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BEFORE THE HEARING EXAMINER FOR THE CITY OF BELLEVUE

In the Matter of the Application for
SUNSET NORTH LOT 10

DSD File No.: 18-127169-LQ

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND RECOMMENDATION**

For a Rezone of a parcel Approximately 7.2
Acres Within the Eastgate Subarea from
Office Limited Business (OLB) to Eastgate
Transit Oriented Development (EG-TOD)
And for Clarification of Associated
Concomitant Zoning Agreements

SUMMARY

1. Recommendation. The Hearing Examiner recommends approval of the rezone, subject to proposed clarification of associated concomitant zoning agreements.

2. Request. MMP Lot 10, LLC requests a rezone of 7.2 acres located at 3002 139th Avenue SE, from Office Limited Business (OLB) to Eastgate Transit Oriented Development (EG-TOD) and clarification of the applicability of Concomitant Zoning Agreements associated with the property.

3. Procedure. Notice of the application was published in the City of Bellevue weekly permit bulletin on December 13, 2018 and mailed to property owners within 500 feet of the property. The City held a public meeting on January 15, 2019. Comments were made during the review process concerning transportation impacts. The City’s responses are noted in the Staff Report. The Hearing Examiner’s public hearing was held via ZOOM conference June 3, 2021. At the hearing the City was represented by Drew Folsom, Associated Land Use Planner. The

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

1 Applicant was represented by Katie Kendall of McCullough Hill Leary, P.S. There was no
2 public testimony.

3 4. Contents of the Record: The record consists of Exhibit C-1, City's PowerPoint
4 Presentation; Exhibit C-2, DSD Staff Report, Exhibit C-3, the DSD project file (pages 1 through
5 1625); and Exhibit A-1, Applicant's Comment Letter dated 6/3/2021. The record also includes
6 the audio recording of the virtual public hearing held June 3, 2021 at 6:00 p.m.

7 FINDINGS OF FACT

8 1. The factual matters set forth in the foregoing **SUMMARY** are adopted by the Examiner
9 as findings.

10 2. MMP Lot 10, LLC purchased the subject property at 3002 139th Ave SE in Bellevue from
11 the original applicant Sunset North, LLC in September of 2019. MMP Lot 10, LLC has been
12 substituted as the applicant here.

13 3. The applicant seeks a rezone of the property from Office Limited Business (OLB) to
14 Eastgate Transit Oriented Development (EG-TOD) and the clarification of Concomitant Zoning
15 Agreements associated with the property.

16 4. A non-project SEPA (State Environmental Policy Act) determination of non-significance
17 (DNS) was previously issued for the site under the associated Comprehensive Plan Amendment
18 (File #12-12970-AC) on February 12, 2015. No development or disturbance of the property is
19 associated with this rezone. Because no new information or changes to the proposal require
20 additional environmental review, the previous DNS was adopted for the present proposal.

21 5. The subject property consists of 7.2 acres within the Eastgate subarea. It is located north
22 of SE 32nd Street, The Sound Transit Eastgate Park and Ride lies immediately to the south.
23 Access to the site is via SE 32nd Street.

24 6. The site is currently undeveloped except for retaining walls and a gravel driveway. The
25 southern portion slopes significantly downward from east to west with steep slopes in the
westerly part. The vegetation in this disturbed area is grass and shrubs. The remainder of the
site is heavily vegetated with trees and shrubs. The northern portion of the property contains a
mapped Type N stream, a Category II wetland and potentially other unmapped streams.

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1 7. No development is proposed under this rezone application. Any future development
2 proposals for the property will be reviewed under a separate permit application with a full SEPA
3 review.

4 8. In 1989 the 7.2 acres involved here were part of a 82.5-acre rezone to OLB and R-10
5 which laid the groundwork for development of the Sunset Ridge I-90 Corporate Center in three
6 phases pursuant to a Master Plan. The instant rezone is within the second phase which called
7 for the construction of attached residential dwelling units. A number of Concomitant Zoning
8 Agreements (CZA's) covering this phase were adopted.

9 9. In 2015, the subject 7.2 acres were designated OLB/EG-TOD in the Comprehensive Plan.
10 The clarification and modification of existing concomitant agreements was envisioned when this
11 designation was made.

12 10. The instant rezone would align the zoning with the designation of the property in the
13 Comprehensive Plan. The neighboring Eastgate Park and Ride property is zoned EG-TOD.

14 11. Presently, the adjacent land use is as follows: To the west: office development; to the
15 south: Eastgate Park and Ride; to the east: multi-family development with Bellevue College
16 further east; to the north: undeveloped multi-family zoned area.

17 12. Under the proposed zoning, dimensional standards would change. The setbacks would be
18 reduced, the floor area ratio (FAR) would increase, the building height limit would increase.

19 13. However, the increase in FAR is mitigated by limitations of lot coverage due to critical
20 areas and stream buffers on the property. Impacts of increased building height will be lessened
21 by the change in grade compared to surrounding residential development.

22 14. No amendments or modifications of existing CZA provisions regarding office use are
23 proposed with the result that office use will not be permitted on the subject property.

24 15. At the request of the City, the applicant submitted a Traffic Analysis Memorandum. The
25 memorandum analyzed impacts to four intersections and determined that the proposed rezone
would not be expected to result in a degradation of service. Of course, the impacts of any
specific development proposal will be determined when such a proposal is reviewed.

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1 16. The Examiner finds that the proposed rezone bears a substantial relationship with the
2 public health, safe and welfare through the creation of residential development opportunities near
3 Bellevue College and places of work.

4 17. The proposed rezone will not materially affect development on surrounding parcels and
5 has merit for the community as a whole.

6 18. The applicant seeks clarification or modification of concomitant zoning agreements
7 associated with the property. In this regard, the Examiner finds that the Staff analysis is sound
8 and he adopts the same. In particular the Examiner finds:

9 (1) The 750,000 gross square foot limit is related to office and ancillary uses and does
10 not preclude residential development. (CZA 14463)

11 (2) The Master Plan requirement was satisfied under prior Design Review for the first
12 development project.

13 (3) The requirements of Conditions #3, and #4, CZA 22416, will be fulfilled by Design
14 Review of any specific future development.

15 (4) Past requirements for affordable housing referred to the Sunset Ridge development
16 not to the subject property. The Sunset Ridge development was completed many years ago.
17 Under LUC 20.20.128 providing affordable housing now is discretionary.

18 (5) The requirements for a childcare facility, public trail system, neighborhood park
19 and fitness center requirements have been satisfied.

20 (6) Clause 3 of Condition 16, CZA 19271, referring to a buffer averaging 40 feet in
21 width abutting the adjacent parcel developed with residential use should be retained

22 (7) Clauses 4, 5 and 6 of Condition 16, CZA 19271, will be satisfied by recording of
23 the proposed Native Growth Protection Easement (NGPE), depicted in Attachment 8 of the Staff
24 Report.

25 (8) Condition 18, CZA 14463, requiring an emphasis on native plant material where
supplemental plantings are required shall remain in effect.

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1 (9) The requirement for a roadway connector between SE Eastgate Way and Kamber
2 Road has been satisfied.

3 (10) The requirement for an access road to the detention pond on the western edge of the
4 site has been satisfied.

5 19. The Staff Report is by this reference incorporated herein as though fully set forth.

6 20. Any conclusion herein which may be deemed a finding is hereby adopted as such.

7
8 **CONCLUSIONS OF LAW**

9 1. The Hearing Examiner has jurisdiction over this proceeding. It is a Process III decision
10 in which the Examiner make a recommendation for final action by the City Council. LUC
11 20.35.015, 20.35.337.

12 2. The requirements of SEPA have been met.

13 3. The proposal meets the criteria for approval of a site-specific rezone. LUC 20.30A.140.

14 4. The proposed clarifications of applicable concomitant zoning agreements are appropriate.

15 5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

16
17 **CONDITIONS**

18 1. **AUTHORITY:**

19 Approval of this rezone does not constitute approval of any Land Use Code amendments, Land
20 Use entitlement review, or any other ancillary permits that may be required for the design and
21 construction of any proposed development on the rezone site.

22 2. **CONCOMITANT CONDITION OF APPROVAL (CZA 14463, Condition #1):**

23 As discussed in the Staff Report, the 750,000 gross square foot limitation in Condition #1 does
24 not apply to multi-family development or uses ancillary to multi-family development on the
25 property. However, the 750,000 gross square foot limitation in Condition 1 will continue to
apply to office, ancillary retail, restaurant, and other such uses on the property.

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1 **3. CONCOMITANT CONDITION OF APPROVAL (CZA 19271, Amended**
2 **Condition #16):**

3 As discussed in the Staff Report, Clause 3 of Amended Condition #16 in CZA 19271 shall
4 remain as a condition of zoning for the property. The recording of a Native Growth Protection
5 Easement that is consistent with Attachment 8 of the Staff Report will satisfy Clauses 4, 5, and 6
6 of Amended Condition #16 for the property.

7 **4. CONCOMITANT CONDITION OF APPROVAL (CZA 14463, Condition #18):** As
8 discussed in the Staff Report, Condition 18 shall remain as a condition of zoning for the
9 property.

10 **RECOMMENDATION**

11 The requested rezone should be **APPROVED**, and applicable concomitant agreements
12 modified, as set forth in the above conditions.

13 **DONE**, this 11th day of June, 2021.

14 

15 Wick Dufford, Hearing Examiner

16 **NOTICE OF RIGHT TO APPEAL**
17 (Pursuant to Resolution No. 9473)

18 **RIGHT TO APPEAL-TIME LIMIT**

19 Persons and entities identified in Land Use Code (LUC) 20.35.350, may appeal the
20 recommendation of the Hearing Examiner to the Bellevue City Council by filing a written
21 statement of the Findings of Fact or Conclusions of Law which are being appealed, and
22 paying a fee, if any, as established by ordinance or resolution, no later than 14 calendar days
23 following the date that the recommendation was mailed. The written statement must be filed
24 together with an appeal notification form, available from the City Clerk. The written statement
25 of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City
Clerk no later than **5:00 p.m. on Friday, June 25, 2021.**

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TRANSCRIPT OF HEARING-PAYMENT OF COST

An appeal of the Hearing Examiner’s recommendation requires the preparation of a transcript of the hearing before the Hearing Examiner. Within thirty (30) days of the decision which is appealed from, the appellant shall order from the City Clerk, on a form provided by the Clerk, a full transcript of the hearing before the Hearing Examiner. At the time the order for transcription is placed, the appellant shall post security in the amount of One Hundred Dollars (\$100.00) for each hearing hour to be transcribed. If appellant fails to post security, the appeal shall be considered abandoned.

Additional requirements and procedures concerning appeals filed with the Council are found at Resolution 9473 and in the City of Bellevue Land Use Code.

CITY COUNCIL CONSIDERATION

Unless appealed, this matter has tentatively been scheduled to go before the City Council on **Monday, July 19, 2021 at 6:00 p.m.** for consideration, and **Monday, August 2, 2021 at 6:00 p.m.** for final action. After (appeal deadline) **Friday, June 25, 2021**, interested persons may contact the Hearing Examiner’s Office at (425) 452-6934 to find out whether an appeal has been filed.

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