

From: [Philip Hardin](#)
To: [PlanningCommission](#)
Subject: Comments - Tree Canopy Land Use Code Amendment hearing April 24, 2024
Date: Wednesday, April 24, 2024 12:58:30 PM

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Dear Commissioners,

A few comments regarding the draft Tree Canopy LUCA dated March 18, 2024:

1. The draft Tree Canopy LUCA dated March 18, 2024 is difficult to compare to the current Tree Canopy LUCA as it is presented without many of the changes marked.
2. It appears that most of Bellevue's tree canopy loss in suburban areas is due to development. Although the report (December 2023 Urban Tree Canopy Assessment) does not specifically document this, it is alluded to in a couple of comments. And, in viewing the tree loss in my neighborhood (Eastgate), almost all of the tree loss is due to new development or demolishing modest houses and replacing them with "lot line to lot line" houses while removing all the trees and most other vegetation on the front of the lot.
3. Reducing the size (DBH) of "significant trees" will not deter developers from removing trees. They will just fill out the required paperwork, and move on.
4. Individual home owners and those communities which own property with trees are the ones who will be burdened by the proposed reduced size and complex numeric limits for tree removal. These complex regulations will deter the home owners from maintaining the vegetation on their property.
5. Property with trees needs to be maintained. If tree covered areas are not maintained, invasives, brush, and dead trees accumulate, and the area will ultimately become a fire hazard. Some time after the file, new trees will begin to grow.
6. There should be separate, much simpler procedures for home owners and community property owners who are only maintaining their vegetation, and are not making major changes to their property.

--

Regards,
Philip Hardin
Eastgate area resident since 1973

From: [Abigail Pearl DeWeese](#)
To: [PlanningCommission](#)
Cc: [Gallant, Kristina](#); [Johnson, Thara](#)
Subject: Tree Ordinance Comments
Date: Wednesday, April 24, 2024 4:50:17 PM

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Dear Chair Bhargava and Commissioners,

Unfortunately I'm not sure that I'll be able to comment during the public hearing on the Tree Ordinance Updates this evening due to family commitments, so I wanted to share a few thoughts. I am a local land use attorney who represents many housing developers with interests in Bellevue.

1. **Flexibility.** I remain concerned that the proposed Tree Ordinance Draft is too inflexible to support development on sites with existing canopy less than required by the new code. On such sites, the proposed code says significant trees could not be removed unless an applicant proves that the maximum density could not be achieved without tree removal (Section 20.20.900.E.5). In areas with significant existing and future density (like Bel-Red and Wilburton) this will force analysis of higher construction typologies like high-rise buildings that simply may not "pencil" in the short term, and I fear it will undermine achieving the City's jobs and housing goals. The Ordinance should remove the limits on tree removal completely and just rely on the tree credit system, or, short of that, provide off-ramps for additional flexibility in Bel-Red and Wilburton.
2. **Minimum Tree Credits for Multifamily Housing.** There is a significant difference in building typologies between duplexes and multifamily buildings that may have hundreds of units. The building forms and onsite space constraints are different. There should be more specificity in the number of tree credits for different kinds of multifamily residential buildings, and a ratio of 0.75 is likely too high. The City should provide further analysis of if this credit threshold will work with existing development standards, or if it will undermine residential density targets. This analysis should occur before the Commission moves forward with its recommendation.

Thanks for your hard work on behalf of the City on this important topic.

Abbey

Abigail Pearl DeWeese

Hillis Clark Martin & Peterson P.S.

999 Third Avenue | Suite 4600 | Seattle, WA 98104

d: **206.470.7651** | 206.623.1745 | f: 206.623.7789

abigail.pearl@hcmp.com | www.hcmp.com | [vCard](#) | [view my bio](#)

Confidentiality Notice:

This communication (including all attachments) is confidential and may be attorney-client privileged. It is intended only for the use of the individuals or entities named above. If the reader of this

message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately.

From: judyandcraig@comcast.net
To: [PlanningCommission](#)
Subject: LUCA on tree retention
Date: Wednesday, April 24, 2024 4:58:33 PM

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Dear Planning Commission,

I urge you to adopt the requirement that developers need a permit to remove any tree that has a 6-inch diameter or wider. In addition, I encourage you to make any other adjustments in the LUCA that will retain more trees in Bellevue.

We have had the misfortune to experience three teardowns immediately near our home in Spiritridge. The worst part has been that the builders tore out all the shrubs and nearly all the trees, so that they can squeeze a larger house on the lot. On two lots, they left one tree. One the other, I'm not sure if they even left one. It is changing the character of the neighborhood. At our house, we enjoy seven trees in the back yard and three in the front. I dread the thought that when we get too old to keep the house, they will all be torn down.

Sincerely,

Judy Ronningen

From: [Natalie Duryea](#)
To: [PlanningCommission](#)
Subject: LUCA / Tree Amendment Comment
Date: Wednesday, April 24, 2024 5:09:43 PM

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Hello Planning Commission,

Thank you for taking the time to read these comments regarding the Land Use Code Amendments regarding tree preservation in the city of Bellevue.

I encourage the planning committee to consider ratification of codes and amendments that protect Bellevue's trees during housing development.

I have experienced firsthand how unnecessary tree removals in my neighborhood have affected the character of our community and added to the incredible 65 acres of trees lost in residential properties since the prior survey. In a lot adjacent to mine 13 native conifers were removed that did not affect the building site. It seemed that the builders simply removed the maximum number of trees due to no sense of the beauty and benefit of trees, and a lack of penalty. Furthermore, replacement of trees on this property has been minimal. This creates an impact for all of us in terms of shade, habitat, views and more.

Bellevue can do better, and Bellevue residents deserve reasonable protections and enforcement to save large native trees which are a resource for our city and our future.

I support a change to the LUCA to enable new rules and regulations around tree preservation and I hope you do too. Bellevue is for residents to enjoy and trees and nature is a huge part of enjoying our 'city in park'.

Thank you,
Natalie Duryea
12825 NE 32nd St

From: [Rerucha, Mary Jo](#)
To: [PlanningCommission](#)
Subject: FW: Connecting to Planning Commission Email
Date: Thursday, April 25, 2024 8:51:01 AM
Attachments: [image001.png](#)
[image001.png](#)

Thara,

This resident is having trouble with the emails reaching our inbox. I will see what I can do to assist them. Please find the email below from the Mr. Tim Hay.

Thank you.

Mary Jo Rerucha
Administrative Assistant
Community Development Department
City of Bellevue
450 110th Avenue NE
Bellevue, WA 98004
425.452.5266

From: Council Office <CouncilOffice@bellevuewa.gov>
Sent: Thursday, April 25, 2024 7:40 AM
To: Tim Hay <pigpoppy@rocketmail.com>
Cc: Rerucha, Mary Jo <MRerucha@bellevuewa.gov>
Subject: Connecting to Planning Commission Email

Good morning Tim,

I've cc'd Mary Jo Rerucha on this email, as she is the staff who assists with the Planning Commission logistics. She'll be able to help you establish email connection to the Planning Commission, or will appreciate the notification if it's not working for constituents when they reach out. Then, we would need to pull our IT folks in to troubleshoot.

Respectfully,



Michelle

Michelle Luce (She/Her) | **Centered Elguezabal** (He/Him)
Executive Assistants to City Council
[425-452-7810](tel:425-452-7810) | CouncilOffice@bellevuewa.gov | BellevueWA.Gov

From: Tim Hay <pigpoppy@rocketmail.com>
Sent: Wednesday, April 24, 2024 5:09 PM
To: Council Office <CouncilOffice@bellevuewa.gov>
Subject: Re: Hi - - I know I'm late, - - out of town

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Darn - - That didn't work Either. Got any more?

Tim

On Wednesday, April 24, 2024 at 05:04:50 PM PDT, Council Office <counciloffice@bellevuewa.gov> wrote:

Hello,

Try using the email found on this webpage:

[Planning Commission | City of Bellevue \(bellevuewa.gov\)](#)

Thank you,

-Centered



Centered Elguezabal (He/Him) | **Michelle Luce** (She/Her)

Executive Assistants to City Council

[425-452-7810](tel:425-452-7810) | CouncilOffice@bellevuewa.gov | BellevueWA.Gov

From: Tim Hay <pigpoppy@rocketmail.com>
Sent: Wednesday, April 24, 2024 4:54 PM
To: Council Office <CouncilOffice@bellevuewa.gov>
Subject: Re: Hi - - I know I'm late, - - out of town

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Hi - - I've tried 3 times to use your email for the Planning Commission. It keeps getting rejected. Can you please get a correct one to me today?

Thanks!!!

Tim Hay pigpoppy@rocketmail.com

On Wednesday, April 24, 2024 at 03:59:09 PM PDT, Council Office <counciloffice@bellevuewa.gov> wrote:

Hello Tim,

Thank you for contacting the City of Bellevue Council Office. To reach the Planning Commission, please use this address: planningcommission@bellevuewa.gov.

Thank you,

-Centered



Centered Elguezabal (He/Him) | **Michelle Luce** (She/Her)

Executive Assistants to City Council

[425-452-7810](tel:425-452-7810) | CouncilOffice@bellevuewa.gov | BellevueWA.Gov

From: Tim Hay <pigpoppy@rocketmail.com>
Sent: Wednesday, April 24, 2024 3:02 PM
To: Council Office <CouncilOffice@bellevuewa.gov>
Subject: Hi - - I know I'm late, - - out of town

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

To Members of the Bellevue Planning Commission

4-24-24 from Tim Hay, 60 yr Bellevue Resident

I speak to TREE PRESERVATION: Require a Permit to Remove any Significant Tree.

I speak also to TREE RETENTION: changes in order to Improve Systems For Tracking Retained Trees; and Especially to Discourage Tree Removal Before Development!

* Overall rationale: Tree Inspections must be instituted to provide evidence of unpermitted removal of significant or landmark trees. **A tree ordinance without 'teeth' is worthless without 'Tree Police'** (a Tree Inspector)

Bellevue is changing while we watch. The primary driver is, of course, Amazon, which has run out of available ways to grow in Seattle. Bellevue has become the 'mothership' for both their expansion and new ventures.

Amazon's generous pay and bonus levels enable a significant percentage of its employees to buy the 3,500sf to 6,000sf upscale homes, selling for \$b2,750,000 to \$5,500,000, depending on detailing and precise location. Many of these purchases have been by Amazon's 'early arrivals', - - the first 10,000 or so to work at Amazon in Bellevue.

A few local builders have taken advantage of this phenomenon and have become favorite customers of their bankers as a result. The full-blown arrival of the big 'national' builders in homebuilding

is happening. It's probable that the only thing preventing the earlier arrival of these giants would be their inability to comfortably build on Bellevue's scattered 'tear-down' lots. They will need a learning period.

But once they learn how to make money building on tear-down 'spot lots', most lots now occupied by Bellevue homes built prior to perhaps 1980 will be at risk of tear-down!

National builders take it as an article of faith that their sprawling 300 – 1,000 homes subdivisions need not bother with trees. It is hard to imagine any volume 'operations' attaching any value to the presence of 150' giants.

The City must create a unique process so efficient that builders and others will 'self-police' themselves in the future so as to cease rogue tree-cutting in excess of those permitted by the City. . . the "Near-certainty of being caught".

#1 Concept: It is essential that our homes and streets have big trees. They foster an inviting aspect, visual identity and community spirit. Our big trees also dampen temperature swings, provide shade and make our oxygen while absorbing CO2.

Present Enforcement Mechanisms: Currently we have none, - - until a scofflaw's level of disregard for the law and simple common sense reaches the front page of the Seattle Times.

The reason why I'm pushing so hard for a signed Site Plan and for a "Tree Inspector" is these: The City can enact all sorts of creative codes to control builders. But, as a now-retired builder of 26 years, I assure you that builders are a 'different animal'. Too many will do what they must do to get the house up and sold. They will THEN deal with the consequences of their actions. Meanwhile, those big trees will be gone. Gone. And no sapling they will offer to plant will have the stature, shade, or the oxygen-creating capacity of our original big trees. How to Actually stop the ravaging of big trees by builders??

The City must hit 'em where it hurts. Mere fines will not deter them. Sooo, what Will get a builder's attention? If the City Red Tags the property for 6 months! Meaning a prohibition against all work on the property for 6 months!

But, even such an 'Armageddon' Penalty will be worthless unless the City creates a way to actually Catch the builders when they cheat. And unless we DO catch them, they WILL cheat. Using Saturday, Sunday 'gyppo' loggers. An experienced Tree Inspector will recognize stumps covered with dirt or ground bark. A Tree Inspector will be expected to ask neighbors what they've seen. Only a city-employed Tree Inspector, a person who knows builders' tricks, who can respond 7 days a week, will command the respect of builders!

Seattle has the same problem, but is afraid to enact codes with effective 'teeth'. Don't you feel that we can do better than Seattle?

It starts with a Tree Inspector.

Approval of a Building Permit must involve:

Preparation of a Site Plan by a licensed Surveyor.

To include the precise location of all Significant Trees,

with notation of diameter, species, and individual condition.

Signatories on Site Plan:

Any Title Owner and any representative of any Building Contractor must attest, - - On the site plan that: *“Neither they nor any entities to which they are connected has at any time, agreed to plan, finance or induce action that was expected to result in Removal or alteration of any trees of any diameter above 8” within the prior six (6) months; and from this date forward will refrain from doing so until the date of issuance of a Bellevue Building Permit.”*

PENALTIES: *Failure to so attest and sign the Site Plan, OR to violate or induce to violate any part of the spirit or the letter of the preceding sentence prior to an issuance of a Bellevue Building Permit issuance shall result in the City ceasing its processing of this application for no less than 6 (six) months. Such action by the City shall ‘run with the land’ and be applicable to future permit applications by any entity until the penalty has run out.*

The same party/parties shall mark on the site plan which of the existing significant trees will be removed, not to exceed 50% of the Significant Trees shown by the surveyor. Significant Trees shall not include Alder, Willow or Cottonwood.

Penalties for Builder Tree Violators, - - After Building Permit issued:

The effective penalty must be the City ceasing all permit work for Six Months.

Mere anticipation of this 6 mo. “Armageddon Penalty” will soon result in builders ‘self-policing’.

Fines for Builders: With \$3,000,000 & \$4,000,000 dollar houses being built, a ‘mere’ \$25k fine is just another line item.

Should any trees of 8” diameter or larger be removed prior to permit issuance, and, that a needed signature on the Site Plan be discovered to be omitted, an additional 3 (three) month penalty shall be imposed.

Relief from any penalty shall be (only) thru a hearing before the City Building Official.

BUILDER INSPECTIONS: Tree Inspector will carry a copy of the signed ‘site plan’, and may take photos and measurements, as appropriate. Inspections at least at these three intervals:

1. After Permit application: Inspector will look for (hidden?) evidence of recent tree removal. This may include ‘Neighbor Interviews’.
2. Before Building Inspector’s sign-off of foundation backfill.
3. Prior to move-in inspection by Building Inspector. Penalty for tree violation at this point: **PENALTY:** Prohibition of move-in for Three (3) months. Still will need Building Inspector’s final sign-off.

TREE REMOVALS BY HOMEOWNER, WITH NO BUILDING PERMIT INVOLVED:

Minimal permit charges per Significant Tree, perhaps \$25 each. Encourages citizen compliance with law.

“Tip Line” for Homeowner (or Builder) tree removals to bring Tree Inspector to scofflaw’s property asap.

Fine for one tree without permit: \$500. 2 trees \$1,300/tree. 3 trees \$2,500/tree. 4 trees \$5k/tree. 5 trees \$8k/tree. \$10,000/tree thereafter. Repeat offenders: All fines doubled. (Fines will work for homeowners).

At Permit issuance, all signatories on Site Plan will fall under either the Building Permit’s 6 months Processing Abeyance penalty or be subject to City’s legal code enforcement process.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

TREES - - S.O.S. ‘TREE POLICE’ PROCESS RECOMMENDATIONS 1-3-’24

By Tim Hay, City of Bellevue Resident

Ours is “A City in a Park”.

And it must be Protected!

As we know - - our trees

by the Logging Truck-full leave too many
scraped lots in their wake.

Too many ‘tear-down’ builders

Arrange a ‘deal’ with the home seller, to

Skirt our weak existing tree code.

Bellevue’s prized Trees are victims to

The lack of a Tree Ordinance with ‘Teeth’.

--- And a way to enforce it.

Our sworn police guard us against people

Who violate our laws.

Do our Beautiful trees deserve less?

Tree Police (Inspector) would cost our City only

1/200th of 1% of our City's budget.

A smart use of our Taxes.

Johnson, Thara

From: John Kappler <johnk@kapplerhomeplans.com>
Sent: Wednesday, April 24, 2024 10:00 AM
To: PlanningCommission
Cc: Gallant, Kristina; Whipple, Nicholas
Subject: Bellevue Planning Commission

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Thank you, Planning Commission Board Members, for your service,

We cannot save our way into a larger and healthier tree canopy we must plant more trees.

It appears that the current direction of the tree code revisions is focused on saving more and more trees saddled on the back of individual private property owners, disproportionate to commercial and public lands. This is in direct conflict to the growth management goals.

Providing more, attainable housing, is essential for our community. Balancing tree regulations with housing needs is essential to protect the property rights of the constituents within a jurisdiction.

Too much discretion is given to planning during the review process. Understandable and predictable outcomes need to be achievable at the onset of any redevelopment.

Please consider:

- Tying down the director's discretion too predictable measurable outcomes by quantifiable measures.
- Provide more fee in lieu opportunities to plant more off-site trees.
- Reduce covenants on planted trees to simple measurable regulations.

While tree regulations are important, making them so onerous as to drive the cost of housing up seems counterproductive.

Grow ourselves into our canopy goals!

Sincerely,

John Kappler, President We all love trees. My contention is right tree right place.

Architectural Innovations P.S.

14311 SE 16th St
Bellevue, WA. 98007
W 425.641.5320
C 425.444.3057
www.kapplerhomeplans.com

Please follow us:

Facebook: [Architectural Innovations, PS](#)
Pinterest: [Architectural Innovations on Pinterest](#)
Houzz: [John Kappler](#)

Yelp: [Architectural Innovations on Yelp](#)

Confidentiality: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system.

Agreement regarding use of this electronic file: The information contained within the accompanying file was copied from electronic data used as a step in the creative process of producing a specific physical drawing. There may be discrepancies between the data in this electronic file and the physical drawing. Where such discrepancies exist, the user shall rely solely upon the physical drawing. We make no warranty regarding this electronic file or the data that it contains.

In using this file, the user accepts the terms of this agreement. User shall assume all liability for the accuracy, utility, or suitability for any purpose of any data the electronic file contains. The user must check and coordinate all information with the physical sealed drawing. Said sealed drawing shall be the final work product of Architectural Innovations P.S. and the only document upon which the user may rely.

This notice should be provided to other users when distributing this information. The initial recipient, to the fullest extent permitted by law, agrees to indemnify, defend, and hold harmless, Architectural Innovations P.S. against all claims, liabilities, losses, damages, and costs arising out of, or in any way connected with, the modification, misinterpretation, misuse, or reuse of the electronic data provided by Architectural Innovations P.S. If this agreement is not acceptable to the user, user shall return the electronic file, unused and non-copied, to Architectural Innovations P.S. Failure to return the file shall constitute acceptance of the terms of this agreement.

This e-mail and any attachment(s) are believed to be free from virus. However it is the responsibility of the recipient to ensure that they are virus free. We do not accept any liability for any loss or damage arising in any way from the receipt, opening or use of this e-mail and any attachments). Thank You.

Johnson, Thara

From: Andy Bench <abench@wrightrunstad.com>
Sent: Wednesday, April 24, 2024 7:51 AM
To: PlanningCommission; King, Emil A.; Johnson, Thara; Rousseau, Gwen; Whipple, Nicholas
Subject: Comments on Bel-Red Subarea Plan Policy Amendments

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Dear Chair Bhargava and Commissioners,

As you know, we have developed and continue to own much of The Spring District. We are closely tracking the Bel-Red Look Forward and the associated Subarea Plan Policy Amendments as these play an important role in shaping the future of Bel-Red and our remaining blocks to be developed in the District.

We have reviewed the changes City staff have recommended in the “Housing”, “Urban Design”, and “Arts, Culture, and Creativity” policies. In general, we support the proposed changes.

However, we request you consider updating existing Urban Design policy S-BR-38 (new policy S-BR-18) to incorporate the concept of development flexibility. The existing Bel-Red Land Use Code has insufficient flexibility for the City to approve development standard deviations to support interesting and varied design. On our Blocks 5 and 6 projects, for example, we had to seek variances from the upper-level stepback requirements to achieve the proposed designs that incorporated unique angular façades. This process was inefficient and carried extra entitlement risk. We proceeded because we were committed to NBBJ’s design, but a Code flexible enough to accommodate development standard deviations efficiently would encourage other developers to pursue interesting designs as well. The Urban Design policies should also reflect the need for flexibility as they play an important role in setting the principles that must be incorporated in the Code.

We recommend the following addition to the policy language to reinforce the need for flexibility. Please request this change in your comments:

Old S-BR-38 (New SB-BR-18): “Encourage diversity in the built environment through a variety of building heights and forms, building articulation and modulation. Encourage building rooflines and floorplates that break down the scale of buildings, help to differentiate Bel-Red from Downtown, and enhance the architectural variety of the area. Provide administrative flexibility to deviate from building standards to achieve these goals.”

Thank you for your work on the Commission on behalf of the City.

Sincerely,

Andy Bench
President
Wright Runstad & Company

Johnson, Thara

From: Don Marsh <don.m.marsh@hotmail.com>
Sent: Tuesday, April 23, 2024 6:45 PM
To: PlanningCommission
Cc: Gallant, Kristina; Ewing, Jennifer; Stewart, Justus
Subject: Comment on Tree Land Use Code Amendment (LUCA)

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Dear Commissioners,

My name is Don Marsh. I'm a co-founder and vice president of 300 Trees, which has offered thousands of free native trees to Bellevue residents, schools, houses of worship, and small businesses during the past four years. I'm also a member of the board of Trees4Livability, which has been highly engaged in the protection of Bellevue's large trees for several years.

The tree protection codes you are considering on Wednesday evening were developed through outreach by city staff and participation by Bellevue residents. I've been involved in many city projects during the past decade, and the process of developing these proposals has been a model of interaction. Staff presented research and draft regulations to residents very early in the process. We felt like real partners, rather than just bystanders in proposals that had already been fully baked and cast in stone before we got to see them.

This gives me a lot of optimism for our city and for the protection of natural resources that benefit all of us in this community.

To be honest, a little optimism is much appreciated at a time when the trees of Bellevue are enduring a triple threat. First, infrastructure projects like light rail, the widening of I-405, and construction of large transmission lines have destroyed thousands of trees during the past decade. Second, we are seeing unprecedented destruction of trees in single family neighborhoods as developers scrape lots and build the largest homes allowed, leaving little room for replacement trees. Third, the twin threats of higher temperatures and changing patterns of precipitation are stressing trees and making them vulnerable to disease, infestation, and increasingly powerful windstorms.

These threats are somewhat mitigated by large-scale tree giveaways held by the City of Bellevue and 300 Trees, but we know that our small trees do not match the carbon storage and air quality benefits of the large trees that we are losing at an alarming rate.

I ask you to support our efforts to maintain the rich tree canopy that is one of the distinguishing features of our city, providing residents of today and tomorrow with a high quality of life. By being smart, Bellevue can develop and grow while preserving the "City in a Park" which we know and love.

Respectfully,

Don Marsh
300 Trees, vice president
Trees4Livability, board member
Washington Clean Energy Coalition, Chair
Sierra Club Washington State Energy Committee

Johnson, Thara

From: Julie Beffa <j.e.beffa@icloud.com>
Sent: Tuesday, April 23, 2024 4:29 PM
To: PlanningCommission
Subject: Support the Tree Amendment at Planning commission April 24 meeting

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Planning Commissioners:

I am in support of the proposed Tree Amendment as presented to you at the March meeting. I am writing to say I am not in support of the changes that the Master Builders want to make to the Amendment.

- Reducing the minimum diameter of a significant tree from 8 inches to 6 inches d.b.h.
- Giving authorization to the Director to consider the preservation of significant trees in a certain order of priority
- Using a fee-in-lieu program as a last resort for planting trees
- After planting, requiring a recorded covenant prohibiting development within any portion of any tree protection zone and possibly a three-year maintenance assurance device (by Director discretion) if new trees were planted to achieve minimum density.

The arguments above and those presented at the March meeting would dilute the integrity of the Amendment in its present form, and allow developers and builders, especially in vulnerable residential neighborhoods, to continue to harm the environment by degrading the landscape, neighborhoods, and air quality when large evergreens are dropped, only for the sake of a huge foundation footprint.

Bellevue residents are entitled to clean air, and carbon storage capacity is the best from big, old trees. Bellevue needs to protect, preserve and enlarge tree canopy for the younger generation to live a healthy life. Let's not fail them in a momentary decision to grant developers easy access without accountability to spoil what we value and only consider the dollar instead of nature and why we live here.

Thank you for your consideration.

Julie Beffa
Bellevue

Johnson, Thara

From: leslieegeller@gmail.com
Sent: Tuesday, April 23, 2024 12:46 PM
To: PlanningCommission
Subject: Comments on Tree Code LUCA

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Hello Planning Commissioners,

I am writing in strong support of the new LUCA to update tree preservation, retention, and protection provisions. Anything we can do to preserve and protect Bellevue's Significant and Landmark trees, I am in favor of.

Thank you,

Leslie Geller
Eastgate single-family resident for 30 years

Johnson, Thara

From: Barb Braun <bbraun@live.com>
Sent: Tuesday, April 23, 2024 12:02 PM
To: PlanningCommission; Gallant, Kristina
Cc: Barb Braun; Ewing, Jennifer; Stewart, Justus
Subject: Comment #2 Tree LUCA - Braun

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

I am opposed to the Master Builders proposed modifications to the tree LUCA. It is completely out of touch with what the residents of Bellevue want and need to combat the rampant and unnecessary destruction of trees by developers. The code should be adopted without modification. Thank you,

Barb Braun

MBAKS' position:

The Master Builders Association of King and Snohomish Counties (MBAKS) is advocating for revisions to balance trees and housing before it goes to the full City Council. MBAKS is generally supportive of the tree credit system, however several concerns remain in the proposed language, including:

- Reducing the minimum diameter of a significant tree from 8 inches to 6 inches d.b.h.
- Giving authorization to the Director to consider the preservation of significant trees in a certain order of priority
- Using a fee-in-lieu program as a last resort for planting trees
- After planting, requiring a recorded covenant prohibiting development within any portion of any tree protection zone and possibly a three-year maintenance assurance device (by Director discretion) if new trees were planted to achieve minimum density.

Public Hearing: Tree Land Use Code Amendment (LUCA)

April 24, 2024

Good Evening Commissioners and City Leaders,

Tree LUCA:

In general, we support the tree LUCA. The minimum tree density approach is brilliant and easy-to-understand. The residents of our city are excited to see action on this, and we hope you fully adopt the recommendations of the Planning Team. Thank you for doing this vitally important work.

One concern: A Commissioner suggested increasing the definition of a significant tree from 6 inches to 8 inches. We strongly disagree. Bellevue residents have been very vocal in their alarm about the number and rate of large tree destruction. Ecosystem services are provided by large trees not small ones. We must retain our more mature trees.

For the LUCA to be successful, the City will need to do more than just update the code. A major effort will need to be made to communicate the importance of trees in our city and to educate developers, businesses, and residents about the new rules. Further strong monitoring and enforcement will need to be put in place, and enforcement actions will need to be highly visible. As the new code is implemented, please make sure these follow-through steps are in place.

We've Only Just Begun:

This LUCA should be a first step in an ongoing journey to protect large trees and tree canopy in Bellevue. We will need to take considerable additional steps to preserve tree canopy as our City densifies. I urge the Planning Commission to not be lulled into thinking we have reached our tree canopy goal. The recent canopy survey is based on 2021 data which is prior to recent large scale tree removal along the highways, along the PSE corridor, in Coal Creek, in Mercer Slough, etc. The remaining canopy we have needs to be retained. We need land acquisition, zoning and codes to proactively protect the remaining forested areas of Bellevue.

Tree density goals in the more urban areas – downtown, BelRed and Wilburton, need to be in keeping with the rest of the City. Without trees, these areas will be overly paved heat islands that are unattractive and too hot in the summertime. Our urban core must be green, cool, and clean. This can be achieved if we require street trees, green roofs and canopied corridors and public spaces.

In addition, the City should take further actions, in partnership with others, to protect existing trees and forests, and to build our canopy as we grow. For example, we should have programs to:

1. Replace the trees along our highways.
2. Implement a city-wide street tree program.
3. Work with the School District to reforest school properties.
4. Educate and incent landowners to plant more trees, especially native and drought tolerant trees.

The Planning Commission should take up the topic of implementing a city-wide street tree program. Many cities require all development and re-development projects to install both street trees and sidewalks. Such a policy should apply to the entire city - both commercial and residential. Bellevue should adopt such an ordinance in 2024.

Thank you,

Barb Braun and Curt Allred, 13609 SE 43rd Place



April 23, 2024

Bellevue Planning Commission
450 110th Ave. NE
Bellevue, WA 98004

RE: Tree LUCA Public Hearing

Dear Chair Bhargava and Planning Commission Members:

The Master Builders Association of King and Snohomish Counties (MBAKS) thanks you for the opportunity to provide comments as you begin to consider proposed tree code amendments (the “land use code update” – LUCA) on the April 24 agenda. MBAKS is the largest local homebuilders’ association in the United States with nearly 2,500 members who work daily to provide a broad range of attainable housing choices. We believe that everyone deserves a place to call home.

Our members have a shared interest in the future of Bellevue, ensuring that it continues to be a great place to live. We appreciate the work Bellevue has done in many respects to encourage more housing choice, supply, and attainability. We also want to thank City staff – in particular Kristina Gallant and Nick Whipple -- for their diligence and willingness to hear and discuss the issues and concerns of our members. Yet, we ask for greater flexibility in these tree regulations laid forth herein that will enable Bellevue to meet tree canopy *and* housing targets.

Tree canopy LUCA must balance the GMA obligations.

MBAKS agrees that canopy, tree retention and replanting, and equitable tree distribution throughout Bellevue are all needed for a thriving and healthy environment. However, MBAKS has concerns with the proposed draft amendments because they deal with retention and replacement of trees outside of critical areas. There are no guiding statutes and whether or how such trees are to be regulated.

The environment and climate change are two of the non-prioritized planning goals under the GMA. Tree code amendments should be contemplated considering ALL the applicable planning goals, including preventing sprawl, protecting property rights, and planning for and accommodating housing in all economic segments.

MBAKS has recommended a few changes to the proposed code with this in mind. We ask for clarification in the proposed code amendments that application of the tree code will not result in loss of housing yield. We also ask that it not be interpreted to prevent compliance with other city codes and design standards, nor to require an applicant to alter the layout to preserve a particular significant tree.

Upon review of Attachment C, Tree Canopy Code Analysis and Recommendations Report, the recommendations upon which the proposed code amendments are based did not take into consideration all the 15 planning goals under the GMA. For example, in



Section 1.1 (Methodology) on page 2, it states that “[p]riorities identified during stakeholder meetings and public comment include protection of larger trees, enhancing overall health of Bellevue’s tree canopy, and preserving Bellevue’s character, livability, and neighborhood identity.” It stands out that none of the identified priorities related to the supply or affordability of housing. Similarly, on page 1, the report notes that it “draws from industry best practices informed by best arboriculture and silviculture best practices, urban tree canopy science, critical areas, stormwater management, climate change impacts and adaptation, and sustainable landscape strategies.” Again, there is no mention of the housing targets that are required by the GMA. Any adopted tree regulations should not materially affect the City’s ability to meet its housing goals. While the City must consider science in evaluating changes to the tree retention/replacement requirements, the environment alone should not be all that is considered.

Requirements for retention/replacement under the canopy LUCA must be clear and objective.

An applicant needs to be able to determine from reading the code how it is to be interpreted and applied. It cannot be left to subjective determinations of staff which results in lack of predictability. It is a matter of fairness that the public, not just an applicant, also be able to read and understand the code so they know what can and cannot be done as part of a development. State law requires that an ordinance “which either forbids or requires the doing of an act in terms so vague that [people] of common intelligence must necessarily guess at its meaning and differ as to its application, violates ... due process of law.” *Anderson, Inc. v. City of Issaquah*, 70 Wash. App. 64, 75 (1993).

MBAKS has previously recommended a few changes where the code is not clear and needs to be revised to eliminate any ambiguity. For example, in Section D (Required Review) on page 4, it provides that the Department “shall review the proposed removal of significant trees.” But what is the review for? There is no standard given. If the intent is to give the applicant flexibility to determine retention versus replacement, no staff review should be needed.

Requirements for tree canopy under LUCA must consider other development regulations.

The GMA requires cities and urban growth areas to densify to accommodate projected population growth. This results in smaller lots which makes it more challenging to design a plat layout that meets all city codes and regulations. Likewise, the accommodation of design standards (e.g., setback requirements; storm water management; providing water & sewer; vertical and horizontal engineering design standards for roads; critical areas regulations) makes tree removal on a site more of a necessity to design and build the subdivision consistent with a myriad of regulations.

While the tree retention and replacement requirements are based on the City’s desire for 40% tree canopy, the concern over a loss of trees comes from residents responding to the short-term loss of tree canopy. A developer is still required to meet landscaping requirements and tree retention and replacement under applicable codes. It is imperative to avoid over-regulated development to address the short-term impact of loss of trees when under the City’s proposed code that tree canopy will be replaced over time.

The code amendments should include provisions to reflect that tree retention and replacement requirements would not: (a) reduce the maximum allowed density, number of allowed lots, maximum allowed floor area ration or lot coverage; (b) preclude the ability to construct either ADUs or “middle housing” consistent with recently enacted state legislation (HB 1110 and HB 1337); or (c) preclude required access and/or utility connections.



The LUCA needs to fully “let go” of the prior approach to tree retention under current code.

Under the current code for tree retention, applicants must retain a certain percentage of significant trees. The proposed code revisions move away from that approach to a more objective approach of requiring a minimum tree density on a proposed development site. This requires applicants to determine if said tree density will be provided by retaining significant trees or by planting new trees.

MBAKS supports this shift to minimum tree density, which:

- provides a better balance of the GMA planning goals;
- is objective and is less likely to result in vague provision that might result in subjective and inconsistent interpretation; and
- “sees the forest from the trees” by acknowledging that giving applicants flexibility to consider retention and/or replacement will help ensure that over time tree canopy will be provided.

There are several provisions of the proposed code amendment that hold onto and do not fully let go of the approach under the current code. For example, in Section D on page 4, if applicants are to have flexibility to determine how to use retention versus replacement (with incentives through providing tree density credits), then the Department “review” of removal of significant trees is unnecessary. Likewise, in Section 3 (Retained Trees) on page 5, if applicants are to have flexibility to determine how to use retention versus replacement there should be no need for the Director to prioritize trees for retention.

Our region is facing a housing supply and affordability crisis that we can address by supporting more and diverse housing options. We need solutions that respect private property rights and help Bellevue balance both housing attainability *and* a healthy tree canopy. Homeowners and builders need predictability to increase the housing supply by replacing their trees. Tree policies that maximize housing options in our neighborhoods can make a significant difference in creating much needed housing for our growing population.

If you have any questions, please don’t hesitate to contact me at vshakotko@mbaks.com or 425.435.8990. Thank you for your consideration.

Sincerely,



Veronica Shakotko
Senior King County Government Affairs Manager
Master Builders Association of King and Snohomish Counties

CC: Kristina Gallant AICP, Planning Manager
Nick Whipple, Assistant Director
Rebecca Horner, Director of Development Services

Johnson, Thara

From: Barb Braun <bbraun@live.com>
Sent: Tuesday, April 23, 2024 8:00 AM
To: Gallant, Kristina; PlanningCommission
Cc: Barb Braun; Curt Allred; Stewart, Justus; Ewing, Jennifer
Subject: Comments Public Hearing: Tree Land Use Code Amendment (LUCA)
Attachments: Tree LUCA Public Hearing Braun 04242024.pdf

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Public Hearing: Tree Land Use Code Amendment (LUCA)

April 24, 2024

Good Evening Commissioners and City Leaders,

Tree LUCA:

In general, we support the tree LUCA. The minimum tree density approach is brilliant and easy-to-understand. The residents of our city are excited to see action on this, and we hope you fully adopt the recommendations of the Planning Team. Thank you for doing this vitally important work.

One concern: A Commissioner suggested increasing the definition of a significant tree from 6 inches to 8 inches. We strongly disagree. Bellevue residents have been very vocal in their alarm about the number and rate of large tree destruction. Ecosystem services are provided by large trees not small ones. We must retain our more mature trees.

For the LUCA to be successful, the City will need to do more than just update the code. A major effort will need to be made to communicate the importance of trees in our city and to educate developers, businesses, and residents about the new rules. Further strong monitoring and enforcement will need to be put in place, and enforcement actions will need to be highly visible. As the new code is implemented, please make sure these follow-through steps are in place.

We've Only Just Begun:

This LUCA should be a first step in an ongoing journey to protect large trees and tree canopy in Bellevue. We will need to take considerable additional steps to preserve tree canopy as our City densifies. I urge the Planning Commission to not be lulled into thinking we have reached our tree canopy goal. The recent canopy survey is based on 2021 data which is prior to recent large scale tree removal along the highways, along the PSE corridor, in Coal Creek, in Mercer Slough, etc. The remaining canopy we have needs to be retained. We need land acquisition, zoning and codes to proactively protect the remaining forested areas of Bellevue.

Tree density goals in the more urban areas – downtown, BelRed and Wilburton, need to be in keeping with the rest of the City. Without trees, these areas will be overly paved heat islands that are unattractive and too hot in the summertime. Our urban core must be green, cool, and clean. This can be achieved if we require street trees, green roofs and canopied corridors and public spaces.

Public Hearing: Tree Land Use Code Amendment (LUCA)

April 24, 2024

Good Evening Commissioners and City Leaders,

Tree LUCA:

In general, we support the tree LUCA. The minimum tree density approach is brilliant and easy-to-understand. The residents of our city are excited to see action on this, and we hope you fully adopt the recommendations of the Planning Team. Thank you for doing this vitally important work.

One concern: A Commissioner suggested increasing the definition of a significant tree from 6 inches to 8 inches. We strongly disagree. Bellevue residents have been very vocal in their alarm about the number and rate of large tree destruction. Ecosystem services are provided by large trees not small ones. We must retain our more mature trees.

For the LUCA to be successful, the City will need to do more than just update the code. A major effort will need to be made to communicate the importance of trees in our city and to educate developers, businesses, and residents about the new rules. Further strong monitoring and enforcement will need to be put in place, and enforcement actions will need to be highly visible. As the new code is implemented, please make sure these follow-through steps are in place.

We've Only Just Begun:

This LUCA should be a first step in an ongoing journey to protect large trees and tree canopy in Bellevue. We will need to take considerable additional steps to preserve tree canopy as our City densifies. I urge the Planning Commission to not be lulled into thinking we have reached our tree canopy goal. The recent canopy survey is based on 2021 data which is prior to recent large scale tree removal along the highways, along the PSE corridor, in Coal Creek, in Mercer Slough, etc. The remaining canopy we have needs to be retained. We need land acquisition, zoning and codes to proactively protect the remaining forested areas of Bellevue.

Tree density goals in the more urban areas – downtown, BelRed and Wilburton, need to be in keeping with the rest of the City. Without trees, these areas will be overly paved heat islands that are unattractive and too hot in the summertime. Our urban core must be green, cool, and clean. This can be achieved if we require street trees, green roofs and canopied corridors and public spaces.

In addition, the City should take further actions, in partnership with others, to protect existing trees and forests, and to build our canopy as we grow. For example, we should have programs to:

1. Replace the trees along our highways.
2. Implement a city-wide street tree program.
3. Work with the School District to reforest school properties.
4. Educate and incent landowners to plant more trees, especially native and drought tolerant trees.

The Planning Commission should take up the topic of implementing a city-wide street tree program. Many cities require all development and re-development projects to install both street trees and sidewalks. Such a policy should apply to the entire city - both commercial and residential. Bellevue should adopt such an ordinance in 2024.

Thank you,

Barb Braun and Curt Allred, 13609 SE 43rd Place

In addition, the City should take further actions, in partnership with others, to protect existing trees and forests, and to build our canopy as we grow. For example, we should have programs to:

1. Replace the trees along our highways.
2. Implement a city-wide street tree program.
3. Work with the School District to reforest school properties.
4. Educate and incent landowners to plant more trees, especially native and drought tolerant trees.

The Planning Commission should take up the topic of implementing a city-wide street tree program. Many cities require all development and re-development projects to install both street trees and sidewalks. Such a policy should apply to the entire city - both commercial and residential. Bellevue should adopt such an ordinance in 2024.

Thank you,
Barb Braun and Curt Allred, 13609 SE 43rd Place

Johnson, Thara

From: Heidi Dean <technogeekswife@yahoo.com>
Sent: Friday, April 19, 2024 1:18 PM
To: Robinson, Lynne; Malakoutian, Mo; Lee, Conrad; Stokes, John; Zahn, Janice; Nieuwenhuis, Jared; Hamilton, Dave; PlanningCommission
Cc: King, Emil A.; Johnson, Thara; Nesse, Katherine; Carlson, Diane (she/her); Gerla, Kathy; Nhccboard
Subject: Neighborhood character: Good for me (Old Bellevue) but not for thee (everywhere else)?

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Dear Council, Planning Commission, and others:

If I'd seen the Council Priorities prior to Tuesday's meeting I would have signed up to give comment on this topic. I still think it's important to point out as it pertains to things in our Comp Plan update.

Please note that priority #7 is Old Bellevue Character

2024-26 Co

- Customer service
- Brand identity
- Arts programs
- Affordable hous
- Use of city prop
- Accessory Dwel
- Old Bellevue Ch
- Eastrail comple
- Diversity Advan
- Community eng
- Human Services
- Homelessness

Old Bellevue is essentially a subdivision of the Downtown neighborhood area, one of CoB's 16 Neighborhood Areas. When I moved to Bellevue 25 years ago Downtown was primarily focused on office and commercial/retail, it was not a "neighborhood". Its only "character" was the retro charm of a few blocks within the Old Bellevue area that has since shrunk to just 3 blocks of Old Main.

The graphic above from Tuesday's Council meeting was not the first time I heard preservation of Old Bellevue's "character" mentioned as a priority. I heard Mayor Lynne Robinson, who lives in the Old Bellevue section of Downtown, emphasize its importance to staff during a council meeting within the past two months (I don't have the date handy).

There's nothing wrong with wanting to preserve the character of one's neighborhood. Where I'm having an issue is that "neighborhood character" is a term being removed from **all other neighborhoods** in the CoB's 2044 Comprehensive Plan update, now in its final phase. In fact, I've sat in Planning Commission meetings and listened to commissioners express concern that "neighborhood" has become a dirty word in this update and that *neighborhoods* are effectively being erased. Notably, it was Chair Vishal Bhargava and Vice Chair Craighton Goeppeler who were most vocal on those points.

In the Comp Plan policy updates "neighborhood" has been swapped out for the vague word "community", the reason given: it's more equitable. What many engaged residents have witnessed during the Comp Plan update process is that in using the term "community" it's allowed people and groups from outside of Bellevue to give input on our city's growth & development strategy, which will result in consequences with which *they* won't have to live. While Bellevue's Comp Plan is a piece of our county/regional growth strategy, it is still an individual piece and this is still supposed to be a plan for Bellevue. Bellevue's neighborhoods and its residents shouldn't be erased in trying to make it fit with the larger county plan.

If the Bellevue Downtown Association and Mayor Robinson can lobby for preservation of Old Bellevue's "character" how unfair is it for the Comprehensive Plan staff to erase mention of "neighborhood character" from Bellevue's 15 other neighborhood areas? How is that "equitable", a term that has permeated this Comp Plan update but seems to be applied **inequitably** throughout the proposed updates?

Full disclosure: I'm BCCing this email to neighborhood associations across the city, as well as to over 60 of my friends in other neighborhoods + Newport Hills. I hope that if they have something to add they will send an email to the Planning Commission, city councilmembers, and staff members, whose email addresses are included in the "to" and "CC" sections.

Unfortunately, most people in Bellevue haven't been paying attention to the Comprehensive Plan update, but they should be- big changes are proposed and they aren't necessarily good for Bellevue's neighborhoods. I encourage all who receive this to review the final draft of proposed changes when it's released in early May and submit

comments to the Planning Commission as they'll be doing a final review on May 8th & 22nd. I also encourage you to submit comments ahead of and/or to attend the public hearings on June 20th & 26th to provide comments. This is a [LINK](#) to the Comprehensive Plan page on the City of Bellevue's website if you'd like to learn more.

AND FOR NEWPORT HILLS FOLKS: ^ ^ ^ This is important as we will begin updating our Neighborhood Area Plan (Newport subarea plan) almost immediately, likely late August/early September. "Neighborhood character" is important to many of us. Don't stay silent.

Thank you,

Heidi Dean
25 yr Bellevue resident, 23 yrs in Newport Hills
Neighborhood leader since 2012
Eyes on City Hall

Johnson, Thara

From: William Shadbolt <william@thewbpa.org>
Sent: Friday, April 19, 2024 12:32 PM
To: Council; PlanningCommission
Cc: Katzaroff, Kenneth; Jessica Clawson; Nancy Rogers; Aaron M. Laing; Abigail Pearl DeWeese; Graham, Clayton; Sam Spiegelman
Subject: Letter re Bel-Red FAR Amenity Incentive System
Attachments: 2024-04-19 Bellevue AH Memo FINAL.pdf

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Dear Council and Planning Commission members,

The Washington Business Properties Association and the signed land use attorneys represent a significant majority of the developers within the city. Please find attached a memo with regards to the current discussion on affordable housing development. We are encouraging the city to extend the existing Bel-Red FAR Amenity System to other areas within the city.

As discussed in detail in the memo, this is due to the following reasons:

1. The existing system works, it is a proven formula that benefits all parties.
2. The legislature has only expressly authorized cities to enact voluntary, incentive-based affordable housing policies via RCW 36.70A.540.
3. Constitutional law strictly limits local government zoning laws.
4. Additional exactions must also continue to be incentivized.

As such we believe the best route for the city is to expand Bel-Red's voluntary incentive-based system to other areas.

The Washington Business Properties Association and its members are willing partners in keeping Bellevue vibrant within the framework referenced in the memo.

Thank you for your consideration in this matter.

Yours sincerely,

William Shadbolt
Managing Director

Office: 360 464 1500
Cell: 425 241 0144
William@TheWBPA.org





April 19, 2024

City of Bellevue
Bellevue City Council
Bellevue Planning Commission
via email

Re: Using the Bel-Red FAR Amenity Incentive System Framework to Legally Incentivize Affordable Housing and Other Public Benefits

Dear Council and Commissioners,

Washington Business Properties Association (WBPA) is a coalition of Washington State commercial property owners and developers. We write to you alongside local land use attorneys to encourage the City to follow the framework of the Bel-Red FAR Amenity Incentive System¹ (the “Bel-Red System”) as you update the affordable housing and other amenity incentives throughout the City (in the Wilburton TOD Area, the Bel-Red Look Forward, and the Downtown FAR Update in particular); and to explain the important legal principles with which the Bel-Red System complies.

The Bel-Red System has several key features that we support and which make it legal. Each parcel of land is given a reasonable base level of development capacity as of right, and developments can “earn” additional development capacity by providing public amenities (*e.g.*, affordable housing, public access to outdoor plaza, public art) or paying fees-in-lieu. In each case, the cost of providing the amenity or fee is lower than the value provided by the additional density awarded, hence creating an “incentive.” As to affordable housing, the Bel-Red System complies with our framework of laws, including the U.S. Constitution, Washington Constitution, several state statutes and controlling case law, because the policies: (a) provide an incentive (*i.e.*, benefit provided exceeds cost of compliance); and (b) are voluntary, in that the property owner has the option to develop the property without using the incentive program or receiving its benefits.

The *Bellevue Housing Economic Policy Analysis Phase 1* report included in Appendix L to the Comprehensive Plan FEIS presents several policy options for the City to consider for the purpose of increasing the production of affordable housing. Although it is possible to structure many of them in a manner that is voluntary and provides a compliant incentive-based system, we believe the Bel-Red System is the easiest alternative (and a successful framework) for demonstrating that property owners receive actual incentives for using the benefits the system provides. In addition to being legally defensible, the Bel-Red System has demonstrated its effectiveness through the production of

¹ A concise explanation of the Bel-Red System is available at “Constructing Affordable Housing,” CITY OF BELLEVUE, COMM’Y DEPT., <https://bellevuewa.gov/city-government/departments/community-development/housing/constructing-affordable-housing> (last visited Mar. 5, 2024). *See also* LUC 20.25D.090.

on-site rent-restricted housing, as well as fees-in-lieu that have helped fund off-site rent-restricted housing.

We are not aware of another affordable housing incentive program in Washington that has achieved such a balanced and successful outcome, with some projects choosing to provide housing on-site and others paying the fee-in-lieu. The Bel-Red subarea has also seen development of a significant amount of market-rate housing and office buildings, which is testament to the fact that the Bel-Red System provides an incentive and enables the production of affordable housing and other amenities without stifling development.

I. The Legislature has Only Expressly Authorized Cities to Enact Voluntary, Incentive-based Affordable Housing Policies via RCW 36.70A.540.

The State Legislature has only expressly authorized cities to implement affordable housing policies through zoning in RCW 36.70A.540, titled “Affordable housing incentive programs—Low-income housing units—Tiny house communities.” This statute references the word “incentive” 18 times and principally allows for the adoption of voluntary, incentive-based affordable housing programs:

*If a developer **chooses not to participate** in an **optional** affordable housing **incentive** program adopted and authorized under this section, a city, county, or town **may not** condition, deny, or delay the issuance of a permit or development approval that is consistent with zoning and development standards on the subject property absent incentive provisions of this program.²*

This legislation requires that affordable housing programs must be “optional,” allow a developer to “choose[] not to participate” and provide an “incentive.” The Bel-Red System complies with this statutory mandate, and any additional system adopted by the City should follow its framework and principles.

RCW 36.70A.540(2) is clear on its face—any affordable housing incentive program must provide “incentives or bonuses” towards the development of low-income housing. This means that any program adopted must include actual benefits to developers when opting-in to such programs. The statute also provides context as to the types of incentives that are appropriate, which include density bonuses, fee waivers, or even the payment of money or property to the developer.³ Put simply, the state law supports an incentive-based optional system that has tangible economic value; ‘incentives’ may not be illusory.

There has been much discussion about whether an incentive program can be voluntary or mandatory. RCW 36.70A.540(3) provides that Bellevue “may establish a minimum amount of affordable housing that must be provided by all residential developments being built under the revised regulations....” Such a framework may be considered “mandatory” so long as it complies with the other sections of .540 discussed above, which require that (a) developers are allowed to opt out;

² RCW 36.70A.540(1)(c). (Bold-face text added for emphasis.)

³ See RCW 36.70A.540(1)(a); RCW 36.70A.540(2)(h).

(b) the program provides an incentive; and (c) the program conforms to the important constitutional principles articulated below.⁴

II. Constitutional Law Strictly Limits Local Government Zoning Authority.

State and federal constitutional principles fundamentally limit the City’s authority to adopt mandatory affordable housing programs by prohibiting the government from requiring private developers from bearing public burdens. The U.S. Supreme Court stated that the constitution “bar[s] Government from forcing some people alone to bear public burdens, which, in all fairness and justice, should be borne by the public as a whole.”⁵ Similarly, the Washington Supreme Court struck down a fee aimed at assisting displaced tenants, noting “[t]he City is instead shifting the public responsibility of providing housing to a limited segment of the population.”⁶

As a consequence, unless the City is providing an optional incentive, affordability requirements must be based on a showing, on a case-by-case basis, that the development in question will create a need for affordable housing units *and* that the affordability requirements must be roughly proportionate to the affordable housing need created by the development.⁷ This is often referred to as *Nollan/Dolan* compliance, and the standard has been consistently applied by the Washington State courts.⁸ The Washington Supreme Court has “repeatedly held . . . that development conditions must be tied to a **specific, identified impact of a development on a community**.”⁹ The case law also makes it clear that land-use exactions are allowed only for the narrow purpose of compensating the public for provable harms resulting from the development in question. And again, the constitutionality of such government regulation is evaluated on a case-by-case basis considering the above factors.¹⁰ Short of this, a local government must pay an owner “just compensation” for the loss in value to their property resulting from the imposition of the permit condition.¹¹

⁴ Seattle’s Mandatory Housing Affordability program is presently being litigated in federal court under the *Nollan / Dolan* framework. *Adams v. City of Seattle*, W. Wash. Dist. Ct., No. 2-22-cv-01767-TSZ. The analysis in this letter could be altered by the outcome.

⁵ *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

⁶ *San Telmo Associates v. City of Seattle* (1987), 108 Wn.2d 20, 24 (1987). The U.S. Supreme Court has clarified that avoiding overburdening subsegments of the population not responsible for public costs goes to the very purpose of the Takings Clause—*viz.*, “to bar Government from forcing some people alone to bear public burdens, which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

⁷ *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Last week, the US Supreme Court again ratified *Nollan/Dolan* and clarified that the analysis applies whether the condition on development is imposed legislatively (such as via the adoption of a comprehensive plan or land use code) or administratively. *Sheetz v. County of El Dorado, California*, 601 U.S. ____ (2024).

⁸ The Supreme Court has also held that the payment of fees—including application fees—can be compensable takings. See *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595 (2013).

⁹ *Isla Verde*, 146 Wn.2d at 761. See also *Honesty in Envtl. Analysis & Legis. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 96 Wn. App. 522, 533–34 (1999) (“Simply put, the nexus rule permits only those conditions necessary to mitigate a specific adverse impact of a proposal.”).

¹⁰ See *e.g.*, *Wash. Food Indus. Ass’n v. City of Seattle*, 1 Wn.3d 1, 33, 524 P.3d 181, 198 (2023)(describing that regulatory takings require a case-by-case analysis); see also *Chong Yim v. City of Seattle*, 194 Wn.2d 651, 661, 451 P.3d 675, 683 (2019).

¹¹ Wash. Const. art. I, sec. 16 (“No private property shall be taken or damaged for public or private use without just compensation having been first made . . .”).

Washington's Growth Management Act expressly requires the City to consider the takings implications of its zoning and land use legislation through the process described in RCW 36.70A.370 and the associated guidance from the State Attorney General. We encourage your review of Attorney General Ferguson's *Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property*.¹²

III. Additional Exactions Must Also Continue to be Incentivized.

Bellevue's current land use policies provide FAR bonuses for items in addition to affordable housing. In Downtown, additional FAR is earned through providing community benefits such as open space, public art, water features and other expensive items that are for the benefit of the public. In Bel-Red, in addition to affordable housing, additional FAR is earned through dedication of parks, park improvements, trail dedication and easements, stream restoration, regional transfer of development rights, or payment of a fee-in-lieu to be applied to such public amenities. In the event the City intends to maintain these amenity requirements, the same legal principles discussed above require that density bonuses (or some other incentive mechanism) must continue to be provided at a rate that produces an incentive. Alternatively, the City must be prepared to demonstrate, on a case-by-case basis, that any conditions placed on development are roughly proportionate to its impacts.

IV. Bel-Red's Voluntary Incentive-based System should be Expanded.

We identify these issues so that the City, and its Council and Planning Commission can consider the gravity of adding restrictions, requirements, or mandatory standards that would effectively result in physical or regulatory taking when crafting any affordable housing policy. While the goal of providing affordable housing is supported by all, the means of achieving that goal should be grounded in sound policies that encourage housing production.

As explained above, the Bel-Red System is voluntary and provides an incentive by allowing developers to build to a greater density than they originally had in exchange for either providing affordable housing as part of the project or choosing to pay a fee-in-lieu. Developers are also allowed to forego this if they choose to limit their building to the base "Floor Area Ratio ("FAR"), which is at least as much as the FAR that was allowed when the affordable housing policy was originally adopted. The number of affordable units required, the bonus FAR provided and the definition of affordable housing at 80% AMI¹³ create a financial incentive. The fee-in-lieu amount is set at a fraction of the value of the additional FAR, also producing an incentive. In our view, this structure meets the legal requirements discussed above and does not impose an unconstitutional burden on developers.

As the City looks to expand its housing affordability program City-wide, we urge it to continue to use the existing, incentives-based affordable-housing policies in the Bel-Red System. This model ensures ongoing compliance with the law in a way that continues the City's commitment to work

¹² The advisory memo required by RCW 36.70A.370 is available at this website: [Avoiding Unconstitutional Takings of Private Property | Washington State](#).

¹³ See LUC 20.50.010 Affordable Housing. "Unless otherwise specified, the price of affordable units is based on that amount a household can afford to pay for housing, when household income is less than 80 percent of the median annual income, adjusted for household size, as determined by the United States Department of Housing and Urban Development for the Seattle Metropolitan Statistical Area, and when the household pays no more than 30 percent of household income for housing expenses."

with developers and property owners to build a better Bellevue. Policies that do not allow developers to “opt out” and that do not provide an incentive will face substantial headwinds in the courts and the marketplace, and additional friction is simply untenable in these times. WBPA and the signatories below urge a lawful, fair, market-based approach that does not place the burden of providing affordable housing solely on developers, and we ask the City to continue to utilize the proven framework that is the Bel-Red System.

Sincerely,

Kenneth Katzaroff

Schwabe

Clayton P. Graham

 **Davis Wright
Tremaine LLP**

Aaron Laing

 **PARKER
SMITH
& FEEK**
An  Company

Jessica M. Clawson

McCullough Hill PLLC

Abigail Pearl DeWeese

Abigail Pearl DeWeese

HCMP
Law Offices

Hillis
Clark
Martin &
Peterson



Nancy Rogers

CH& CAIRNCROSS & HEMPELMANN
ATTORNEYS AT LAW

Sam Spiegelman


SPIEGELMAN LAW PLLC
FIGHTING FOR ALL WASHINGTONIANS

This message may contain confidential or proprietary information intended only for the use of the addressee(s) named above or may contain information that is legally privileged. If you are not the intended addressee, or the person responsible for delivering it to the intended addressee, you are hereby notified that reading, disseminating, distributing or copying this message is strictly prohibited. If you have received this message by mistake, please immediately notify us by replying to the message and delete the original message and any copies immediately thereafter.

If you received this email as a commercial message and would like to opt out of future commercial messages, please let us know and we will remove you from our distribution list. Washington Business Properties Association 123 Fir Street NE #201, Olympia, WA 98506

Thank you.~

Johnson, Thara

From: Dykstra, Jesse F (DFW) <Jesse.Dykstra@dfw.wa.gov>
Sent: Friday, April 19, 2024 9:36 AM
To: PlanningCommission
Subject: Environmental policy update

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Good Morning,

My name is Jesse Dykstra, I am the WDFW's Habitat Biologist for the City of Bellevue. I am contacting you to inquire about the forthcoming updates to the GMA and SMA policies. The City of DFW is keen to initiate discussions early and provide input on any upcoming Critical Area Ordinances and I noticed that the City will be looking at drafting the environmental portion soon. We are looking for the opportunity to provide comments early along with some new research we have found. Please let me know if a meeting would be better and I can set one up for everyone.

Thank you.

Jesse Dykstra – Habitat Biologist
Washington Department of Fish and Wildlife
Region 4, Mill Creek Office
Cell: (564) 200-3689
Email: Jesse.Dykstra@dfw.wa.gov

Johnson, Thara

From: Ann Brashear <abrashear@comcast.net>
Sent: Thursday, April 18, 2024 7:17 PM
To: Council; PlanningCommission
Cc: Robinson, Lynne; Malakoutian, Mo; Lee, Conrad; Stokes, John; Zahn, Janice; Nieuwenhuis, Jared; Hamilton, Dave; Bhargava, Vishal; Goepppele, Craighton; Cuellar-Calad, Luisa; Khanloo, Negin; Ferris, Carolyn; Lu, Jonny; King, Emil A.; Johnson, Thara; Nesse, Katherine; Carlson, Diane (she/her); Gerla, Kathy
Subject: Public Comment - Newport Hills Shopping Center
Attachments: Brashear public comment April 2024.pdf

[EXTERNAL EMAIL Notice!] Outside communication is important to us. Be cautious of phishing attempts. Do not click or open suspicious links or attachments.

Dear Councilmembers and Planning Commissioners,

I am attaching a public comment on the Newport Hills Shopping Center. I have also copied Planning Director Emil King and his staff, the City Manager and the City Attorney. I appreciate all of your careful attention, as this matter is very important to me and to the future of our Newport Hills neighborhood. Wisely (not excessively) redeveloped, the Newport Hills Shopping Center can again become the anchor of a “15-minute” neighborhood, one of the few outlying Bellevue neighborhoods that is walkable and has plenty of things worth walking to.

Respectfully submitted,

Ann R. Brashear