

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
STUDY SESSION MINUTES

October 24, 2018  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chair Barksdale, Commissioners deVadoss, Malakoutian, Morisseau, Moolgavkar

COMMISSIONERS ABSENT: Commissioners Laing, Carlson

STAFF PRESENT: Terry Cullen, Nicholas Matz, Department of Planning and Community Development

COUNCIL LIAISON: Mayor Chelminiak

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER  
(6:34 p.m.)

The meeting was called to order at ~~6:34~~ p.m. by Chair Barksdale who presided.

2. ROLL CALL  
(6:34 p.m.)

Upon the call of the roll, all Commissioners were present with the exception of Commissioners Laing and Carlson, both of whom were excused.

3. APPROVAL OF AGENDA  
(6:34 p.m.)

A motion to approve the agenda was made by Commissioner Moolgavkar. The motion was seconded by Commissioner Morisseau and the motion carried unanimously.

4. REPORTS OF CITY COUNCIL, BOARDS AND COMMISSIONS  
(6:35 p.m.)

Mr. Hassan Dhananjaya spoke representing the East Bellevue Community Council. Formed in 1969, the community council has approval/disapproval authority over Comprehensive Plan and Land Use Code amendments within its boundary. He noted that at its regular meeting on September 11, the community council voted to disapprove the homeless services uses Land Use Code amendment. The determination was that the amendment was not in the best interest of the Bellevue residents living within the jurisdiction of the community council. A public hearing was held in June on the amendment and forwarded a recommendation to the City Council. The recommendation, however, was not mentioned in the final Land Use Code amendment. Citing the ordinance's lack of a buffer between shelters and schools, appointment of a good neighbor agreement advisory committee exclusively by the director of planning services, the lack of a

mandatory tracking system, and the inclusion of a development agreement in the permit process, the East Bellevue Community Council could not approve the Land Use Code amendment. Since a ((inaudible...CFC? C and C?)) Land Use Code amendment is a Process 1 permit, the East Bellevue Community Council would not have any official say in the approval process of a shelter permit application within its jurisdiction. By disapproving the Land Use Code amendment, any shelter application in East Bellevue will be subject to a conditional use permit, giving the community council and its constituents oversight over the application process. Going forward, in accordance with its statutory obligations, the East Bellevue Community Council will continue to provide a forum for consideration of and advice regarding all local matters that directly or indirectly affect the East Bellevue area.

## 5. STAFF REPORTS

(6:38 p.m.)

Comprehensive Planning Manager Terry Cullen briefly reviewed with the Commission the calendar of meeting dates and agenda items.

Mr. Cullen asked for feedback on the parliamentary procedure training session. Commissioner Morisseau said she found it to be very educational and suggested all Commissioners would benefit from attending. The instructor made the process very entertaining and engaging. There was a focus on efficient ways to run meetings

Commissioner Malakoutian agreed and suggested the training should be mandatory for all Commission members. The course was very eye-opening, particularly in regard to showing how meetings can be run very efficiently.

Mr. Cullen said the City Clerk's office is looking into making the training available annually for all board and commission members.

## 6. ORAL AND WRITTEN COMMUNICATIONS – None

(6:43 p.m.)

## 7. PUBLIC HEARING

(6:43 p.m.)

### A. Final Review Public Hearings 2018 Annual Comprehensive Plan Amendments – Privately Initiated Amendments

Mr. Cullen briefly reviewed the public hearing process and noted that following the public hearing on each proposal the Commission would discuss and act on the resolution included in the packet to adopt it as recommended, amend the resolution and adopt it, or not adopt it.

A motion to open the public hearing was made by Commissioner Malakoutian. The motion was seconded by Commissioner deVadoss and the motion carried unanimously.

Senior Planner Nicholas Matz stated that the Comprehensive Plan is the city's foundational policy document. The amendment process is the mechanism by which the city can modify its land use development and growth policies. Amending the Comprehensive Plan is limited to an annual process under the Growth Management Act. The final review recommendations developed by the Commission will result in City Council action by ordinance. The environmental impacts of the various Comprehensive Plan amendments are examined on the

entirely of the annual work program.

Mr. Matz noted that a staff report and recommendation for each proposal had been included in the Commission packet and had been publicly available since October 4.

i. City Dacha LLC  
(6:49 p.m.)

Mr. Matz said the proposal seeks to amend just under half an acre of the Wilburton subarea map from Public/Single Family-Low (P/SF-L) to Multifamily-Medium (MF-M) for the site at 160 118th Avenue SE. He noted that the recommendation of the staff to approve the proposed amendment was predicated on the application having satisfied all of the Land Use Code decision criteria for final review of a privately initiated Comprehensive Plan amendment.

Mr. Matz noted that the subject property lies to the south of the Bellevue Botanical Gardens. Park Highlands apartments are to the east and south of the site, low-rise suburban office buildings lie to the west across 118th Avenue SE, and further to the north there is a multifamily residential development. In the opinion of the staff, the proposal is consistent with the Comprehensive Plan; addresses the interests and changed needs of the entire city; addresses significantly changed conditions; could lead to the site being suitably developed; and demonstrates public benefit and enhances the public health, safety, and welfare. The adopted original public designation for the site considered the site to be a future part of the Wilburton Hill Community Park, and since the site will not be acquired for park purposes, the designation is an unintended consequence in that it prevents consideration of the appropriate density for the site.

Mr. Matz said no public comments had been received regarding the proposed amendment.

Mr. Ian Morrison with McCullough Hill Leary spoke on behalf of the applicant. He voiced support for the recommendation of the staff. The proposal meets all of the decision criteria, including significantly changed circumstances. The city had anticipated acquisition of the site for use as a city park, but that is no longer the city's plan. The Commission was asked to recommend approval of the Comprehensive Plan amendment.

A motion to close the public hearing was made by Commissioner Malakoutian. The motion was seconded by Commissioner Moolgavkar and the motion carried unanimously.

Commissioner deVadoss asked what change in terms of policy or strategy led to the decision on the part of the city to not acquire the site for use as park property. Mr. Matz said in the late 1980s and early 1990s the city was looking at developing the park and engaging in a significant affordable housing component in what turned out to be the Park Highlands project. All of that was in play as part of the Comprehensive Plan discussion about the future development of the site. The subject property, located between the Park Highlands site and the park site, was held by a private individual for many years who was not willing to sell the site. Development of Park Highlands and the park moved ahead without including the site.

A motion to recommend to the City Council that it adopt the City Dacha LLC amendment to the Comprehensive Plan was made by Commissioner Morisseau. The motion was seconded by Commissioner deVadoss.

Chair Barksdale asked to have included in the transmittal to the Council language outlining the

history of the site and the development of the park, and why the proposal is ripe for a determination.

The motion carried unanimously.

ii. Bellevue Nursery  
(7:01 p.m.)

A motion to open the public hearing was made by Commissioner Moolgavkar. The motion was seconded by Commissioner Morisseau and the motion carried unanimously.

Mr. Matz noted the Commission had received communications from some ~~folks~~ residents who expressed the concern that their comments had not been included in the online listing of all public comments. He said that error was recognized and fixed, and stressed that that did not mean they were not validly part of the record. He provided the Commissioners with copies of those comments along with the comments received after noon today, and noted that the comments posted online with the headline of October 18 to October 24 included those comments received after the Commission agenda was sent out.

Mr. Matz said the Bellevue Nursery Comprehensive Plan amendment seeks to amend the Southwest Bellevue subarea map for just over half an acre from Single Family-High (SF-H) to Neighborhood Business (NB) for the site at 842 104th Avenue SE. The site is currently developed as a garden nursery business. He said the recommendation of the staff was to approve the proposed amendment given that the application satisfies all of the Land Use Code decision criteria for final review of a privately initiated Comprehensive Plan amendment. The nursery is a long-established business anchoring other neighborhood-scale commercial uses in the corridor.

Neighborhood centers in Bellevue exist in various formats. Some are small centers, like in Lake Hills and Eastgate, while some are single sites like Northtowne and BelEast. In the case of the Bellevue Nursery site, the patterned land use extant is a linear center rather than a more normal concentrated framework. Most of the larger shopping areas came about as part of post-war development, while the sites in the western portion of the city tended to develop as single site operations that have built up over time. Regardless of shape, the area between Chase's Pancake Corral and the Chevron station up to Bellevue Nursery and beyond function as a neighborhood center.

In terms of addressing the interests and changed needs of the entire city, Mr. Matz said the fundamental issue relative to the Bellevue Nursery site is the fact that there is a conflict in the Comprehensive Plan which the property owner has asked the city to resolve. Because of the detail the city pays attention to for neighborhood centers, and all of the policies associated with sustaining local business, the conflict must be resolved in favor of the Neighborhood Business designation versus the fact that the Comprehensive Plan says the site should have residential uses. ~~If~~ ~~†~~ ~~The plan would have been more robust~~ ~~had about~~ intended nonconforming uses to be the solution to resolving the conflict, ~~it would have been more robust~~. Continuing with the residential designation will not solve the issue of sustaining neighborhood centers, notwithstanding whether or not it treats the property owner in an equitable fashion. The conflict must be resolved in favor of the balance of policy in order to address the interests and changed needs of the entire city.

Specific to the recommendation that the proposal meets the significant changed conditions criteria, Bellevue Nursery is a long-established business. The historically established residential

land use designation conflicts the policy supporting the site's sustaining role as a community third place. The consequence is that a long-established business cannot avail itself of land use strategies to ensure neighborhood center redevelopment fits into neighborhoods with mutual goals for maintaining and enhancing the shared qualities of stability, maintenance and healthy levels of reinvestment. It is incumbent upon the plan to resolve conflicts of policy and it is of mutual benefit to the property owner, neighboring community and the city at large to do so.

Mr. Matz said the ~~last~~ time for the designation ~~for-of~~ the Bellevue Nursery center site was when the designation was established rather than when the city went through an exercise to amend the Comprehensive Plan through an established process. Over the course of ~~the~~ years, the nonconforming use status did not interfere with the previous property owner's decision to operate the nursery business on the site. A significantly changed condition has existed, but it was not presented to the city for resolution until the current property owner identified the conflict as impeding something he wants to do. The new owner's attempt to resolve the policy conflict establishes for the first time a significantly changed condition, namely an unexpected consequence of an adopted policy. For Bellevue Nursery, since the city does not propose plan amendments for private sites, the owner's application illustrates the failure of the existing plan to resolve the policy conflict. At the point of the owner's application occurs the existence of a significantly changed condition.

Mr. Matz said the recommendation of the staff was that the proposal meets the final review decision criteria in that it is consistent with the Comprehensive Plan; addresses interests and changed needs of the entire city; addresses significantly changed conditions; could be suitably developed; and demonstrates public benefit and enhances the public health, safety, and welfare.

The Commissioners were informed that 53 comments and inquiries had been received from the public in the final review phase. The theme common to all of the comments, both those for and against the proposal, is acknowledgement of the valuable role the nursery plays locally and in Bellevue. Some of the common themes by those opposed to the proposal were safety in terms of the fact that the site layout and nearby streets exaggerate traffic congestion that is already occurring in the area; a rezone would make the property more valuable, motivating the owner to sell or allow other businesses on the site; and the city has other ways of regulating the owner's site redevelopment than through a Comprehensive Plan amendment. Those in favor of the proposal pointed out that for 60 years the nursery has truly been a local business, and that the nursery operates as a local gathering place. Of the 53 comments, 20 were favorable to the proposal, 31 were not in favor of the proposal, and two were requests for information.

Mr. Matz reminded the Commissioners that there is currently a right-of-way violation having to do with use of the right-of-way. The city's transportation department has actively been working with the property owner to resolve the issue and to date there has been evidence of compliance.

Mr. Edwin Tian, 842 104th Avenue NE, spoke as the applicant. He said Bellevue Nursery has been operating in the city for over 62 years. He said he was very happy to take over what for six decades been a family business. The previous owner built the business on a solid foundation and reputation, and the intent is to continue to build on their successes and to introduce the next generation of children to the joys of horticulture and working with their hands in the dirt. He said he would like to add a horticultural library for all to use free; classrooms for ongoing educational purposes; coffee and refreshment services; and landscaping design and installation as well as other related services. In order to do that, it will be necessary to expand the facility within the existing footprint, something the current land use designation does not allow. The current residential zoning has specific restrictions in regard to commercial uses and impacts the

permitting for any business expansion. He stressed that he has no intention of redeveloping the site for some other undisclosed use, nor any intention of selling the property to someone else. The only goal is to increase the services offered in the community. He said the business has a good relationship with the nearby church which allows for directing overflow parking to their lot. The anticipation is that the relationship will continue. There is an intent to continue being a good neighbor while also conforming to all zoning codes.

Mr. Kevin Sutton with NBA Architects, 600 108th Avenue NE, said the small business is operating in a challenging and competitive environment. The owner is looking for any opportunity to bring more customers to the facility. None of the plans the owner has for the site and the business can be put into play without first changing the current residential designation.

Mr. Siamak Soroor, 9815 NE 29th Street, said he lives near the site and shops nearby businesses regularly. He voiced support for the proposed Comprehensive Plan amendment. He said traffic is not an issue for him because of having ready access to the freeway. He said he has also visited Medina Nursery but it does not have the same energy as Bellevue Nursery. The team at Bellevue Nursery are always very helpful and friendly. It is exciting that the owner wants to offer more services.

Mr. Van Lee, 4654 140th Place SE, said he fully supports the proposed rezone of the Bellevue Nursery site. He said he has a passion for horticulture and enjoys the specialties the Bellevue Nursery offers. The staff are passionate about what they do, unlike those who work at Home Depot. He said he wants to pass on to his kids the joy of gardening. Bellevue Nursery should be able to expand as they have outlined to include educational services.

Mr. Andrew Max, 103 South Davies Road, Lake Stevens, said he has known Mr. Tian and his family for well over 20 years. He said no one should feel threatened by his motivations for wanting to change the designation on his property. The family are wonderful people who care about their community. The proposal only seeks an action that will make something functional for the community. He said he was the one who introduced Mr. Tian to the previous owner of the Bellevue Nursery. The level of excitement Mr. Tian portrayed when he heard that the business was for sale was amazing. The Bellevue Nursery is the kind of business Bellevue should want to see continue operating, and the Tian family are the kind of people the neighborhood should want to see living there. Change happens, some of which is good and some of which is bad. What is proposed for the Bellevue Nursery site will not really change anything; it will only make something that already exists better. The site operates commercially and has never had a house on it. It only makes sense to make the change to Neighborhood Business.

Ms. Lynn Holmes, 1021 104th Avenue SE, said she lives within walking distance of the nursery. She said she is a customer, an employee and a neighbor of the business. She said she left a corporate job in Seattle to follow her bliss by using her passion for gardening. Bellevue Nursery gave her the opportunity to have a second career from which she has never looked back. Bellevue has changed and with it both the skyline and the tree line, but there is a vibrancy all the new growth has brought. Bellevue Nursery is not the biggest and shiniest nursery in Bellevue. Because of its small footprint, its specialty is small-space gardening, something that fits perfectly with the new demographics of the city. The nursery wants to do more without necessarily getting bigger. It wants to offer more services to the neighborhood.

Mr. Yawen Yu, 1536 139th Lane NE, voiced objection to the proposed change to the Bellevue Nursery site. The nursery is located in the middle of a residential area and the change from residential to commercial may introduce all kinds of allowed businesses to the neighborhood.

Keeping it as residential would allow the nursery use to continue. A commercial designation on the site would impact the quality of life for those living around the nursery, and will diminish area property values. She asked if the city had received any concrete plans from the Bellevue Nursery site owners, such as a permit application.

Mr. Curtis Max, 103 South Davies Road, Lake Stevens, said he has known Mr. Tian since the age of three and as such was able to speak to his character. He said his family and the Tian family are close and that he worked at one time at Bellevue Nursery and through that learned to love Bellevue, where he now works at Symetra Securities. The Bellevue Nursery staff are always helpful and friendly. The Tian family can be trusted to do what they say they will do with their property given a change to a commercial designation.

Mr. Xintian Yang, 827 104th Avenue SE, said his home is across the street from the Bellevue Nursery. He expressed his concerns and objections to rezoning the site. The final review criterion of changed conditions is tied to the last time the map was amended, and that criterion has not been met. In 2015 there was a citywide update to the Comprehensive Plan. The Bellevue Nursery has been where it is for decades, and the zoning conflict has also been there for decades. In years past no change has been made to the designation because it has not been found that there have been significant changes. The same still applies and the property owner should not be able to continue claiming that there have been significant changes. With regard to the SEPA evaluation, the applicant downplays the fact that the proposal will create impacts to the surrounding environment, particularly traffic. If the site is changed from residential to commercial, either the current property owner will redevelop the site or will sell it to a developer who will, either of which will increase traffic. The criterion that the subject property is suitable for development in general conformance with the surrounding area is not met given that the surrounding area is all residential.

Ms. Shuyang Liu, 827 107th Avenue SE, voiced objection to the proposed Comprehensive Plan amendment. She said everyone assumes the change from residential to commercial is needed for the Bellevue Nursery to survive, but that is not necessarily true. The property owner claims that in order to survive they need to add a coffee stand as well as meeting rooms and classrooms, something they say cannot be done under the current zoning. However, the LUC 20.20.560 allows nonconforming businesses to file permits to upgrade their sites. There is no record that Bellevue Nursery even attempted to take that route. The Bellevue Nursery could also apply for variances to achieve the site upgrades wanted, but that has not been done either. The fact that the property owner has moved directly for a rezone could result in a variety of businesses being permanently allowed to operate on the site. Once rezoned, the land will be more attractive to buyers and the site will no longer be limited to a nursery. The rezone likely will help to accelerate the end of the nursery business instead of helping the business. The owner is a real estate agent. The Commission should favor the approach that will keep the nursery operating as a nursery.

Ms. Wei Du, 750 122nd Avenue NE, voiced opposition to the proposed Bellevue Nursery Comprehensive Plan amendment. She said traffic conditions are already bad and there is a backup during rush hour all the way between the downtown and I-90. Changing from residential to commercial could bring in more business and more traffic, impacting the commute of all the people who use Bellevue Way. The proposed rezoning will open a lot of possibilities for future land uses on the site, including the sale of alcohol and smoking products. Students from Bellevue High School would rush down there and hang out after school. Restaurants could be allowed under the proposed zoning, which would add more to the traffic problems.

Ms. Ruth Ruppert, 4315 Lake Washington Boulevard NE, Kirkland, said she has an office in Bellevue and also owns homes in Bellevue. She spoke in support of the proposed Bellevue Nursery Comprehensive Plan amendment. She said she has frequented the Bellevue Nursery for more than 30 years. She said her professional background is in land use and producing environment impact statements, five levels of hydrology and rezoning properties. Many of her projects involved building homes for tens of thousands of people and there was a lot of process involved. She said in looking at the Bellevue Nursery site, everything should be kept in perspective. The site is very small and should have been rezoned a long time ago. It should be viewed in light of a master plan. A \$50 billion mass transit project is coming soon within walking distance of the site.

Mr. Vinm Bui, 1013 104th Avenue SE, said he is new to Bellevue having just recently purchased his home near the nursery. He said it was clear to him that many enjoy planting and horticulture and said he enjoys it too. He said he likes having the nursery nearby and likes the owner's plans to make the nursery a better place. He voiced concern, however, over the lack of assurances that the nursery will continue to operate. If the site were to be rezoned and then sold, other businesses that are allowed under Neighborhood Business would be permitted on the site. He said he would support a compromise under which the rezone would be allowed in exchange for ensuring the nursery business would remain.

Mr. Roger Hirsch, 10214 SE 8th Street, said he has been a neighbor of the nursery for 43 years. He said he also was the former chair of the CAC for the South Bellevue subarea study. He said he opposed the proposed rezone to NB for the nursery site. A few businesses interspersed within a single family district does not create a linear business district. The language creep is concerning. It is hard to dust off a Comprehensive Plan once it is enforced. Words once in are hard to get out as things get memorialized. He said he could support something in between involving a stipulated agreement by all parties. A parcel two blocks north of the nursery site was rezoned and it affected essentially a corridor that determined the designation between single family and multifamily that has existed for 35 years. That is how important a single rezone of a single property can be.

Ms. Mona Jarman-Hirsch, 10214 SE 8th Street, said she has lived in her current home for 43 years and has been involved in community planning in Bellevue since 1974, including work on the subarea plan that established SE 6th Street as the demarcation between multifamily and single family. She said she has no quarrel with the nursery and would like to see it continue. However, the proposal does not meet the review criteria laid out in the Comprehensive Plan. It is not consistent with the Southwest Bellevue subarea plan which has the overarching goal of preserving the residential neighborhood. The subarea is completely residential and there has been new investment made in new single family houses right across the street from the nursery, which is evidence of the vitality of the area as a residential community. The nursery site is not a neighborhood commercial center, it is an isolated parcel. There are no changed conditions to warrant the amendment and the rezone. The area is residential and has been such for a long time. There has been significant redevelopment in the form of multifamily but that is farther south along Bellevue Way. The nursery site is 1700 feet away from the next Neighborhood Business zone. It is not a continuous linear community center. The amendment will not enhance the public health, safety or welfare given that there are already code compliance issues having to do with right-of-way. There are enormous traffic problems in the area. The city did a traffic study costing more than \$70,000 that was focused on traffic calming on SE 8th Street and SE 6th Street. City staff made it clear that they are limited in what they can do to control traffic in the area. There are no guarantees that once rezoned the property will continue to operate as a nursery; there could be anything from a restaurant to a convenience store or gas station.

Mr. Xiaoding Zhou, 10223 SE 8th Street, said he has lived in his home one block from the nursery for five years. He agreed with those who had said the Bellevue Nursery is very important to the local community. Everyone wants to see it continue operating as it has been for the past 60 years. After rezoning the site, there is no guarantee the business will continue for another six decades. The current owner is an active realtor and knows the value of rezoning the site. It is hard to believe the nursery will continue to operate if the site is rezoned. The business can continue to operate under the current zoning.

Mr. Ming Zhang, 10422 SE 24th Place, expressed his concerns and objections to the proposed amendment. The nursery is loved by all and everyone wants to see it continue where it is forever. The proposed rezone injects the possibility that the nursery might go away. Retaining the current zoning virtually guarantees the use will not go away. The city should work with the owner to find a way to achieve the upgrades the owner wants without rezoning the site.

A motion to close the public hearing was made by Commissioner deVadoss. The motion was seconded by Commissioner Moolgavkar and the motion carried unanimously.

Commissioner Morisseau noted the applicant had indicated a desire to offer increased services for the community, including a coffee place and a bakery. She asked if there were any way for the applicant to achieve those outcomes without approving the Comprehensive Plan amendment and subsequent rezone. Mr. Matz said the applicant has said the additional services can be provided within the existing development footprint on the site. Everyone acknowledges that the site is constrained, something that would affect any development of the site. The site cannot be rezoned without a Comprehensive Plan amendment. A variance is something that happens when nothing else can be done and there are no other options. For example, where someone only has ten feet of front yard, they cannot meet a 15-foot setback. As to the idea that the nonconforming use provisions of the Land Use Code can be used to allow the business to limp along, those provisions are quite clear in allowing a nonconforming use to continue by successive owners or tenants, except where a use has been abandoned. Repairs to nonconforming structures are permitted, though expansion is not allowed unless the expansion conforms to the regulations of the code. There is a provision that allows for expansion provided the fair market value of the remodel does not exceed 100 percent of replacement value. The nonconforming use provisions are designed to sustain an existing use at current levels but they do not allow further intensifying the use of a site. By not allowing nonconforming uses to be remodeled or expanded, the nonconforming use provisions are designed to ease something out and move things along toward conformity. The Bellevue Nursery has nonconforming structures, is a nonconforming use in that nurseries are not allowed in residential districts, and the site is nonconforming because it does not have the necessary parking and other attributes required of a commercially developed or Neighborhood Business site. There is no other tool in the toolbox to address the existing policy conflict.

Commissioner deVadoss asked if there had been similar nonconformance scenarios addressed by the city in the past. Mr. Matz said Department of Development Services staff do not keep record of nonconforming uses and how they were resolved because the outcomes have rested largely on decisions made by property owners. He said he could not think of other situations involving nonconforming uses that mirror what is happening on the Bellevue Nursery site. There have been situations in which a residential use wanted to be more intense or move toward a commercial designation, but they have not raised the question of the existing nonconforming status of what is there currently.

Chair Barksdale asked for clarification regarding the timeline. He said it was his impression that it is like a statute of limitations relative to the last update or change. Mr. Matz explained that there is no statute of limitations addressing whether or not decisions are ripe or not. The last time the pertinent map or text was amended was when the site received its designation. At subsequent points in time the plan was reviewed, including the Southwest Bellevue subarea plan process and the city's ten-year Comprehensive Plan update, but the Bellevue Nursery site did not come up. When adopted in 1996, the subarea plan did not address the site or call it out in any way. The point at which a significantly changed condition exists the point at which the issue is raised in search of a resolution. There is no "miss and you're out" scenario. The Comprehensive Plan is a living document that is supposed to help the city evolve and move forward. Opportunities or conflicts may exist for years, but it is at the point when an owner or someone else steps forward claiming to have a problem that the analysis of significantly changed conditions kicks in.

Commissioner Moolgavkar asked about the linear business designation. She noted that some of those providing testimony pointed out that most of the businesses are on the east side of the road and that the Bellevue Nursery is an isolated case on the west side. She asked how the city made the linear business determination given that there are homes and churches in between the uses. Mr. Matz said it is not an actual classification. Staff took a close look at how they would apply Neighborhood Business policies that support the stabilization and retention of local business. The exercise looked at pattern evidences. The idea of a linear district is legitimate in the same way a circular or concentrated district can exist. People do not necessarily think of the area as a linear district but they do think about having to go to the nursery, to the gas station and to the dry cleaners. That can be accomplished in some locations by driving around a parking lot, or by driving a linear pattern. The existing linear configuration serves the neighborhood in the same way.

Commissioner Morisseau suggested the point can be argued that the site as it is supports a sustainable business, one that has been around for more than 50 years. She said she understood the idea of a conflict in the plan but added that she found it somewhat flawed. It can also be argued that everything surrounding the site is residential. Nothing precludes the business from continuing to operate as a sustaining local business from a policy perspective. If for some reason the business should go away, the site will become a residential site, which is in conformance with the policies of the Comprehensive Plan. She said she found it difficult based on the criteria and the proposed rezoning that the proposed approach is the right solution.

Commissioner Malakoutian said the Commission's decision should not be based on the intentions of the property owner, because that could change at any time. The Commission cannot just assume that the business is sustainable based on the fact that it has been in operation for 60 years. The decision of the Commission should be based on the fact that the nursery business is a legally nonconforming operation. The fact is the current land use designation of residential is in conflict with the nursery business and is causing problems for the business.

Commissioner Morisseau said the decision of the Commission should be based on the criteria. There is a conflict of policy, and that is one of the criteria.

Mr. Matz said it is incumbent upon the plan to resolve conflicts in policy. There are two elements in play, policy and map. There is no policy that says the site must be kept residential, but there is in place a designation that says the site is residentially designated. The policies drill down to how neighborhood centers and businesses are sustained, including businesses that are not in centers. The Bellevue Nursery is specifically called out specifically in the subarea plan as an example of one of those neighborhood businesses. There is a conflict between the policy

intent and how to realize that, and the designation on the site. While there is no policy that says the site must be kept residential, ~~but~~ there is the presumption that a designation is a designation. That fact could actually drive the discussion more toward resolving the conflict in favor of the site as appropriate for residential uses. The nonconforming use provisions are not part of the city's policy tools; they are not part of the policy choices that can be made. Where there are policies that conflict with designations, it is to the mutual benefit of all to resolve those conflicts. Nonconforming uses are used as a tool to resolve the policy of the city's intent to support local business. Because the issue exists under the decision criteria for significantly changed conditions, it has been brought forward by the owner of the property, and it is incumbent upon the city to resolve the conflict. The plan does not anticipate that such conflicts can be resolved through the nonconforming use provisions. The plan says designations either must be allowed to play out, or the conflicts must be resolved with the policies that exist to support neighborhood businesses.

Commissioner deVadoss said the fact is a nursery is operating in a residential zone. The use was clearly allowed at some point in the past, but now the use is not allowed. So long as the exception is grandfathered, things will continue as they are, but unless the business continues to operate, the site must convert back to residential. Mr. Matz agreed and said that is what the designation suggests. However, local businesses will not be sustained by letting nature take its course. By doing nothing, the policy of the city in regard to supporting and sustaining local businesses will not be implemented.

Commissioner deVadoss said he understood that logic but added that he could not see any compelling arguments as to what could not be done by the existing business and property. The city could probably do more to help the property owner mitigate the potential conflicts as opposed to making a choice that it will be very difficult to pull back from at some future time. Mr. Matz clarified that the nonconforming use is not allowed to do anything other than what it is already doing. It could not add a coffee shop or things of that nature, and there is nothing the city can do to help grandfather a nonconforming business. The nonconforming use provisions exist to encourage uses to come into conformance. In the case of the Bellevue Nursery site, that would argue in favor of making the site residential, which conflicts with the nature of the existing business and use as part of a neighborhood center, for which there is policy that specifically endorses sustaining and retaining those businesses. The business cannot grow under the nonconforming use provisions.

Commissioner deVadoss said he understood and agreed with the city's desire to encourage third places, and agreed it would appear that Bellevue Nursery is a thriving third place. However, there is also a need to defer to zoning policies. He said his view was that the rezoning would not be in conformance with the adjacent land use and the surrounding development patterns. He stressed the need to be careful about making a decision that cannot be later retracted.

Chair Barksdale commented that if nothing is done, the business will not be in conformance with the surrounding residential properties. At the same time, rezoning the site to Neighborhood Business would also essentially create a site that is out of conformance with the surrounding residential properties. Mr. Matz said there are currently three categories of nonconformance, building, site and use, all of which exist because of the site's current residential zoning. Rezoning to a commercial district would mean the use would no longer be nonconforming, though it would still be nonconforming in terms of site and building. Redevelopment of the site to include a coffee shop or other amenities would be allowed only insofar as the city's rules and regulations are followed. By intent in execution, there must be districts that exist side-by-side that are not the same thing. The city's zoning code forces redevelopment to comply with the

rules and regulations associated with a particular district, which include setbacks, building height and parking requirements, which are aimed at managing the impacts of putting dissimilar uses next to each other.

Commissioner Malakoutian suggested that the nonconforming situation cannot simply be left alone. The site cannot be turned back to residential because there is a business already there that everyone wants to see remain there. The right solution for the business and for the city's policies is to make the site conforming.

Commissioner deVadoss said his concern was not about what is in the mind of the property owner. He said his concern was focused on what the significantly changed conditions were. He said he saw no compelling argument that anything had significantly changed. Mr. Matz said the proposed amendment demonstrates evidence of significant change due to the unanticipated consequences of an adopted policy, namely the historical establishment of a residential land use designation direction redevelopment setting up a conflict with the reality of the site and its extremely long-tenured use for commercial purposes. The plan did not expect that the site would be so successful. What the plan did not expect and what it did expect constitute a legitimate significantly changed condition. The success of the site was not expected, yet the success of the site got validated through subarea plan policy and with the idea of the city trying to sustain and retail local businesses. It is now incumbent upon the city to resolve the conflict in some fashion.

Mr. Cullen allowed that the decision was not an easy one to make. He said the Comprehensive Plan will always have competing policies. What it oftentimes comes down to is where the Commissioners as individuals put the weight on those policies. Regardless of what the use on the site is currently, the question is whether or not the long-term direction for commercial makes sense for the site. The arguments proposed in favor of that suggest the site and the use is part of a neighborhood-serving business commercial district that may not be contiguous but which is used in that manner. On the other hand there is policy about retaining residential areas that are already planned for residential. There is also a call in the plan to seek to preserve existing neighborhood commercial centers. There is no right or wrong answer and no silver bullet because both sides can clearly be argued.

Chair Barksdale asked about the available tools to be used in either scenario. Mr. Matz said what is before the Commission is a proposed plan amendment that would change the site to Neighborhood Business. In terms of other solutions to resolve the question, there are none.

A motion to recommend to the City Council adoption of the Bellevue Nursery amendment to the Comprehensive Plan was made by Commissioner Moolgavkar. The motion was seconded by Commissioner Malakoutian. Commissioners Moolgavkar and Malakoutian voted in favor of the motion, and Commissioners deVadoss and Morisseau voted against the motion. Chair Barksdale broke the tie by voting in favor of the motion.

Chair Barksdale clarified that his vote was in support of the long-term intent of the policy to support neighborhood businesses.

Commissioner Morisseau said she wanted the Council to have presented to them the minority opinion. Mr. Cullen said the Chair could outline the salient points when making the presentation of the resolution to the Council.

Commissioner Morisseau said she did not feel as though the staff presented the Commission with sufficient information regarding nonconforming sites. That issue should also be made to the

Council. Commissioner deVadoss agreed and said what was missing was the tools at the right level of granularity, leaving an all or nothing situation. Mr. Matz clarified that the nonconforming use provisions in the Land Use Code will not solve the conflict the proposed amendment raised. What they do, however, is clarify keep nonconforming businesses operational.

iii. Red Town

(8:46 p.m.)

A motion to open the public hearing was made by Commissioner Moolgavkar. The motion was seconded by Commissioner Malakoutian and the motion carried unanimously.

Mr. Matz explained that the proposal would amend 1.56 acres of the Newcastle subarea map from Single Family-Medium (SF-M) to Single Family-Urban Residential (SF-UR). The subject property address is 16425 SE Cougar Mountain Way and it is developed with a single family home. He said the recommendation of staff was to approve the application because it satisfies all of the Land Use Code decision criteria for final review of a privately initiated Comprehensive Plan amendment.

Mr. Matz noted that during threshold review it was indicated that the city was active in figuring out appropriate densities for areas as they annexed and developed in the 1980s and 1990s, including through the Lakemont land use studies. The intent and language of the subarea plan was to marry the appropriate level of urban infrastructure with the kind of densities expected for the area.

In the opinion of the staff, the proposed Red Town Comprehensive Plan amendment is consistent with the Comprehensive Plan; addresses the interests and changed needs of the entire city; and addresses ~~the~~ significantly changed conditions since the last time the pertinent Comprehensive Plan text or maps were amended. The Lakemont-area neighborhoods have been built at densities that have effectively supported the parks, critical areas preservation, and the streets and transit infrastructure intended for urban development levels. The question of appropriate density has never been asked in regard to the Red Town site. The site can be suitably developed under the potential zoning classification and in fact the dimensional configurations associated with the proposed R-7.5 make it more practical to develop. The densities to the east, south and west of the site are real R-7.5 and perceived R-7.5 because of the use of a planned unit development. The proposal also demonstrates a public benefit and enhances the public health, safety and welfare.

Ms. Pamela Johnson, 3741 122nd Avenue NE, said Red Town does not need a Comprehensive Plan change. The best use of the site is not the best economic value but rather the best use for the community. The urban residential character is consistent with Cougar Mountain/Lakemont, which is in line with the urban village overlays. Red Town, however, is not part of a village. The policies allow for villages that go through the master plan process. The site was not in fact overlooked. Ordinance 4424 talks about it. Every site was considered and every site contributes to the overall plan. There is language about the overall mix of housing types and overall densities, and there are development caps for each village. Ordinance 4424 was approved in 1992, incorporation occurred in 1995, and the Albright development occurred in 2006. In 2006 there were also changes made relative to easements for the Red Town site. The property is subject to established conditions, and infill development is covered by policy. The ordinance included 30 percent lifetime affordable housing when going to R-7.5. The proposal is not consistent with the Comprehensive Plan. There are no significantly changed conditions.

A motion to close the public hearing was made by Commissioner deVadoss. The motion was seconded by Commissioner Moolgavkar and the motion carried unanimously.

Chair Barksdale asked for a staff reaction to the testimony. Mr. Matz said he was part of the process in the 1980s and 1990s and was the one who wrote the policies. He said he was there when the subarea plan was developed and during the process of managing annexed and subdivided properties. He said he was part of dealing with the master village concept which was realized only in part. He reiterated that in the opinion of the staff the proposed Comprehensive Plan amendment meets all of the Land Use Code decision criteria, including consistency with the Comprehensive Plan and the Newcastle subarea. The site was in fact overlooked in the work done to match appropriate levels of urban density with appropriate infrastructure.

Commissioner Moolgavkar asked how the site came to be overlooked. Mr. Matz explained that there were three things going on. First, the subarea plan involved updating the King County version. Second, people were coming in to talk specifically about their properties. Third, at the time SF-UR was a new tool in the city's toolbox and consideration was given to where it would work and where it would not work. Also at the time inclusionary zoning was a tool used to bring about affordable housing; that tool no longer exists. The Red Town site never was subjected to any of those considerations in that it was never part of the bigger items being dealt with.

A motion to recommend to the City Council adoption of the Red Town amendment to the Comprehensive Plan was made by Commissioner Morisseau. The motion was seconded by Commissioner Malakoutian and the motion carried unanimously.

Mr. Matz informed the Commissioners that the recommendations on the resolutions will be before the City Council in study session on November 26, and final action is slated for December 10.

8. STUDY SESSION – None  
(9:00 p.m.)

9. OTHER BUSINESS – None  
(9:00 p.m.)

10. APPROVAL OF MINUTES  
(9:00 p.m.)

A. September 12, 2018

A motion to approve the minutes as submitted was made by Commissioner Morisseau. The motion was seconded by Commissioner Malakoutian and the motion carried without dissent; Commissioners deVadoss and Moolgavkar abstained from voting.

B. September 26, 2018

A motion to approve the minutes as submitted was made by Commissioner Morisseau. The motion was seconded by Commissioner Malakoutian and the motion carried without dissent; Chair Barksdale and Commissioner deVadoss abstained from voting.

11. CONTINUED ORAL COMMUNICATIONS  
(9:02 pm.)

Ms. Pamela Johnson, 3741 122nd Avenue NE, said one thing not discussed relative to the Bellevue Nursery Comprehensive Plan amendment was the fact that they are using a church site as part of its parking lot. If that relationship goes away, parking will be an issue. If rezoned to Neighborhood Business, the site will have to have parking available.

Mr. Matz explained that there is a shared use parking provision in the Land Use Code that allows a site to use another site's parking area. Such agreements must be in writing, which is the case for Bellevue Nursery.

12. EXECUTIVE SESSION – None  
(9:04 p.m.)

13. ADJOURN  
(9:04 p.m.)

A motion to adjourn was made by Commissioner deVadoss. The motion was seconded by Commissioner Morisseau and the motion carried unanimously.

Chair Barksdale adjourned the meeting at 9:04 p.m.