

RESOLUTION NO. 436A

A RESOLUTION OF THE EAST BELLEVUE COMMUNITY COUNCIL DISAPPROVING BELLEVUE ORDINANCE NO. 5307, WHICH APPROVED THE REZONE APPLICATION OF COSMOS DEVELOPMENT AND ADMINISTRATION CORP. TO AMEND THE 1987 CONCOMITANT AGREEMENT ADOPTED BY ORDINANCE NO. 3755 TO ALLOW FOR REDEVELOPMENT OF THE LAKE HILLS SHOPPING CENTER TO A MIXED USE NEIGHBORHOOD RETAIL CENTER.

WHEREAS, in 1987, the City and the owner of the property commonly known as the Lake Hills Shopping Center entered into a Concomitant Agreement for the redevelopment of the property (adopted under Ordinance No. 3755); and

WHEREAS, the owner of the property constructed the Lake Hills Shopping Center, pursuant to the Concomitant Agreement; and

WHEREAS, the owner of the Lake Hills Shopping Center sold the property to Cosmos Development;

WHEREAS, in June, 2000, "the City entered into a partnership with Cosmos Development and Administration Corporation to produce an urban design study for the Lake Hills Shopping Center" (Staff Report for Lake Hills Rezone, Section 2, p. 3.), which "partnership" involved the contribution of City funds toward the developer's study in the amount of an initial contribution of \$10,000 and subsequent contribution of \$4,500 plus uncounted hours of City of Bellevue staff time; and

WHEREAS, the City held public meetings on four alternatives for the redevelopment of the Lake Hills Shopping Center (Id., p. 3.); and

WHEREAS, one alternative, called the "Preferred Alternative" by the Bellevue Planning Staff, was presented to the Bellevue City Council on March 31, 2001; and

WHEREAS, the Bellevue City Council voted unanimously to "support the direction of this Preferred Alternative, thus convincing the Owners to move forward and to put in place zoning that would enable the redevelopment of the center in accordance with the "Preferred Alternative" (staff Report, Section 2, p. 3. It should be noted that this language really should read "thus convincing the Owners to move forward and submit an application to change the development standards applicable to the property that would enable the redevelopment of the center in accordance with the Preferred Alternative," because the rezone approved by the City in Ordinance No. 3507 does not rezone the property. In addition, no "zoning" is "put in place that would enable the redevelopment." Instead, Ordinance 3507 approves a concomitant agreement is a contract between the City and the developer, allowing the developer the ability to build under specific development standards, as well as an exemption from the City's Traffic Standards Code (Ordinance No. 3508, also disapproved by the EBCC.); and

WHEREAS, in order to accomplish the "Preferred Alternative", Cosmos (the Owners) did not require a rezone for the property; and

WHEREAS, the City determined that even though Cosmos did not seek to change the zoning on the property, it would process a rezone application for the Preferred Alternative; and

WHEREAS, rezone applications are not subject to the Traffic Standards Code, but to ensure that traffic concurrency would not be addressed at a later date, the City also passed Ordinance No. 5308, exempting the redevelopment of the Lake Hills Shopping Center from the Traffic Standards Code (Staff Report, first full paragraph, p. 5.); and

WHEREAS, such exemption was also required because the City determined that the proposed development may not even be permitted with the modifications to the Concomitant Agreement adopted by the City in Ordinance No. 5307 (Staff Report, Section 3, p. 4.); and

WHEREAS, the City only performed what it termed a “programmatic SEPA checklist” to support its MDNS for the project, asserting that the environmental review is “phased under WAC 197-11-060(5),” and that “development of any new structure on the site will entail more detailed environmental review (Staff Report, Section I, p. 5.)”; and

WHEREAS, the City asserts that the rezone application “is not a development permit specific review for any building or use proposed in the amendment, nor is it intended to be a planned action (Staff Report, Section C(I), p. 20.)” but the Concomitant Agreement adopts a “Master Plan,” which shows the placement of structures, access, heights of structures, landscaping, and other development configuration details; and

WHEREAS, on June 5, 2001 the EBCC held an open courtesy public hearings on the Lake Hills rezone application; and

WHEREAS, the Bellevue City Council held public hearing on Ordinance No. 5307 on July 30, 2001, and voted to approve it; and

WHEREAS, on September 4, 2001 and continued on September 5, 2001, the East Bellevue Community Council held a public hearing on Ordinance No. 5308 and voted to disapprove the Ordinance; and

WHEREAS, on September 19, 2001, the East Bellevue Community Council reviewed its written Resolution containing findings and conclusions supporting its decision to disapprove said Ordinance and Resolutions; Now, Therefore,

BE IT RESOLVED by the Community Council of the East Bellevue Community

Municipal Corporation of the City of Bellevue:

Section 1. The East Bellevue Community Council makes and enters the following findings of fact:

A. **Public hearing -- notice and record.** The public hearing before the East Bellevue Community Council was convened on September 4, 2001. All required public notice of the hearing had been provided. The following evidence was introduced into the record:

1. Public hearing notice of the Community Council public hearing; and
2. Ordinance No. 5307 and all exhibits and attachments thereto, including the entire administrative record before the Hearing Examiner and City Council on this Ordinance; and
3. Ordinance No. 5308, (the Traffic Standards Code exemption), and all exhibits and attachments thereto, including the entire administrative record before the City Council on this Ordinance.
4. Specific findings of fact and conclusions were based on the following administrative materials, although this is not a complete list:

<u>Exhibit No.</u>	<u>Description</u>
13	January 2001 Final Report of the Urban Design Study
21	COB-PCD, March 25, 1999 booklet, Neighborhood Shopping Center Summit
3	Concomitant Zoning Agreement adopted by Ordinance 3755
12	EBCC memorandum dated June 6, 2001 with attachment of Carol A. Morris, attorney for EBCC
32	Verbatim transcript, June 5, 2001 meeting
33	Verbatim transcript, May 1, 2001 meeting
34	EBCC comments re: inaccuracies spotted in the transcript

Additional Materials Description

1. July 2001 FEIS for 2001-2012 Transportation Facilities Plan
2. Year 2000 Traffic Count Data for 156th Avenue s/o N.E. 8th, 156 Ave s/o Main, 164th Avenue s/o N.E. 8th, and 164th s/o Main, provided by COB Transportation Department (Candy Ann Masters)
3. Concurrency Update – LOS Snapshot as of August 31, 2000 (Draft Final Report dated 10-27-00 by M. Rohman, et al., COB Transportation
4. Staff Report dated 8-10-01 by Dan Ardini
5. September 4, 2000 public hearing

B. **Findings.** This rezone application and concomitant agreement fall within the jurisdiction of the East Bellevue Community Council, pursuant to RCW 35.14.040, specifically to land, buildings and structures governed by a zoning ordinance. With regard to Ordinance No. 5307, the EBCC can approve, fail to disapprove within 60 days or disapprove. It is all or nothing.

1. **Background.** In 1987, the existing Concomitant Agreement (#12052) rezoned the Lake Hills Shopping Center site from NB to CB with conditions (Ordinance No. 3755). Specific use size restrictions included:

- a. one tenant not exceeding 30,000 square feet;
- b. one additional tenant not exceeding 15,000 square feet;
- c. in the event the center constructs an additional building, it shall not exceed 20,000 square feet;
- d. the Neighborhood Business performance standards for building height, land coverage, landscaping, screening and other site development standards shall be the standards for the district. Existing structures exceeding the height limit of 20 feet shall not be enlarged vertically; and
- e. site coverage was limited to 35%.

2. **Current Maximum Building Heights.** The current maximum building height for NB is 20(25) feet, for CB it is 45 feet (10 add one story for residential; 19 office buildings can be increased by 15 feet if 75% of the ground floor is devoted to parking for that building; 25 maximum building height can be increased to 30 feet if residential uses are provided on the second floor and the structure does not exceed two stories.

3. **Current Maximum Lot Coverage.** The maximum lot coverage by structures in the NB zone is 35%. This can be increased to 50% if residential uses are included.

4. **City's Consideration of Shopping Center Sites for "Revitalization."** The City of Bellevue staff considered six shopping center sites for a revitalization program. Three of them are within one mile of the Lake Hills Shopping Center. (1) Kelsey Creek at 148th and Main; (2) Lake Hills at 156th and Lake Hills Blvd.; and (3) Bel-East at 145th and S.E. 16th.

These shopping centers provide 308,750 square feet of retail within a one mile radius of the Lake Hills Shopping Center. Kelsey Creek has 197,650 square feet; Lake Hills has 72,800 square feet; and Bel-East has 38,300 square feet. A fourth NB zone is located at 156th and N.E. 8th which has a grocery store with approximately 40,000 square feet. It is presently vacant.

The staff rated these centers on a scale of 1 to 5, the best being 5. The centers were evaluated and compared by appearance, mix of use and vitality.

Lake Hills was rated 3.5 (the highest of all six centers). Bel-East was rated 1 (the lowest) and Kelsey Creek was rated 2.5. (See, p. 87 of HE Exhibits.) Comments by Ellen Miller-Wolfe in the Summit Report indicate that the retail market may be saturated: As stated by

Ms. Miller-Wolfe:

Whether the market can support small grocery stores and other small tenants that provide essential goods and services is a big question. If we are to believe that Ernst & Young's rule of thumb, one person can support 12 to 14 square feet of retail space. With a residential population of 105,700, Bellevue is at 42.6 square feet per person. Although there are reasons for this number, it is possible that the Bellevue retail market is saturated.

5. The "Preferred Alternative" for the Lake Hills Shopping Center. The City of Bellevue and the applicant jointly studied four (4) planning alternatives and selected a fifth as the "Preferred Alternative" for the Lake Hills Shopping Center redevelopment. (HE #13 Ex., Lake Hills Shopping Center, Final Report, Urban Design Study, January, 2001.) Two alternatives retained the existing square footage for the center (72,800 square feet), a third provided approximately 130,000 square feet and the fourth added 75 housing units to 130,000 square feet of commercial area. The preferred alternative provides 157,000 of commercial services and community use.

6. Traffic Generation. Traffic generation was estimated to add between 200-300 trips during the pm peak, not including trips generated by the library and college. The Appendix provides some demographic information for the area within a mile radius of the Lake Hills Center:

- a. the population is about 14,000 and has changed little since 1980. Down in 1990, up in 1998;
- b. there are about 5,000 households and the number has increased about 7% since 1980;
- c. average median incomes in 1998 were \$64,396 and \$53,555;
- d. population by transportation to work is 6,918 of which 5,321 drive alone;
- e. households by number of vehicles is 4,689. They have an estimated 9,305 vehicles. Only 96 households have no vehicles. Two-thirds of the households have 2 or 3 vehicles; and
- f. the median property value in 1998 was \$150,108. The median rent was \$533. 72% of property values are between \$100,000 - \$199,000.

7. General Traffic Concurrency Projections. The traffic concurrency projections for 2000 (Concurrency Update 8-31-00) show that the East Bellevue Mobility Management Area has exceeded the 1 hour standard by 6.6% and was within 0.7% of the two hour standard in 2000, based on 1999 traffic counts.

8. Average Annual Weekday Traffic. The year 2000 Average Annual Weekday Traffic on 156th Avenue south of N.E. 8th is 17,600 vehicles, south of Main Street 156th had 14,500 vehicles per day. Hourly traffic counts for 2000 should be that 156th Avenue S.E. south of Main Street had 1,253 vehicles per hour between 3-4 p.m., 1,218 vehicles per hour between 4-5 p.m. and 1,291 vehicles per hour between 5-6 p.m.

9. FEIS for Transportation Facilities. The FEIS for the 2001-2002 Transportation Facilities Plan shows that the Average Traffic Volumes, averaged over two hours, on 156th

Avenue north of Main Street, will increase 25-26% over the 1999 traffic levels by the year 2012. That is 1,411 vehicles per hour in 1999 will become 1,768-1,777 vehicles per hour for a two hour period between 4 and 6 p.m. on weekdays south of N.E. 8th Street. 156th Avenue currently serves as a collector arterial for the predominantly residential Lake Hills neighborhood. There are no capacity improvements proposed south of N.E. 8th Street. The character of the street south of N.E. 8th Street included limited-width, direct access from the residences and several stop sign controlled intersections. These features limit the advantages in travel time for through trips. (Id., p. 3-18.)

On pages 5-8, the FEIS states that noise levels on 156th Avenue north of Main Street are projected to increase over the 1993 observed levels. The traffic volume in 1993 was 1390 vehicles with an observed noise level of 65 decibels. The highest one hour noise projection for 2012 is 67 decibels. Both of these levels interfere with speech. (5-2) These levels also exceed the Bellevue Environmental Noise Standards of 55 decibels for residential day use. (5-4) They are at the Commercial and Industrial Standards level of 65 decibels.

10. Zoning Designation. In the “applicability” section for rezones, Bellevue Land Use Code, Section 20.30A.115 provides that “this part applies to each application for a rezone of property.” The Cosmos Development application does not include a request for a rezone of property. The property is currently zoned Community Business, or “CB” as adopted by the Southeast Subarea Plan adopted in 1985 and readopted in 1993. (Staff Report, Section V(A), p. 36.)

Even though this is not a request for a change from one zoning classification to another, the City has determined that in order to approve the changes to the Concomitant Agreement, it must evaluate the application under the following criteria, some of which only apply to actual redesignations of property from one zone to another:

The City may approve or approve with modifications an application for a rezone of property if: (A) the rezone is consistent with the Comprehensive Plan; and (B) the rezone bears a substantial relation to the public health, safety or welfare; and (C) the rezone is warranted in order to achieve consistency with the Comprehensive Plan or because of a need for additional property in the proposed land use district classification or because the proposed zoning classification is appropriate for reasonable development of the subject property; and (D) the rezone will not be materially detrimental to uses or property in the immediate vicinity of the subject property; and (E) the rezone has merit and value for the community as a whole.

Bellevue Land Use Code, Section 20.30A.140 (emphasis added). The above criteria have been drafted to address a redesignation of property from one zoning classification to another. The criteria do not address conditions imposed in a concomitant agreement, because the concomitant agreement is the mechanism under which the City “impose[s] development conditions designed to mitigate potential impacts of the rezone and development pursuant thereto.” Bellevue Land Use Code, Section 20.30A.155.

Here, the City has no intention of adopting development conditions in the new

Concomitant Agreement to “mitigate potential impacts of the rezone and development thereto.” The City determined that under its existing development regulations, the proposed rezone application probably could not be approved (Staff Report, Section 3, p. 4), so the City decided to adopt an ordinance that would exempt this particular rezone application from compliance with the City’s regulations (Ordinance 5308). As stated by the City:

The Lake Hills Shopping Center is located within Mobility Management Area (MMA) 9, one of several areas within Bellevue where traffic levels of service are measured. Because the level of traffic in MMA 9 exceeds the 1 hour standard that is applicable within that area, and may exceed the 2-hour standard due to increasing volume, future additional development of this site may not be permitted even with the proposed modification of the concomitant agreement. For that reason, a related, but separate process is being initiated by the City to amend the Traffic Standards Code (TSC). The Amendment would exempt traffic from being counted when determining the applicability of the City’s concurrency standards if generated by specified neighborhood serving uses located in neighborhood shopping centers.

(Staff Report, Section C (3), p. 4.)

11. Amended Concomitant Agreement (Ordinance No. 5307). Ordinance 5307 proposes several changes to the existing development standards:

a. Section 2-G would permit the addition of one grocery store, tenant size not exceeding 45,000 square feet, one tenant not exceeding 20,000 square feet and two tenants not exceeding 15,000 square feet.

b. Section 3 would limit the site to 157,000 square feet of commercial development and a site coverage of 40%. Maximum building height would be increased to 40 feet, measured from average existing grade for Building A. All other structures on the site will be limited to 35 feet.

c. New sections 4 and 5 are added to specify the application of a Master Site Plan and Design Guidelines to supercede and supplant the provisions of the Community Retail Design District, Part 20.25 I, LUC.

12. City Analysis of Proposal. The Staff Report presents a review and analysis of the proposal that includes the following:

a. “A new grocery [store] is intended to replace the existing aged and undersized grocery, a big requirement for the neighborhood. The modernized store will assume its traditional shopping center function of attracting smaller businesses that will also serve the immediate neighborhood, and ensure the economic viability of the center.” (p. 41.)

b. The proposed renovation to 157,000 square feet would generate a net

increase of 122 trips during the p.m. peak hour. Table 2 summarizes p.m. peak hour trip generation using the assumptions given.

(i) trips generated by the existing shopping center were determined from a three-day count performed at the site from noon Tuesday, April 17 through noon, Friday, April 20, 2001. (p. 43.)

(ii) trip generation for the potential future development in the p.m. peak hour was determined using standard trip generation rates for each of the proposed uses. (p. 42.)

(iii) Table 2 shows that the existing shopping center, 67,650 square feet would generate a total of 618 p.m. peak hour trips. The proposed shopping center, 101,000 square feet, would generate a total of 572 p.m. peak hour trips at a rate of 5.66 trips per 1,000 square feet. (p. 44.)

Comment: Apparently, the proposed shopping center will generate 46 p.m. peak hour trips less than the existing shopping center. If the same standard trip generation rate per 1,000 square feet were applied to the existing shopping center, at a rate of 5.66 per 1,000 square feet, there would be a total of 383 p.m. peak trips. That would generate a net increase of 189 trips during the p.m. peak hour. If the existing shopping center measured trip generation rate was used for the proposed center at a rate of 9.14 trips/1,000 square feet, the proposed shopping center, 101,000 square feet, would have a total p.m. peak trips of 922. That would be 35% added trips to the p.m. peak hour.

Ms. Dreaney, COB Development Review Manager, stated that she anticipates approximately 1,800 additional trips on top of the 7,400 existing daily trips currently at the Lake Hills Shopping Center site. (June 5, 2001 EBCC minutes, p. 297, p. 60 in packet.)

Staff maintains that the proposed development would increase peak p.m. traffic by 122 trips.

(iv) The Conceptual Exterior Elevations for the proposed increase in height allowed to 40 feet are shown in elevations B-B at Lake Hills Blvd., elevation C-C and Section F.

Comment: The scale and size of the "existing residences" are overwhelmed by the height and massive size of the proposed new two story mixed use building with parking below grade.

13. Staff Decision. Staff Policy Review and Decision Criteria are presented on pages 57-59 of the HE Report. These include:

- a. The rezone is consistent with the Comprehensive Plan.

Staff believes that the rezone meets this criterion under the following:

SE Bellevue Subarea Policy S-SE-7, which states, in part: “the level of development is of low intensity which is compatible with the adjacent residential districts.”

CP Policy LU-17: Protect residential areas from the impacts of non-residential uses of a scale not appropriate to the neighborhood.

CP Policy EC-18: Maintain retail areas that are designed to serve neighborhoods.

b. The rezone bears a substantial relation to public health, safety and welfare.

Staff believes that the rezone meets this criterion because it will (1) work to prevent instability of the neighborhood and (2) provide the potential to reduce the length of vehicle trips during commute hours.

c. The rezone is warranted in order to achieve consistency with the CP or because of a need for additional property in the proposed land use district classification or because the proposed zoning classification is appropriate for reasonable development of the subject property.

Staff believes that the rezone meets this criterion because it satisfies:

CP Policy EC-18 by maintaining retail areas that are designed to serve neighborhoods.

CP Policy LU-10 Reduce the regional consumption of underdeveloped land by facilitating development of existing development when appropriate.

d. The rezone will not be materially detrimental to uses or property in the immediate area.

Staff believes that this criterion has been satisfied because: the development is consistent with surrounding uses and the concomitant agreement will ensure that potential impacts from renovation of the center on adjacent properties is controlled.

Comment: Did the staff mean construction? Traffic? Noise? Visual impacts?

e. The rezone has merit and value for the community as a whole.

Staff believes that this criterion has been satisfied because: an expanded grocery store and additional space for tenants will result in a center that

can be competitive with those in other neighborhoods and offers good potential to reduce trip lengths within the area.

14. Additional Applicable Comprehensive Plan Policies. In addition to the Comprehensive Plan policies cited by City Staff, the EBCC considered the following:

a. Comprehensive Plan Policy TR-35: Review proposed developments and require mitigation of traffic impacts where necessary. Prohibit development approval if the development will cause the level of service in one or more Mobility Management Areas to fall below the adopted standard, unless demand management or other system improvements are provided to mitigate the transportation impacts.

b. Comprehensive Plan Policy LU-28: Encourage neighborhood retail and personal services to locate at appropriate locations where local economic demand, local citizen acceptance, and design solutions demonstrate compatibility with the neighborhood. The following concepts should be considered when determining compatibility:

1. Retail and personal services should be encourage to group together within planned centers to allow ease of pedestrian movement.

2. Neighborhood business centers should consist of neighborhood scale, retail and personal services.

15. Statutory Authority for Concomitant Agreement. The Washington State Legislature recently adopted regulations applicable to development agreements such as the Concomitant Agreement approved by Ordinance No. 5307. RCW 36.70B.170. These regulations specifically contemplate that such agreements would only be in effect for a specific term:

Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement, and may not be subject to an amendment to a zoning ordinance or development standard or regulation or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. . . .

RCW 36.70B.180 (emphasis added). The Legislature also contemplated the need for a city to change its regulations during the term of the agreement, under limited circumstances:

A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health or safety.

RCW 36.70B.170(4). Otherwise, the agreement is binding on the parties and their successors, during the term of the agreement. RCW 36.70B.190.

There is a question whether the existing Concomitant Agreement, adopted by the City and the property owner in 1987, has expired and therefore may not be amended. Any concomitant agreement adopted or amended by the City after the adoption of the above regulations relating to development agreements must specify a term, and be applicable for build-out only, and consistent with the language set forth above. Language has not been added to the Concomitant Agreement to address these state law requirements.

The City's method of amending the Concomitant Agreement for this developer under the rezone process, when no rezone has been requested, allows the developer to change the development standards applicable to the property as long as he can satisfy criteria that apply to rezones (which are very broad). If any other property owner (without one of these perpetual concomitant agreements recorded against the property) requested an increase in height from the code limitation for his/her proposed structure, the variance process would be used. The variance criteria is much more difficult to satisfy than the City's rezone criteria, which do not even remotely relate to the proposed modifications, such as height increases. (See, RCW 35A.63.100(2).)

16. State Law Prohibition on Adoption of Development Agreements which Conflict with Development Regulations.

This rezone application is not consistent with the City's development regulations, specifically the Traffic Standards Code. Approval of the rezone was dependent upon the City's adoption of an ordinance exempting the proposed development from compliance with the TSC. (Staff Report, No. 3, p. 4.) If the application violates the existing codes, it is difficult to understand how the staff could recommend approval under even the broad rezone criteria (i.e., whether the application will be materially detrimental to uses or property in the immediate vicinity of the subject property, whether it has merit and value for the community as a whole). Furthermore, the statutes relating to development agreements prohibit the City's approval of a development with a concomitant agreement if it is inconsistent with City codes. ("A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW." RCW 36.70B.170(1).)

17. Conflict of Interest/Appearance of Fairness. The City has admitted that it entered into a partnership with Cosmos Development & Administration Corporation to produce an urban design study for the Lake Hills shopping center. (Staff Report, p. 3.) The City has also described the unique process it used to develop the alternatives, and then to present the "Preferred Alternative" to the City Council for a final vote of approval. (Id.) However, there is no procedure in the City' code for such "pre-application approvals" for rezones by the City Council or Community Council. The City staff did not cite to any particular procedure as authority for such pre-hearings or pre-approval, but did explain that it was utilized to facilitate the development because the City and the developer were partnering. In addition, the City drafted and approved an ordinance specifically exempting this particular development from the Traffic Standards Code. City staff has recommended approval of this rezone application, even though it is not consistent with existing development regulations.

18. Equal Protection. The City has not cited to any policies, standards or regulations addressing the City's ad hoc procedure allowing it to "partner" with a private developer and fund a portion of the studies necessary for redevelopment of private property. As confirmed by the City representatives at the "pre-approval" hearings, this is a totally unprecedented procedure.

The City has not cited any policies, standards or regulations allowing a "pre-approval" process before the City Council or Community Council for rezones or any other type of development proposals. Therefore, there are no criteria to guide any decision making to approve "preferred alternatives." Bellevue has apparently created this process for the benefit of one particular developer, and deviated from existing code procedures in order to ensure that the final decision would be an approval of the application.

19. Adoption of Development Regulations in Concomitant Agreement to be Applicable to One Developer. The Concomitant Agreement Amendment does more than just modify the standards for the development, it creates a "master plan" for the property, apparently to be effective in perpetuity, and creates a perpetual administrative process outside of the City's Land Use Code, allowing the City to change the "master plan" without notice to the public.

The City of Bellevue is required to adopt procedures conforming to chapter 36.70B RCW, meaning that they have to be included in the City's code, not in contracts with private developers. Here, the City is attempting to create an ad hoc process for master plan adoption and amendment, solely for the benefit of this particular developer, by attaching a copy of the "master plan" to the Concomitant Agreement, and then including provisions in the concomitant agreement which describe the criteria for amendment.

The City has developed a procedure for a Master Plan Development permit in Section 20.25J.050 of the Land Use Code. While the City has included it in this chapter of the Code so that it is applicable to the Institutional District, we question why the City has adopted very detailed procedures and criteria for approval of a Master Plan Development permit in this section, yet is willing to merely attach a "master plan" to the Concomitant Agreement for the Lake Hills Shopping Center, and deem this attachment to be an "approval." The procedures for amendment of the Master Plan Development permit are included in the City's code, and we question the City's decision to develop specific procedures for this particular developer's amendment of the plan, which do not involve any notice to the public or the EBCC, nor do they even require issuance of a final decision (all as required by chapter 36.70B RCW).

The City has not exempted it from project permit processing, as it is required to do under RCW 36.70B.140, if the permit will not follow the mandatory procedures. While the City may argue that the development agreement statutes may contemplate a similar procedure, those statutes also require the agreement to contain a definite term, and are not for perpetual contracts between a City and developer to govern the manner in which the City will process future amendments to the master site plan.

C. Conclusions.

1. Ordinance No. 5307 proposes three key land use changes:

a. The existing Lake Hills Concomitant Agreement allows development to cover 35% of the total site. That is approximately 95,089 square feet. The existing total area of retail is 72,800. Permitting development of a 45,000 square foot grocery store would add 15,000 square feet and fit within the site coverage allowed.

b. Increasing the allowable site coverage to 40% would permit the approximately 108,673 square feet of retail space on the surface without exceeding the current building height restriction of 20 feet, an increase of 13,584 square feet over the existing allowance.

c. Permitting a maximum of 157,000 square feet of commercial development and increasing the maximum building height to 40 feet to accommodate a structure with underground parking, two stories of retail and a pitched roof form would add an additional 48,237 square feet of retail space.

2. The five rezone decision criteria listed in LUC 20.30A.140 are applicable to a rezone application.

3. There is considerable, existing retail space within one mile of the proposed redevelopment. Lake Hills, Kelsey Creek and Bel-East Shopping Centers have 308,750 square feet of retail space. In addition, the NB zone at 146th and N.E. 8th has 40,000 square feet of grocery (retail) space. The population in the area is about 14,000 people and has changed little since 1980. Each person is served by about 25 square feet of retail space. This is almost double the national rule of thumb (12-14 square feet per person) and more than half of the Bellevue City-wide retail at 42.6 square feet per person, which includes the downtown.

4. There is no evidence that the Lake Hills area is "blighted" or in decline as a result of this aging shopping center. There are about 5,000 households within one mile of the Lake Hills Shopping Center. This number has increased by 7% since 1980. Median property values were \$150,108. Median rent was \$533 per month in 1998. Two-thirds of the households have 2 or 3 vehicles. Most of the residences in this area would be classified as "affordable" by most of Bellevue's standards.

5. Development in the areas around Lake Hills Shopping Center have saturated the transportation system. The year 2000 traffic concurrency projection using measured traffic for 1999 show that the East Bellevue Mobility Management Area (which includes Lake Hills) was within 0.7% of allowable levels of service standards for 2 hour p.m. peak period. The 2000 year measured traffic volumes for 156th Avenue were 1.7% higher than 1999. Increasing the total retail area of Lake Hills Shopping Center to 157,000 square feet is estimated to add 1,800 additional trips per day to the existing 7400 trips per day. This increase of 24%, coupled with projected increases of 25-26% from regional traffic would overwhelm the largely residential streets around the Lake Hills Shopping Center.

6. Noise levels along 156th Avenue are already higher than Bellevue Noise standards and are projected to increase by the year 2002 due to increased traffic volumes.

7. The existing buildings at Lake Hills Shopping Center are one story structures, limited to a maximum height of 20 feet, and are very compatible with the surrounding residential area. Increasing the building height to 40 feet to permit a two story building with underground parking is too overwhelming a scale change to the existing residences. While the residences are permitted to increase their building heights to 30 feet as currently allowed in the LUC, it is unlikely that will occur.

8. The proposed rezone is not consistent with the Comprehensive Plan policies cited in No. 14 above. The Comprehensive Plan policy TR-35 requires that the City require that proposed developments mitigate traffic impacts. Here, the City has not only failed to mitigate traffic impacts, it has adopted an Ordinance exempting the proposed development from satisfying concurrency requirements because the development is inconsistent with the TSC. CP LU-28 addresses neighborhood scale, which was not considered by the City in its decision to approve a development that will overwhelm the nearby one-story residences.

9. The Concomitant Agreement does not include the mandatory language required by RCW 36.70B.180, as described in No. 15 above.

10. The City has admitted that the development is inconsistent with the TSC, yet Ordinance No. 3507 adopts a Concomitant Agreement for the development. This is prohibited by RCW 36.70B.170(1), as described in No. 16 above.

11. The City's use of special procedures for this particular developer, together with City financial assistance constitutes a conflict of interest, equal protection violation and/or a violation of the appearance of fairness doctrine, as described in No. 17 and 18 above.

12. The City's adoption of unique procedures for this particular developer in a contract that the City apparently intends to be perpetual (no term is included in the agreement, as required by state law) violates the Regulatory Reform Act, chapter 36.70B RCW.

D. Decision.

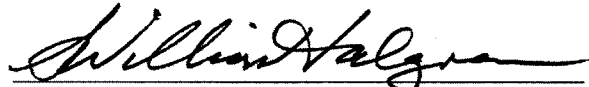
For all of the above reasons, the EBCC hereby disapproves Ordinance No. 5307.

Section 3. Pursuant to RCW 35.14.040, Ordinance 5307 shall not become effective within the area of the East Bellevue Community Municipal Corporation.

Section 4. The Clerk is hereby directed to certify the original of this Resolution, to file the same and keep the same in her office. The Clerk is further directed to distribute certified or conformed copies of this Resolution to the Bellevue City Council and Planning Department.

PASSED by a majority vote of the East Bellevue Community Council on the 5th day of September, 2001, and signed in authentication of its passage this 21st day of September, 2001.

APPROVED:


ACTING CHAIR, Bill Halgren

ATTEST:

By: 
CLERK

APPROVED AS TO FORM:
OFFICE OF THE COMMUNITY
COUNCIL ATTORNEY:

By: _____
CAROL A. MORRIS

FILED WITH THE COMMUNITY COUNCIL CLERK: September 21, 2001
PASSED BY THE COMMUNITY COUNCIL: September 5, 2001
RESOLUTION NO. 436A