

July 11, 2016

## **CITY COUNCIL STUDY SESSION ITEM**

### **SUBJECT**

Discussion of a draft Ordinance amending Section 1.1 of Ordinance No. 5625, granting an extension of the deadline for BV Holdings (formerly known as Wasatch Management & Development LLC), to construct the required mid-block pedestrian and vehicular Connector Road through the Wasatch Superblock and the associated Connector Road agreement.

### **STAFF CONTACTS**

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### **POLICY CONSIDERATION**

Should the City agree to amend Ordinance 5625 to allow for an extension of time to complete of the mid-block pedestrian and vehicular connection between 106th and 108th Avenues NE within the Wasatch Superblock and be a signatory to the Agreement Regarding Midblock Connector Road?

### **DIRECTION NEEDED FROM COUNCIL**

  X   Discussion

  X   Information

       Action

### **BACKGROUND/ANALYSIS**

In 2004, Wasatch Management & Development LLC (Wasatch) applied for Design Review approval for development of the northwest corner of the "Wasatch Superblock," bounded by NE 10<sup>th</sup> Street on the north, NE 8<sup>th</sup> Street on the south, 106<sup>th</sup> Avenue NE on the west, and 108<sup>th</sup> Avenue NE on the east. Wasatch initiated the process requesting vacation of NE 9<sup>th</sup> Street, a cul-de-sac within the Superblock. The street vacation was subsequently abandoned in favor of a plat vacation.

On June 20, 2005, the City Council held a public hearing to consider vacating the Fox Addition Plat subject to certain conditions. Following the hearing, the City Council found the proposed plat vacation was consistent with the decision criteria set forth in RCW 58.17.212. In particular, Council found the proposed vacation and subsequent removal of NE 9<sup>th</sup> Street allowed the Wasatch Superblock master plan to be implemented as envisioned, with pedestrian and vehicular access throughout the block in a circulation pattern that is not only most suitable for the proposed building layout, but also for usage inside the buildings and the open spaces outside the buildings.

The benefit of improved pedestrian and vehicular access serves public health, safety and welfare purposes, and provides open spaces, streets, sidewalks, and other public ways. After determining the public use and interest to be served by the vacation of the plat, the City Council, by motion, adopted Ordinance No. 5609 vacating the plat.

In order for the City to ensure the requirements of Ordinance No. 5609 were met, the City retained the title to NE 9<sup>th</sup> Street. Later, it was discovered that retaining the title impeded Wasatch's ability to obtain construction financing. Council found there were other ways to fulfill the requirements of Ordinance No. 5609, yet still release the title to NE 9<sup>th</sup> Street. In order to release the title to NE 9<sup>th</sup> Street, Council passed Ordinance No. 5625 which amended Ordinance No. 5609.

Pursuant to the terms of Ordinance No. 5625, a condition of the plat vacation required Wasatch Management & Development LLC, now known as BV Holdings, to build a Connector Road no later than September 27, 2015. The deadline passed and BV Holdings defaulted on this condition. At the October 5, 2015 Study Session, Council discussed BV Holdings' failure to perform and the status of ongoing negotiations. Council emphasized the importance of reaching a resolution that will ensure the Connector Road is constructed. Council directed staff to continue negotiations until a resolution could be reached. If the parties could not reach a resolution, Council indicated the City should pursue available legal options to ensure that BV Holdings fulfills its obligations, which could include a lawsuit for specific performance.

As directed by Council, staff engaged in further negotiations with BV Holdings. Staff also engaged Trammel Crow in the negotiations because they own some of the parcels located in the Superblock. In particular, Trammel Crow owns property upon which part of the Connector Road will be built. Trammel Crow constructed an office building and parking garage on this property. To ensure access to their property, Trammel Crow entered into negotiations with BV Holdings to construct a temporary Connector Road. Trammel Crow, BV Holdings and the City were able to reach an agreement on the Connector Road (hereinafter referred to as "the Agreement"). The matter was set for public hearing on April 4, 2016, to consider whether to permit amendment of Ordinance No. 5625.

Public testimony was given at the hearing. Speakers raised concerns that BV Holdings refused to provide the easements necessary to facilitate building part of the Connector Road; thus, preventing Trammel Crow from building a one-lane road as agreed upon. Some speakers stated that a delay not only puts in jeopardy the crosswalk located at 9th Place and 106th Street; but also, creates a safety issue. In addition, objections were raised that there are no benefits to the City of Bellevue or any of the Washington Square residents for granting an extension of time to build the Connector Road. Some speakers felt that the mid-block Connector Road is essential for egress so it should not be delayed.

Council expressed concern that it is not clear whether the Agreement burdens the property, especially since BV Holdings is not the owner of all the parcels on the Superblock. Council also raised concerns about the enforceability of the Agreement against subsequent owners without a title guarantee. Finally, concern was raised that there was no deadline to build the road and there is no obligation to build the road other than holding a bond.

Council directed staff to address the issues raised at the public hearing and return at a later date. Staff engaged in further discussions with BV Holdings and Trammel Crow and worked to ensure that the Agreement and the changes to the Ordinance addresses the concerns raised by Council and the public. During this process, staff also had discussions with representatives of the residents of Washington Square.

The following is a summary of the key elements of this agreement:

*Timing:*

- The obligation to build the road remains a condition of the plat vacation and remains an obligation that runs with the land. So long as BV Holdings is the owner of the property, it is bound by this obligation.
- The requirement to build the entire two-way Connector Road does not take effect until such time as development is undertaken on the remaining undeveloped parcels in the Superblock.
- As development takes place on each parcel within the Superblock, an adjacent two-way section of the Connector Road must be completed. Any permits issued by the City for development will have this requirement. Construction must take place within 30 months after building permits are issued. The two-way Connector Road must be completed by the time all development is completed and approved by the City.

*Bonding:*

- Within 60 days of the execution of the Agreement, BV Holdings is required to bond for the completion of the entire Connector Road. This bonding requirement will remain for each parcel owned by BV Holdings.
- As each segment of the Connector Road is completed, inspected, and approved by the City, the bond will be reduced proportionally. The initial bond will cover the cost of completion of the entire two-way Connector Road. The full amount of the bond will be for 150% of the cost to construct the full two-way Connector Road, including required frontage improvement. When, and if, the interim one-way Connector Road is completed in accordance with the Agreement, the City will reduce the bond to 150% of the cost to complete construction of the remaining portion of the Connector Road. BV Holdings shall bond for any portion of the Connector Road that has not been completed.
- The bond shall keep pace with inflation, tied to CPI-W, and shall be adjusted annually on the anniversary of the effective date of the Agreement.
- BV Holdings will continue to bond each year for and carry the cost to provide the necessary assurances to the City that the two-way Connector Road will ultimately be constructed at the time of future development of the adjacent parcels.
- If development of the Superblock occurs in a segmented fashion, and if requested by BV Holdings in writing, the City may reduce the amount of the bond commensurate to the portion left to be completed. If development has not taken place, the bond obligation remains until such time as the two-way Connector Road is completed.
- The City may execute on the bond to construct the two-way Connector Road if development of the Superblock has not occurred and the road has not been fully

completed during a twenty-year period commencing from the date of the execution of the Agreement.

- If BV Holdings no longer owns the parcel, each subsequent owner shall provide to the City, prior to demolition of a section of the Interim Road, a completion bond, or assignment of savings, or a letter of credit (each being “Security”) equal to 150% of the road construction costs for the segment of the two-way Connector Road that corresponds to the demolished portion of the Interim Road, as determined by a valid construction estimate provided by the Owner’s contractor assigned to build that portion of the Connector Road. This bonding obligation runs with the land.

*Construction:*

- The location of the Connector Road, the expectations for the frontage improvements and other relevant aspects of the location and design of the Connector Road shall be contained in a separate agreement between the parties.
- BV Holdings shall be responsible for ensuring that an interim one-way Connector Road is constructed and completed no later than a year from the effective date of the Agreement.
- BV Holdings may enter into an agreement with a third party to complete the interim one-way section of the Connector Road or the entire two-way Connector Road.<sup>1</sup>

*Responsibilities for the Connector Road:*

- The Connector Road will be a private road owned by the persons or entities on whose land the Connector Road is located, subject to the rights of the public and other persons described in the Access Easement.
- In no event shall the City have any responsibility for the costs and expenses in constructing, operating and maintaining the Connector Road.

Staff has finalized the written agreement with BV Holdings, Trammel Crow and Washington Square Parking Associates, subject to Council approval.<sup>2</sup> Construction on the one-lane Interim Road has begun but is awaiting approval of the Agreement before it can be completed.

**ALTERNATIVES**

- 1) Direct staff to return with a final ordinance for adoption.
- 2) Provide staff with other direction.

**RECOMMENDATION**

Option 1.

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<sup>1</sup> BV Holdings has entered into an agreement with Trammel Crow to complete the one-lane Interim Road.

<sup>2</sup> These are the three property owners within the Superblock over whose property the Connector Road will be constructed and who will be signatories to the Agreement.

**ATTACHMENT(S)**

Agreement Regarding Midblock Connector Road  
Proposed Ordinance No.6299

**AVAILABLE IN COUNCIL DOCUMENT LIBRARY**

1. Ordinance No. 5609
2. Ordinance No. 5625
3. Public Access Easement
4. Covenant Regarding Public Access Easement
5. Road Plan

