

5
310211

FINDINGS, CONCLUSIONS AND DECISION
OF THE CITY COUNCIL OF THE CITY OF SEATTLE

In the matter of the Petition)
of)
Lesley Bain)
To rezone 55,870 square)
feet of land located at 711)
Bellevue Avenue East from)
LR3 to MR-60)
)

C.F. 310211
DPD Project 3010378

FINDINGS, CONCLUSIONS
AND DECISION

Introduction

This matter involves a request by Lesley Bain to rezone approximately 55,870 square feet of property located at 711 Bellevue Avenue East from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60). A portion of the property is located on a steep slope in an environmentally critical area. Attachment A shows the area to be rezoned.

On October 25, 2010, the Director of the Department of Planning and Development (DPD) recommended approval of the rezone, with conditions. On December 16, 2010, after holding an open-record hearing, the Hearing Examiner issued her Findings and Recommendation that recommended approval of the rezone, subject to conditions.

The Council received one appeal of the Hearing Examiner's Findings and Recommendation. The appeal challenged the Hearing Examiner's conclusion that the steep slope was created by human activity. Property designated as environmentally critical may not be rezoned from LR3 to MR-60 unless the environmentally critical area was created by human activity or is a designated peat settlement, liquefaction, seismic or volcanic hazard, or flood prone area, or abandoned landfill.

The matter first came before the Committee on the Built Environment (Committee) on April 27, 2011. At that meeting, the Committee reviewed the Hearing Examiner's file and staff report, and considered the merits of the rezone petition and appeal. On May 25, 2011, the Committee voted to recommend that the full Council deny the appeal because the record contained substantial evidence supporting the Hearing Examiner's conclusion that the steep slope was created by human activity and the appellant provided no evidence refuting the Hearing Examiner's conclusion. The Committee also voted to recommend the full Council approve the rezone, with conditions, and that the rezone expire six (6) years from the effective date of its approval unless, within that six (6) year period, an application is filed for a Master Use Permit that is subsequently issued.

Findings of Fact and Conclusions

1. The Council adopts the Hearing Examiner's Findings of Fact and Conclusions of Law for C.F. 310211, dated December 16, 2010.
2. The Council adopts the conditions recommended in the Hearing Examiner's Findings and Recommendation for C.F. 310211, dated December 16, 2010, amended to read as follows:

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.

Decision

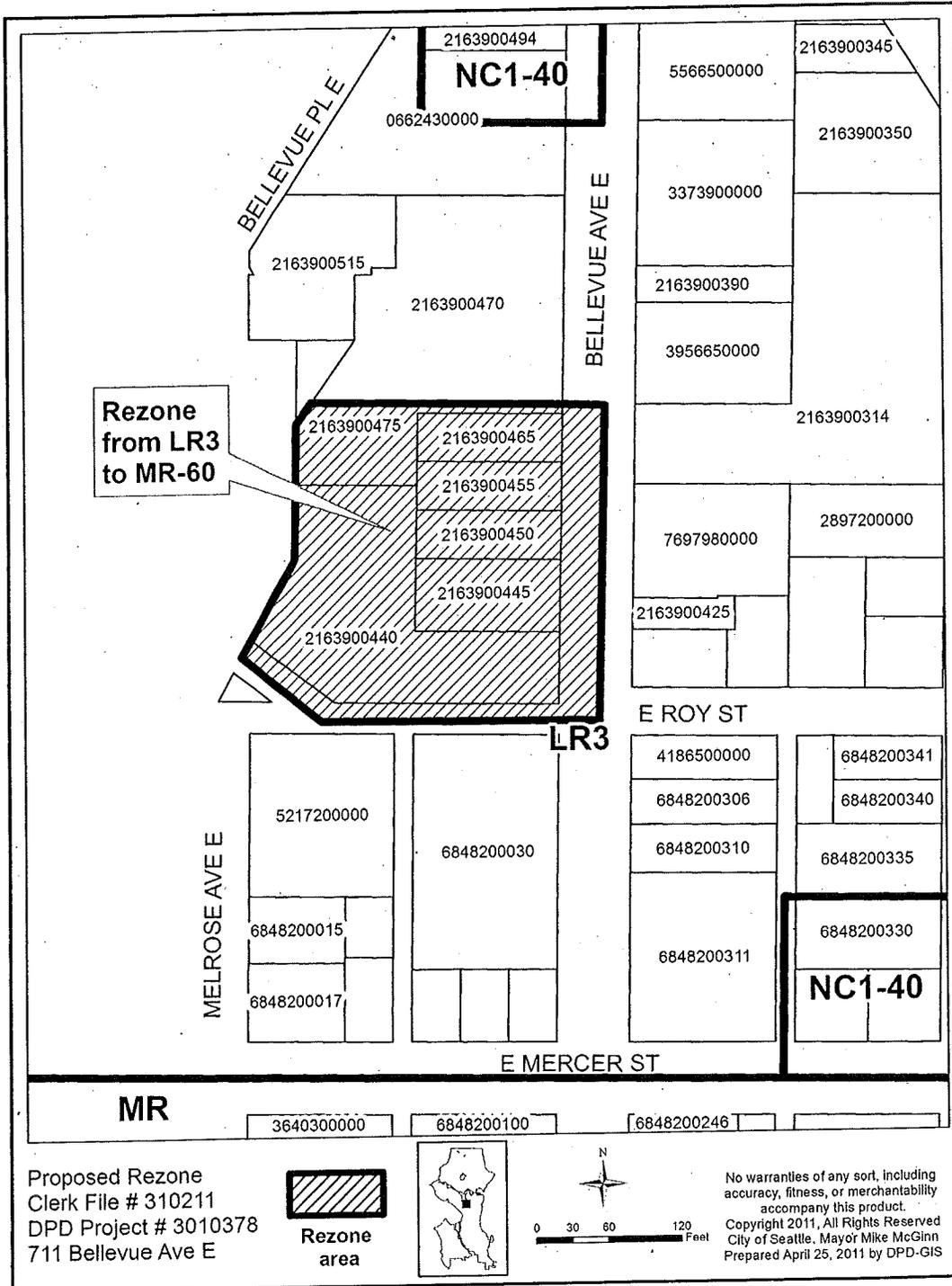
The Council GRANTS a rezone of the property from LR3 to MR-60 as described above and found in Attachment A. The rezone is subject to the execution of a Property Use and Development Agreement (PUDA) requiring the property owner to comply with the

amended conditions described above. The rezone remains in effect unless revoked pursuant to Section 23.34.004.

Dated this _____ day of _____, 2011.

City Council President

ATTACHMENT A





**Legislative Department
Seattle City Council
Memorandum**

Date: May 18, 2011

To: Committee on the Built Environment (COBE)

From: Sara Belz, Legislative Analyst, Council Central Staff

Subject: **Council Bill (CB) 117179 and Clerk File (CF) 310211:** Application of Lesley Bain for approval of a contract rezone of 55,870 square feet of land at 711 Bellevue Avenue East from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60) for future construction of two structures containing 58 residential units and parking for 63 vehicles. (DPD Project Number 3010378 / Type IV)

Overview

Lesley Bain (the "Applicant") proposes a contract rezone of a site located at 711 Bellevue Avenue East from LR3 to MR-60. COBE was previously briefed on this matter at its April 27, 2011, meeting. The subject property is located on the west side of Bellevue Avenue East and north of East Roy Street in the Capitol Hill Urban Center. The site is comprised of six parcels with a total size of around 55,870 square feet. A 51-unit apartment building (BelRoy Apartments) and five single-family homes are currently located on the property. The Applicant's proposed development plans for the rezone area call for the preservation of the apartment building, the relocation or demolition of the single-family houses, and the construction of 58 new residential units, 49 additional underground parking spaces, and approximately 900 square feet of commercial space. About 22 more residential units would be constructed under the rezone proposal than would be permitted under current LR3 zoning.

While the eastern portion of the rezone site is relatively flat, the western portion slopes steeply downward toward Interstate 5 and is classified as an environmentally critical area (ECA). No disturbance or development of the ECA is proposed as part of the contract rezone; however, some disturbance of the ECA buffer could occur on the northern portion of the site. The Director of the Department of Planning and Development (DPD) reviewed the proposed rezone pursuant to SEPA and issued a Determination of Nonsignificance (DNS) that was not appealed. The Director also issued a design review approval that was not appealed.

A map of the proposed rezone area is attached to this memorandum. The parcels that immediately surround the rezone site are zoned LR3; however, the height and scale of nearby existing buildings varies widely and many exceed what is currently permitted under LR3 zoning. Both DPD and the Hearing Examiner recommend approval of this rezone, with conditions.

Appeal

The Council received one appeal of the Hearing Examiner's Findings and Recommendation for this rezone proposal. The appeal challenged the Hearing Examiner's conclusion that the steep slope ECA located on the site was created by human activity. Seattle Municipal Code Section 23.34.024.B.2 states that property designated as an ECA may not be rezoned to Midrise unless the ECA was created by human activity or is a designated peat settlement, liquefaction, seismic or volcanic hazard, or flood prone area, or abandoned landfill. The Hearing Examiner's record for this matter contains substantial evidence supporting her conclusion that the steep slope on the proposed rezone site was created by human activity. The appellant did not submit a timely request to supplement the record nor provide any evidence refuting the Hearing Examiner's conclusion.

Staff recommends the appeal be denied.

CB 117179 and CF 310211

Council staff, in consultation with the Law Department, has drafted the necessary documents to complete this rezone. These include CB 117179, a Property Use and Development Agreement (PUDA), and a Council Findings, Conclusions and Decision (FC&D) for CF 310211.

Rezone expiration

It is standard City practice to include termination language in rezone legislation, PUDAs, and Council FC&Ds that cause rezones to expire after two years unless an application for a Master Use Permit is issued within that two-year time period. Given current economic conditions, the Applicant requested the expiration timeline for the proposed rezone at 711 Bellevue Avenue East be extended to six years. Both DPD and the Hearing Examiner considered this request and neither expressed any concerns about it.

Consistent with the applicant's request, CB 117179, the PUDA, and the Council FC&D for CF 310211 all include language that would extend the expiration timeline for the proposed rezone from two to six years.

CB 117179

CB 117179 would amend the Official Land Use Map to reflect the proposed change in zone designation at 711 Bellevue Avenue East from LR3 to MR-60. It would also accept a PUDA that would place several conditions on the rezone. The rezone conditions included in the PUDA are copied below. They were adopted from DPD's and the Hearing Examiner's reports.

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.

Staff recommends approval of CB 117179.

CF 310211 (Proposed Council FC&D)

CF 310211 contains the content of the record established by the Hearing Examiner and a proposed Council FC&D. The proposed Council FC&D adopts the Hearing Examiner's Findings and Conclusions and grants the proposed rezone. A copy of the proposed Council FC&D (labeled "DRAFT") is included in Committee members' notebooks and printed on yellow paper.

COBE is also requested to amend the title of CF 310211, as shown below in strikethrough, to make it consistent with the content of the rezone application and the title of CB 117179:

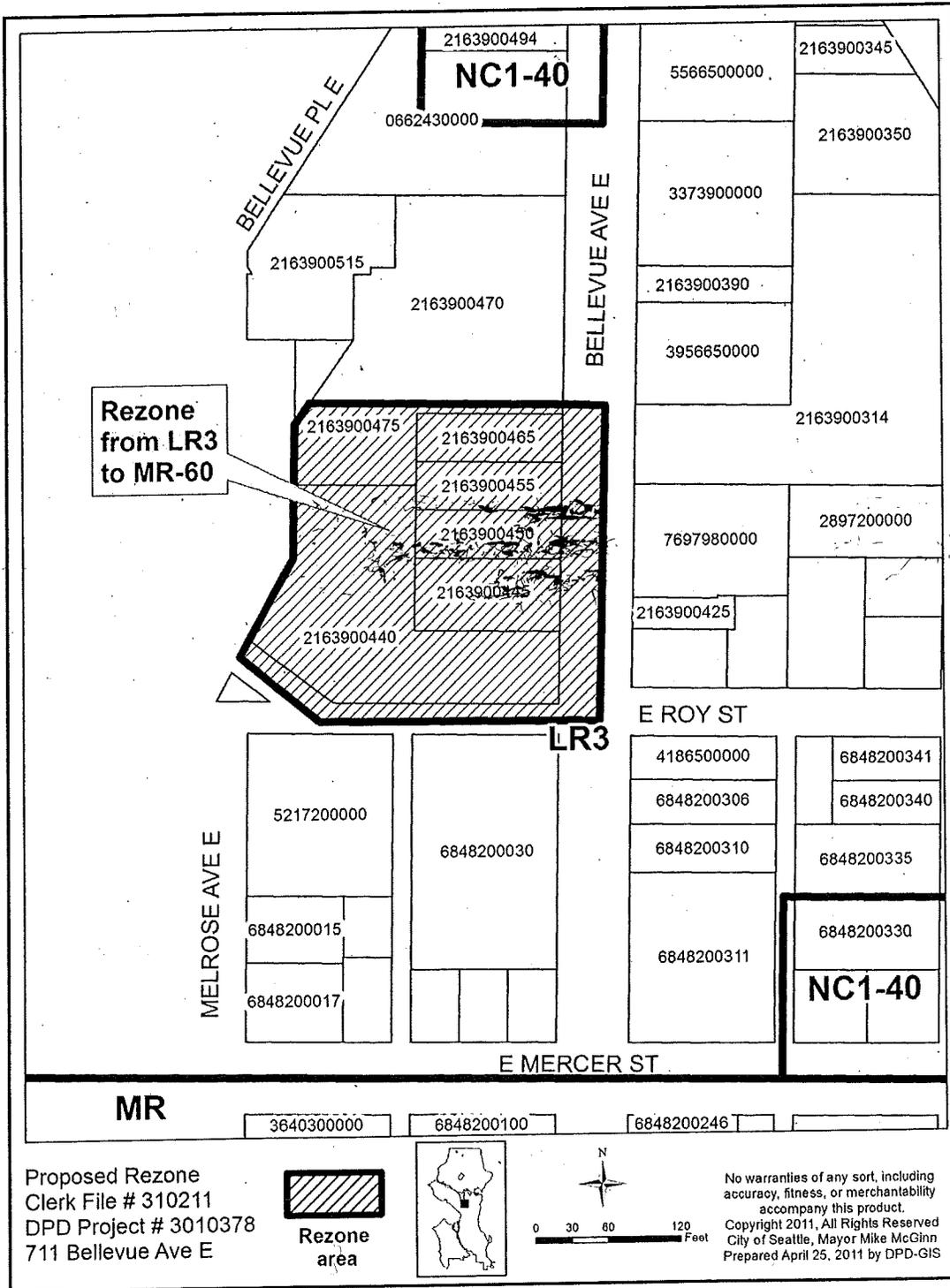
Application of Lesley Bain for approval of a contract rezone of 48,885,870 square feet of land at 711 Bellevue Avenue East from Lowrise 3 (~~L3LR3~~) to Midrise with a 60 foot height limit (MR-60) for future construction of two structures containing 6058 residential units and parking for 7063 vehicles. (DPD Project Number 3010378 / Type IV)

Staff recommends approval of the proposed Council FC&D and amending the title of CF 310211 as described above.

Next Steps

A Committee recommendation on May 25 will enable a Full Council vote on both CB 117179 and CF 310211 on May 31.

Map of Proposed Rezone Area: 711 Bellevue Avenue East





**Legislative Department
Seattle City Council
Memorandum**

Date: April 25, 2011

To: Sally Clark, Chair
Tim Burgess, Vice Chair
Sally Bagshaw, Member
Tom Rasmussen, Alternate
Committee on the Built Environment (COBE)

From: Sara Belz, Council Central Staff

Subject: **Clerk File (CF) 310211:** Application of Lesley Bain for approval of a contract rezone of 48,885 square feet of land at 711 Bellevue Avenue East from Lowrise 3 (L3) to Midrise with a 60 foot height limit (MR-60) for future construction of two structures containing 60 residential units and parking for 70 vehicles. (DPD Project Number 3010378 / Type IV)

Note: If COBE votes to grant this rezone, the title of CF 310211 will need to be amended to increase the square footage of the rezone area to 55,870 square feet and make other technical corrections.

Overview

Lesley Bain (the "Applicant") proposes a rezone of a site located at 711 Bellevue Avenue East from Lowrise 3 (LR3) to Midrise with a 60 foot height limit (MR-60). The site is located on the west side of Bellevue Avenue East and north of East Roy Street. A map of the proposed rezone area is attached to this memorandum. The site is comprised of six parcels that total approximately 55,870 square feet of property. The parcels are owned by Belroy Homes LLC.

Facts related to the rezone:

- When the Applicant first proposed a rezone of the subject site, the property was zoned L3. As a result of recent amendments to multifamily zoning language in the Seattle Municipal Code, the site is now zoned LR3.
- The properties located immediately north, south and east of the site are zoned LR3. Two nodes of Neighborhood Commercial 1 zoning with a 40 foot height limit (NC1-40) are located within two blocks of the rezone area.
- Surrounding land uses are primarily multifamily residential with building heights that range from three to 12 stories. A few single-family homes and small commercial uses are also located nearby.
- The proposal identifies this matter as a contract rezone and includes specific development plans for the site. The plans call for the preservation of the existing BelRoy Apartments (51 units), the relocation or demolition of five existing single-

family houses, and the construction of 58 new residential units, 49 additional underground parking spaces, and about 900 square feet of commercial space.

- About 22 more residential units would be constructed under the rezone proposal than would be permitted under current LR3 zoning.
- Under the Applicant's development proposal, almost 90 percent of the rezone site would be developed to heights of around 30 feet. Such heights would be permitted under LR3 zoning. The remainder of the site would include building heights of around 60 feet, necessitating the proposed rezone to MR.
- The rezone site is located within the boundaries of the Capitol Hill Urban Center and the Capitol Hill Neighborhood Plan area.
- Metro bus transit provides service to the rezone site along Bellevue Avenue. The future light rail station on Broadway is located about three-quarters of a mile to the southeast.
- While the eastern portion of the site is relatively flat, the western portion slopes steeply downward toward Interstate 5 and is classified as an environmentally critical area (ECA). A geotechnical consultant commissioned by the Applicant concluded that the ECA was created as a result of legal grading operations related to the construction of the freeway. No disturbance or development of the ECA is proposed as part of the contract rezone; however, some disturbance of the ECA buffer could occur on the northern portion of the site.
- The DPD Director reviewed the proposed rezone pursuant to SEPA and issued a Determination of Nonsignificance (DNS) that was not appealed. The Director also issued a design review approval that was not appealed.
- Six written public comments were submitted to the Hearing Examiner; five in favor of the project and one opposed. The letters favoring the rezone expressed support for the preservation of the BelRoy Apartments, the proposal's compatibility with existing development on the block, increased density, planned landscaping improvements, and the developer's commitment to quality and responsiveness to community feedback. The letter in opposition expressed concerns that the proposal did not qualify for a steep slope exemption and that the six-story portion of the project would not allow for a sensitive transition between zoning areas.
- A Property Use and Development Agreement (PUDA) will be required as the request is for a contract rezone and not a general rezone. It is standard City practice to include termination language in PUDAs that cause rezones to expire after two years unless an application for a Master Use Permit is issued within that two year time period. For this rezone, the Applicant requests the standard two year time limit be extended to six years.

Development Proposal

The development proposal associated with this rezone calls for the preservation of the existing BelRoy Apartments (51 units), the relocation or demolition of five existing single-family houses, and the construction of 58 new residential units, 900 square feet of commercial space, and 49 underground parking spaces. Constructed in 1930-31, the L-shaped building known as the BelRoy Apartments was designated as a City landmark last fall. It was designed by architects William Bain and Lionel Pries. Of the 51 residential units that are located in the BelRoy, 27 are studios and 24 have one bedroom. A small garage underneath the building and accessible via Roy Street can accommodate 14 cars.

The five single-family homes that would be removed from the rezone site as part of the planned redevelopment are located along Bellevue Avenue East and date from the early 20th century. None of the houses are landmarked nor believed to be historically significant.

The 58 new residential units included in the Applicant's development proposal would be located in two buildings. The larger of the two would be an L-shaped structure that would mirror the BelRoy. Together, this building and the BelRoy would form a rectangle with two open corners. Within the courtyard space between the two L-shaped buildings, a smaller building would be constructed. The courtyard building and the portion of the new L-shaped building that would extend along Bellevue Avenue East would be three stories, consistent with the height of the existing BelRoy Apartments. The portion of the L-shaped building that would extend along the northern boundary of the rezone site would be six stories. A small area behind the BelRoy Apartments, on the western edge of the rezone site, would be developed as a community garden or P-Patch.

Because the rezone area is located within the Capitol Hill Urban Center, the Applicant would not be required to provide additional parking on-site as part of the planned redevelopment effort. However, the Applicant intends to expand the BelRoy Apartments' existing underground garage in order to provide parking for 63 vehicles.

Type of Action

Because this rezone is site-specific, the matter is considered quasi-judicial under the Seattle Municipal Code.¹ Quasi-judicial rezones are subject to the Appearance of Fairness Doctrine, which prohibits ex-parte communication. Council decisions must be based on the record established by the Hearing Examiner.

The Hearing Examiner established the record at an open-record hearing.² The record contains the substance of the testimony provided at the Hearing Examiner's open record hearing and the exhibits entered into the record at that hearing. Those exhibits include, but are not limited to, the recommendation of the Director of DPD, the State Environmental Policy Act checklist for the proposal, maps showing the rezone area, the rezone application, copies of public comments, and other materials.

The Record

Selected documents and exhibits from the record are reproduced in Councilmembers' notebooks. The entire Hearing Examiner's record is kept in my office and is available for review at Councilmembers' convenience. Selected documents and exhibits reproduced here include:

- Hearing Examiner's recommendation (Yellow);
- Appeal of the Hearing Examiner's recommendation, submitted by Mr. Ross Radley (Green); and

¹ Seattle Municipal Code (SMC) Chapter 23.76.004.

² Council action shall be based on the record established by the Hearing Examiner. The Council may supplement the record with new evidence or information if the Council determines that the new evidence or information was not available or could not reasonably have been produced at the time of the open record hearing before the Hearing Examiner. SMC § 23.76.054E.

- Responses to Mr. Radley's appeal, submitted by Ms. Melody McCutcheon (Blue); and
- Reply to Ms. McCutcheon's response, submitted by Mr. Radley (Lavender); and
- DPD's recommendation (Pink).

Recommendations from DPD and the Hearing Examiner

Both DPD and the Hearing Examiner recommend approval of the proposed rezone. Specifically, the Hearing Examiner's Findings and Recommendation dated December 16, 2010, drew the following conclusions based on testimony at the open record hearing, submitted exhibits and DPD's analysis:

- Match between zone criteria and area characteristics: The rezone site and properties that surround it would function well as a Midrise zone. The area provides concentrations of housing in a desirable, pedestrian-oriented neighborhood in close proximity to a variety of services, amenities, and employment opportunities. The height and scale of existing buildings varies widely but generally exceed what is permitted under LR3 zoning.
- Neighborhood plans: The Capitol Hill Neighborhood Plan does not include any policies that specifically pertain to the proposed rezone site. However, the Plan does include policies that promote diverse land uses, a mixture of housing types, the preservation of the neighborhood's architectural quality, and the development of new, high-quality housing that blends in with existing historic structures.
- Height limit and views: The surrounding neighborhood does not have a clearly established height pattern but, as is noted above, structure heights often exceed what is permitted under LR3 zoning. The portion of the rezone site that would be developed with a six-story tower would likely reduce the private views from a total of five units on the east side of Bellevue Avenue East. The construction of a wider, eight-story tower was previously considered; however, prior to the design review process, the Applicant agreed to narrow the tower and reduce its height from eight stories to six. The tower, which would extend along the north property line of the rezone site, would face a parking lot and a blank wall of an existing residential building. Proposed pedestrian infrastructure, existing trees, and other planned landscaping will help create a buffer between the proposed tower and the neighboring property to the north.
- Precedential effects: With the exception of a few single-family properties and some parking lots, most properties in the immediate vicinity of the rezone site are already fully developed at or above existing zoning density. The relatively small size of most of the less developed parcels makes it unlikely that a rezone of 711 Bellevue Avenue East from LR3 to MR would encourage other nearby property owners to pursue the same.
- Evaluation of other impacts: Existing public services and service capacities, including street access, street capacity, transit service, and parking capacity are sufficient to serve the additional residential units that would be permitted under the proposed rezone. DPD's report identifies conditions to mitigate noise, transportation, and other impacts (see below). Height, bulk, and scale impacts were reviewed and addressed through the design review process.

Conditions recommended by DPD and the Hearing Examiner

DPD recommended that approval of the rezone be subject to the following 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, as modified by design review conditions, including the structure design, structure height, building materials, landscaping, street improvements, parking lot design and layout, signage, and site lighting.

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

- 2) The applicant 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.
- 3) The applicant 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 in to any Construction Management Plans required to mitigate any short-term transportation impacts that result from the project.

SEPA conditions – during construction:

- 4) 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.
- 5) For the duration of the construction activity, the applicant/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:

- 6) The Applicant 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.

The Hearing Examiner also recommended approval of the rezone subject to the following condition:

- 1) The final PUDA for the rezone shall prohibit the operation of any form of "drinking establishment" (as that term is defined in Seattle Municipal Code Section 23.84A.010) on the site.

With regard to DPD's condition #1, the Master Use Permit drawings dated June 9, 2010, already incorporate all of the design review conditions. That said, the Committee may want to replace DPD's language with the following: "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."

Appeal

One appeal of the Hearing Examiner's recommendation was filed by Mr. Ross Radley, an attorney, on behalf of his clients Mr. Rex Himes and Mr. Ron Hull. Mr. Himes and Mr. Hull live across Bellevue Avenue East from the rezone site. The appeal, which was submitted on February 17, 2011, documents Mr. Radley's clients desire to appeal the Hearing Examiner's conclusion that the steeply sloping ECA on the western edge of the rezone site was created by human activity during the construction of Interstate 5. (The rezone of an ECA from LR3 to MR is only permitted under very limited circumstances. Once such circumstance is when the ECA was created by human activity.) Ms. Melody McCutcheon, attorney for the Applicant, submitted responses to Mr. Radley's motion on February 18, 2011, and March 21, 2011. Her responses supported the Hearing Examiner's conclusion. On March 24, 2011, Mr. Radley filed a reply to Ms. McCutcheon's March 21 response. Mr. Radley's reply did not address the issue of whether the evidence in the record supported the Hearing Examiner's conclusion that the ECA was created by human activity. Instead, Mr. Radley's reply focused on questions of due process related to an earlier ECA exemption decision.

The Council has no authority to address the earlier ECA exemption decision because it was not timely appealed. The Council also has no jurisdiction to review Type I decisions, which include decisions to exempt applicants from complying with ECA development regulations. Because the content of Mr. Radley's reply raises issues that are outside the purview of the Council's authority, and because the Council did not receive any timely requests to supplement the Hearing Examiner's record for this rezone, Councilmember Clark decided last week that the Committee would not accept oral argument as part of its April 27, 2011, briefing on this rezone. On April 18, Councilmember Clark sent a letter to all the parties of record for this matter notifying them of her decision.

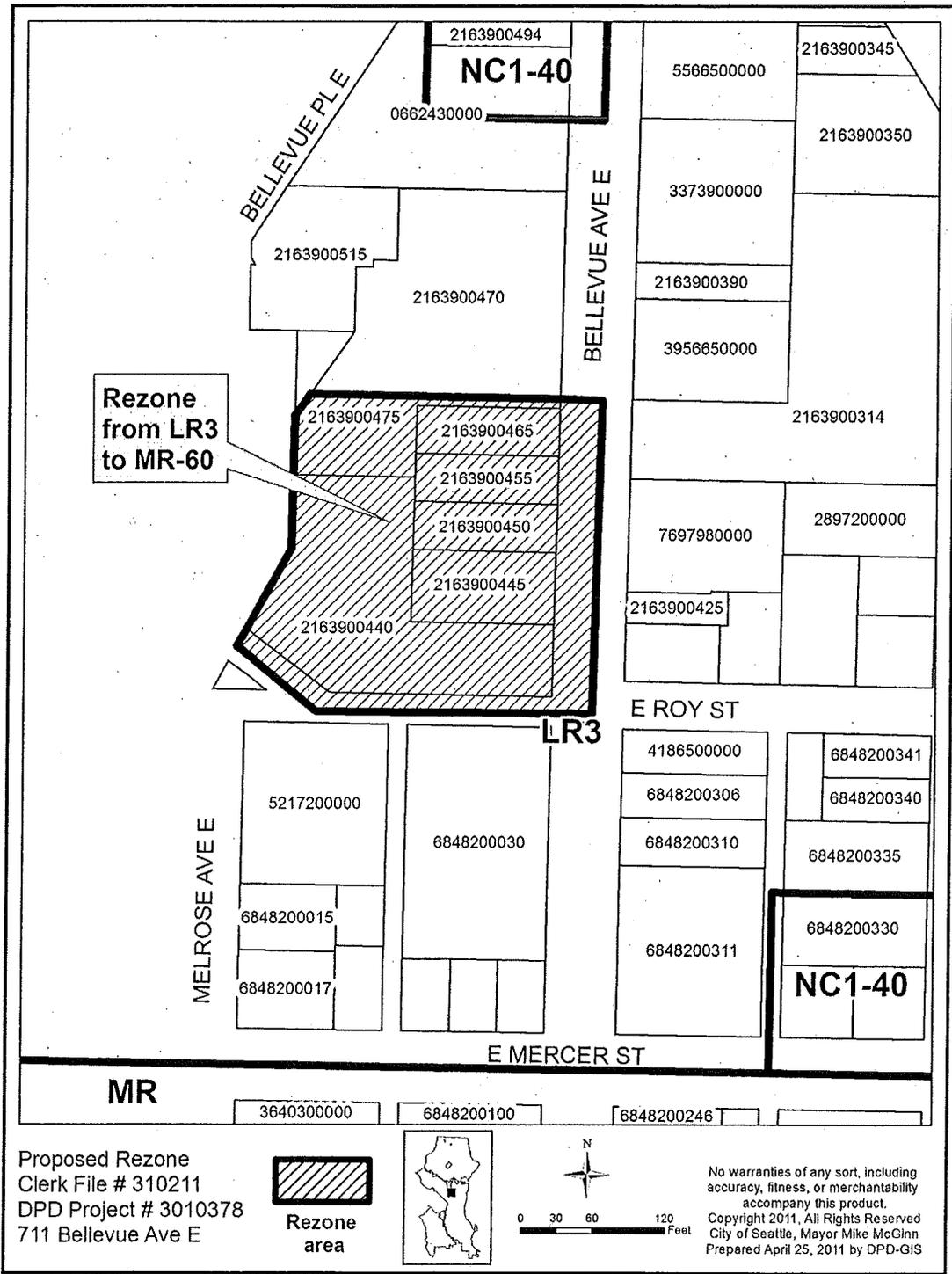
Staff Recommendation

Staff recommends approval of the proposed rezone as conditioned by DPD and the Hearing Examiner.

Next Steps

Council staff, in consultation with the Law Department, will draft the necessary documents to complete the rezone decision. These include a Council Findings, Conclusions and Decision for the Clerk's File; a Council Bill; and a PUDA. Further discussion and a possible Committee vote on this matter are likely to occur at the May 11, 2011, COBE meeting.

Rezone Map for 711 Bellevue Avenue East



**FINDINGS AND RECOMMENDATION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Application of

LESLEY BAIN

for approval of a contract rezone for property
located at 711 Bellevue Avenue East

CF 310211

DPD Reference:
3010378

CITY CLERK

2010 DEC 16 PM 2:13

FILED
CITY OF SEATTLE

Introduction

Lesley Bain applied for a rezone of property located at 711 Bellevue Avenue East from Lowrise 3 to Midrise zoning. The Director of the Department of Planning and Development (Director) submitted a report recommending that the rezone be approved. The Director's report included a SEPA Determination of Non-significance and design review approval, neither of which was appealed.

A public hearing on the rezone application was held before the Hearing Examiner on November 30, 2010. The Applicant was represented by Melody B. McCutcheon, attorney-at-law, and the Director was represented by Lisa Rutzick, Senior Land Use Planner. An attorney representing three members of the public asked that the record be held open for submittal of additional information on whether the proposal qualified for a steep slope exemption. The request was denied because the Director's decision on the exemption was not properly appealed and thus, was not properly before the Examiner. The record was held open for the Examiner's site visit and closed on December 6, 2010.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. Having considered the evidence in the record and visited the site, the Examiner enters the following findings of fact, conclusions and recommendation on the application.

Findings of Fact

Site and Vicinity

1. The site is addressed as 711 Bellevue Avenue East, in the Capitol Hill neighborhood. It is located at the northwest corner of Bellevue Avenue East and East Roy Street, within the Capitol Hill Urban Center Village, and approximately four blocks west of the Broadway commercial core.
2. The site is 55,870 square feet in size and encompasses approximately one-third of the lengthy block. The topography is relatively flat along Bellevue Avenue East, but slopes down steeply on the west to the Melrose bicycle trail and Interstate 5. This part of the

property is classified as an Environmentally Critical Area (ECA). A 60 foot Cedar tree is located on the northeast edge of the property, and several Atlas Blue Cedar trees are located at the south edge of adjacent property to the north.

3. The site is zoned Lowrise 3 (L3), and the L3 zone extends in all directions from the site. However there is an area of Neighborhood Commercial 1-40 at the north end of the block and another approximately one block south and east of the site, at the intersection of Summit Avenue East and East Mercer Street. Zoning south of East Mercer Street is Midrise (MR).

4. The site is developed with the Belroy Apartments and five single-family residential structures. Development within the vicinity is of varied height and density. Other development on the west side of Bellevue Avenue East consists of a four-plus story apartment complex and a new four-story condominium to the north, and one-story retail/commercial structures within the NC1-40 zone at the northern end of the block. The adjacent apartment complex to the north is separated from the street by a large surface parking lot and carport structures, and the south face of the complex consists of a solid blank wall. *See Exhibit 30 at 17-18*

5. Along the east side of Bellevue Avenue East, structures range from three to nine stories in height along with three single-family residences. One single-family residence is isolated between a six-story condominium and an eight-story condominium. The other two are rental houses at the south end of the block on parcels of 3,766 and 2,213 square feet respectively. Development to the north, south and east within the L3 zone varies greatly, from a few single-family residences to 12-story multifamily residential buildings. The NC1-40 node at East Mercer and Summit is developed with one-story retail buildings. In the MR zone south of East Mercer Street, condominium and apartment development is one to eleven stories in height.

6. Bellevue Avenue East has a 60-foot-wide right-of-way with two-way traffic and parking along one side. It is designated a collector arterial street and is improved with curbs, gutters and sidewalks. East Roy Street is a non-arterial street. It is constructed on a steep incline and has a 20-foot-wide right-of-way. Adjacent to the site, it has two-way traffic with parking and a sidewalk along parts of the street. There is no alley adjacent to properties on this block. East Denny Way, a principal arterial, and Belmont and Broadway Avenues East, minor arterials, also serve the area.

7. Two Metro transit routes have scheduled stops nearby, and the site is approximately three-quarters of a mile from the future light rail station on Broadway Avenue East.

Zoning History and Potential Zoning Changes

8. The Director reports that in 1923, the site was designated Second Residence District, and between 1947 and 1982, it was designated Second Residence District in Area District C (R2-C). At the time the Multi-Family Code was adopted in 1982, the site and vicinity were zoned RMH 350, which allowed structures of 10 to 15 stories in height. With the

adoption of the Multi-Family Code, properties zoned multi-family were reviewed. Those located north of East Mercer Street were designated L3, and those located south of East Mercer Street were designated MR. In the mid-1990s, the subject site and surrounding area were included within the Urban Center Village.

9. The City Council has adopted text amendments to the City's lowrise multifamily zones that consolidate the Lowrise 3 and Lowrise 4 zones and allow building heights to approximately 40 feet within them. Council Bill 117014.

Neighborhood Plan

10. The site is included within the planning area of the adopted Capitol Hill Neighborhood Plan, but is not expressly referenced in the Neighborhood Plan.

11. The Neighborhood Plan includes several goals and policies that are relevant to this rezone application. CH-G1 envisions a neighborhood "with distinct residential areas, active business districts, accessible transportation services, and strong institutions, which is diverse and densely populated." CH-G2 envisions an "enhanced neighborhood with diverse land uses, a mixture of housing types including single-family and dense multifamily, and vibrant commercial districts." CH-G3 envisions a community "with a full range of housing types from single family homes to multifamily contributing to a diverse, densely populated neighborhood." CH-P5 encourages "preservation of the neighborhood's architectural quality, historic character, and pedestrian scale." CH-P8 calls for the enhancement and protection of "the character of the diverse residential districts." CH-P14 encourages the "preservation of existing housing structures and the maintenance of properties." CH-P15 encourages the "development of high quality new housing that blends with historic housing."

Proposal

12. The Applicant seeks to have the property rezoned from L3 to MR with a property use and development agreement (PUDA). Under the PUDA, approximately 88.5 percent of the site would be developed to the current L3 zoning height (33 feet), and approximately 11.5 percent would be developed to the MR zoning height (60 feet). Exhibit 32.

13. The Applicant successfully sought a landmark designation for the Belroy Apartments, which will be restored, preserving 51 existing, small, residential units. The five single-family structures on the site are to be relocated if possible, and otherwise demolished.

14. Two new residential buildings, with a total of 58 units, are proposed. A three-story building would be constructed on the interior of the site, and a second, L-shaped building would be constructed to wrap around two sides of an interior courtyard. The L-shaped building would be three stories along Bellevue Avenue East (north-south) to match the height of the Belroy Apartments. At the north end of the property, the three-story wing would connect to a six-story wing that would be oriented east-west on the property. The

existing entry court to the Belroy would be retained, and an open entryway into the interior courtyard would be constructed at the north end of the property, beneath the connection between the three-story and six-story sections of the L-shaped building. See Design Review Packets, Exhibits 28, 29 and 30. A small commercial space would be included on the east end of the six-story wing's first floor, adjacent to Bellevue Avenue East, with provision for outdoor seating under the 60-foot Cedar tree that is to be preserved. (The Atlas Blue Cedar trees on the adjacent property to the north would also be protected.)

15. The proposal would add approximately 22 residential units more than the number allowed under existing zoning. The proposed buildings would be narrow, with individual units clustered around shared staircases, thereby eliminating interior hallway space, allowing natural ventilation and daylight, and increasing the area available on the site for vegetated open space. The proposal would proceed under the City's Priority Green program and meet 2030 energy goals.

16. The six-story section of the L-shaped building along the north edge of the site would provide an additional 10 foot setback along the north property line for approximately 35 feet, and the units would be recessed, with pedestrian corridors along the north edge.

17. Although no parking is required within the urban center, below-grade parking for 63 vehicles is proposed in a garage shared with the Belroy and accessed via the existing Belroy garage entry on East Roy Street.

18. The Applicant secured a Water Availability Certificate for the proposal from Seattle Public Utilities.

19. The Applicant secured a geological engineering study of the site that resulted in a report (Exhibit 21) that included geologic observations of the site, a discussion of subsurface conditions, seismic considerations, general geotechnical considerations, and recommendations for additional engineering analysis for the design phase of the project. The Applicant's consultant also issued a report on the steep slope on the property. (Exhibit 20), which concluded that the proposed development would not impact the slope, nor would the slope affect the stability of the development.

20. The geotechnical consultant reviewed the general contours of the site as shown in 1899, which depicted a slope of approximately 20 percent, and WSDOT's plans for construction of Interstate 5 directly down slope of the property, which show design slopes for the freeway cuts in the area as (2H:1V max"), or 50 percent. This is consistent with the slope today. Exhibit 20. The consultant also reviewed a 1960 aerial photograph of the area taken before construction of Interstate 5, which shows a residence constructed on the slope, and a 1969 aerial photograph showing the completed freeway and a newly planted slope without the residence. Exhibit 34. From this research, the consultant concluded that the current slope was created from a flatter configuration that became steep as a result of legal grading operations for Interstate 5. Exhibit 20.

21. The steep slope ECA would be replanted in accordance with Code-mandated standards and in cooperation with the Washington State Department of Transportation. A small area to the west of the Belroy Apartments, but outside the critical area and buffer, would be developed into a "P-patch" garden.

22. The Applicant secured a technical memorandum on traffic generation and parking demand from a transportation consultant, (Exhibit 16), which was reviewed and accepted by the City's Senior Transportation Planner (Exhibit 15). The report concludes that the proposal will generate 17 new PM peak hour trips, but that no streets in the area would be affected by 10 or more project trips. The report also concludes that because the proposal would add 63 on-site parking spaces, some existing residents currently parking on the street could be accommodated on-site, thereby reducing the overall number of vehicles currently parked on the street. Exhibit 16.

23. The Applicant prepared a shadow study as part of the design review process. Exhibit 29 at 44-47. Under existing conditions, the 60-foot Cedar tree and the evergreen trees between the site and the adjoining property to the north cast a shadow across parts of that property. With the six-foot wing of the proposed L-shaped building in place, the shadowing would increase slightly, as the shadow from the new building wing filled in and "squared off" the gaps in the existing shadows. The Applicant presented testimony that the increased shading of the open space to the west of the adjoining apartment structure would not reach the existing swimming pool located there.

24. The Applicant performed an analysis of the proposal's impact on private views. The Applicant's architects visited potentially affected units in buildings across Bellevue Avenue East and took photographs. To quantify the view impacts, they superimposed drawings of those buildings on the plans for the proposal. The views from four units in the nine-story residential building at 714 Bellevue Avenue East would have their 270-degree view reduced to approximately 236 degrees. Exhibit 38. They would maintain their view of the downtown skyline, the Olympic Mountains and the area north of Queen Anne Hill, but would lose some of the view of Queen Anne Hill. One unit in the six-story residential building at 730 Bellevue Avenue East would lose the view to the southwest, although it is presently obscured by existing street trees for most of the year and by the evergreen trees on the subject site and adjacent property to the north for the entire year.

25. To show potential massing alternatives on the site, the Applicant's architects prepared an elevation drawing that shows the proposal at the height allowed under existing L3 zoning, the height proposed for the LR3 zone in Council Bill 117014, and the height allowed under the MR zone. Exhibit 37.

26. Prior to the design review process, the Applicant met with neighborhood residents and homeowners associations, as well as historic preservation advocates and other interest groups. These meetings led the Applicant to reduce the proposed height of the east-west wing from eight to six stories and to reorient it on the site to narrow its width at Bellevue Avenue East and preserve the 60 foot Cedar tree. The commercial space was

also added at the request of the neighborhood. To guard against a noisy commercial tenant, the draft PUDA provides that "no taverns, bars or pub shall be permitted." Exhibit 32.

27. The proposal was reviewed by the Capitol Hill Design Review Board (Board). At the early design guidance meeting, the Board heard the Applicant's presentation on four development options, took public comment, and after visiting the site, identified the siting and design guidelines of highest priority for the proposal. At the initial recommendation meeting, the Board considered the Applicant's response to the initial design guidance, heard additional public comment and provided additional design guidance. At the final recommendation meeting, Board reviewed the Applicant's response to the additional design guidance, heard public comment and stated its preference on design of the area that would connect the two wings of the L-shaped building. The Board unanimously recommended approval of the proposal, including requested departures for structure width, front setback, projections into setbacks, and the site triangle at the garage exit where mirrors would be installed to alert vehicles and pedestrians of vehicles exiting the garage.

Public Comment

28. Most public comments were received during the design review process for the proposal. They are summarized in the Director's report and recommendation, Exhibit 4 at 3-7. *See also* Exhibit 8.

29. The Hearing Examiner received five comment letters supporting the proposal and one opposing it. Exhibit 1. The letters favoring the rezone expressed support for the preservation of the Belroy Apartments, the proposal's compatibility with the mix of heights, volumes and architecture on the block, increased density, substantial plantings and open space, additional housing near light rail, care given to public edges of the building, removal of five dilapidated houses, and the developer's commitment to quality and responsiveness to community feedback. The letter in opposition expressed concerns that the proposal did not qualify for a steep slope exemption, and that the six-story portion of the proposal would not establish a sensitive transition between zoning categories.

30. Three members of the public who live across Bellevue Avenue East and slightly south of the site, and their attorney, testified at the public hearing on the proposed rezone. They opposed the rezone and expressed concerns about view blockage; parking; sight lines for traffic exiting the site via Roy Street; noise from a potential restaurant or bar in the commercial space; a "canyon effect" as a result of the six-story portion of the proposal; possible precedent being set for further tall buildings; the potential loss of five single-family turn-of-the-century structures; and the matter of whether the proposal qualified for the steep slope exemption.

Director's Review

31. After reviewing the Applicant's geotechnical submittals and the City's GIS system, the Director determined that the proposal qualified for an exemption from steep slope development standards, although all other applicable standards of the ECA ordinance applied. Exhibit 19. The Director's determination was not appealed via a request for an interpretation pursuant to Chapter 23.88 SMC.

32. The Director approved a street improvement exception request for East Roy Street after determining that the locations of the ECA and adjacent structures made it infeasible to widen the right-of-way.

33. The Director issued design review approval for the proposal, incorporating the Board's recommendations. The Director also reviewed the proposal pursuant to SEPA and issued a Determination of Non-significance (DNS). Neither the design review approval for the DNS was appealed. In a report dated October 25, 2010, the Director recommended approval of the rezone. Exhibit 4.

Applicable Law

34. SMC 23.34.008.A requires that the zoned capacity for urban villages be no less than 125% of the growth targets adopted in the Comprehensive Plan for the village. For residential urban villages taken as a whole, the zoned capacity must be within the density ranges established in the Land Use Element of the Comprehensive Plan.

35. The L3 zone functions as an area that "provides moderate scale multifamily housing opportunities in multifamily neighborhoods where it is desirable to limit development to infill projects and conversions compatible with the existing mix of houses and small to moderate scale apartment structures." SMC 23.34.020.A.

36. SMC 23.34.020.B provides the locational criteria for the L3 zone: "Properties already zoned L3;" "Properties developed predominantly to the permitted L3 density and where L3 scale is well established;" and "Properties within an urban center or village". Properties that are designated as ECAs may remain L3 only if located in an area that is predominantly developed to the L3 intensity. SMC 23.34.020.B.1 and B.2.

37. L3 zoning is most appropriate in areas predominately developed to L3 density and where L3 scale is well established, or areas within an urban center or village, and "where the street pattern provides for adequate vehicular circulation and access to sites. Locations with alleys are preferred," and street widths should accommodate two-way traffic and parking along at least one curbside. SMC 23.34.020.B.3.1. Further, L3 zoning is most appropriate in areas "that are well served by public transit and have direct access to arterials so that vehicular traffic is not required to use streets that pass through less intensive residential zones;" "areas with significant topographic breaks, major arterials or open space that provide sufficient transition to LDT or L1 multifamily development;" "areas with existing multifamily zoning with close proximity and

pedestrian connections to neighborhood services, public open spaces, schools and other residential amenities;" and properties "adjacent to business and commercial areas with comparable height and bulk, or where a transition in scale between areas of larger multifamily and/or commercial structures and smaller multifamily development is desirable." SMC 23.34.020.B.3.2.

38. The Midrise zone functions to provide "concentrations of housing in desirable, pedestrian-oriented urban neighborhoods having convenient access to regional transit stations, where the mix of activity provides convenient access to a full range of residential services and amenities, and opportunities for people to live within walking distance of employment." SMC 23.34.024.A.

39. Under SMC 23.34.024.B.1, part of the locational criteria for the Midrise zone, the only properties that may be considered for a Midrise designation are properties already zoned Midrise, properties in areas already developed predominantly to Midrise intensity, and properties within an urban center or urban village where the neighborhood plan states that the Midrise zone is appropriate. Properties "designated as environmentally critical may not be rezoned to a Midrise designation" unless the environmentally critical area was "created by human activity"

40. Under SMC 23.34.024.B.2, the "Midrise zone designation is most appropriate in areas generally characterized by the following:" "adjacent to business and commercial areas with comparable height and bulk;" "served by major arterials and where transit service is good to excellent and street capacity could absorb the traffic generated by midrise development;" "in close proximity to major employment centers;" "along arterials where topographic changes either provide an edge or permit a transition in scale with surroundings;" "flat areas where the prevailing structure height is greater than 37 feet or where due to a mix of heights, there is no established height pattern;" "with moderate slopes and views oblique or parallel to the slope where the height and bulk of existing structures have already limited or blocked views from within the multifamily area and upland areas" "with steep slopes and views perpendicular to the slope where upland developments are of sufficient distance or height to retain their views over the area designated for the Midrise zone;" and "where topographic conditions allow the bulk of the structure to be obscured. Generally these are steep slopes, 16 percent or more, with views perpendicular to the slope."

41. Compliance with the requirements of Chapter 23.34 SMC constitutes consistency with the Comprehensive Plan for purposes of reviewing proposed rezones. SMC 23.34.007.C. Thus, Plan goals and policies are not separately reviewed.

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 23.76.052.
2. SMC 23.34.007 provides that the applicable sections of Chapter 23.34 SMC on rezones are to be weighed and balanced together to determine the most appropriate zone

and height designation. In addition, the zone function statements are to be used "to assess the likelihood that the area proposed to be rezoned would function as intended." SMC 23.34.007.A. "No single criterion ... shall be applied as an absolute requirement or test of the appropriateness of a zone designation ... unless a provision indicates the intent to constitute a requirement..." SMC 23.34.007.B. The general rezone criteria, including "zoning principles," are set forth in SMC 23.34.008.

3. The most appropriate zone designation is the one "for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation." SMC 23.34.008.B.

4. The 58 new residential units proposed for the site would help achieve the urban village's adopted growth target of 1,000 households and would exceed the village's residential density goal of 33 households per acre. The rezone would maintain the zoned capacity of the urban village and therefore complies with SMC 23.34.008.A.

5. The area does not really function well as an L3 zone. Height and scale vary widely, and the area provides everything from a few single-family residences to numerous midrise housing opportunities.

6. The area meets some of the locational criteria for the L3 zone because it is already zoned L3 and is located within an urban center. However, the predominant height and scale exceed the L3 scale, and the area is predominantly developed to a density and intensity greater than L3. The street pattern in the area provides for good vehicular circulation and access to the site via a collector arterial, and traffic is not required to use streets that pass through less intensive residential zones. Bellevue Avenue East accommodates two way traffic and parking along one curbside. However, there are no alleys in the area. There is no LDT or L1 zoning or development nearby, and thus, no need for a transition to it. The area is well served by transit, and has close proximity and pedestrian connections to neighborhood services along Broadway Avenue East, and to parks, schools, hospitals and other residential amenities available in the area and on nearby First Hill.

7. The area would function well as a midrise zone. It provides concentrations of housing in a desirable, pedestrian-oriented neighborhood within four blocks of a full range of residential services, amenities and employment, all of which are available in and around the Broadway Commercial Core. Two small Neighborhood Commercial nodes are located one-half to two blocks away. The area is also within easy walking distance of two transit routes that travel to downtown and Laurelhurst employment centers, and within three-quarters of a mile of the planned Light Rail station that will provide regional transit.

8. The site meets the threshold criterion of SMC 23.34.024.B.1 for consideration as a Midrise zone because properties in the area, including several properties in the immediate vicinity, are developed predominantly to the intensity permitted by the Midrise zone.

9. The site also meets the threshold criterion of SMC 23.34.024.B.2 because the geotechnical consultant's research shows that the ECA on the site was created by human activity.

10. With respect to the other Midrise locational criteria, the site is not adjacent to business and commercial areas of comparable height and bulk. However, it is within an area that is close to major employment centers and open space and recreation facilities. It is also located on an arterial and served by other arterials, with good transit service and street capacity that could absorb the traffic generated by midrise development.

11. Although there is a topographic change on the property, it does not provide an edge or transition in scale with surroundings, and there is no need for such a transition in this neighborhood. There is no clearly established height pattern, although the prevailing structure height exceeds 37 feet. Views in the area are primarily perpendicular to the steep slope to the west. However, because most of the site and properties across the arterial are flat, the proposal would slightly reduce private views from a total of five units in two buildings on the east side of Bellevue Avenue East. Development east of Bellevue Avenue East is at a higher elevation and should not incur view impacts.

12. The draft PUDA expressly provides that the rezone is not intended to establish a precedent for other rezones in the surrounding area. Properties south of the site on Bellevue Avenue East are fully developed, and it is unlikely that the rezone would affect them. Most properties on the east side of Bellevue Avenue East are fully developed at or above the existing zoning density with the exception of the three single-family structures. Two are rental houses under separate ownerships and are on parcels sufficiently small to make redevelopment to Midrise standards unlikely. The rezone along with increased development in the vicinity could one day encourage an application for additional density on the property directly north of the site. However, such a proposal would likely require demolition of much of the existing building and parking area and significant new construction.

13. The proposal would add density in keeping with the range of housing types available in the area and with neighborhood-scale retail, consistent with goals CH-G1, CH-G2 and CH-G3 in the Neighborhood Plan. It would be consistent with policies CH-P5, CH-P14 and CH-P15, as well, because it would include the renovation of the Belroy Apartments, would provide high-quality housing that would complement and blend with the architectural fabric of the neighborhood, including the historic Belroy, and would be consistent with the pedestrian scale in the neighborhood.

14. The zoning principles listed in SMC 23.34.008.E are generally aimed at minimizing the impact of more intensive zones on less intensive zones, if possible. The six-story section of the proposed L-shaped building has been narrowed and aligned perpendicular to Bellevue Avenue East. The arterial qualifies as a physical buffer for properties to the east, although most of the buildings on those properties equal or exceed the proposal's height. The six-story section will also be partially screened by a 60-foot-tall Cedar tree

and, across the arterial, will face a six-story residential tower that is screened by trees on a seasonal basis, one-story parking structures and, slightly to the south, a nine-story residential tower, part of which is also screened by deciduous trees. To the west, the topography drops off sharply toward Interstate 5.

15. As noted, to the north of the site, the six-story section of the proposed L-shaped building would face a blank building wall and a parking area. In this unique configuration, the proposed 10 foot setback along part of the north property line, the proposed pedestrian corridors along the north edge of the building to minimize bulk, and the existing and proposed plantings along both sides of the north property line, including three existing Atlas Blue Cedar trees, would sufficiently minimize the impacts of the project on the property to the north. To the south, the three-story Belroy Apartments would provide a sufficient buffer between the proposed six-story building section and the lowrise zoning across East Roy Street.

16. The proposed rezone would positively impact the housing supply, as it would add 58 new residential units to the existing 51 small residential units in the Belroy. No low income housing would be displaced.

17. Although the proposal would increase the demand for public services, the increase would be minimal. There is no evidence in the record that the demand would exceed service capacities. In particular, street access, street capacity, transit service and parking capacity were shown to be sufficient to serve the additional units that would be allowed by the proposed rezone. The Director has evaluated impacts on public services and service capacities, as well as noise, historic preservation, transportation and other impacts, pursuant to SEPA, and has identified conditions to mitigate impacts that are not otherwise adequately addressed through existing regulations. Height, bulk and scale impacts were reviewed and addressed through the design review process.

18. The proposal will have a positive impact on pedestrian safety with the removal of four curb cuts and the addition of exterior lighting along Bellevue Avenue East. The design review process and historic adjacency review assured that the proposal would respect the architectural value of the historic Belroy Apartments. The addition of the small amount of commercial space on site could result in a slight increase in employment activity in the area.

19. Manufacturing activity, shoreline view, public access and recreation, and shoreline navigation are not factors in this rezone. Nor is the proposal located within an overlay district.

20. Changed circumstances are to be considered only as they relate to elements or conditions included in the criteria for the relevant zone. Such circumstances are not required for a rezone and are not cited in support of this proposal.

21. As noted, the critical area on the property would not be disturbed by construction, and it has been determined that the proposed development and irrigation of the P-patch area would not adversely affect it.

22. Weighing and balancing the applicable sections of Chapter 23.34 SMC together, the most appropriate zone designation for the site is Midrise with a PUDA.

23. To better implement the intent of the proposed PUDA's prohibition on "taverns, bars or pubs," the language should be revised to prohibit any form of a "drinking establishment" within the proposed commercial space. SMC 23.84A.010 defines "drinking establishment" as "an establishment other than a restaurant, licensed to sell alcoholic beverages for consumption on premises; that limits patronage to adults of legal age for the consumption of alcohol; and in which limited food-service may be accessory to the service of alcoholic beverages. Drinking establishments may include but are not limited to taverns, saloons, brewpubs, bars, pubs, or cocktail lounges associated with restaurants."

Recommendation

The Hearing Examiner recommends that the City Council **APPROVE** the requested rezone conditioned upon the development of the project in accordance with the final approved Master Use Permit drawings, dated June 9, 2010, as modified by design review conditions, including the structure design, structure height, building materials, landscaping, street improvements, parking lot design and layout, signage and site lighting. The Examiner also recommends that Section 1.d of the proposed PUDA, Exhibit 32, be revised to prohibit any form of a "drinking establishment" as that term is defined in SMC 23.84A.010.

Entered this 16th day of December, 2010.



Sue A. Tanner
Hearing Examiner

CONCERNING FURTHER REVIEW

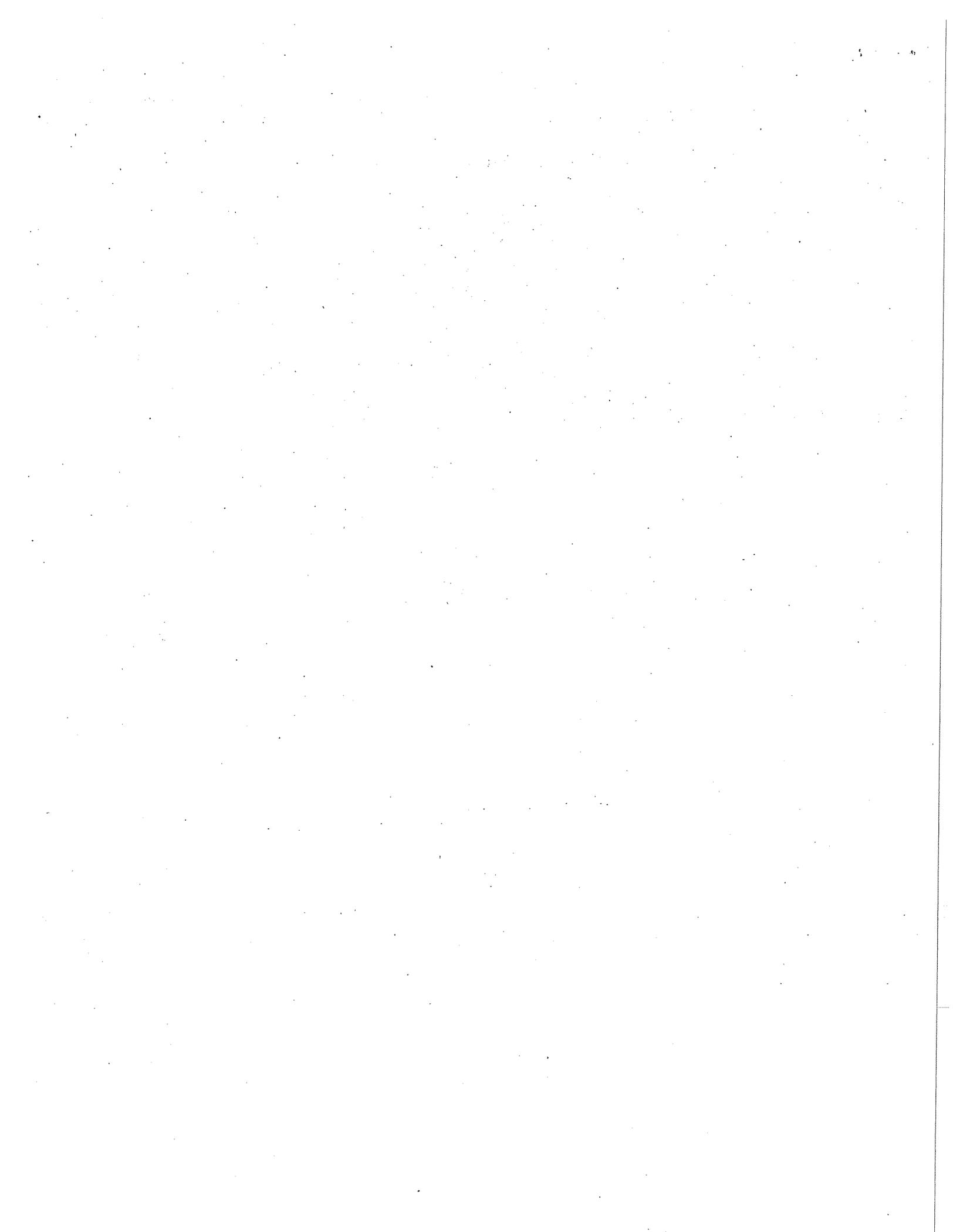
NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner's recommendation to consult appropriate Code sections to determine applicable rights and responsibilities.

Pursuant to SMC 23.76.054, any person substantially affected by a recommendation of the Hearing Examiner may submit an appeal of the recommendation in writing to the City Council. The appeal must be submitted within fourteen (14) calendar days following the

date of the issuance of the recommendation of the Hearing Examiner, and be addressed to:

Seattle City Council
Built Environment Committee
c/o Seattle City Clerk
600 Fourth Avenue, Floor 3 (physical address)
P.O. 94728 (mailing address)
Seattle, WA 98124-4728

The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought. Consult the City Council committee named above for further information on the Council review process.





City of Seattle

Department of Planning and Development

D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND RECOMMENDATION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3010378
Council File Number: 310211
Applicant Name: Leslie Bain, Weinstein AU Architects
Address of Proposal: 711 Bellevue Ave E

SUMMARY OF PROPOSED ACTION

Council Land Use Action to rezone 55,870 sq. ft. of land from L-3 to MR (CF # 310211). Project includes two new structures (one, 3-story structure and one, 3 & 6-story structure) containing 58 residential units, preservation of 51 existing units in an existing multifamily structure (BelRoy Apartments), and 980 sq. ft. of commercial use at grade located in an environmental critical area. Project includes 11,000 cu. yds. of grading. Parking for 72 vehicles to be provided below grade. Existing single family structures (5) to be demolished.

The following Master Use Permit components are required:

Contract Rezone – To rezone from NC3-65 and MR to NC3-85
Seattle Municipal Code Section 23.34

SEPA Environmental Review - Seattle Municipal Code Section 25.05

Design Review – Seattle Municipal Code Section 23.41 with Development Standard Departures

1. Structure Width (SMC 23.45.052)
2. Front Setback (SMC 23.45.518)
3. Projections into Setbacks (SMC 23.45.518)
4. Sight Triangle (SMC 23.54.030)

Certificate of Approval – Landmarks Preservation Board (SMC 23.66)

SEPA DETERMINATION: Exempt DNS MDNS EIS
 DNS with conditions
 DNS involving non-exempt grading, or demolition, or involving another agency with jurisdiction.

City of Seattle Hearing Examiner
EXHIBIT

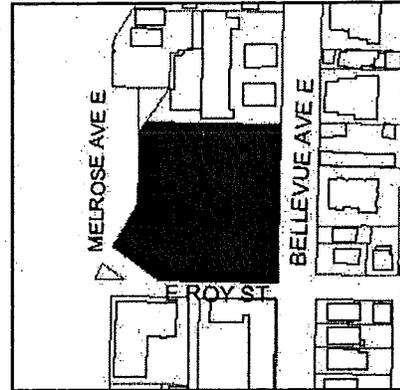
Appellant _____
Respondent _____
Department _____
ADMITTED
DENIED _____

4

FILE CF #310211, Proj. 3010378

SITE AND VICINITY

The site, located in the Capitol Hill neighborhood, lies within the Capitol Hill Urban Center Village at the northwest corner of Bellevue Avenue East and East Roy Street. The site is relatively flat along the 248 foot Bellevue Avenue East frontage and the topography drops on the west edge of the site. The western sloping area on the site is classified as an ECA (steep slope and potential slide area, the latter due to the steep slope designation). No disturbance or development of the ECA area is proposed; some disturbance of the ECA buffer would occur on the northern portion of the site.



The 55,870 square foot site includes five existing houses and the BelRoy Apartments. The site is zoned Lowrise 3 (L3). This same designation extends in all directions around the subject site. There is a Neighborhood Commercial 1-40 (NC1-40) zone on the north end of the block, and another NC1-40 zone at the nearby intersection of Summit Avenue East and East Mercer Street. The area south of East Mercer Street is zoned Midrise (MR). The neighborhood's existing urban form of the vicinity is varied in terms of height and density. On the east side of Bellevue Avenue East, buildings range from three to eight story residential buildings and a few single family homes.

Well served by transit, the area comprises mostly multi-family residential structures. Interstate 5 runs parallel and to the west of Melrose Avenue.

Background Information

The Master Use Permit application was submitted under the Midrise Land Use Code provisions in effect in December 2009. However, in January 2009, a new Midrise Code became effective through passage of Ordinance 123209. The project and permit application were subsequently revised per the new Code, and the project is being reviewed under the new Midrise Code.

An Exemption from the Environmentally Critical Area (ECA) Ordinance was approved for the site to waive the ECA Development Standards contained in SMC 25.09.180.B.1 for the proposed development due to previous grading and development activity. ECA review is still required for this project and other development standards continue to apply.

PROPOSAL

The project includes preservation of the existing BelRoy Apartments and demolition of the five existing houses and new construction of 58 residential units. The preferred option retains the existing BelRoy Apartments and would require a Contract Rezone from Lowrise 3 (L3) to Midrise (MR). Access to the garage with 63 stalls would be provided below grade and accessed via the existing garage entry to the BelRoy Apartments on East Roy Street.

Although the MR designation would apply to the entire site, per the restrictions of a Property Use and Development Agreement ("PUDA"), most of the site would be developed under the current L3 zoning which limits building height to 30 feet. Only the east-west wing of the L-shaped building would utilize the extra height allowed by an MR zone.

PUBLIC COMMENTS

Approximately 34 members of the public attended the Early Design Guidance meeting held on October 7, 2009 and seven letters were received. The following comments were offered:

- Supportive of project, but concerned that the four units located in the central courtyard should be eliminated to have a truly open courtyard. Also concerned about the height of the north building and feels that these 12 units should be distributed elsewhere on the site.
- Would like to see the proposed six story element lowered and suggests using the minimum floor to floor height. Believes that attention to the streetscape will be an improvement to the neighborhood. Feels this is a well studied proposal.
- Concerned that private view will be blocked and would like the building heights lowered. Supportive of the general project direction that is respectful of the neighborhood character and is pleased that the applicant has been responsive to the neighbors concerns.
- Concerned that the north tower is out of context of the surrounding environment. The taller buildings that are in the area were built before the current code was implemented. Feels that granting a rezone that allows greater height will set a poor precedent for the neighborhood.
- Supports project's current direction.
- Neighborhood planning group consensus that an open courtyard should be the central focus of this project and that support for additional height would be encouraged to achieve an open central courtyard. Note that the strongest opposition is from neighbor's who reside in the tallest building in the area (9 stories) that would no longer be permitted.
- Respect for the BelRoy is critical and that the proposed building should respond to the three story height of the BelRoy. Also notes that the five existing houses, that are proposed to be demolished, are an important part of the existing streetscape character.
- Concerned with the loss of the houses and the resulting loss of neighborhood flavor in exchange for modern, larger buildings. Clarified that the developer has not decided whether the units will be rental or condos. Also concerned with shading and view impacts from the proposed buildings.
- Supportive of the notion of designing through-units, which are a unique model and desirable from a green building standpoint. Feels the Board should support a departure that allows for skinnier buildings.
- Wondered whether thought of restoring the existing houses, rather than bulldozing them and recognizing the character they lend to the neighborhood. Against the increased height.
- A few exceptions that were allowed 30 years ago to allow taller buildings should not be considered a precedent for further buildings. The neighborhood design guidelines note that maximizing solar exposure is desirable; however allowing a taller building will preclude sun from other buildings across Bellevue.
- Three different alternatives have not been shown. The proposed development looks too blocky and the buildings should run east-west with courtyards on either end for safety. The proposed building is too tall for the context. Would like to see brick used.
- Support preservation of the existing single family structures, but if this development goes forward, it should be well-designed and support density. Opportunities for rental units are desired and parking is always a problem in this area.

- Support project proposal and feels the building can be mitigated with landscaping along the street. The pathway that runs along I5 should be cleaned up and attention given to security issues. Also suggested that relocation of the existing houses should be explored.

- Concerned with the impacts of construction. Supports keeping existing houses, especially the front yards associated with these houses.
- Corner spaces should provide access to the courtyard area.
- Like the slenderness of the building which will mitigate the increase height. Continuing the street wall is good and should include individual entries that encourage pedestrian activity.
- Concerned with the loss of the old growth cedar tree located in the property, increase in traffic congestion, preservation of the existing houses and corporate gain as the expense of affordable rental housing units.
- Prefer increased height for the north building to allow courtyard to remain open, quality materials that reflect the original apartment building and floor plans that are relatively small to keep innovative and affordable layouts similar to the BelRoy.
- Pleased with preservation of BelRoy. Added height for north building not too impactful as the north building is only approximately 30-40 feet wide. Concern about the precedent this will establish is a concern, however.
- Architectural history of the BelRoy includes narrow footprint, garden entry walk, paired apartment stacks "point blocks", smaller units, and natural cross ventilation. Impressed with the plans to preserve and enhance the building and create a sensitive development surrounding the BelRoy.
- Supportive of the rezone request for added height and would support more height if courtyard remains open.
- Concerned with the loss of greenbelt and bird habitat and trees along the fence line. Would like to see these preserved.

The applicant applied for a Master Use Permit on December 17, 2009. Notice of Application was published on January 1, 2010 and a 14-day comment period ended on January 27, 2010. Approximately 33 comments were received by DPD during this period.

- Request to be a Party of Record.
- Support for proposed project as an architectural enhancement to the neighborhood and the preservation of the historic BelRoy. Proposed six-story wing only 30-40 feet wide and will likely have an acceptable impact on private views and on the light and space at street level.
- Concern that increased height will set a precedent.
- Trees along the fence should be preserved for erosion control, habitat preservation and privacy.
- Oppose proposed rezone due to view blockage across site from across the street, concerns about precedent-setting, increased traffic and parking to the neighborhood and unnecessary commercial space.
- Support project and proposed entry pattern and design's ability to respect the BelRoy and be compatible with the streetscape.
- Appreciate preservation and repair of BelRoy.
- Would like to see inner courtyard kept as open space, quality construction materials and smaller floor plans.
- Support additional height on the north section in exchange for an open inner courtyard.
- Confirm the unique design qualities and features of the BelRoy and agree that the proposed design will be sympathetic to the BelRoy and enhance the streetscape.
- Support the location of parking below grade.

- The area has many building that meet Lowrise 3 standards. Removal of the five single family structures takes away from the architectural diversity of the area, block sunlight, decrease the sense of open space and exacerbate difficult parking conditions.
- Existing neighborhood already meets density and livability – the proposed tower would not add any benefit to the neighborhood, but would take away light and cause more shadows.
- Pleased with the proposed lower building, but not the six story tower as out of scale and causing view blockage.
- Oppose this project as unnecessary development.
- Smaller size units of the BelRoy desirable and adds to variety of housing types.
- More housing in this neighborhood is beneficial.
- Acute parking shortage in the area, particularly during construction, that should be mitigated.
- Oppose project as out of character with the neighborhood.
- The proposed design lacks a sensitive transition to nearby buildings.
- Current zoning is reasonable and should be adhered to.
- Support for the proposed rezone which will integrate new development into the neighborhood in a positive and desirable manner.

Approximately 16 members of the public attended the Initial Recommendation meeting held on April 21, 2010. The following comments were offered:

- Oppose rezone of site to Midrise. Dubious about the viability of café space. Natural ventilation is problematic with freeway fumes. Object to the height of the north tower.
- Worried there is an inadequate supply of guest parking proposed. Concerned about steepness of Roy Street during icy conditions. Existing zone should be respected.
- Pleased with the design aesthetic and character.
- Support concept of taller tower to allow more space in the courtyard. Prefers the mix of building heights in the neighborhood. The entry to the commercial spaces should be from the sidewalk to the east and not to the north.
- Support garage entry off of Roy Street (rather than Bellevue).
- Support preservation of the BelRoy.
- Concerned that the proposed green space does not benefit the neighborhood, only the building residents.
- Feels this is a classy alternative to an otherwise boxy approach. Clarify café commercial use in the zone.
- Support for proposed massing and responsiveness to the BelRoy. Well-scaled courtyard.
- Strong street wall design. Community already has public open spaces available.
- More density is good.
- Clarifying proposed units will be condos. Concerned with the privacy and light for the interior units facing each other.

Approximately eight members of the public attended the Final Recommendation meeting held on May 19, 2010. The following comments were offered:

- Noted that the café had no parking spaces and expressed concern that the café could turn into a bar; would prefer café were deleted.
- Concerned with view blockage and increased height.
- Building design and mass does not complement the existing buildings in the neighborhood.

- Concerned with whether design departures were justified and resulted in a contribution to the streetscape.
- Questioned whether rezone criteria were met and why a tapering down at the zone edge was not being required.

REZONE ANALYSIS

SMC 23.34.004 Contract rezones.

- A. *Property Use and Development Agreement (PUDA). The Council may approve a map amendment subject to the execution, delivery and recording of an agreement executed by the legal or beneficial owner of the property to be rezoned to self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone. All restrictions shall be directly related to the impacts that may be expected to result from the amendment. A rezone shall be conditioned on performance or compliance with the terms and conditions of the property use and development agreement. Council may revoke a contract rezone or take other appropriate action allowed by law for failure to comply with a PUDA. The agreement shall be approved as to form by the City Attorney, and shall not be construed as a relinquishment by the City of its discretionary powers.*

The proposal is for a contract rezone in which development would be controlled by the use of a Property Use and Development Agreement (PUDA). A contract rezone is proposed, and a PUDA would be executed to impose conditions on the project. The Design Review and SEPA process has helped inform an appropriate Agreement. The PUDA would restrict the development of the properties proposed for rezone to the structure approved through the Design Review process which the analysis is included below. The approved design includes, but is not limited to, the structure design, structure height, building materials, landscaping, street improvements, parking design and layout, public benefit features, signage and site lighting and is documented in the approved plans dated June 9, 2010.

- B. *Waiver of Certain Requirements. The ordinance accepting the agreement may waive specific bulk or off-street parking and loading requirements if the Council determines that the waivers are necessary under the agreement to achieve a better development than would otherwise result from the application of regulations of the zone. No waiver of requirements shall be granted which would be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.*

No waivers are being requested as part of the contract rezone.

SMC 23.34.007 Rezone evaluation.

- A. *The provisions of this chapter apply to all rezones except correction of mapping errors. In evaluating proposed rezones, the provisions of this chapter shall be weighed and balanced together to determine which zone or height designation best meets those provisions. In addition,*

the zone function statements, which describe the intended function of each zone designation, shall be used to assess the likelihood that the area proposed to be rezoned would function as intended.

B. No single criterion or group of criteria shall be applied as an absolute requirement or test of the appropriateness of a zone designation, nor is there a hierarchy or priority of rezoning considerations, unless a provision indicates the intent to constitute a requirement or sole criterion.

Under the prior version of the MR criteria, there was a requirement that property could not be rezoned to an MR designation if an Environmentally Critical Area was located on the property. SMC 23.34.024.B.2, prior to passage of Ordinance 123209 in December 2009. However, the MR criteria were changed through passage of Ordinance 123209, and the presence of an Environmentally Critical Area no longer precludes a rezoning to MR. Therefore, the evaluation applicable to the proposed rezoning involves a weighing and balancing of factors, with no one factor as a requirement or sole criterion to be met.

C. Compliance with the provisions of this chapter shall constitute consistency with the Comprehensive Plan for the purpose of reviewing proposed rezonings, except that Comprehensive Plan Shoreline Area Objectives shall be used in shoreline environment redesignations as provided in SMC Subsection 23.60.060.B3.

D. Provisions of this chapter that pertain to areas inside of urban centers or villages shall be effective only when a boundary for the subject center or village has been established in the Comprehensive Plan. Provisions of this chapter that pertain to areas outside of urban villages or outside of urban centers shall apply to all areas that are not within an adopted urban village or urban center boundary.

The site is located in the Capitol Hill Urban Center.

E. The procedures and locational criteria for shoreline environment redesignations are located in Sections 23.60.060 and 23.60.220, respectively.

The proposal is not located within any shoreline area.

F. Mapping errors due to cartographic or clerical mistakes may be corrected through process required for Type V Council land use decisions in SMC Chapter 23.76 and do not require the evaluation contemplated by the provisions of this chapter.

SMC 23.34.008 General rezoning criteria.

A. To be approved a rezoning shall meet the following standards:

1. In urban centers and urban villages the zoned capacity for the center or village taken as a whole shall be no less than one hundred twenty-five percent (125%) of the growth targets adopted in the Comprehensive Plan for that center or village.

The proposal site is within the Capitol Hill Urban Center. The Urban Village Appendix A to the Seattle Comprehensive Plan set a 1,000 household increase as the growth target for this Urban Center. This target requires a density increase to 35 households per acre (or 1,245 SF per household) from the existing 31 households per acre (or 1,405 SF per household). The subject site is 55,870 SF. Development of more than 45 households on this site would exceed the residential density goals of this RUV; therefore, the proposed 109 residential units far exceed this density and positively contribute to meeting this goal.

The proposed rezone for the proposed structure will maintain the zoned capacity and zoned density for this site. The proposed rezone is consistent with SMC 23.34.008.A.1 because the increased height does not reduce capacity below 125% of the Comprehensive Plan growth target. The proposed residential units would contribute to achieving the 125% of the growth targets for the Capitol Hill Urban Center.

2. For the area within the urban village boundary of hub urban villages and for residential urban villages taken as a whole the zoned capacity shall not be less than the densities established in the Urban Village Element of the Comprehensive Plan.

The proposal is located within an urban center and the zoned capacity will not be less than the densities established in the Urban Village Element of the Comprehensive Plan.

B. Match Between Zone Criteria and Area Characteristics. The most appropriate zone designation shall be that for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation.

To assist in evaluating the match with locational criteria, the analysis below addresses the L3 and MR locational criteria from other sections of the Code. Following that analysis, the remaining General Rezone Criteria from SMC 23.34.008 C-I are discussed.

C. Zoning History and Precedential Effect. Previous and potential zoning changes both in and around the area proposed for rezone shall be examined.

The subject site was annexed into the City of Seattle in 1883. In 1923, the site was zoned Second Residence District. Between 1947 and 1982, the subject site was zoned Second Residence District in Area District C (R2-C). When the Multi-Family Code was adopted on June 11, 1982 under Ordinance 110570, there was a City-wide examination of properties zoned multi-family. At the time, this portion of Capitol Hill was zoned RMH 350, allowing buildings of 10 to 15 stories. Based on the Multi-Family Land Use Policies in effect at that time, new zoning designations were applied. Properties north of E. Mercer St. were designated as L3, whereas properties south of E. Mercer St. were designated MR.

City Land Use Policies have changed substantially in the last quarter century. In 1994 the City adopted a new Comprehensive Plan based on the Urban Center concept. Population and employment growth was to be encouraged in Urban Centers, and the Villages within those Centers, and proportionately discouraged outside of Urban Centers. Policy changes since 1994 have reinforced and strengthened the Urban Center concept. Thus, the zoning history based on prior policy direction, does not militate against a rezone.

In terms of a possible precedential effect of the rezone, properties to the south of E. Roy Street and west of Bellevue Avenue E. are already fully developed, and the rezone is not expected to affect those properties. There are two properties south of the site across Bellevue Avenue E. that are not developed to current zoning, but have markedly different physical circumstances. They consist of two rental houses under separate ownership. One parcel (708) is 3,766 square feet, and the other (704) is 2,213 square feet. Their small size significantly limits their redevelopment potential and redevelopment to Midrise standards would be unlikely. In addition, the draft PUDA (attached) explicitly states the City Council intent that this contract rezone will not serve as a precedent.

The site immediately north of the BelRoy is developed with an apartment building, with its required parking located in the area between the street and the building. Construction of a new building in the parking area is not considered likely, given the loss of existing parking to which tenants have become accustomed and the significant difficulty of building underground parking in that location.

The PUDA associated with the rezone of the subject property would allow only a small portion of the site to exceed the height of the L3 zone, and there is precedent in the neighborhood for exceeding a three-story height. Approval of the rezone and PUDA is based on the exceptional conditions of the site, with a valued existing building, with limited flat area for development, major existing vegetation, with only one adjacent property and the orientation of that property entirely away from the subject site. These conditions are unique to the BelRoy site. The rezone is only a reallocation of density and improved massing on the site, not a change to a high density condition.

Under the prior version of the MR criteria, there was a requirement that property could not be rezoned to an MR designation if an Environmentally Critical Area was located on the property. SMC 23.34.024.B.2, prior to passage of Ordinance 123209 in December 2009. This provision may have operated as an absolute requirement or limitation. However, the MR criteria were changed through passage of Ordinance 123209, and the presence of an Environmentally Critical Area no longer precludes a rezone to MR. Therefore, the evaluation applicable to the proposed rezone involves a weighing and balancing of factors, with no one factor as a requirement or sole criterion to be met.

D. Neighborhood Plans.

1. For the purposes of this title, the effect of a neighborhood plan, adopted or amended by the City Council after January 1, 1995, shall be as expressly established by the City Council for each such neighborhood plan.

The project site lies within the planning area of the Capitol Hill Neighborhood Plan which was adopted as an amendment to the Comprehensive Plan by City Council, June 16, 1999, by Ordinance 119498. The Capitol Hill Neighborhood Plan includes the geographical area around the site, but has no specific references to this site or its environs.

2. Council adopted neighborhood plans that apply to the area proposed for rezone shall be taken into consideration.

The following goals and polices in the adopted Capitol Hill Neighborhood Plan apply to the proposed rezone (Goal/Policy in italics followed by response/analysis).

CH-P5: Encourage the preservation of the neighborhood's architectural quality, historic character and pedestrian scale.

The project included the nomination and designation of the existing BelRoy Apartment building, recognizing the value this building contributes to the architectural quality and historic character of this neighborhood. The new project is compatible with the pedestrian scale of the existing neighborhood.

CH-P9: Zoning and design guidelines should ensure that new development complements the existing architectural fabric of the neighborhood.

The design of the proposed development evolved in response to the Citywide and Capitol Hill Neighborhood Guidelines as applied and reviewed through the Design Review process (see Design Review section of this decision). This review ensures that the proposed development will complement the architectural fabric of the neighborhood and more specifically, the architectural precedent established by the BelRoy landmark building located on the subject site.

CH -P14: Encourage the preservation of existing housing structure and maintenance of properties.

The existing BelRoy Apartment Building will be preserved and upgraded with new windows and other enhancements to bring higher energy efficiency and durability to the building.

CH -P15: Encourage the development of high quality new housing that blends with historic housing.

See response to CH-P9 above.

3. Where a neighborhood plan adopted or amended by the City Council after January 1, 1995 establishes policies expressly adopted for the purpose of guiding future rezones, but does not provide for rezones of particular sites or areas, rezones shall be in conformance with the rezone policies of such neighborhood plan.

With the exception of the location of the Susan Henry Library, the adopted Capitol Hill Neighborhood Plan contains no policies for guiding future rezones.

4. If it is intended that rezones of particular sites or areas identified in a Council adopted neighborhood plan are to be required, then the rezones shall be approved simultaneously with the approval of the pertinent parts of the neighborhood plan.

The subject site is not identified for rezoning in the Capitol Hill Neighborhood Plan.

Conclusion: The proposed contract rezone is consistent with all applicable policies contained in the Comprehensive Plan's adopted Capitol Hill Neighborhood Plan.

E. Zoning Principles. The following zoning principles shall be considered:

1. The impact of more intensive zones on less intensive zones or industrial and commercial zones on other zones shall be minimized by the use of transitions or buffers, if possible. A gradual transition between zoning categories, including height limits, is preferred.

The rezone is of a large site, just one block north of a large MR-zoned area. The predominant building height on the site would be three stories (the BelRoy being four stories on the downhill side). The increased height would only be utilized on the northern portion of the proposed L-shaped building which would be six stories in height. In terms of transition to the property to the north, several factors are important to note about the proposed six-story portion:

- The portion of the building that extends to six stories has been made as narrow as possible and is aligned perpendicular to the street to narrow its width on Bellevue Avenue E.
- The tallest part of the building is modulated to provide an additional 10-foot setback from the northern property line and Bellevue Avenue E., for a length of approximately 35 feet.
- The units are recessed, with pedestrian corridors along the northern edge. These corridors moderate the building bulk and help to separate the 6-story portion from the building to the north.
- The existing 62-foot tall cedar tree would be retained, and aligns in height to the scale of this building wing and helps to screen it from view.

The south façade of the abutting property to the north (i.e. the façade closest to the proposed six-story structure) is a windowless, blank façade. Approximately half of the length of the proposed 60-foot building adjoins the neighboring building's surface parking lot. In addition, there are three Atlas Blue cedars on the northern property that currently provide a physical buffer between the properties. Given the sensitive design of the six-story portion, and the conditions on the adjoining property, sufficient transition between zones is provided.

2. Physical buffers may provide an effective separation between different uses and intensities of development. The following elements may be considered as buffers:

- a. Natural features such as topographic breaks, lakes, rivers, streams, ravines and shorelines;*
- b. Freeways, expressways, other major traffic arterials, and railroad tracks;*
- c. Distinct change in street layout and block orientation;*
- d. Open space and greenspaces.*

To the west of the proposed development, the site topography drops considerably downward towards the Interstate 5 corridor. To the south of the site, the abutting 20-foot wide right-of-way, Roy Street, also drops significantly downward and the apartment buildings across Roy Street have limited views of the site to the topographical break and significant vegetation. To the east of the site, is Bellevue Avenue, a 60 foot wide right-of-way bounded by a combination of single and multi family residences.

The portion of the proposed development that will take advantage of the Midrise height limit runs along the northern portion of the site. As noted earlier, the south façade of the abutting property to the north (i.e. the façade closest to the proposed six-story structure) is a windowless, blank façade. Approximately half of the length of the proposed 60-foot building adjoins the neighboring building's surface parking lot. In addition, there are three Atlas Blue cedars on the northern property that currently provide a physical buffer between the properties. Given the sensitive design of the six-story portion, and the conditions on the adjoining property, sufficient transition between zones is provided.

3. Zone Boundaries.

a. In establishing boundaries the following elements shall be considered:

- (1) Physical buffers as described in subsection E2 above;*
- (2) Platted lot lines.*

The proposed rezone does not follow existing platted lot lines, but does follow long standing ownership lines.

b. Boundaries between commercial and residential areas shall generally be established so that commercial uses face each other across the street on which they are located, and face away from adjacent residential areas. An exception may be made when physical buffers can provide a more effective separation between uses.

No commercial zones are being proposed.

4. In general, height limits greater than forty (40) feet should be limited to urban villages. Height limits greater than forty (40) feet may be considered outside of urban villages where higher height limits would be consistent with an adopted neighborhood plan, a major institution's adopted master plan, or where the designation would be consistent with the existing built character of the area.

The property is located within the Capitol Hill Urban Center Village. The proposed height limit would reach 60 foot base height limit allowed under Midrise zones with a self imposed restriction of this height allowance to the north section of the new building. The remainder of the new development would be limited to a 30 foot tall base height (compliance with the underlying zone height limitations).

Conclusion: The proposal, as designed, is consistent with the zoning principles stated above: the design has limited the additional height to a location on the site that minimizes the impact to the immediate neighbor to the north and neighbors to the east.

F. Impact Evaluation. The evaluation of a proposed rezone shall consider the possible negative and positive impacts on the area proposed for rezone and its surroundings.

1. Factors to be examined include, but are not limited to, the following:

a. Housing, particularly low-income housing;

The proposal includes 58 new housing units on a site in addition to the existing 51 residential units. There is no low-income housing included in the proposal. However, the retention of the BelRoy and its interior layout keeps small units available to residents of Capitol Hill. The small unit size will puts these units within a broader range of income than most new housing.

b. Public services;

There will be an increase in demand on public services from the proposed net increase of 58 residential units and 895 square feet of retail, and parking for 63 vehicles. Fire and police service needs may slightly increase related to the increased residential units and commercial space not previously existing.

c. Environmental factors, such as noise, air and water quality, terrestrial and aquatic flora and fauna, glare, odor, shadows, and energy conservation;

There is little increase in *noise, air and water quality* impacts expected with the proposed increase in height. *Terrestrial and aquatic flora and fauna* would likely not be affected. *Glare and odor* impacts would likely not change and these are mostly associated with street level uses which would be the same regardless of structure height.

In terms of the building to the north, there is significant landscaping on this adjacent property that *shades* itself. The proposed six-story building portion would infill the existing shadowing from the trees, but would not reach the swimming pool west of the building or significantly increase shadows.

Energy consumption would be increased with the expected additional 58 residential units. The proposed increase, however, is minimal. The project includes a significant commitment to sustainability. The site planning allowed under the rezone and PUDA creates naturally ventilated and daylight units based on narrow footprints and greater open space than would occur under the current zoning. This is a positive impact under item (c) energy use, above. The proposed development, as made possible by the rezone, would be permitted under the City's Priority Green program, and meet 2030 energy goals.

d. Pedestrian safety;

Pedestrian safety is improved by removing curb cuts from Bellevue Avenue E.; the removal of the curb cuts also increases valuable on-street parking for neighbors and visitors. Pedestrian safety will also be enhanced with landscaping and exterior lighting along Bellevue Avenue.

e. Manufacturing activity;

There is no manufacturing activity existing or proposed at this location.

f. Employment activity;

The proposal includes 895 sq. ft. of commercial space which is a new use on the site. Therefore, employment opportunities are expected to increase albeit minimally.

g. Character of areas recognized for architectural or historic value;

The existing BelRoy Apartment Building is a designated landmark. Through the design review process and the historic adjacency review, the proposed development has responded to and respected the architectural value of this landmark.

h. Shoreline view, public access and recreation.

The proposal is not located within or near any shoreline area.

2. Service Capacities. Development which can reasonably be anticipated based on the proposed development potential shall not exceed the service capacities which can reasonably be anticipated in the area, including:

a. Street access to the area;

No additional curb cuts or access points on the right of way are proposed beyond that which is allowed under current zoning. In fact, several existing curbcuts will be restored. By allowing a single access point on Roy Street, the project will consolidate its impacts on street access into a single access point to the below grade parking. The rezone would not negatively impact traffic or transportation significantly more than a development under the current zones.

b. Street capacity in the area;

The rezone would not result in a significantly greater number of vehicle trips than might occur under the current zones.

c. Transit service;

King County Metro Transit (MT) runs the #14 bus south along Bellevue Avenue E. to downtown, with a bus stop at the intersection of Bellevue Avenue E. and E. Roy St. The #25 bus (serving downtown and Laurelhurst) has a stop at the corner of Lakeview Boulevard E. and Belmont Avenue E.

Though parking is proposed for the units (63 spaces), the excellent availability of transit service and proximity to downtown makes it likely that transit would be the preferred choice for commuting increasing ridership. Some increase in transit usage could be anticipated from the redevelopment of the site but not the rezone. The rezone will create approximately 22 additional units beyond what the existing zone would currently allow.

d. Parking capacity;

Because the site is located within an urban center, no parking is required by the Land Use Code (SMC 23.54.015B2). However, as indicated above, there are 63 parking spaces proposed for the 109 proposed residential units. Coupled with the location adjacent to excellent transit service, there is adequate on-site parking being provided. Please also see Long Term Transportation Impacts in the SEPA analysis.

e. Utility and sewer capacity;

Sewer Capacity:

The proposed rezone would result in an increase in the demand for sewer capacity over what would be allowed to be built outright under the existing zone. This increase is expected to be minimal.

Electrical Service:

The proposed rezone would result in a minimal increase in the electrical service load over what would be allowed to be built outright under the existing zone.

Water Availability:

A Water Availability Certificate was granted by Seattle Public Utilities on December 21, 2009.

f. Shoreline navigation.

The project site is not located within or near any shoreline area.

Conclusion: There is anticipated an increased need for sewer, police and fire services related to the increase of 58 residential units while other service and environmental impacts related to height increase would be minimal. Positive impacts include restoration of several curbcuts and an enhanced pedestrian streetscape with landscaping. The frontage along Bellevue Avenue E. features several residential entries that bridge the scale between smaller neighborhood residences and larger multi-family buildings. They provide public views into the project's garden courtyard, and reflect the "point block" circulation strategy favored by well-known architects of the period, including Frederick Anhalt and Lionel Pries. In addition, the rezone development provides substantially more open space, and open space of higher quality and utility, than would be possible under L3 standards. Adequate parking will be provided and transit service is excellent.

G. Changed Circumstances. Evidence of changed circumstances shall be taken into consideration in reviewing proposed rezones, but is not required to demonstrate the appropriateness of a proposed rezone. Consideration of changed circumstances shall be limited to elements or conditions included in the criteria for the relevant zone and/or overlay designations in this chapter.

As noted above, adopted City policy has been revised regarding rezones of sites with ECAs and that change of circumstances should be noted.

In addition, more generally, see the discussion above of Zoning History. The City's Comprehensive Plan has replaced the Land Use Policies that were in effect when zone designations were established in 1982. Newer adopted policies encourage growth in Urban Center Villages. In addition, the Design Review process did not exist at that time, and Design Review allows for a finer-grained examination of building context and the compatibility of proposed development.

H. Overlay Districts. If the area is located in an overlay district, the purpose and boundaries of the overlay district shall be considered.

The site is not located in an overlay district.

I. Critical Areas. If the area is located in or adjacent to a critical area (SMC Chapter 25.09), the effect of the rezone on the critical area shall be considered.

As noted previously, the proposed rezone development is not anticipated to have any adverse effect on the steep slope critical area on the western part of the site. The critical area would not be disturbed by construction. The critical area would be replanted pursuant to a re-vegetation plan that meets ECA standards, and in collaboration with the Washington State Department of Transportation in an effort to remove invasive vegetation and replant with native species.

SMC 23.34.013 Designation of multifamily zones.

An area zoned single family that meets the criteria of Section 23.34.011 for single-family designation, may not be rezoned to multifamily except as otherwise provided in Section 23.34.010 B.

The proposed rezone is not from a single family designation.

SMC 23.34.020 Lowrise 3 (L3) zone, function and locational criteria.

A. Function. An area that provides moderate scale multifamily housing opportunities in multifamily neighborhoods where it is desirable to limit development to infill projects and conversions compatible with the existing mix of houses and small to moderate scale apartment structures.

The neighborhood has a mix of structures including mid-rise apartment and condominium buildings that range from three to nine stories, and some remaining single family homes. Apartment structures directly across the street from the site range in height from five to nine stories. (The scale of neighborhood development is documented in the Early Design Guidance Packet, pages 4-5.) On the same side of the street as the proposed rezone, there is a small Neighborhood Commercial 1 zone. The area functions to provide greater density, and in a number of cases, much greater height, than envisioned by the L3 zone

B. Locational Criteria.

1. Threshold Conditions. Subject to subsection B2 of this section, properties that may be considered for an L3 designation are limited to the following:

a. Properties already zoned L3;

The site is currently zoned L3.

b. Properties in areas already developed predominantly to the permitted L3 density and where L3 scale is well established;

The properties in this area are predominantly developed to the permitted L3 density; however the scale consists of a wide variety of developments and is not well established.

c. Properties within an urban center or village, except in the Wallingford Residential Urban Village, in the Eastlake Residential Urban Village, in the Upper Queen Anne Residential Urban Village, in the Morgan Junction Residential Urban Village, in the Lake City Hub Urban Village, in the Bitter Lake Village Hub Urban Village, or in the Admiral Residential Urban Village; or

The property is located within an urban center.

d. Properties located in the Delridge Neighborhood Revitalization Area, as shown in Exhibit A 23.34.020 provided that the L3 zone designation would facilitate a mixed-income housing development initiated by a public agency or the Seattle Housing Authority; a property use and development agreement is executed subject to the provisions of SMC Chapter 23.76 as a condition to any rezone; and the development would serve a broad public purpose.

The property is not located in the Delridge Neighborhood Revitalization Area.

Conclusion: To be considered for a Lowrise 3 zone, the site must meet criteria a, b, c or d. The site meets conditions a and c, so it may be considered for Lowrise 3 zoning.

2. Properties designated as environmentally critical may not be rezoned to an L3 designation, and may remain L3 only in areas predominantly developed to the intensity of the L3 zone.

The area around the project site is largely already developed, with many structures of a greater height and bulk than L3 (buildings in the vicinity range from three to nine stories.) The site itself is also not consistent with L3 designation criteria as it is developed at a scale greater than L3 (a portion of the Belroy itself is four stories in height). Therefore, the designation of the environmentally critical area in the existing Lowrise 3 zone should not remain as such given that the site does not match the intensity of the L3 zone.

3. Other Criteria. The Lowrise 3 zone designation is most appropriate in areas generally characterized by the following:

a. Development Characteristics of the Area.

(1) Either:

(a) Areas that are already developed predominantly to the permitted L3 density and where L3 scale is well established,

The area appears to be predominantly developed to the L3 density; however the L3 scale is not well-established and many buildings exceed the L3 allowed scale. The area around the project site is largely already developed, with many structures of a greater height and bulk than allowed in an L3 zone. (As previously noted, buildings in the vicinity range from three to nine stories.) The site itself is also not consistent with L3 locational criteria as it is developed at a scale greater than L3 (a portion of the Belroy itself is four stories in height). Thus, the site does not match L3 locational criteria.

(b) Areas that are within an urban center or urban village, except in the Wallingford Residential Urban Village, in the Eastlake Residential Urban Village, in the Upper Queen Anne Residential Urban Village, in the Morgan Junction Residential Urban Village, in the Lake City Hub Urban Village, in the Bitter Lake Village Hub Urban Village, or in the Admiral Residential Urban Village; or

The subject site is located in an Urban Center.

(c) Areas that are located within the Delridge Neighborhood Revitalization Area, as shown in Exhibit A 23.34.020 provided that the L3 zone designation would facilitate a mixed-income housing development initiated by a public agency or the Seattle Housing Authority; a property use and development agreement is executed subject to the provisions of SMC Chapter 23.76 as a condition to any rezone; and the development would serve a broad public purpose.

The subject site is not located in the Delridge Neighborhood Revitalization Area.

(2) Areas where the street pattern provides for adequate vehicular circulation and access to sites. Locations with alleys are preferred. Street widths should be sufficient for two (2) way traffic and parking along at least one (1) curbside.

The locational criteria also refer to L3 sites as having direct access to arterials, so that traffic does not have to go through less intensive ones to reach an arterial. In this case, the site fronts on a collector arterial, Bellevue Avenue E., which is more typical of higher density zones. Also, although the street pattern does provide adequate vehicular circulation and access to sites, there is no alley. The lack of an alley makes this site less than ideal for an L3 zone. As a result, there are four curb cuts on Bellevue Avenue E. serving existing site uses. Bellevue Avenue is a 60-foot wide right-of-way with curbs, sidewalks and gutters with two-way traffic and parking along one curbside. It appears that Roy Street, on a steep incline, is a substandard width with sidewalks along a portion of the right-of-way. Roy Street has two-way traffic and parking along the curbside along some portions of the street. The L3 zone is used to provide a transition between multifamily and commercial zones. That function is not applicable here, as the site is part of a residential area, and is not on an edge of a commercial zone.

b. Relationship to the Surrounding Areas.

(1) Properties in areas that are well served by public transit and have direct access to arterials, so that vehicular traffic is not required to use streets that pass through less intensive residential zones;

The subject property is well served by public transit and has direct access to Bellevue Avenue, a collector arterial.

(2) Properties in areas with significant topographic breaks, major arterials or open space that provide sufficient transition to LDT or L1 multifamily development;

There are no L1 or LDT zones in the nearby vicinity. The significant topographical break occurs within the Lowrise 3 zone.

(3) Properties in areas with existing multifamily zoning with close proximity and pedestrian connections to neighborhood services, public open spaces, schools and other residential amenities;

The subject property is within an existing multifamily zone and is in close proximity and pedestrian connections to neighborhood services located on Broadway, downtown Seattle and several major hospitals located in the First Hill neighborhood. There are two urban "pocket parks" located nearby: Tashkent Park at Mercer and Boylston, and the Thomas Street Park on the corner of Thomas and Bellevue, four blocks south of the site. Large parks within walking distance include Volunteer Park and Cal Anderson Park. The Melrose bicycle trail is immediately west of the site. Schools are located within the greater Capitol Hill neighborhood.

(4) Properties that are adjacent to business and commercial areas with comparable height and bulk, or where a transition in scale between areas of larger multifamily and/or commercial structures and smaller multifamily development is desirable.

The subject property is not adjacent to a business or commercial area, although a small area zoned NC1 is nearby.

SMC 23.34.024 Midrise (MR) zone, function and locational criteria.

A. Function. An area that provides concentrations of housing in desirable, pedestrian-oriented urban neighborhoods having convenient access to regional transit stations, where the mix of activity provides convenient access to a full range of residential services and amenities, and opportunities for people to live within walking distance of employment.

This area is in a desirable, pedestrian-oriented neighborhood that is just four blocks west of the main Broadway Commercial Core. The site is within a block that has a small Neighborhood Commercial 1 zone on the north, and a larger Neighborhood Commercial 1 zone is located two blocks to the southeast. The site is within walking distance of employment, and a full range of residential services. Regional transit, the Capitol Hill Light Rail station, is planned along Broadway and is generally located within walking distance (approximately 11 blocks away). The #14 bus runs south along Bellevue Avenue E. to downtown, with a bus stop at the intersection of Bellevue Avenue E. and E. Roy St. The #25 bus (serving downtown and Laurelhurst) has a stop at the corner of Lakeview Boulevard E. and Belmont Avenue E.

B. Locational Criteria.

1. Threshold Conditions. Subject to B2 of this subsection, properties that may be considered for a Midrise designation are limited to the following:

a. Properties already zoned Midrise;

The subject site is not currently zoned Midrise.

b. Properties in areas already developed predominantly to the intensity permitted by the Midrise zone; or

Several of the properties in the immediate area are developed to the intensity permitted by MR zoning. They range in height from three to nine stories, with several buildings across the street from the site at a height and density that is MR or greater in character. The site and immediate area are predominantly developed to the intensity of the MR zone. Only 11.5% of the site would be developed to the height allowed by the MR zone.

c. Properties within an urban center, the village core of a hub urban village or a residential urban village, where a neighborhood plan adopted or amended by the City Council after January 1, 1995 indicates that the area is appropriate for a Midrise zone designation.

The Capitol Hill Neighborhood Plan does not address the site or its immediate vicinity and so does not comment on the zone designation of the site.

2. Environmentally Critical Areas. Except as stated in this subsection 23.34.024.B.2, properties designated as environmentally critical may not be rezoned to a Midrise designation, and may remain Midrise only in areas predominantly developed to the intensity of the Midrise zone. The preceding sentence does not apply if the environmentally critical area either 1) was created by human activity, or 2) is a designated peat settlement, liquefaction, seismic or volcanic hazard, or flood prone area, or abandoned landfill.

The December 2009 revision to the MR criteria provided a needed update to the treatment of property with ECA designations. Prior to 2004, Policy L 106 in the Comprehensive Plan stated that moderate density zones were not compatible with ECA areas, and unless an area was already predominantly developed to a moderate multi-family density and scale, a site with an ECA should be downzoned to L1 or L2. However, through adoption of Comprehensive Plan amendments in 2004 (Ordinance No. 121701), this language was changed to be less restrictive as to rezones of sites with ECAs. The December 2009 revision to the MR criteria to allow a rezone to MR on sites with certain ECAs implemented the 2004 Comprehensive Plan amendments.

The December 2009 revisions state that if an ECA "was created by human activity," then a rezone to MR is not prohibited. In the case of the BelRoy site, a steep slope exemption request has been approved by DPD in recognition that the steep slope on the site was created by prior legal grading associated with the construction of I-5. Therefore, the ECA was created by human activity, and a rezone to MR is allowed by this criterion. Furthermore, much of the property on the area appears to be developed to the intensity of the Midrise zone.

3. Other Criteria. The Midrise zone designation is most appropriate in areas generally characterized by the following:

a. Properties that are adjacent to business and commercial areas with comparable height and bulk;

The subject site is located in an area that is developed with comparable height and bulk. Although the property is not adjacent to business and commercial areas, there are some commercial uses nearby.

b. Properties in areas that are served by major arterials and where transit service is good to excellent and street capacity could absorb the traffic generated by midrise development;

The property is on a collector arterial where transit service is good to excellent, and the existing street capacity is fully expected to be adequate to accommodate the traffic generated by midrise development and an increased number of residential units. The area is served by major arterials including Denny Way and Interstate 5 and minor arterials including Belmont Avenue East, a portion East Roy Street, Broadway.

c. Properties in areas that are in close proximity to major employment centers;

The subject site is located in an area that is in close proximity to major employment centers, including Broadway, downtown Seattle and several major hospitals located in the First Hill neighborhood. It is within the second densest neighborhood in the City, with a walkability rating of 97 out of 100 (www.walkscore.com).

d. Properties in areas that are in close proximity to open space and recreational facilities;

Open space and recreational facilities are in close proximity. There are two urban "pocket parks" located nearby: Tashkent Park at Mercer and Boylston, and the Thomas Street Park on the corner of Thomas and Bellevue, four blocks south of the site. Large parks within walking distance include Volunteer Park and Cal Anderson Park. The Melrose bicycle trail is immediately west of and adjacent to the site.

e. Properties in areas along arterials where topographic changes either provide an edge or permit a transition in scale with surroundings;

The subject site is located on a collector arterial. Bellevue Avenue East runs roughly parallel to the topographic break at the west edge of Capitol Hill.

f. Properties in flat areas where the prevailing structure height is greater than 37 feet or where due to a mix of heights, there is no established height pattern;

Most of the site and properties across the street to the east are flat, and there is no clearly established height pattern, with many structures greater than 37 feet in height. The portion of the site where the new development is proposed is relatively flat, however the site itself (as described earlier), contains steep slopes downward towards the Interstate 5 corridor.

g. Properties in areas with moderate slopes and views oblique or parallel to the slope where the height and bulk of existing structures have already limited or blocked views from within the multifamily area and upland areas;

Views in this area are not parallel to the slope, rather they are more perpendicular. The height and bulk of some existing structures have already limited or blocked views from within the multifamily and upland areas.

h. Properties in areas with steep slopes and views perpendicular to the slope where upland developments are of sufficient distance or height to retain their views over the area designated for the Midrise zone;

Views in this area are primarily perpendicular to the slope. In terms of view impacts, multi-family buildings across Bellevue Avenue E. have views over the existing Belroy Apartment building. The new building interior to the site, and the building portion along Bellevue Avenue E. would be at three stories in height, typical of current Lowrise 3

zoning. The northern portion of the building would cause some limited view impact beyond what would occur with current Lowrise 3 development. However, that view impact is limited to four units out of the 19 units in the 714 Bellevue building, and one unit in the 730 Bellevue building. Furthermore, given the 62-foot tall evergreen tree that would be retained, the view impact is a small percentage of the total view arc from these units, and views of the downtown skyline and mountain views are retained.

i. Properties in areas where topographic conditions allow the bulk of the structure to be obscured. Generally, these are steep slopes, 16 percent or more, with views perpendicular to the slope.

Not applicable because the topographic conditions of the site and immediate area are not such that building bulk can be obscured due to topography. The proposed new development is not located on the area of the site with mapped steep slopes and topography that can obscure the bulk of the new development.

Conclusion: The subject property generally meets the criteria for Midrise zones.

Summary

The proposal for the subject property meets the function and locational criteria of the zone and is, therefore, appropriately to re-zone as Midrise. The proposed contract rezone is consistent with the applicable policies contained in the Comprehensive Plan's adopted Capitol Hill Neighborhood Plan.

Impacts of the proposed height increase to surrounding area appear to minimal. Development of the site will result in an increase of approximately 22 units and the anticipated an increased need for police and fire services, sewer capacity and energy needs and other environmental impacts would be minimal. Positive impacts include improved massing, sensitivity to the scale of the BelRoy, and sustainability goals. Adequate parking will be provided and transit service is excellent.

RECOMMENDATION - REZONE

Based on the above analysis, the Director recommends that the proposed contract rezone to NC3-85 \be **CONDITIONALLY APPROVED** subject to a Property Use and Development Agreement (PUDA) that limits the structure to be built to the design approved by the Design Review process and documented in approved plans dated June 9, 2010.

ANALYSIS - DESIGN REVIEW

Design Guidance

At the Early Design Guidance meeting, the applicants presented four options for developing the property. Option 1 illustrates a plan that meets the current L-3 zoning, and removes the existing BelRoy building. Units would be in three buildings, with surface level parking below the buildings and access off of Bellevue Avenue East. Units would be off of a double loaded

corridor. This scenario meets existing code, but does not allow for the historic preservation of the BelRoy, sustainability based on natural ventilation and daylight, and the urban design goals for a more pedestrian-oriented Bellevue Avenue East.

Option 2 also meets the L-3 code, but retains the BelRoy. This scenario has two buildings along Bellevue Avenue East; and surface parking below and behind the units. While the project goal of retaining the BelRoy is met, the project results in 36 new units and uses surface area as parking rather than as open space. Vehicles enter and exit to Bellevue Avenue E.

Option 3 illustrates what is possible under the existing MR code, retaining the BelRoy and creating a single building along Bellevue Avenue East, with code compliant setbacks. In this scenario, 70 new units can be built in a single, double-loaded corridor building. This option illustrates the allowable envelope with a 60-foot high building. Taking full advantage of an MR zone would not reflect the varied massing that is characteristic of the neighborhood, and the double-loaded units do not meet the project's sustainability goal.

Option 4, the applicant's preferred direction for the project retains the BelRoy and creates narrower buildings that allow for natural ventilation and daylight, and on-site open space. Parking is below grade and enters off of Roy Street. This scenario uses the 60-foot height only for a 40-foot wide bar along the north. The rest of the construction matches the height of the existing BelRoy. The circulation for the units is a "point-block" strategy, with stacks of paired units entering from stairwells. This is the same strategy used in the BelRoy. The interior of the site would include a 12-unit building and would have landscaped areas and circulation. The applicant would need to request a contract rezone in order to allow a portion of the site to exceed the 30 foot height limit of the L-3 zone.

After visiting the site, considering the analysis of the site and context provided by the proponents, and hearing public comment, the Design Review Board members provided the following siting and design guidance and identified by letter and number those siting and design guidelines found in the City of Seattle's Design Review: Guidelines for Multifamily and Commercial Buildings of highest priority to this project. The Board also consulted with the adopted neighborhood specific guidelines Capitol Hill Neighborhood Design Guidelines.

At the Initial Recommendation meeting, a further developed design was presented that included a reduced interior building, detailed landscaping and open space plans, detailed information on the Bellevue Avenue façade, materials palette and revised fenestration plans.

The Board expressed satisfaction with the site layout and design, including the size and location of the interior building, and the quality and location of open space areas. The Board identified two issues to be addressed at an additional recommendation meeting: 1) exploration of alternative solutions for the "knuckle" area that links the 3-story façade along Bellevue with the 6-story east-west wing of the new building, and 2) improvements to the café space to communicate a more commercial character and have it relate better to the street.

At the Final Recommendation meeting, the presentation focused on two issues identified at the Initial Recommendation meeting. In addressing the "knuckle" that connects the 3- and 6-story portions, two options were presented. The first option eliminated the "knuckle" so that the 6-story was a separate building. The second option set the "knuckle" area back 15 feet from the plane of the Bellevue Avenue façade.

With respect to the café space, further information was presented on the height of comparable café spaces, and the design changes in response to the Board's comments at the Initial Recommendation meeting, such as pulling the east wall in to behind the columns, extending the glazing from ceiling to grade, and providing access from both the north and east sides. Also, the ground plane was revised to be hardscape, in order to link outside and inside.

The Board preferred retention of the "knuckle" with its setback from the plane of the Bellevue Avenue façade, noting that the "knuckle" helps to mediate between the two building forms and provides a more functional and human scale entry into the project site. The Board also believed the design of the café space was much improved and was satisfactory.

Site Planning

A-1 Responding to Site Characteristics. The siting of buildings should respond to specific site conditions and opportunities.

The Board expressed much interest and concern with the proposed site plan, specifically the design of the interior spaces. The interior courtyard should be of the highest quality in terms of design, landscaping, dimensions and usability. The preferred scheme shows 12 units located within the courtyard space; this freestanding structure within the courtyard area significantly affects the sense of openness and tradition typically associated with an internal open courtyard spaces. In order to be convinced of the merits of keeping these units in the central structure, the Board would need to see an exceptional development of the outdoor spaces and all façade treatments. In an effort to describe what could be considered an exceptional space, the following elements should be explored:

- a. Wider open spaces around the central building.
- b. Character and development of the entries and ability for individual ownership of the open spaces outside of ground level units.
- c. High quality materials.
- d. Window treatments and design that responds to the BelRoy.
- e. Well developed landscape plans that acknowledge the public-private quality of the spaces, while also being sensitive to the privacy of the individual units.
- f. Relationship between the new and existing building both in section and three-dimensional renderings.
- g. The landscape and site plan should include points of relief, as well as gathering space.

After reviewing design revisions and additional information at the Initial Recommendation meeting, the Board expressed satisfaction with the siting of the buildings. The Board appreciated the reduction in size of the interior courtyard building, and the quality, functionality, and location of outdoor spaces.

A-2 Streetscape Compatibility. The siting of buildings should acknowledge and reinforce the existing desirable spatial characteristics of the right-of-way.

The Board agreed that the building along Bellevue should be the same height as the BelRoy. And the eastern portion of the north building should drop down to this same datum line. See B-1.

At the Initial Recommendation meeting, the Board clarified that comments at the Early Design Guidance meeting were not referring to the height of the north building, but were instead referring to having a common datum line continue across the Bellevue Avenue façade. Detailed information was provided regarding the Bellevue Avenue façade. The Board asked for exploration of different ways to resolve the connection between the 3- and 6-story elements. Options included eliminating the “knuckle” area to create two separate buildings, or articulating the composition or connection in a different way, to reduce the horizontal or flat feeling of the Bellevue Avenue façade. With the exception of further exploration of the “knuckle” and fenestration on the 6-story portion, the Board was satisfied that the project reinforces desirable streetscape characteristics.

At the Final Recommendation meeting, the Board reviewed two options for the “knuckle” that connects the 3- and 6-story portions of the Bellevue Avenue building. The Board determined that the option which retained the “knuckle” and set it back from the Bellevue Avenue façade provided a better design along the Bellevue Avenue streetscape, than if the “knuckle” was eliminated and there were three separate buildings along Bellevue (existing BelRoy, 3-story building, and separate 6-story building).

A-3 Entrances Visible from the Street. Entries should be clearly identifiable and visible from the street.

The Board agreed that the north entrance area should have a strong sense of arrival and be open to the air or have a sense of visual openness in the architecture, similar to the sense of the arrival and openness of the south entrance. The Board wanted further exploration of the community space that occurs at the north side of the north entry point.

At the Initial Recommendation meeting, the Board expressed concerned that the café entrance did not directly relate to the street or to the community space immediately north of it.

At the Final Recommendation meeting, the Board noted the improved entries to the café space, and better integration of the café with the outdoor seating area on the north.

A-5 Respect for Adjacent Sites. Buildings should respect adjacent properties by being located on their sites to minimize disruption of the privacy and outdoor activities of residents in adjacent buildings.

To the north of the subject lot is a five-story residential building that has a narrow north-south footprint, with units oriented to the west. The southern façade of the building consists of a stair tower and windowless concrete masonry unit wall. A parking area is on the east of the building, and a swimming pool is on the west side. There is substantial existing vegetation on both sides of the property line. A shadow study was presented, noting that shadows from the proposed project would infill the existing shadowing from the trees, but would not reach the pool or significantly increase shadows on the property to the north.

A-6 Transition Between Residence & Street. The space between the building and the sidewalk should provide security and privacy for residents and encourage social interaction among residents and neighbors.

The Board expressed keen interest in both the existing and proposed second entry area accessed from Bellevue, as well as the point block entries for those units that front onto Bellevue. These entries should be gracious and allow views into the courtyard open spaces, while the entries to the unit groupings along Bellevue should be attractive while also expressing the privacy and security of the residences.

Based on additional information provided at the Initial Recommendation meeting, the Board expressed satisfaction with the way residential units along Bellevue Avenue relate to the sidewalk.

A-7 Residential Open Space. Residential projects should be sited to maximize opportunities for creating usable, attractive, well-integrated open space.

The Board is interested in seeing the next level of design of the open spaces created by the courtyard area, the transitional space between the residences and the street along Bellevue, the open space along the northern property edge and the existing spaces to the west of the BelRoy. The Board is also very supportive of cleaning up the vegetated slope area between the BelRoy and the pathway that runs parallel to I-5. See also A-6 and E-2.

At the Initial Recommendation meeting, the Board reviewed the quality and variety of the proposed open space areas and the treatment along the northern property edge, and expressed support for the quality of the design.

Height, Bulk, and Scale

B-1 Height, Bulk, and Scale Compatibility. Projects should be compatible with the scale of development anticipated by the applicable Land Use Policies for the surrounding area and should be sited and designed to provide a sensitive transition to nearby, less intensive zones. Projects on zone edges should be developed in a manner that creates a step in perceived height, bulk, and scale between the anticipated development potential on the adjacent zones.

The Board agreed that the preferred option is heading in the right direction and appears to be creating a positive precedent for the neighborhood. The Board discussed at length the relocation of the 12 units in the courtyard to elsewhere on site and possibly the north building. See A-1.

The Board also noted that the east end of the north building should be the same height as the Bellevue building to continue the height datum line established by the BelRoy and continued by the Bellevue building through to the east end of the north building, creating a sense of continuity along the street front. This eastern portion of the north building should relate to and face the street, respond to the existing trees, north entrance area, as well as the respond to the middle Bellevue building, rather than appear as the "end" façade of the north building.

At the Initial Recommendation meeting, the Board agreed that the east elevation of the six-story tower should better respond to the datum line and materials of the three-story building along Bellevue. The fenestration of this six-story east elevation also needs further work to create a

front on this street and not appear as an end of the building. The Board also expressed satisfaction with the courtyard building, noting that its size had been reduced and that the open space was of high quality.

Architectural Elements

C-2 Architectural Concept and Consistency. Building design elements, details and massing should create a well-proportioned and unified building form and exhibit an overall architectural concept. Buildings should exhibit form and features identifying the functions within the building.

The Board looks forward to seeing a cohesive architectural design that responds to the architecturally significant existing BelRoy apartment building and creates consistent massing and scale along Bellevue Avenue. The Board enthusiastically supported designing the building forms and configurations of the new structures to reflect the features of the BelRoy, including unit grouping, multiple entries, single loaded corridors and skinnier building forms to allow natural ventilation and day lighting. The Board did not encourage the new building to mimic the design of the BelRoy, but rather to dialogue with and reference the BelRoy and its forms, fenestration lines, unusual unit layouts and detailing. All of the building elevations should be presented at the next meeting, including the interior elevations and the north facade of the north building.

At the Initial Recommendation meeting, the Board was concerned that the design of the "knuckle" between the 3-story building along Bellevue and the 6-story tower was unresolved and created a relentlessly horizontal elevation. This seam needs to be detailed and further considered either with a planer shift or elimination of the 'bridge' over this prominent entry. The Board was not supportive of a departure from building length with the particular design presented.

At the Final Recommendation meeting, the Board endorsed retention of the 'bridge' or "knuckle" element with its 15-foot setback from the Bellevue façade, and supported its associated building width departure. The Board agreed that this 'bridge' element was preferred in order to minimize the contrast between the proposed three-story and six-story structures. The Board appreciated the changes to the fenestration on the 6-story building façade adjacent to Bellevue Avenue.

C-3 Human Scale. The design of new buildings should incorporate architectural features, elements and details to achieve a good human scale.

The Board agreed that the scale of the east facing facades should integrate features that reinforce the pedestrian scale and ground level entrances that are welcoming and comfortable.

At the Initial Recommendation meeting, the Board expressed support for the scale and design of the residential units along Bellevue Avenue, and sought further design refinements to the retail space at the northern end of the site.

At the Final Recommendation meeting, the Board noted the improved café design and the improved relationship between the café and the outdoor public seating area. The Board would still prefer that the retail space have higher ceilings, but overall, the changes to the space including glazing, entry locations and seating were all positive improvements.

- C-4 Exterior Finish Materials. Building exteriors should be constructed of durable and maintainable materials that are attractive even when viewed up close. Materials that have texture, pattern, or lend themselves to a high quality of detailing are encouraged.**

The Board strongly agreed that the material palette should respond to and take cues from the BelRoy, but not necessarily imitate the BelRoy.

At the Initial Recommendation meeting, the material palette included a brick base of a similar color as the BelRoy, an off-white Swiss Pearl cementitious panel. Above the stairwells along Bellevue, the same type of panels would be used, although these would have perforated holes creating a pattern that would allow for natural ventilation, while also reflecting the brick pattern of the BelRoy. These panels would have an integral color to match the other panels. The operable windows are a dark charcoal grey. The interior building would be clad in cedar and the gates would be open with an art deco sensibility to reflect the BelRoy. With further explanation provided by the design team, the Board supported the exterior finish materials.

Pedestrian Environment

- D-1 Pedestrian Open Spaces and Entrances. Convenient and attractive access to the building entry should be provided. To ensure comfort and security, entry areas should be sufficiently lighted and entry areas should be protected from weather. Opportunities for creating lively, pedestrian-oriented open space should be considered.**

See A-6, A-7 and E-2.

At the Initial Recommendation meeting, the Board discussed the proposed commercial space located at the northeastern corner of the proposed building. The Board agreed that this commercial space could be more viable in its appearance and circulation (height, entry point, signage, etc). Specifically, the Board felt that the location of the entryway and commercial appearance would help make this space more functional for commercial uses. The Board asked for more information on how the café façade was relating to the Bellevue Avenue streetscape and expressed concern with the height of the café space. The Board noted that the café had a private looking character and the entrance did not directly relate to the street.

As noted previously, at the Final Recommendation meeting, the Board felt that the design of the commercial space had been revised in such a way that it appeared more commercial and inviting in nature, and was likely, therefore, to be more functional.

- D-12 Residential Entries and Transitions. For residential projects in commercial zones, the space between the residential entry and the sidewalk should provide security and privacy for residents and a visually interesting street front for pedestrians. Residential buildings should enhance the character of the streetscape with small gardens, stoops and other elements that work to create a transition between the public sidewalk and private entry.**

The Board is very concerned about the quality and openness of the interior courtyard. See A-1 and B-1.

As noted previously, at the Initial Recommendation meeting, the Board reviewed revisions to the interior building, and received detailed information on the courtyard and other open space areas. The Board was pleased with the interior building and the open space areas.

Landscaping

E-1 Landscaping to Reinforce Design Continuity with Adjacent Sites. Where possible, special consideration should be given to abutting streetscape and neighboring properties.

The Board discussed the preservation of the existing trees at the northeast corner of the site. Retaining the trees is important for ecological and screening reasons; however, these reasons should be balanced with the configuration of the most successful site plan. The Board stressed that the preservation of the trees should not appear as an afterthought to the building and site, but instead should be well integrated into the plan.

At the Initial Recommendation meeting, it was clarified that the proposal will retain one of the two existing trees at the northeast corner of the site. The tree being retained is a 60-foot tall cedar. The seating area for the café space would be complemented by retention of this tree.

E-2 Landscaping to Enhance the Building and/or Site. Landscaping, including living plant material, special pavements, trellises, screen walls, planters, site furniture, and similar features should be appropriately incorporated into the design to enhance the project.

The Board is also interested in the design of the north side of the site between the north building and the property line. The landscape plan and open spaces along this corridor are important as a transition to the development to the north.

Special attention should be given to the design of the public-private open spaces within the central courtyard and along Bellevue Avenue. Clear differentiation between the semi private entry spaces and the more communal open spaces is critical. Views through and to the site are also important and within the character of the neighborhood courtyard buildings.

At the Initial Recommendation meeting, the Board was very pleased with the design of the courtyard, the reduction in the interior building to allow for more generous dimensions, courtyard plantings and circulation space.

DEVELOPMENT STANDARD DEPARTURES

Several departures from the development standards were proposed at this time. The Board's recommendation on the requested departures was reserved until the Final Recommendation meeting and is based upon the departure's potential to help the project better meet these design guideline priorities and achieve a better overall design than could be achieved without the departure.

Summarized below is the final departure list, with the Board's recommendation noted.

- 1) **Structure Width (SMC 23.45.052):** The preferred design would require a departure to exceed the structure width standards on Bellevue. The maximum structure width allowed is (150'). The proposed structure width is 176'-6".

At the Initial Recommendation meeting, the Board was not supportive of a departure from building width with the design presented at that time (see discussion under C-2). However, with the revision to the "knuckle" element and fenestration on the 6-story element, as well as a better understanding of the details of the Bellevue façade, the Board unanimously recommended approval of this departure. The building width is broken up by the north entry and the substantial building setback on the northern edge, which is more effective than a 150' building width with fewer corridors and setbacks. Also, the pulling back of the "knuckle" element provides a further reduction of perceived building width.

- 2) **Front Setback (SMC 23.45.518):** The Code requires an average of seven feet and a minimum of five feet. The proposed front setback is 5.9'.

The Board unanimously supported this departure as it provides a street wall that is responsive to the existing BelRoy.

- 3) **Projections into Setbacks (SMC 23.45.518):** The Code allows a maximum encroachment of two feet into the required setbacks. The weather protection roofs in the proposed design would project four feet into the front setback.

The Board unanimously supported this departure as the weather protection roofs would better define the residential entrances and add variation to the elevation.

- 4) **Sight Triangle (SMC 23.54.030):** The preferred design proposes to eliminate the required sight triangle from the garage exit.

The Board unanimously supported this departure, noting that mirrors would be installed to alert vehicles and pedestrians alike of oncoming vehicles.

The four Board members in attendance unanimously recommended approval of the project and the requested departures. The design review process prescribed in Section 23.41.014.F of the Seattle Municipal Code describing the content of the DPD Director's decision reads in part as follows:

The Director's decision shall consider the recommendation of the Design Review Board, provided that, if four (4) members of the Design Review Board are in agreement in their recommendation to the Director, the Director shall issue a decision which incorporates the full substance of the recommendation of the Design Review Board, unless the Director concludes the Design Review Board:

- a. *Reflects inconsistent application of the design review guidelines; or*
- b. *Exceeds the authority of the Design Review Board; or*
- c. *Conflicts with SEPA conditions or other regulatory requirements applicable to the site; or*
- d. *Conflicts with the requirements of state or federal law.*

Subject to the above-proposed conditions, the design of the proposed project was found by the Design Review Board to adequately conform to the applicable Design Guidelines.

ANALYSIS & DECISION – DESIGN REVIEW

Director's Analysis

Four members of the Capitol Hill Design Review Board were in attendance and provided recommendations (listed above) to the Director and identified elements of the Design Guidelines which are critical to the project's overall success. The Director must provide additional analysis of the Board's recommendations and then accept, deny or revise the Board's recommendations (SMC 23.41.014.F3). The Director agrees with and accepts the conditions recommended by the Board that further augment the selected Guidelines.

Following the Recommendation meeting, DPD staff worked with the applicant to update the submitted plans to include the recommendations of the Design Review Board. The Director of DPD has reviewed the decision and recommendations of the Design Review Board made by the four members present at the decision meeting and finds that they are consistent with the City of Seattle Design Review Guidelines for Multifamily and Commercial Buildings. The Director agrees with the Design Review Board's conclusion that the proposed project and conditions imposed result in a design that best meets the intent of the Design Review Guidelines and accepts the recommendations noted by the Board. The Director is satisfied that all of the conditions imposed by the Design Review Board have been met.

Director's Decision

The design review process is prescribed in Section 23.41.014 of the Seattle Municipal Code. Subject to the above-proposed conditions, the design of the proposed project was found by the Design Review Board to adequately conform to the applicable Design Guidelines. The Director of DPD has reviewed the decision and recommendations of the Design Review Board made by the four members present at the decision meeting, provided additional review and finds that they are consistent with the City of Seattle Design Review Guidelines for Multifamily and Commercial Buildings. The Design Review Board agreed that the proposed design, along with the conditions listed, meets each of the Design Guideline Priorities as previously identified. Therefore, the Director accepts the Design Review Board's recommendations and **APPROVES** the proposed design and the requested departures.

ANALYSIS - SEPA

The proposal is 58 residential units, thus the application is not exempt from SEPA review. Environmental review resulting in a Threshold Determination is required pursuant to the Seattle State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05) because the proposed project is located in a Lowrise zone and exceeds the threshold unit count.

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated December 15, 2009 and annotated by the Land Use Planner. The information in the checklist, pertinent public comment, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The Department of Planning and Development has analyzed the environmental checklist and submitted by the project applicant and reviewed the project plans and any additional information in the file. As indicated in this analysis, this action will result in adverse impacts to the environment. However, due to their temporary nature and limited effects, the impacts are not expected to be significant.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced, may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, "*Where City regulations have been adopted to address and environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation*" subject to some limitations. Short-term adverse impacts are anticipated from the proposal. No adverse long-term impacts on the environmentally critical area are anticipated.

Short-Term Impacts

The following temporary or construction-related impacts are expected; decreased air quality due to suspended particulates from demolition and building activities and hydrocarbon emissions from construction vehicles and equipment; increased traffic and demand for parking from construction equipment and personnel; increased noise; and consumption of renewable and non-renewable resources.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. The Stormwater, Grading and Drainage Control Code regulates site excavation for foundation purposes and requires that soil erosion control techniques be initiated for the duration of construction. Puget Sound Clean Air Agency (PSCAA) regulations require control of fugitive dust to protect air quality. The Building Code provides for construction measures in general. Finally, the Noise Ordinance regulates the time and amount of construction noise that is permitted in the City.

The SEPA Overview Policy (SMC 25.05.665) and the SEPA Construction Impacts Policy (SMC 25.05.675B) allow the reviewing agency to mitigate impacts associated with construction activities. Most short-term impacts are expected to be minor. Compliance with the above applicable codes and ordinances will reduce or eliminate most adverse short-term impacts to the environment. However, impacts associated with air quality, noise, and construction traffic warrant further discussion.

The following temporary or construction-related impacts are expected: decreased air quality due to suspended particulates from construction activities and hydrocarbon emissions from construction vehicles and equipment; increased dust caused by drying mud tracked onto streets during construction activities; increased traffic and demand for parking from construction materials hauling, equipment and personnel; increased noise; and consumption of renewable and non-renewable resources. Several adopted codes and/or ordinances provide mitigation for some of the identified impacts:

- The applicant estimates approximately 11,000 cubic yards of excavation for construction. Excess material to be disposed of must be deposited in an approved site.
- The Stormwater, Grading and Drainage Control Code regulates site excavation for foundation purposes and requires that soil erosion control techniques be initiated for the duration of construction.
- The Street Use Ordinance requires watering streets to suppress dust, on-site washing of truck tires, removal of debris, and regulates obstruction of the pedestrian right-of-way.
- Puget Sound Clean Air Agency regulations require control of fugitive dust to protect air quality. The Building Code provides for construction measures in general.
- Finally, the Noise Ordinance regulates the time and amount of construction noise that is permitted in the city.

Compliance with these applicable codes and ordinances will reduce or eliminate most short-term impacts to the environment. However, given the amount of building activity to be undertaken in association with the proposed project, additional analysis of drainage, grading, noise, greenhouse gases, and traffic impacts is warranted.

Drainage

Soil disturbing activities during site excavation for foundation purposes could result in erosion and transport of sediment. The Stormwater, Grading and Drainage Control Code provides for extensive review and conditioning of the project prior to issuance of building permits. Therefore, no further conditioning is warranted pursuant to SEPA policies.

Earth - Grading

The construction plans will be reviewed by DPD. Any additional information showing conformance with applicable ordinances and codes will be required prior to issuance of building permits. Applicable codes and ordinances provide extensive conditioning authority and prescriptive construction methodology to assure safe construction techniques are used; therefore, no additional conditioning is warranted pursuant to SEPA policies.

The Stormwater, Grading and Drainage Control Code requires preparation of a soils report to evaluate the site conditions and provide recommendations for safe construction on sites where grading will involve cuts or fills of greater than three feet in height or grading greater than 100 cubic yards of material. The current proposal involves excavation of approximately 11,000 cubic yards of material. A Preliminary Geotechnical Engineering Study (by Hart Crowser dated April 16, 2009) was submitted with this application and was review and approved by DPD. The Stormwater, Grading and Drainage Control Code provides extensive conditioning authority and prescriptive construction methodology to assure safe construction techniques are used, therefore, no additional conditioning is warranted pursuant to SEPA policies.

Traffic, Circulation and Parking

Construction activities are expected to affect the surrounding area. Impacts to traffic and roads are expected from truck trips during excavation and construction activities. The SEPA Overview Policy (SMC 25.05.665) and the SEPA Construction Impacts Policy (SMC 25.05.675B) allows the reviewing agency to mitigate impacts associated with transportation during demolition and

construction. The construction activities will require the removal of material from site and can be expected to generate truck trips to and from the site. In addition, delivery of concrete and other materials to the site will generate truck trips. As a result of these truck trips, an adverse impact to existing traffic will be introduced to the surrounding street system, which is unmitigated by existing codes and regulations.

During demolition and construction, existing City code (SMC 11.62) requires truck activities to use arterial streets to the greatest extent possible. This general area is subject to traffic congestion during the PM peak hour, and large construction trucks would further exacerbate the flow of traffic. Pursuant to SMC 25.05.675(B) (Construction Impacts Policy) and SMC 25.05.675(R) (Traffic and Transportation), additional mitigation is warranted.

For the removal and disposal of the spoil materials, the Code (SMC 11.74) provides that material hauled in trucks not be spilled during transport. The City requires that a minimum of one foot of "freeboard" (area from level of material to the top of the truck container) be provided in loaded uncovered trucks which minimize the amount of spilled material and dust from the truck bed en route to or from a site.

For the duration of the construction activity, the applicant/responsible party shall cause construction truck trips to cease during the hours between 4:00 p.m. and 6:00 p.m. on weekdays. This condition will assure that construction truck trips do not interfere with daily PM peak traffic in the vicinity. As conditioned, this impact is sufficiently mitigated in conjunction with enforcement of the provisions of existing City Code (SMC 11.62).

On-street parking in the neighborhood is limited, and the demand for parking by construction workers during construction could exacerbate the demand for on-street parking and result in an adverse impact on surrounding properties. The owner and/or responsible party shall assure that construction vehicles and equipment are parked on the subject site or on a dedicated site within 800 feet for the term of the construction whenever possible.

To facilitate these efforts, a Construction Management Plan will be required as a condition of approval identifying construction worker parking and construction materials 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.

The Street Use Ordinance requires sweeping or watering streets to suppress dust, on-site washing of truck tires, removal of debris, and regulates obstruction of the pedestrian right-of-way. This ordinance provides adequate mitigation for these construction transportation impacts; therefore, no additional conditioning is warranted pursuant to SEPA policies.

Noise

All construction activities are subject to the limitations of the Noise Ordinance. Construction activities (including but not limited to demolition, grading, deliveries, framing, roofing, and painting) shall be limited to non-holiday weekdays from 7am to 6pm. Interior work that involves mechanical equipment, including compressors and generators, may be allowed on Saturdays between 9am and 6pm once the shell of the structure is completely enclosed, provided windows and doors remain closed. Non-noisy activities, such as site security, monitoring, weather protection shall not be limited by this condition.

Construction activities outside the above-stated restrictions may be authorized upon approval of a Construction Noise Management Plan to address mitigation of noise impacts resulting from all construction activities. 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. 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.

Greenhouse Gas Emissions

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant.

Long-Term Impacts – Use-Related Impacts

Land Use

The proposed project includes a Council Action to rezone the subject site from Lowrise 3 to Midrise. See the rezone analysis at the beginning of this report.

Historic and Cultural Preservation

The proposed action includes demolition of the five single family structures. An Appendix A survey was completed and submitted to the Department of Neighborhoods Landmarks Coordinator. After review by the Landmarks Preservation Board staff, it was determined that the buildings were unlikely to meet the standards for designation as individual landmarks (see Letter dated March 9, 2009). A Certificate of Approval for any changes to the BelRoy Apartment building must be obtained from the Landmarks Preservation Board/Department of Neighborhoods Director.

Subsequent to the application submittal, the existing BelRoy Apartment Building was nominated on August 18, 2010 and designated a historic landmark on October 6, 2010 by the Landmarks Preservation Board. Following the approval for landmark nomination, a referral was sent to the Department of Neighborhoods on August 27, 2010 for review of potential impacts of the proposed development to the adjacent nominated landmark. On September 22, 2010, the Landmark Board Coordinator responded that no additional mitigation of the project design would be required.

Traffic and Transportation

A Traffic Generation and Parking Demand Analysis for the proposed project was prepared by Heffron Transportation, Inc. (TSI), dated April 13, 2010. The report evaluates traffic volumes associated with the proposed demolition and the construction of the new building. According to the traffic report, there are approximately 20 PM peak hour vehicle trips associated with the existing development on the subject site. Of these 20 trips, approximately 17 are associated with the existing BelRoy Apartments and three are associated with the existing houses. The proposed

development, including the retention of the existing BelRoy apartment building, would generate approximately 37 vehicle trips, 20 of which are due to the new development. The trip assignment analysis concludes that no roadway would be affected by ten or more project trips. Therefore, the project is not expected to adversely affect street capacity or intersection level of service.

Parking

The proposed development is located in the Capitol Hill Urban Center where parking is not required per SMC 23.54.015B2. However, the proposal includes 63 parking spaces to be provided below grade and accessed from a driveway via Roy Street.

In the Traffic Generation and Parking Demand Analyses prepared by Heffron Transportation, Inc and dated April 13, 2010, parking generation rates from the Institute of Transportation Engineers (ITE) Parking Generation Manual (3rd Edition), the Puget Sound Regional Council, the Seattle Comprehensive Neighborhood Parking Study Final Report and census data were used to estimate the project's parking demand.

Currently 14 stalls are provided on site and the demand is approximately 39 vehicles during the week and 40 vehicles during the weekend. The existing condition thus generates an offsite impact of 25 vehicles during the week and 26 vehicles during the weekend. According to ITE, the project would generate a peak weekday parking demand of 83 vehicles and a peak weekend parking demand of 85 vehicles. The project will include 63 parking stalls, leaving a potential overflow of 20 spaces during the week and 22 during the weekend. Therefore, the projected overflow from the proposed project is less than the existing overflow from the current project and no adverse impacts are anticipated.

Greenhouse Gas

Operational activities, primarily vehicular trips associated with the project and the projects' energy consumption, are expected to result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant.

DECISION – STATE ENVIRONMENTAL POLICY ACT (SEPA)

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(c).

RECOMMENDED CONDITIONS – REZONE

Approval of this contract rezone is conditioned upon the development of the project in accordance with the final approved Master Use Permit drawings, dated June 9, 2010, as modified by design review conditions including the structure design, structure height, building materials, landscaping, street improvements, parking lot design and layout, signage and site lighting.

RECOMMENDED CONDITIONS – SEPA

Prior to Issuance of any Construction, Shoring or Grading Permits

1. The applicant shall provide to the DPD Land Use Planner for approval a Construction Management Plan which identifies construction worker parking and construction materials 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.
2. The applicant shall provide to the DPD Land Use Planner for approval a Construction Noise Management Plan Construction. 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.

During Construction

3. 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.
4. For the duration of the construction activity, the applicant/responsible party shall cause construction truck trips to cease during the hours between 4:00 p.m. and 6:00 p.m. on weekdays.

CONDITIONS-DESIGN REVIEW

Prior to Issuance of any Certificate of Occupancy

5. The applicants shall arrange for an inspection with the 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 09, 2010.

Signature: _____

Grace Ogama for
Lisa Rutzick, Senior Land Use Planner
Department of Planning and Development

Date: October 25, 2010