner’s request to include the properties in the Wilburton/NE 8th Study area, which would have provided enhanced zoning to the properties, then it would be appropriate to include them in the proposed LID; but, because the properties were excluded and denied the opportunity for enhanced zoning, it is inappropriate to now include them in the boundary of the proposed LID. (Exhibit 1, Tab O)

79. A letter dated October 8, 2010 was received from Erich Volkstorf of Volkstorf Rentals Partnership (“VRP”), which the owner of property located at 640 116th Avenue NE, and admitted. As managing partner of VRP, Mr. Volkstorf objected to being included in the LID because he could see no clear benefit to the owner or tenant, which depends greatly on the
familiarity and visual prominence of its location for business, which is benefitted by a high traffic flow. Reducing traffic flow on 116th Avenue NE will, he feels, adversely affect the tenants’ visibility and therefore its potential customers. Since this property is on the border of the proposed LID, Mr. Volkstorf respectfully requests that the boundary be redrawn to exclude his parcel from the proposed LID.

80. A letter dated October 4, 2010 from Kenneth S. Hammer of Northwest Investment Company was received and admitted. Mr. Hammer requested a meeting to review the valuation determinations with the appraiser, to discuss inconsistencies in determinations of special benefit by parcel and to get clarification on this LID Mr. Hammer requests an adjustment to the special benefit, consistent with Bellevue’s $1.00 per square foot; that substantiation of property valuation be provided; and, that the City consider expanding the benefited areas to parcels west of Interstate 405. (Exhibit 1, Tab O).

81. Jim Hill, Vice President with Kemper Development Company, owner of property located at 11919 NE 8th Street and currently occupied by Bartell Drug Store, acknowledged that the connection between Bel-Red and downtown Bellevue, created by the proposed road improvements, will someday be a very important infrastructure improvement, he also emphasized that formation of an LID to impose additional assessments on properties within its boundaries may be inappropriate because some of the properties, including the Bartell Drug Store site, will not be enhanced or receive special benefits.

82. According to Mr. Hill, the current plan to widen 120th Avenue NE will result in diminished ingress and egress to the property and the property’s inherent value will be not be increased in the long-term or for the current tenant. He also testified that the LID proposal is inappropriately funding a regional project, benefiting downtown and Bel-Red, instead of an infrastructure project benefitting properties within the current proposed LID boundary.

83. Mr. Hill asked the City to keep the project on its priority list, work with Transportation Department to find better solutions for the expansion of 120th Avenue NE and to fund the project out of the General CIP Plan, instead of putting an additional burden on local businesses for this regional benefit.

84. R. Gerard Lutz, of the Perkins Coie law firm, representing Best Buy, objected to the inclusion of Best Buy’s leased store property in the proposed LID, if the route for extension is the so called “Best Buy” preferred alternative that staff has chosen. (See Exhibit 6 for thorough explanation of Mr. Lutz’s arguments, including exhibits and attachments)
85. Three exhibits were admitted which illustrate the conceptual layout for Wilburton Connections (Exhibit 7A); an alternate route for the proposed NE 6th Street extension – referred to as the “Mutual Materials-Bellevue School District Alternative (Exhibit 7B); and an illustration of the damage that would be caused to the Best Buy Store and parking area, if the City’s “Preferred Alternative” is selected. (Exhibit 7C)

86. Under the terms of its lease, Best Buy is obligated to pay all of the taxes that are imposed on the property. The City’s preferred alternative not only damages the store, but it also creates access problems, not access benefits; and, eliminates reciprocal parking which is significant to parking and access at the store. (Exhibit 6 and testimony)

87. The preferred alternative damages the loading dock, reduces parking in other ways and makes servicing the store with merchandise very difficult. The potential for site redevelopment, additional zoning, improved, reduced congestion, and increased reputation will not occur at the Best Buy and Home Depot sites, which are subject to a reciprocal lease agreement, covenants and restrictions which restrict the property to one floor of retail. (Exhibit 6, 7A, 7B, 7C and testimony)

88. Mr. Lutz emphasized that creating a corner at the Best Buy site will cause destruction of part of its existing building, shrinking of the site and destruction of the reciprocal parking, and diminished access to the site for customers. He also emphasized that morning traffic will come too early to benefit the store and under the existing configuration, could not easily access the site due to increased traffic congestion. Neither the site owner nor Best Buy will benefit from the proposed LID. (Exhibit 6, 7A, 7B, 7C and testimony)

89. Mr. Lutz also emphasized that the City has not completed its SEPA review or permitting for either the NE 4th through the Best Buy site or for 120th, and should look at alternatives. (Exhibit 6 and testimony)

90. Best Buy advocates an alternative route for the NE 4th Street extension, which would run north of their building through the Mutual Materials site and the school bus barn. He feels that this alternative is more consistent with the City’s retail vision for the redevelopment of the Wilburton subarea because those properties will be redeveloped if the vision is implemented. (Exhibit 6, Exhibits 7A, 7B, 7C and testimony)

91. Randy Boss, a real estate broker with 25 years of experience represents Best Buy and concentrates on big box expansions in the Pacific Northwest for a number of retailers. Mr. Boss is an expert on site analysis and site locations and when Best Buy expanded to the Washington
market in 2000, it opened 20-30 stores. Bellevue was the toughest store to open because there were no other locations in Bellevue and the current site was not a retail corridor at the time.

92. Best Buy took a chance and opened up the store with Home Depot after major studies of potential issues, including traffic flows, visibility, access and parking. For the past seven years, Best Buy has spent hundreds of thousands of dollars creating that spot as a Best Buy retail location.

93. Best Buy would consider it egregious, after seven years of building its reputation and retail anchor, that the City would haphazardly decide that they want to cut 10,000 sq ft. off of a 46,000 sq. ft. building that is one of the most successful Best Buy stores in Washington.

94. According to Mr. Boss, a 25% reduction in square footage by removing 10,000 sq. ft. of a 46,000 sq. ft store which is designed by experts to have what is needed to create the sales flow and customer satisfaction, may cause the store might loose 50% of its sales; and, if that happens, the store cannot remain in its current location.

95. Mr. Boss views the proposed extension of NE 4th Street as a commuter route and a connector between downtown and Bel-Red, not an access route to Best Buy or a local project.

96. In Mr. Boss’ opinion, RCW 35.44 does not allow the City to do a regional improvement and charge it to local businesses and local property owners, who are not benefitted. If an alternative route on the North side of Best Buy is selected, like the one suggested by Mr. Lutz, Best Buy would be happy to participate in the LID and the payments, even though it does not believe that the LID is going to produce additional revenues or an increase in land value.

97. Oscar Del Moro is Executive Vice President for Cosmos Development Company (“CDC”), located at 11747 NE 1st Street, Parcel 56, summarized his testimony with a conclusion – “Never have so few, been asked to give up so much, for so many others.” CDC has been operating its business at this location for 25 years. For the past 35 years, Mr. Del Moro has been an architect, an urban designer, a developer and a community builder, who does not think the LID is going to build the Wilburton community, but that it will separate it. In Mr. Del Moro’s opinion, there is an indebtedness to downtown and to trying to improve the circulation structure, but thinks that the City is approaching this awkwardly by trying to force an east-west connection when both the physical area and the community are asking for a solution that supports the community rather than breaking it apart.

98. Doug Exworthy is an owner and the managing member of TRF Capital, LLC, which owns the retail shopping center at 120th between 6th and 7th, better known as the Old Larry’s Market site; and, more recently as the old G.I. Joe’s Center. Mr. Exworthy has been involved in
commercial real estate development and management for TRF for 30 years and, during the last 23 years as a principal. During that time he has worked on 6 million square feet of commercial projects valued at roughly $800 million dollars; and, his experience in commercial projects and, in particular, retail projects, has given him an understanding of the relationship between a project site characteristics and resulting economic value. See the letter dated October 22, 2010, from Mr. Exworthy, for a more complete explanation of his concerns and interests. (Exhibit 8 and testimony)

99. Mr. Exworthy protests the formation of the Wilburton Connection’s LID because the property owners who will benefit from the road projects are located outside of the proposed LID boundary; and because, property owners inside the proposed LID boundary will be hurt by and will not benefit from the road projects. (Exhibit 8 and testimony)

100. Mr. Exworthy repeats earlier testimony that the City’s own studies show that: (a) the City’s clear intent is to provide new through traffic routes from the downtown area and from the Bel-Red area, for mass transit and HOV freeway traffic; (b) the projects are needed to accommodate unprecedented growth in the downtown area and in the Bel-Red area, based on projected employment growth in Bel-Red (14 times that of Wilburton) and downtown (20 times that of Wilburton) in the next 20 years; and, that (c) dwelling unit growth in downtown and Bel-Red will be much greater than dwelling unit growth in Wilburton. Therefore, the road improvements are not needed for the properties inside the LID boundary to fully develop under the City’s current Comprehensive Plan. (Exhibit 8 and testimony)

101. Mr. Exworthy emphases that existing properties can be developed without deterioration in the level of traffic congestion inside the proposed LID boundary, which will increase and hurt rather than benefit properties inside the LID boundary; and that constraints to accessibility and congested internal circulation, caused by the projects will be a liability and not a benefit owners of properties inside the proposed LID, making it more difficult to lease and sell those properties. (Exhibit 8 and testimony)

102. David Markley is the principal in the firm Transportation Solutions, Inc., and represents TRF Pacific. He has been a transportation and traffic engineer for 35 years, and has worked on over 350 retail and commercial projects through the Pacific Northwest and Alaska. Access is a critical and predominant consideration in the definition of any boundary for the LID and any assessment of special benefit for those that might be assessed. See Mr. Markley’s letter dated October 21, 2010, and attachments for a more thorough explanation of his positions and interests. (Exhibit 9)
103. Mr. Markley has reviewed a number of the City studies that were available and has summarized some of that information into a simple graph that compares the three alternatives: (1) 2010 conditions as they exist today; (2) 2030, incorporating land use assumptions associated with the Wilburton Subarea for 2030; and (3) 2030, with the full build-out, including the road improvements that are part of the LID. (Exhibit 9 and testimony)

104. Based on those comparisons, Mr. Markley concluded that: (1) the road improvements don’t appear to be needed because there will be only a moderate increase in traffic volume but not a substantial degradation in level of service; (2) when the Wilburton subarea is fully developed in 2030, including the road improvements, there will be a substantial increase in volumes and a corresponding substantial decrease in level of service, because congestion is getting worse; and, (3) accessibility to and onsite circulation at various properties, including the TRF site and Park 120, will be degraded by the increased amount of traffic that is forecast. (Exhibit 9 and testimony)

105. Based on his review of the City’s analysis, Mr. Markley found a substantial degradation to level of service, increase in congestion and increase in cues that will constrain access to the individual properties; and feels this analysis supports a finding that there will be liabilities, not special benefits associated with the proposed road improvements. (Exhibit 9 and testimony)

106. Brent Carson, an attorney with the Gordon Derr law firm, represented the interests of TRF Capital. He pointed out, among other things, that Mr. Macaulay issued a preliminary economic feasibility study, dated June 3rd, before he received the Perteet Study, in which he concluded that there are special benefits provided by the road improvements because of reduced traffic congestion and improved circulation. See Mr. Carson’s letter dated October 21, 2010, with attached exhibits, for a more complete explanation of his concerns and interests. (Exhibit 10)

107. Mr. Carson found this to be of interest because, in his opinion, the Perteet Study and the Transpo Study show just the opposite; and yet, the conclusions he reaches in the special benefits study are the same.

108. Mr. Carson provided: (1) the Traffic operations report by Inca, dated November 2009, which goes into far greater detail about diminished circulation at various intersections (Exhibit 11); (2) the Transpo Report, which shows decreased levels of service and huge increases in volume of traffic in 2030, just from these road projects including thousands of extra trips in the PM peak hour, caused by the through traffic between Downtown Bellevue and Bel-Red (Exhibit 12); and, (3) a report about the NE 4th Street Extension Project prepared by Parson’s
Brinkerhoff, which specifically states that the extension is needed to accommodate growth in
the downtown and Bel-Red areas (Exhibit 13 and testimony).

109. Mr. Carson concludes that the proposed roadway improvements are a regional improvement
that may help overall City circulation, at the cost of a decreased circulation and impaired access
to the properties within the LID area; and, that the special benefits study is fatally flawed
because it concludes that traffic congestion would be reduced and circulation improved,
whereas, the facts show just the opposite. (Exhibits 10, 11, 12, 13 and testimony)

110. Joel Glass of Design Guild Homes, is a tenant of the Cosmos Building, No 56, at 11747 NE 1st
Street. He also testified against formation of the Wilburton LID and cited the study findings for
the proposed Wilburton connections, on page 10 which says, at the bottom
“For this analysis, the date of evaluation is June 3rd. Special benefit occurs to the
affected properties due to proposed project by reducing traffic congestion and
improving circuitry of traffic flow.”

111. Mr. Glass also cites figure 9 of the Transpo Report, which shows that only one intersection, SE
1st Avenue and 116th Avenue, will actually experiences an increased level of service in 2030;
while level of service decreases drastically several intersections and remains the same at most
intersections. Mr. Glass concludes that, if the report presumes that the special benefit is from
reducing traffic congestion and improved circuitry, no special benefit exists.

112. Leann Hopwood represents the owner of Parcels 43 and 46, 606-636 120th Avenue NE, which
is the office complex known as Park 120. The owner is concerned about the proposed road
improvements and LID, including: (a) increased traffic; (b) restricted access on 120th Avenue
NE; and, (c) the loss of three left-turn out exits and two left-turn entrances, which are the main
source of ingress and egress for the office park. Please see the letter dated October 21, 2010,
from Gerald T. Davis, of the Harris & Moure, PLLC law firm, on behalf of the property owner
of Park 120 for additional information about the owner’s interests and concerns. (Exhibit 14
and testimony)

113. Ms. Hopwood testified that Park 120 has almost 100,000 sq. ft. of office space and 800 sq. ft. of
frontage along 120th NE. About 150 vehicles, tenants, employees and customers visit Park 120
on a daily basis, at all times of the business day. The existing ingress and egress has been part
of the property since its development in 1980 and customers of tenants on the lower level (on
the west or 120th Avenue NE side) depend on it every day. (Exhibit 14 and testimony)

114. The businesses at Park 120 are mostly small including: (a) a dance academy with over 110
students; (b) a yoga studio with hourly classes filled to capacity; (c) a chiropractic office with a
full schedule of patients; and, (d) a training center for Safeway. (Exhibit 14 and testimony)
115. The proposed changes being funded by the proposed LID will have a significant negative impact on businesses, including: (a) increased bypass traffic not destined for any of the businesses on 120th Avenue NE; (b) severe restrictions on ingress and egress; and, (c) monetary and physical penalties to the property owner of Park 120. Ms. Hopwood expressed support for the position expressed by TRF and agrees that those who actually benefit from the road projects should bear the cost. (Exhibit 14 and testimony)

116. David Graef with Bartell Drug Company, which occupies 11919 NE 8th Street, under a lease with Bellevue Properties, Inc., is also concerned about the road widening project on 120th Avenue NE, and the proposed assessments because ingress and egress from 120th to NE 7th Street would be substantially restricted, causing harm to the Bartell Drug Company. See Mr. Graef’s letter dated October 21, 2010. (Exhibit 15)

117. Part of the due diligence performed prior to signing a lease and undertaking a monumental remodel of the Bartell Drug store, in June 2010, was analysis of ingress and egress to the location. Access to the parking lot is from NE 7th and a fully functional intersection at 120th Avenue NE. (Exhibit 15 and testimony)

118. The proposed design for widening 120th Avenue NE eliminates left turn movements and will harm Bartell Drug’s business. Bartell supports the position expressed by Doug Exworthy of TRF Pacific and also agrees that those who actually benefit by the road improvements should bear the cost. Bartell request the City staff to reconsider their denial of the proposed design alternative which would maintain left-in, left-out movement from 120th Avenue NE to NE 7th Street. (Exhibit 15 and testimony)

119. Mr. T.J. Woosley represents Hal Woosley Properties, owners of property located at 12005 NE 12th Street, which is outside of the proposed LID boundary. He was concerned about using an LID to fund the proposed improvements and assumptions about growth and development in the area. Please see his letter dated October 21, 2010. (Exhibit 16)

120. Mr. Todd Woosley, also with Hal Woosley Properties, was concerned about policy, the evaluation and cost and revenue issues, and also supported previously expressed positions opposing the proposed LID. Mr. Woosley pointed out that the City’s proposed capital budget is 33% lower, from 300 million to 200 million dollars; and that, with less money to invest in capital projects, there is a question about whether the City will have sufficient funds to compete the projects. If the projects area not completed, assessments may be down and the project may not be feasible to build.
121. A letter dated October 28, 2010, was received from Gregory K. Johnson, President of Wright Runstad & Company in support of the Wilburton LID and Transportation Improvements. Wright Runstad & Company does not own property within the boundaries of the proposed LID. Please see the letter to understand the company’s interests and concerns. (Exhibit 17).

122. Don Thorpe, President of Tiki Enterprises (Tiki Car Wash) located adjacent to the Bartell Drug Store on NE 8th, has been doing business on Lot 32 for 30 years, and supports positions previously expressed. He also explained that the only traffic increase he foresees will be from cars that turn left off of NE 8th Street and go across his property to the TRF property.

123. Kendall Anderegg is the Vice President of Sales and Distribution at Mutual Materials, located on Parcels 35 and 36. In addition, he is the 5th generation family member in a business that was started in 1900 and has been at the same location in Bellevue since the 1960s. Mr. Anderegg requested the City bring him into the process and allow him to provide appropriate comment if a decision is made to reconsider the preferred alignment of NE 4th extension, and to consider an alignment that would impact his property. In a letter, admitted into evidence, Mr. Anderegg joined other business owners in the proposed LID who are concerned that the proposed expansion of 120th Avenue NE will actually cause significantly more congestion than it resolves; that the traffic coming through will not benefit his business; and that the cost should be born by a much wider area than is proposed, because the benefits will be enjoyed by businesses in downtown and Bel-Red, more so than in the Wilburton area. Please see Mr. Anderegg’s letter for a more complete explanation of his interests and concerns. (Exhibit 18).

124. Larry Smith owns FAZENDA, LLC, located on Lots 18, 19 and 20, believes the benefits described are illusory; and that he can only see damage to most of the property owners within the LID area because the benefits will be enjoyed by those who are located outside of the LID; and, he asks the City to reconsider formation of the LID.

125. Mr. Eddie Lin, of Perkins Coie, representing Best Buy Stores offered Ordinance No. 5898 into the record, which established a local revitalization zone and shows that the downtown area, included in that zone, will benefit from the NE 4th/120th Project. Mr. Lin also stated that the environmental review for both NE 4th and 120th is still ongoing and his belief that numerous alternatives are still under consideration, which could affect the special benefits for properties and the LID boundaries.

126. Mr. David Makley reviewed the Perteet Study, and identified items that caused him to question several aspects of the study including, on the first page, the stated purpose of the study, to support the definition of LID boundaries, which suggests that Perteet knew the boundaries
prior to the analysis done by Mr. Macaulay. Please see Mr. Markley’s letter dated October 27, 2010 for a more complete understanding of his findings and conclusions upon review of the August 18, 2010 Pereteet letter. (Exhibit 22).

127. Mr. Makley reasons that the transportation analysis by Pereteet did not inform the definition of the special benefit area but, rather the transportation analysis was prepared to advocate for those boundaries.

128. Mr. Makley also noticed that the study talks about a number of benefits, on page 1 that accrued as a result of the proposed improvements. The first four of the benefits are believed by him to be general benefits rather than special benefits. The fifth, which is the operation of the intersection, is not, in his opinion, consistent with the analysis presented by the Transpo Group; and he disputes whether the analysis shows a benefit where levels of service go down. Mr. Makley pointed out several other discrepancies between the Pereteet study and the Transpo analysis. (Exhibit 22 and testimony)

129. Kris Liljeblad, Director of Transportation Planning for Pereteet explained that he was asked by Mr. Macaulay to provide information about transportation impacts and benefits associated with the NE 4th and 120th improvement with the idea of analyzing how that would support the formation of an LID in the Wilburton area.

130. Mr. Liljeblad was asked to try and identify what the changes might be in access and mobility in the area; and, in order to do that, proposed a couple of methods to help identify a project proposal or boundary, including a link analysis and some intersection operational analysis; but, was not directed to reach any conclusions that are set forth in the study.

131. The Pereteet study also had a much more limited scope than the Transpo study, including a smaller study area and a much more focused analysis, which Mr. Liljeblad tried to structure in a way that would be economically practical for a smaller area and for the smaller fee that he received.

132. Nancy LaCombe testified that traffic volume is going to increase in 2015 with or without the projects. There’s limited access through all of the areas in downtown, Wilburton, and in Bel-Red; and, traffic volumes will increase with or without the proposed transportation projects.

133. Ms. LaCombe also testified that the environmental review is still going on, however, only one alternative is being analyzed for the NE 4th and one alternative is being analyzed for 120th, which is the City’s preferred alternative.

134. An email exchange about parcel numbers 29 and 31, within the proposed LID, between Greg Brackett, of Nissan of the Eastside, Inc and Eric Miller, Capital Programming Division
Manager for the City of Bellevue Transportation Department, dated October 11, 2010, was admitted into evidence. (Exhibit 19)

CONCLUSIONS

1. Based on evidence presented during the two day public hearings, there is considerable disagreement among property and business owners within the proposed boundaries of the Wilburton Connections LID, about whether the proposed boundaries are appropriate.

2. The evidence supports a conclusion that the assessment methodology used by the City of Bellevue was appropriate, assuming that the proposed boundaries are appropriate.

3. The evidence also supports a conclusion that the Wilburton Connections Local Improvement District should be formed, if boundary and special benefit issues for businesses located on the fringes of the proposed LID, and ingress/egress impacts on existing businesses, related to the design of roadway improvements along 120th Avenue NE can be resolved.

4. Although the businesses that offered evidence during the two public hearings may not represent a majority of the parcels currently included in the proposed LID boundaries, the collective voice of those who did attend and participate, is resoundingly opposed to formation of the LID, for all of the reasons covered in exhibits and testimony.

RECOMMENDATION

More work should be done to address issues raised by existing business and property owners during the public hearings, prior to making a final decision about boundaries and formation of the Wilburton Connections LID, as currently proposed.

Dated: November 18, 2010

Christopher Mathews, Hearing Examiner

11/18/10

CITY OF BELLEVUE
450 – 110th Avenue NE
P. O. Box 90012
Bellevue, WA 98009-9012