

Ordinance No. 123609

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 102 of the Official Land Use Map to rezone property located at 711 Bellevue Avenue East from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60), and accepting a Property Use and Development Agreement in connection therewith. (Petition by Lesley Bain, C.F. 310211, DPD Project 3010378).

Council Bill No. 11719
(11719)

Related Legislation File: _____

Date Introduced and Referred: 5.23.11	To: (committee): Built Environment
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: 5.31.11	Date Presented to Mayor: 6.1.11
Date Signed by Mayor:	Date Returned to City Clerk:
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Samy V. Lewis

Committee Action:

Date	Recommendation	Vote
<u>052511</u>	<u>REPASS</u>	<u>3-0 SC, TB, SB</u>

This file is complete and ready for presentation to Full Council. _____

Full Council Action:

Date	Decision	Vote
<u>5.31.11</u>	<u>Passed</u>	<u>8-0 (M.O. excused)</u>

ORDINANCE 123609

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 102 of the Official Land Use Map to rezone property located at 711 Bellevue Avenue East from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60), and accepting a Property Use and Development Agreement in connection therewith. (Petition by Lesley Bain, C.F. 310211, DPD Project 3010378)

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. This Ordinance affects the following legally described lots ("the Property") commonly known as 711 Bellevue Avenue East:

LOTS 1, 16, 17 AND 18, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON; EXCEPT THAT PORTION OF LOTS 16, 17 AND 18 CONVEYED TO THE STATE OF WASHINGTON FOR PRIMARY STATE HIGHWAY NO. 1, SEATTLE, FREEWAY, BY DEED RECORDED UNDER RECORDING NUMBER 5060053. SUBJECT TO ALL MATTERS OF RECORD.

AND

LOT 2, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON.

AND

THE SOUTH 40 FEET OF LOT 3, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON.

AND

SOUTH 20 FEET OF LOT 4 AND THE NORTH 20 FEET OF LOT 3, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON.

AND



1 NORTH 40 FEET OF LOT 4, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE,
2 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING
3 COUNTY, WASHINGTON.

4 AND

5 THOSE PORTIONS OF BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE,
6 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING
7 COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

8 THE SOUTH 8 FEET OF LOT 5 OF SAID BLOCK; ALSO THAT PORTION OF LOT 14 OF SAID
9 BLOCK 5, DESCRIBED AS FOLLOWS:

10 BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 14; THENCE WEST ALONG THE
11 SOUTH LINE OF SAID LOT 85.30 FEET TO THE SOUTHWEST CORNER OF THE TRACT CONVEYED TO
12 PERSIS A. LIVESLEY BY DEED DATED MAY 27, 1905 AND RECORDED UNDER RECORDING NUMBER
13 341209;

14 THENCE NORTHEASTERLY ALONG THE WEST LINE OF SAID LIVESLEY TRACT TO ITS
15 INTERSECTION WITH A LINE RUNNING WEST PARALLEL WITH THE SOUTH LINE OF SAID LOT
16 FROM A POINT ON THE EAST LINE OF SAID LOT, 8 FEET NORTH OF THE SOUTHEAST CORNER
17 THEREOF; THENCE EAST ALONG SAID PARALLEL LINE TO SAID POINT ON THE EAST LINE OF SAID
18 LOT; THENCE SOUTH ALONG THE EAST LINE, 8 FEET TO THE POINT OF BEGINNING;

19 ALSO LOT 15 OF BLOCK 5; EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

20 BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 15; THENCE EAST ALONG THE
21 NORTH LINE OF SAID LOT 87.21 FEET; THENCE IN A SOUTHWESTERLY DIRECTION 59.70 FEET TO A
22 POINT 121.92 FEET WEST OF THE EASTERLY LINE AND 10 FEET NORH OF THE SOUTHERLY LINE OF
23 SAID LOT 15;

24 THENCE WEST PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 50 FEET TO A POINT
25 ON THE WESTERLY LINE OF SAID LOT 15; THENCE NORTHERLY ALONG SAID WESTERLY LINE
26 50.21 FEET TO THE POINT OF BEGINNING; AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED
27



1 LOTS CONVEYED TO THE STATE OF WASHINGTON FOR PRIMARY STATE HIGHWAY NO. 1
2 (SEATTLE FREEWAY) BY DEEDS RECORDED UNDER RECORDING NUMBERS 5094103 AND 5105999.

3 Section 2. The Official Land Use Map zone classification, established on page 102 of the
4 Official Land Use Map, and adopted by Ordinance 110381 and last modified by Ordinance
5 123589, is amended to rezone the Property from Lowrise 3 (LR3) to Midrise with a 60 foot
6 height limit (MR-60), as shown in Exhibit A of this ordinance. The Official Land Use Map zone
7 classification is conditioned upon performance and continued compliance with the conditions of
8 the Property Use and Development Agreement referenced in Section 3 of this ordinance.

9 Section 3. The Property Use and Development Agreement, attached to this Ordinance
10 as Exhibit B, is hereby approved and accepted.

11 Section 4. The rezone approval of the Property expires, pursuant to Section
12 23.76.060.B of the Seattle Municipal Code, six years from the effective date of approval, unless,
13 within the six year period, an application is filed for a Master Use Permit, which permit is
14 subsequently issued. If the permit is subsequently issued, the rezone remains in effect unless
15 revoked pursuant to Section 23.34.004.

16 Section 5. The City Clerk is hereby authorized and directed to file said Property Use
17 and Development Agreement, attached to this ordinance as Exhibit B, at the King County
18 Records and Elections Division; to file, upon return of the recorded agreement from the King
19 County Records and Elections Division, the original of said Property Use and Development
20 Agreement with this Ordinance at the City Clerk's Office; and to deliver copies of the same to
21 the Director of the Department of Planning and Development and to the King County Assessor's
22 Office.
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1 Section 6. This Ordinance, effectuating a quasi-judicial decision of the City Council and
2 not subject to mayoral approval or disapproval, shall take effect and be in force thirty (30) days
3 from and after its passage and approval by the City Council.

4 Passed by the City Council the 31 day of May, 2011, and
5 signed by me in open session in authentication of its passage this

6 31 day of May, 2011.
7

8 

9 _____
10 President _____ of the City Council

11 Filed by me this 31 day of May, 2011.

12 

13 _____
14 Monica Martinez Simmons, City Clerk
15

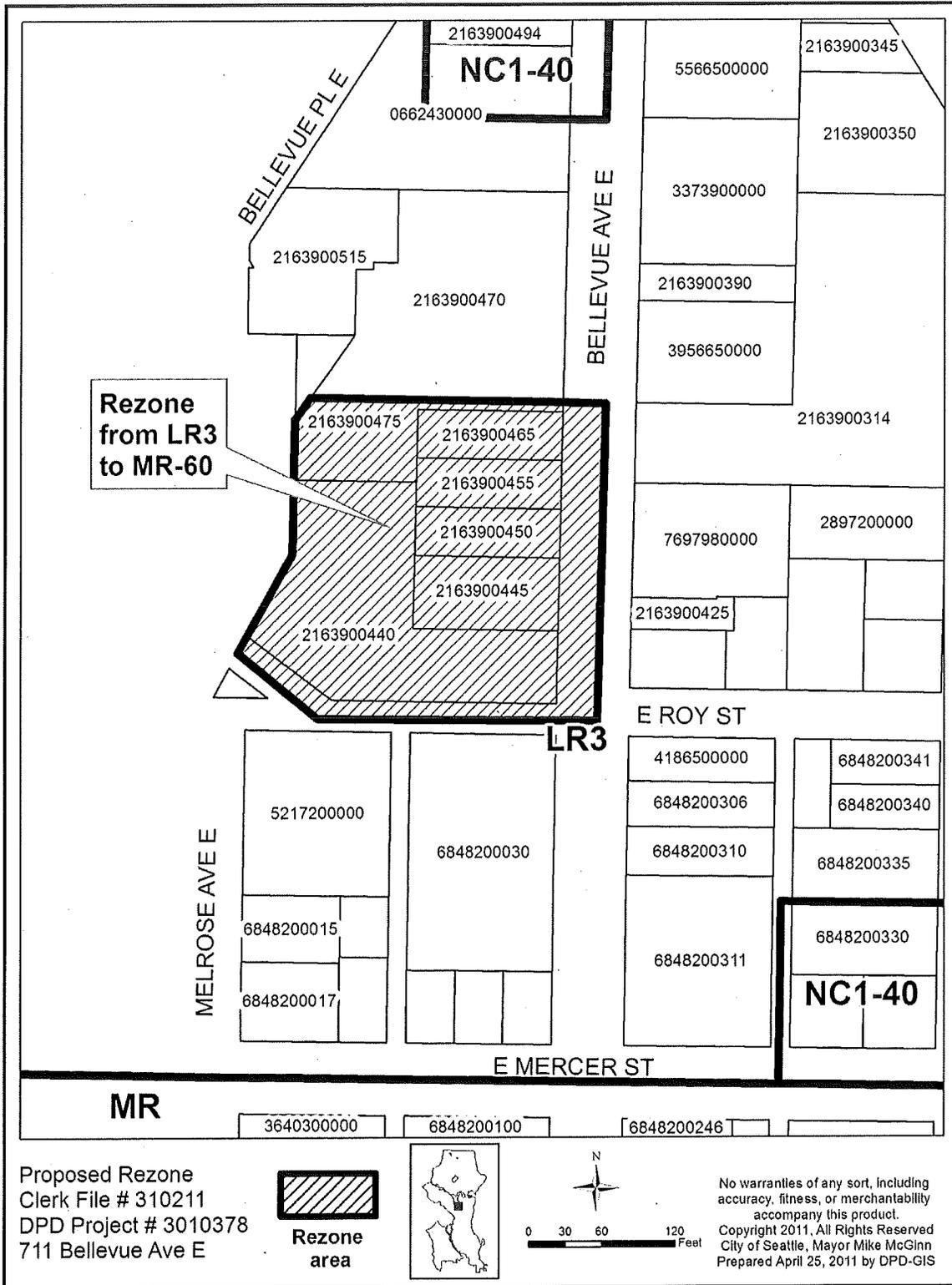
16 (Seal)

17
18 Exhibit A: Rezone Map

19 Exhibit B: Property Use and Development Agreement
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22
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26
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Exhibit A: Rezone Map for 711 Bellevue Avenue East



BUS CITY CLERK

Exhibit B: Property Use and Development Agreement – v.2

When Recorded, Return to:

THE CITY CLERK
600 Fourth Avenue, Floor 3
PO Box 94728
Seattle, Washington 98124-4728

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor: 1) <u>Belroy Homes, LLC</u> 2) _____ <input type="checkbox"/> Additional on page _____
Grantee: 1) <u>The City of Seattle</u> 2) _____ <input type="checkbox"/> Additional on page _____
Legal Description (abbreviated): <u>Lots 1-4, portions of Lots 5 and 14-18, Block 5, East Park Addition.</u>
<input checked="" type="checkbox"/> Additional on : <u>pp. 2-3</u>
Assessor's Tax Parcel ID #: <u>2163900440, 2163900445, 2163900450, 2163900455, 2163900465, 2163900475</u>
Reference Nos. of Documents Released or Assigned: <u>Not applicable.</u>

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this ____ day of _____, 2011, in favor of the **CITY OF SEATTLE** (the "City"), a Washington municipal corporation, by **BELROY HOMES, LLC** (the "Owners"), a Washington limited liability company.

RECITALS

A. Belroy Homes, LLC is the owner of that certain real property (the "Rezone Area") in the City of Seattle zoned Lowrise 3 (LR3) shown in Attachment A and described as:

LOTS 1, 16, 17 AND 18, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON; EXCEPT THAT PORTION OF LOTS 16, 17 AND 18 CONVEYED TO THE STATE OF WASHINGTON FOR PRIMARY STATE HIGHWAY NO. 1, SEATTLE, FREEWAY, BY DEED RECORDED UNDER RECORDING NUMBER 5060053. SUBJECT TO ALL MATTERS OF RECORD.

AND

LOT 2, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON.

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AND

NORTH 40 FEET OF LOT 4, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON.

AND

THOSE PORTIONS OF BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THE SOUTH 8 FEET OF LOT 5 OF SAID BLOCK; ALSO THAT PORTION OF LOT 14 OF SAID BLOCK 5, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 14; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 85.30 FEET TO THE SOUTHWEST CORNER OF THE TRACT

CONVEYED TO PERSIS A. LIVESLEY BY DEED DATED MAY 27, 1905 AND RECORDED UNDER RECORDING NUMBER 341209;

THENCE NORTHEASTERLY ALONG THE WEST LINE OF SAID LIVESLEY TRACT TO ITS INTERSECTION WITH A LINE RUNNING WEST PARALLEL WITH THE SOUTH LINE OF SAID LOT FROM A POINT ON THE EAST LINE OF SAID LOT, 8 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE EAST ALONG SAID PARALLEL LINE TO SAID POINT ON THE EAST LINE OF SAID LOT; THENCE SOUTH ALONG THE EAST LINE, 8 FEET TO THE POINT OF BEGINNING;

ALSO LOT 15 OF BLOCK 5; EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 15; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 87.21 FEET; THENCE IN A SOUTHWESTERLY DIRECTION 59.70 FEET TO A POINT 121.92 FEET WEST OF THE EASTERLY LINE AND 10 FEET NORH OF THE SOUTHERLY LINE OF SAID LOT 15;

THENCE WEST PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 50 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 15; THENCE NORTHERLY ALONG SAID WESTERLY LINE 50.21 FEET TO THE POINT OF BEGINNING; AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED LOTS CONVEYED TO THE STATE OF WASHINGTON FOR PRIMARY STATE HIGHWAY NO. 1 (SEATTLE FREEWAY) BY DEEDS RECORDED UNDER RECORDING NUMBERS 5094103 AND 5105999.

B. On December 17, 2009, the Owners submitted to the City of Seattle an application under Project No. 3010378 for a contract rezone of the Rezone Area from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60). The purpose of the application is to allow the Rezone Area to be used for multifamily residential development and a small commercial space.

C. Seattle Municipal Code (SMC) Section 23.34.004 allows the City to approve a contract rezone subject to “self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts which could occur from unrestricted use and development permitted in the zone.”

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

AGREEMENT

Section 1. Agreement. Pursuant to SMC Section 23.34.004, the Owners hereby covenant, bargain and agree, on behalf of themselves and their successors and assigns, that they will comply with the following limitations and conditions in consideration of the rezone of the Rezone Area from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60):

General conditions:

- 1) Approval of the rezone shall be conditioned upon the development of the proposed project in accordance with the final approved Master Use Permit drawings, dated June 9, 2010, which substantially conform to the conditions established during the design review process, including the structure design, structure height, building materials, landscaping, street improvements, parking lot design and layout, signage, and site lighting.

- 2) The operation of any form of “drinking establishment” (as that term is defined in SMC Section 23.84A.010) shall be prohibited on the site.

SEPA conditions – prior to issuance of any construction, shoring or grading permits:

- 3) The Owners shall provide to the DPD Land Use Planner for approval a Construction Management Plan that identifies construction worker parking and construction material staging areas; truck access routes to and from the site for excavation and construction phases; and sidewalk and street closures with neighborhood notice and posting procedures.
- 4) The Owners shall provide to the DPD Land Use Planner for approval a Construction Noise Management Plan. The Plan shall include a discussion on management of construction-related noise, efforts to mitigate noise impacts, and community outreach efforts to allow people within the immediate area of the project to have opportunities to contact the site to express concern about noise. Activities outside the above-stated restrictions may be authorized upon approval of the Plan to address mitigation of noise impacts resulting from all construction activities. Elements of noise mitigation may be incorporated into any Construction Management Plans required to mitigate any short-term transportation impacts that result from the project.

SEPA conditions – during construction:

- 5) The hours of construction activity shall be limited to non-holiday weekdays between the hours of 7:00 a.m. and 6:00 p.m. and between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays (except that grading, delivery and pouring of cement and similar noisy activities shall be prohibited on Saturdays). This condition may be modified by DPD to allow work of an emergency nature. This condition may also be modified to permit low noise exterior work (e.g., installation of landscaping) after approval from DPD.
- 6) For the duration of the construction activity, the Owners/responsible party shall cause construction truck trips to cease during the hours between 4:00 p.m. and 6:00 p.m. on weekdays.

Design Review condition – prior to the issuance of any Certificate of Occupancy:

- 7) The Owners shall arrange for an inspection with the DPD Land Use Planner to verify that the construction of the buildings with siting, materials, and architectural details is substantially the same as those documented in the approved plans dated June 9, 2010.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the land and shall be binding upon the Owners, their heirs, successors and assigns, and shall apply to after-acquired title of the Owners of the Property.

Section 3. Termination. The covenants herein and the rezone shall expire six (6) years from the effective date of approval, unless, within the six (6) year period, an application is filed for a Master Use Permit, which permit is subsequently issued. The rezone remains in effect during this period unless revoked pursuant to SMC Section 23.34.004.

Section 4. Amendment. This Agreement may be amended or modified by agreement between Owners and the City; provided, such amendment agreement shall be approved by the legislative authority of the City by ordinance.

Section 5. Exercise of Police Power. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 6. No Precedent. The conditions contained in this Agreement are based on the unique circumstances applicable to this Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 7. Benefited. This Agreement is made for the benefit of the City and for the benefit of the owners of property within 300 feet of the Rezone Area and either the City or any such property owners may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 8. Repeal as Additional Remedy. Owners acknowledge that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owners avail themselves of the benefits of this rezone but then fail to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may revoke the rezone by ordinance and require the use of the Rezone Area to conform to the requirements of the Lowrise 3 (LR3) zone.

SIGNED this 26th day of MAY, 2011.

Belroy Homes, LLC
a Washington limited liability company

By: Wyckoff Investments, LLC

By: Dell R. Call
Dell R. Call
Its: Manager

STATE OF WASHINGTON

COUNTY OF KING



SS.

On this day personally appeared before me Dell R. Call, to me known to be the Manager of Wyckoff Investments, LLC, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 26th day of MAY, 2011.

Patricia A. Hughes



Printed Name

PATRICIA A. HUGHES

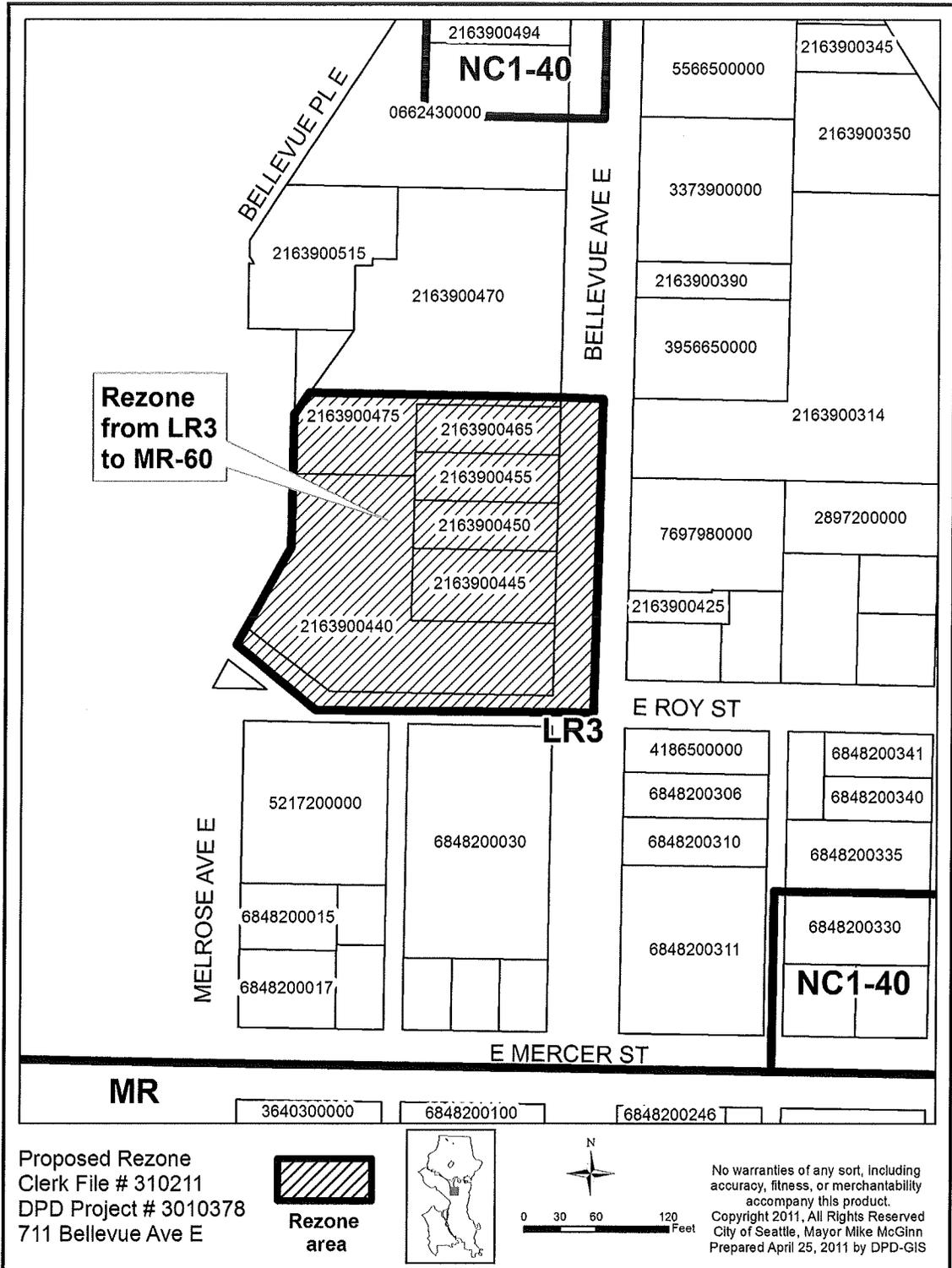
NOTARY PUBLIC in and for the State of Washington, residing at

Edmonds

My Commission Expires

6/9/2013

ATTACHMENT A



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Legislative	Sara Belz, 4-5382	NA

Legislation Title:

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 102 of the Official Land Use Map to rezone property located at 711 Bellevue Avenue East from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60), and accepting a Property Use and Development Agreement in connection therewith. (Petition by Lesley Bain, C.F. 310211, DPD Project 3010378)

Summary of the Legislation:

This legislation effectuates a quasi-judicial rezone of six parcels located at 711 Bellevue Avenue East. The proposed rezone would change the zone designation of the parcels from LR3 to MR-60. A Property Use and Development Agreement is associated with this rezone petition.

Background: (Include a brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable.)

The legislation is a petitioner-generated rezone subject to the Council's rules for quasi-judicial decisions. The original petition, Department of Planning and Development recommendation, Hearing Examiner's Findings and Recommendation, and record established by the Hearing Examiner are contained in Clerk File 310211.

Please check one of the following:

- This legislation does not have any financial implications.**
(Stop here and delete the remainder of this document prior to saving and printing.)



Exhibit B: Property Use and Development Agreement – v.2

When Recorded, Return to:

THE CITY CLERK
600 Fourth Avenue, Floor 3
PO Box 94728
Seattle, Washington 98124-4728

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor:	1) <u>Belroy Homes, LLC</u>	2) _____
	<input type="checkbox"/> Additional on page _____	
Grantee:	1) <u>The City of Seattle</u>	2) _____
	<input type="checkbox"/> Additional on page _____	
Legal Description (abbreviated):	<u>Lots 1-4, portions of Lots 5 and 14-18, Block 5, East Park Addition.</u>	
	<input checked="" type="checkbox"/> Additional on : <u>pp. 2-3</u>	
Assessor's Tax Parcel ID #:	<u>2163900440, 2163900445, 2163900450, 2163900455, 2163900465, 2163900475</u>	
Reference Nos. of Documents Released or Assigned:	<u>Not applicable.</u>	



THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this ____ day of _____, 2011, in favor of the **CITY OF SEATTLE** (the "City"), a Washington municipal corporation, by **BELROY HOMES, LLC** (the "Owners"), a Washington limited liability company.

RECITALS

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AND

LOT 2, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON.

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THE SOUTH 8 FEET OF LOT 5 OF SAID BLOCK; ALSO THAT PORTION OF LOT 14 OF SAID BLOCK 5, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 14; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 85.30 FEET TO THE SOUTHWEST CORNER OF THE TRACT



CONVEYED TO PERSIS A. LIVESLEY BY DEED DATED MAY 27, 1905 AND RECORDED UNDER RECORDING NUMBER 341209;

THENCE NORTHEASTERLY ALONG THE WEST LINE OF SAID LIVESLEY TRACT TO ITS INTERSECTION WITH A LINE RUNNING WEST PARALLEL WITH THE SOUTH LINE OF SAID LOT FROM A POINT ON THE EAST LINE OF SAID LOT, 8 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE EAST ALONG SAID PARALLEL LINE TO SAID POINT ON THE EAST LINE OF SAID LOT; THENCE SOUTH ALONG THE EAST LINE, 8 FEET TO THE POINT OF BEGINNING;

ALSO LOT 15 OF BLOCK 5; EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

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THENCE WEST PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 50 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 15; THENCE NORTHERLY ALONG SAID WESTERLY LINE 50.21 FEET TO THE POINT OF BEGINNING; AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED LOTS CONVEYED TO THE STATE OF WASHINGTON FOR PRIMARY STATE HIGHWAY NO. 1 (SEATTLE FREEWAY) BY DEEDS RECORDED UNDER RECORDING NUMBERS 5094103 AND 5105999.

B. On December 17, 2009, the Owners submitted to the City of Seattle an application under Project No. 3010378 for a contract rezone of the Rezone Area from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60). The purpose of the application is to allow the Rezone Area to be used for multifamily residential development and a small commercial space.

C. Seattle Municipal Code (SMC) Section 23.34.004 allows the City to approve a contract rezone subject to "self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts which could occur from unrestricted use and development permitted in the zone."

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

AGREEMENT

Section 1. Agreement. Pursuant to SMC Section 23.34.004, the Owners hereby covenant, bargain and agree, on behalf of themselves and their successors and assigns, that they will comply with the following limitations and conditions in consideration of the rezone of the Rezone Area from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60):

General conditions:

- 1) Approval of the rezone shall be conditioned upon the development of the proposed project in accordance with the final approved Master Use Permit drawings, dated June 9, 2010, which substantially conform to the conditions established during the design review process, including the structure design, structure height, building materials, landscaping, street improvements, parking lot design and layout, signage, and site lighting.



- 2) The operation of any form of “drinking establishment” (as that term is defined in SMC Section 23.84A.010) shall be prohibited on the site.

SEPA conditions – prior to issuance of any construction, shoring or grading permits:

- 3) The Owners shall provide to the DPD Land Use Planner for approval a Construction Management Plan that identifies construction worker parking and construction material staging areas; truck access routes to and from the site for excavation and construction phases; and sidewalk and street closures with neighborhood notice and posting procedures.
- 4) The Owners shall provide to the DPD Land Use Planner for approval a Construction Noise Management Plan. The Plan shall include a discussion on management of construction-related noise, efforts to mitigate noise impacts, and community outreach efforts to allow people within the immediate area of the project to have opportunities to contact the site to express concern about noise. Activities outside the above-stated restrictions may be authorized upon approval of the Plan to address mitigation of noise impacts resulting from all construction activities. Elements of noise mitigation may be incorporated into any Construction Management Plans required to mitigate any short-term transportation impacts that result from the project.

SEPA conditions – during construction:

- 5) The hours of construction activity shall be limited to non-holiday weekdays between the hours of 7:00 a.m. and 6:00 p.m. and between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays (except that grading, delivery and pouring of cement and similar noisy activities shall be prohibited on Saturdays). This condition may be modified by DPD to allow work of an emergency nature. This condition may also be modified to permit low noise exterior work (e.g., installation of landscaping) after approval from DPD.
- 6) For the duration of the construction activity, the Owners/responsible party shall cause construction truck trips to cease during the hours between 4:00 p.m. and 6:00 p.m. on weekdays.

Design Review condition – prior to the issuance of any Certificate of Occupancy:

- 7) The Owners shall arrange for an inspection with the DPD Land Use Planner to verify that the construction of the buildings with siting, materials, and architectural details is substantially the same as those documented in the approved plans dated June 9, 2010.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the land and shall be binding upon the Owners, their heirs, successors and assigns, and shall apply to after-acquired title of the Owners of the Property.

Section 3. Termination. The covenants herein and the rezone shall expire six (6) years from the effective date of approval, unless, within the six (6) year period, an application is filed for a Master Use Permit, which permit is subsequently issued. The rezone remains in effect during this period unless revoked pursuant to SMC Section 23.34.004.



Section 4. Amendment. This Agreement may be amended or modified by agreement between Owners and the City; provided, such amendment agreement shall be approved by the legislative authority of the City by ordinance.

Section 5. Exercise of Police Power. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 6. No Precedent. The conditions contained in this Agreement are based on the unique circumstances applicable to this Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 7. Benefited. This Agreement is made for the benefit of the City and for the benefit of the owners of property within 300 feet of the Rezone Area and either the City or any such property owners may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 8. Repeal as Additional Remedy. Owners acknowledge that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owners avail themselves of the benefits of this rezone but then fail to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may revoke the rezone by ordinance and require the use of the Rezone Area to conform to the requirements of the Lowrise 3 (LR3) zone.

SIGNED this _____ day of _____, 2011.

Belroy Homes, LLC
a Washington limited liability company

By: Wyckoff Investments, LLC

By: _____
Dell R. Call
Its: Manager



STATE OF WASHINGTON

COUNTY OF KING



ss.

On this day personally appeared before me Dell R. Call, to me known to be the Manager of Wyckoff Investments, LLC, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2011.

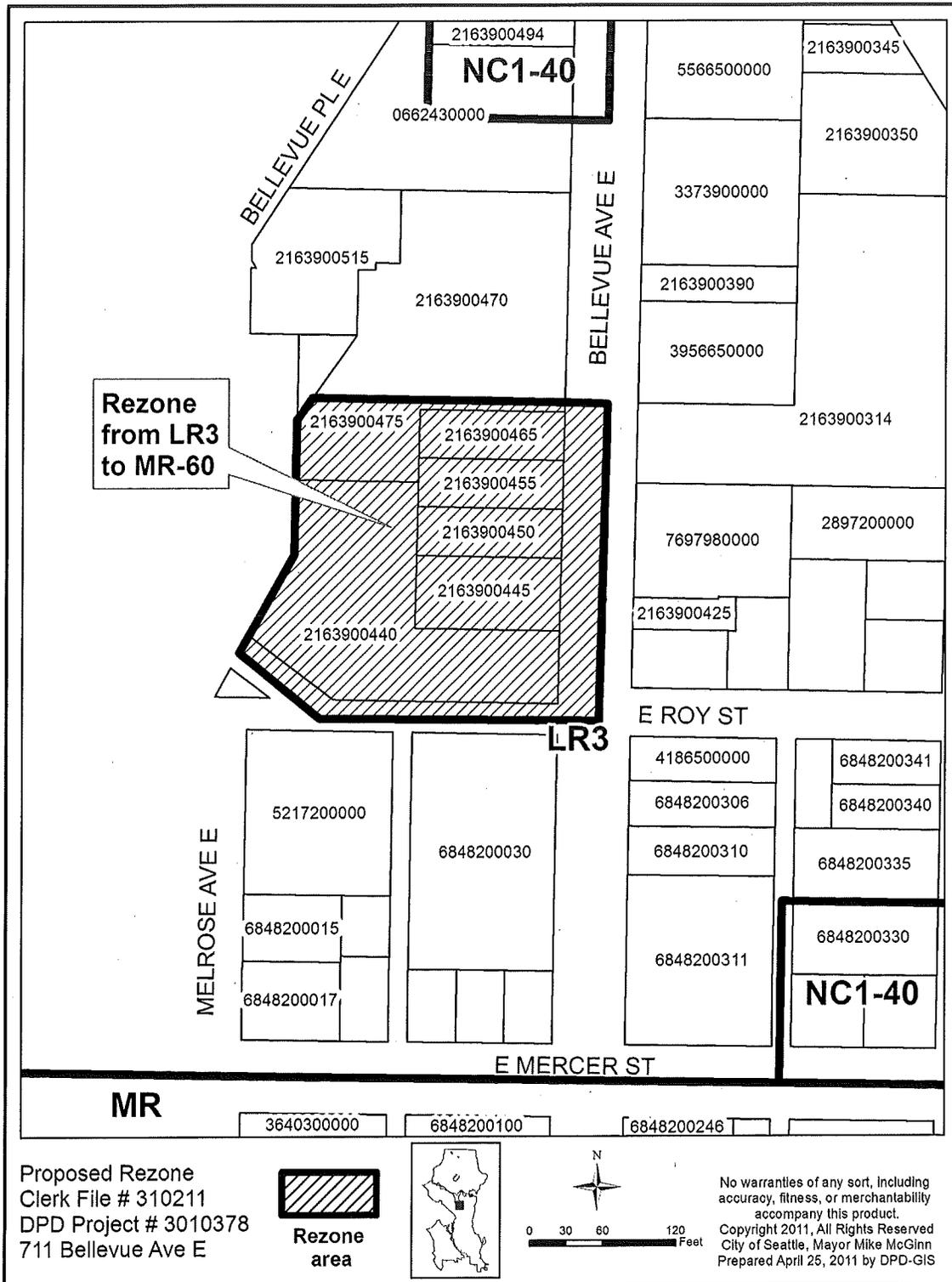
Printed Name

NOTARY PUBLIC in and for the State of
Washington, residing at

My Commission Expires



ATTACHMENT A



STATE OF WASHINGTON – KING COUNTY

--SS.

272660
CITY OF SEATTLE, CLERKS OFFICE

No. 123609,610,611,612,613

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

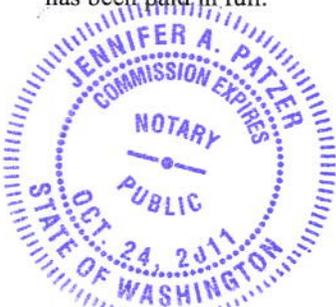
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT: TITLE ONLY ORDINANCE

was published on

06/17/11

The amount of the fee charged for the foregoing publication is the sum of \$ 81.90, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

06/17/11

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle Title Only Ordinances

The full text of the following legislation, passed by the City Council on May 31, 2011, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>.

Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 123609

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 102 of the Official Land Use Map to rezone property located at 711 Bellevue Avenue East from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60), and accepting a Property Use and Development Agreement in connection therewith. (Petition by Lesley Bain, C.F. 310211, DPD Project 3010378)

ORDINANCE NO. 123610

AN ORDINANCE related to fees and charges for permits and activities under Seattle's Building and Construction Codes; repealing sections of Ordinance 123453 and amending Sections 22.900E.050, 22.900C.010, and 22.900D.145 of the Seattle Municipal Code to make technical corrections.

ORDINANCE NO. 123611

AN ORDINANCE relating to Shoreline Street End permits; amending the current Seattle Department of Transportation Street Use Fee Schedule by revising the Shoreline Street End permit fee methodology, and repealing Section 1 and Attachment A of Ordinance 119673, Shoreline Street End Permit Fee Methodology; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123612

AN ORDINANCE relating to the Seattle Streetcar, accepting donations to fund service enhancements, authorizing changes in the streetcar service plan, and ratifying and confirming prior acts.

ORDINANCE NO. 123613

AN ORDINANCE relating to the Seattle Ethics and Elections Commission; authorizing the Executive Director to execute an agreement with the Seattle School District for implementing an ongoing independent ethics and whistleblower protection program for Seattle Public Schools, increasing appropriations in the 2011 Adopted Budget for the Seattle Ethics and Elections Commission, creating a position in the Seattle Ethics and Elections Commission, and ratifying and confirming prior acts; all by a two-thirds vote of the City Council.

Date of publication in the Seattle Daily Journal of Commerce, June 17, 2011.

6/17(272660)

Return Address:

Seattle City Clerk's Office

600 4th Avenue, Floor 3

P O Box 94728

Seattle, WA 98124 - 4728



20110608001133

SEATTLE CITY CLERK
PAGE-001 OF 008
06/08/2011 14:26
KING COUNTY, WA

69.00

WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

Please print or type information

Document Title(s) (or transaction contained therein): (Insert Ordinance or Resolution Number Here)

1. Property Use and Development Agreement accepted by Ordinance 123609

FILED
CITY OF SEATTLE
2011 OCT 24 PM 2:50
CITY CLERK

Grantor(s)

- 1. Belroy Homes, LLC
- Additional names on page ___ of document.

Grantee(s) (Last name first, then first name and initials)

- 1. City of Seattle
- 2.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Lots 1-4, portions of Lots 5 and 14-18, Block 5, East Park Addition

Additional legal on pages 2-3 of document

- N/A

Assessor's Property Tax Parcel/Account Number

2163900440; 2163900445; 2163900450; 2163900455 ; 2163900465 ; 2163900475

- Assessor Tax # not yet assigned.
- N/A

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

Exhibit B: Property Use and Development Agreement – v.2

When Recorded, Return to:

THE CITY CLERK
600 Fourth Avenue, Floor 3
PO Box 94728
Seattle, Washington 98124-4728

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor: 1) <u>Belroy Homes, LLC</u> 2) _____ <input type="checkbox"/> Additional on page _____
Grantee: 1) <u>The City of Seattle</u> 2) _____ <input type="checkbox"/> Additional on page _____
Legal Description (abbreviated): <u>Lots 1-4, portions of Lots 5 and 14-18, Block 5, East Park Addition.</u>
<input checked="" type="checkbox"/> Additional on : <u>pp. 2-3</u>
Assessor's Tax Parcel ID #: <u>2163900440, 2163900445, 2163900450, 2163900455, 2163900465, 2163900475</u>
Reference Nos. of Documents Released or Assigned: <u>Not applicable.</u>

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this ____ day of _____, 2011, in favor of the **CITY OF SEATTLE** (the "City"), a Washington municipal corporation, by **BELROY HOMES, LLC** (the "Owners"), a Washington limited liability company.

RECITALS

A. Belroy Homes, LLC is the owner of that certain real property (the "Rezone Area") in the City of Seattle zoned Lowrise 3 (LR3) shown in Attachment A and described as:

LOTS 1, 16, 17 AND 18, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON; EXCEPT THAT PORTION OF LOTS 16, 17 AND 18 CONVEYED TO THE STATE OF WASHINGTON FOR PRIMARY STATE HIGHWAY NO. 1, SEATTLE, FREEWAY, BY DEED RECORDED UNDER RECORDING NUMBER 5060053. SUBJECT TO ALL MATTERS OF RECORD.

AND

LOT 2, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON.

AND

THE SOUTH 40 FEET OF LOT 3, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON.

AND

SOUTH 20 FEET OF LOT 4 AND THE NORTH 20 FEET OF LOT 3, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON.

AND

NORTH 40 FEET OF LOT 4, BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON.

AND

THOSE PORTIONS OF BLOCK 5, EAST PARK ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 83, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

THE SOUTH 8 FEET OF LOT 5 OF SAID BLOCK; ALSO THAT PORTION OF LOT 14 OF SAID BLOCK 5, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 14; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 85.30 FEET TO THE SOUTHWEST CORNER OF THE TRACT

CONVEYED TO PERSIS A. LIVESLEY BY DEED DATED MAY 27, 1905 AND RECORDED UNDER RECORDING NUMBER 341209;

THENCE NORTHEASTERLY ALONG THE WEST LINE OF SAID LIVESLEY TRACT TO ITS INTERSECTION WITH A LINE RUNNING WEST PARALLEL WITH THE SOUTH LINE OF SAID LOT FROM A POINT ON THE EAST LINE OF SAID LOT, 8 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE EAST ALONG SAID PARALLEL LINE TO SAID POINT ON THE EAST LINE OF SAID LOT; THENCE SOUTH ALONG THE EAST LINE, 8 FEET TO THE POINT OF BEGINNING;

ALSO LOT 15 OF BLOCK 5; EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 15; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 87.21 FEET; THENCE IN A SOUTHWESTERLY DIRECTION 59.70 FEET TO A POINT 121.92 FEET WEST OF THE EASTERLY LINE AND 10 FEET NORH OF THE SOUTHERLY LINE OF SAID LOT 15;

THENCE WEST PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT 50 FEET TO A POINT ON THE WESTERLY LINE OF SAID LOT 15; THENCE NORTHERLY ALONG SAID WESTERLY LINE 50.21 FEET TO THE POINT OF BEGINNING; AND EXCEPT THAT PORTION OF THE ABOVE DESCRIBED LOTS CONVEYED TO THE STATE OF WASHINGTON FOR PRIMARY STATE HIGHWAY NO. 1 (SEATTLE FREEWAY) BY DEEDS RECORDED UNDER RECORDING NUMBERS 5094103 AND 5105999.

B. On December 17, 2009, the Owners submitted to the City of Seattle an application under Project No. 3010378 for a contract rezone of the Rezone Area from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60). The purpose of the application is to allow the Rezone Area to be used for multifamily residential development and a small commercial space.

C. Seattle Municipal Code (SMC) Section 23.34.004 allows the City to approve a contract rezone subject to “self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts which could occur from unrestricted use and development permitted in the zone.”

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

AGREEMENT

Section 1. Agreement. Pursuant to SMC Section 23.34.004, the Owners hereby covenant, bargain and agree, on behalf of themselves and their successors and assigns, that they will comply with the following limitations and conditions in consideration of the rezone of the Rezone Area from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60):

General conditions:

- 1) Approval of the rezone shall be conditioned upon the development of the proposed project in accordance with the final approved Master Use Permit drawings, dated June 9, 2010, which substantially conform to the conditions established during the design review process, including the structure design, structure height, building materials, landscaping, street improvements, parking lot design and layout, signage, and site lighting.

- 2) The operation of any form of “drinking establishment” (as that term is defined in SMC Section 23.84A.010) shall be prohibited on the site.

SEPA conditions – prior to issuance of any construction, shoring or grading permits:

- 3) The Owners shall provide to the DPD Land Use Planner for approval a Construction Management Plan that identifies construction worker parking and construction material staging areas; truck access routes to and from the site for excavation and construction phases; and sidewalk and street closures with neighborhood notice and posting procedures.
- 4) The Owners shall provide to the DPD Land Use Planner for approval a Construction Noise Management Plan. The Plan shall include a discussion on management of construction-related noise, efforts to mitigate noise impacts, and community outreach efforts to allow people within the immediate area of the project to have opportunities to contact the site to express concern about noise. Activities outside the above-stated restrictions may be authorized upon approval of the Plan to address mitigation of noise impacts resulting from all construction activities. Elements of noise mitigation may be incorporated into any Construction Management Plans required to mitigate any short-term transportation impacts that result from the project.

SEPA conditions – during construction:

- 5) The hours of construction activity shall be limited to non-holiday weekdays between the hours of 7:00 a.m. and 6:00 p.m. and between the hours of 9:00 a.m. and 6:00 p.m. on Saturdays (except that grading, delivery and pouring of cement and similar noisy activities shall be prohibited on Saturdays). This condition may be modified by DPD to allow work of an emergency nature. This condition may also be modified to permit low noise exterior work (e.g., installation of landscaping) after approval from DPD.
- 6) For the duration of the construction activity, the Owners/responsible party shall cause construction truck trips to cease during the hours between 4:00 p.m. and 6:00 p.m. on weekdays.

Design Review condition – prior to the issuance of any Certificate of Occupancy:

- 7) The Owners shall arrange for an inspection with the DPD Land Use Planner to verify that the construction of the buildings with siting, materials, and architectural details is substantially the same as those documented in the approved plans dated June 9, 2010.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the land and shall be binding upon the Owners, their heirs, successors and assigns, and shall apply to after-acquired title of the Owners of the Property.

Section 3. Termination. The covenants herein and the rezone shall expire six (6) years from the effective date of approval, unless, within the six (6) year period, an application is filed for a Master Use Permit, which permit is subsequently issued. The rezone remains in effect during this period unless revoked pursuant to SMC Section 23.34.004.

Section 4. Amendment. This Agreement may be amended or modified by agreement between Owners and the City; provided, such amendment agreement shall be approved by the legislative authority of the City by ordinance.

Section 5. Exercise of Police Power. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 6. No Precedent. The conditions contained in this Agreement are based on the unique circumstances applicable to this Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 7. Benefited. This Agreement is made for the benefit of the City and for the benefit of the owners of property within 300 feet of the Rezone Area and either the City or any such property owners may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 8. Repeal as Additional Remedy. Owners acknowledge that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owners avail themselves of the benefits of this rezone but then fail to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may revoke the rezone by ordinance and require the use of the Rezone Area to conform to the requirements of the Lowrise 3 (LR3) zone.

SIGNED this 26th day of MAY, 2011.

Belroy Homes, LLC
a Washington limited liability company

By: Wyckoff Investments, LLC

By: Dell R. Call
Dell R. Call
Its: Manager

STATE OF WASHINGTON

COUNTY OF KING

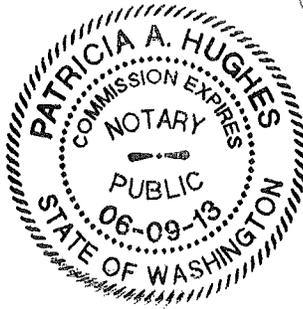


ss.

On this day personally appeared before me Dell R. Call, to me known to be the Manager of Wyckoff Investments, LLC, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 26th day of MAY, 2011.

Patricia A. Hughes



Printed Name

PATRICIA A. HUGHES

NOTARY PUBLIC in and for the State of Washington, residing at

Edmonds

My Commission Expires

6/9/2013

ATTACHMENT A

