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BEFORE THE HEARING EXAMINER FOR THE CITY OF BELLEVUE

In the Matter of the Application for

DSD File No.: 21-104902-LQ

NE 8th STREET PARTNERS

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATION**

For a Rezone of Two Parcels Zoned Office
(O) to Residential High Density (R-30)

SUMMARY OF RECOMMENDATION

The Hearing Examiner respectfully recommends that the Bellevue City Council **APPROVE** the requested rezone, subject to the condition contained at the end of this recommendation.

REZONE REQUEST

The Applicants, Harold Moniz of Collins Woerman (“Applicant”), request a rezone of two parcels (“property”) that are zoned Office (O), to re-classify both parcels as Residential High Density (R-30). No development application accompanies the proposal at this time.

The proposed rezone would achieve consistency with a comprehensive plan amendment enacted by the Bellevue City Council on December 14, 2020 (File #20-102741-AC), which changed the planning designation from Office (O) to a Multi-Family High Density (MF-H) for both parcels.

CONTENTS OF THE RECORD

The record consists of Exhibit C-1, the DSD project file, including the Staff Report (pages 1 through 333); Exhibit C-2, DSD PowerPoint presentation; and Exhibit A-1, Applicant’s

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**CITY OF BELLEVUE
450 – 110th Avenue NE
P. O. Box 90012
Bellevue, WA 98009-9012**

1 public letter of support with two attachments. The record also includes the audio recording of
2 the virtual public hearing held August 26, 2021 at 6:00 p.m. The Examiner heard one witness-
3 the land use planner assigned to the application from DSD, Ms. Carol Orr. The Applicant
4 attended the hearing and submitted an exhibit, but no witnesses testified. No members of the
5 public attended the hearing or commented on the proposed rezone. There are no Parties of
Record registered for this proposal.

6 **PROCEDURE**

7 1. Decision Process.

8 A rezone application is a Process III decision governed by Land Use Code (“LUC”)
9 20.35.030. The Hearing Examiner is responsible for holding a public hearing and making a
10 recommendation to the City Council. The City Council makes the final decision on behalf of
11 the City.

12 The proposal is within the jurisdictional boundaries of the East Bellevue Community
13 Council. After the City Council makes a decision on the project, the East Bellevue Community
14 Council will review the decision of the City Council pursuant to LUC 20.35.450(A).

15 2. Public Notice and Process Prior to Public Hearing.

16 A Notice of Application was published in the City of Bellevue’s Weekly Permit Bulletin
17 on May 20, 2021. Notice was mailed to taxpayers and occupants within 500 feet of the property
18 and those on the list to receive the Weekly Permit Bulletin regularly every week. Two (2) one-
19 sided Public Information Signs were installed along NE 8th Street on the same date. Exhibit C-
20 1 at 134.

21 Because this proposal falls within the jurisdiction of the East Bellevue Community
22 Council (“EBCC”), the public meeting for the project was combined with an EBCC courtesy
23 hearing. Notice of Application included notice of the Public Meeting and EBCC courtesy
24 hearing, which was held virtually at 6:00 p.m. on June 1, 2021. Because the public meeting
25 was held during a regularly scheduled EBCC monthly meeting, there were members of the
public present. However, no questions were posed to the City or to the applicant during the
public comment portion of that meeting regarding this project. Exhibit C-1 at 134.

The Development Services Department (“DSD”) published a recommendation of
approval with conditions on August 5, 2021. Exhibit C-1at 127-137 with attachments. For

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1 compliance with the State Environmental Policy Act (“SEPA”), the Department relied on a
2 Determination of Non-Significance (“DNS”) issued on October 8, 2020 for the previously
3 approved Comprehensive Plan Amendment (File #20-102741-AC) on the project pursuant to
4 BCC Chapter 22.02. Exhibit C-1 at 134.

5 3. Public Hearing Before the Hearing Examiner.

6 After appropriate public notice, the Hearing Examiner held a virtual public hearing on
7 August 26, 2021 at 6:00 p.m. The Applicant was represented by Jessica Roe, attorney from
8 McCullough Hill Leary, P.S. The Department was represented by Carol Orr, Associate Land
9 Use Planner. Ms. Orr made a presentation at the public hearing, which was admitted into the
10 record as Exhibit C-2. No other witnesses testified.

11 The Applicant provided a public comment letter with a presentation on the proposal
12 placed in the record as Exhibit A-1. The Applicant also provided a corrected legal description
13 of the properties that are the subject of this proposal, as Attachment 2 to Exhibit A-1. No
14 witnesses were presented by the Applicant.

15 The Hearing Examiner opened public testimony on the record and asked that any persons
16 in attendance wishing to testify identify themselves. No one did so. There was one caller
17 identified only by telephone number, other than persons associated with the Department and the
18 Applicant. The Examiner specifically inquired whether that individual would like to testify.
19 There was no reply by the caller.

20 As required by the code, the Hearing Examiner must issue his or her recommendation or
21 decision within 10 working days of the hearing.

22 4. Procedural Findings Should be Considered Findings of Fact.

23 For purposes of this recommendation, the information set forth in this section should be
24 considered to be Findings of Fact.

25 **FINDINGS OF FACT**

1. Comprehensive Plan Amendment Adopted in 2020.

On December 14, 2020, the Bellevue City Council enacted a Comprehensive Plan
Amendment (“CPA”) (File # 20-102741-AC) to designate the parcels Multi-Family High
Density (MF-H). The zoning was not changed at that time, however, and the property continues

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1 to be zoned Office (O), a zoning classification that is inconsistent with the new plan designation
2 adopted in the CPA.

3 2. Rezone Proposed to Make Zoning Consistent with Comprehensive Plan.

4 The Applicant is proposing a rezone for the property to bring the zoning classification
5 for the properties into conformance with the comprehensive plan designation. The new zoning
6 classification for the properties would be Residential High Density (R-30), bringing the zoning
7 into consistency with the Comprehensive Plan. Although there is no development application
8 before the Hearing Examiner, the new zoning classification would allow multi-family
9 development.

10 3. Site Description.

11 The two subject properties are 0.93 acres in size (40,570 square feet)¹ and are located
12 within the Wilburton/NE 8th Street Subarea. The properties are on the south side of NE 8th
13 Street, approximately 800 feet to the west of the intersection of NE 8th Street and 140th Avenue
14 NE. Currently the western property, 13635 NE 8th Street, is developed with a two-story office
15 building constructed over a screened surface level parking area. The eastern property, 13655
16 NE 8th Street, contains a single-story commercial building housing a veterinary office. When
17 redeveloped, both sites will continue to be accessed from NE 8th Street. As currently developed,
18 there is vehicular access from one property to the next located behind the existing structures.
19 Pedestrian access to both properties is currently provided by a short flight of stairs from the
20 public sidewalk at a location approximately midway between the two parcels. Mature
21 landscaping with trees, shrubs, and groundcovers is present along the street frontage.

22 4. Existing Development in the Immediate Vicinity.

23 Low-rise, multi-family residential buildings border the subject properties on the west,
24 east and south. A low-rise multi-family project is located to the north of the subject properties
25 on the north side of NE 8th Street. The subject properties are located to the east of the Puget
Sound Energy power line easement and north of the Glendale Golf Course.

¹ 13655 NE 8th Street is 18,933 square feet and 13635 NE 8th Street is 21,637 square feet. Please note that the Staff Report, Exhibit C-1, at p. 129, paragraph 1.A, incorrectly reports the property to be .89 acres or 39,180 square feet in size (17,357 square feet + 21, 643 square feet).

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1 5. Existing Development in the Larger Vicinity.

2 The two parcels are surrounded on all sides by residential high density R-30 zoning and
3 development. In the larger vicinity and beyond surrounding the residential high density R-30
4 zoning is a neighborhood business parcel to the east. Further to the south and west is single
5 family residential zoning (R-2.5 and R-1). *See* Staff Report at p. 5.

6 6. Transition Overlay District.

7 Due to the existence of a vacant single-family zoned parcel to the south (*see* map on p. 7
8 of Staff Report, Exhibit C-1 at 133), the properties are subject to Transition Area Design
9 Standards. Should the vacant single- family parcel be developed with a legally established non-
10 residential use, the Transition Area Design District requirements would no longer apply. The
11 intent of the Transition Overlay District is to soften the impact of more intense development on
12 the neighboring parcel, and provide a more compatible transition between different zoning
13 districts. The Transition Overlay District creates height incentives for such amenities as under-
14 building parking, a pitched-roof form, or a roof free of mechanical equipment.

15 7. Utilities.

16 DSD conducted a technical review of the rezone proposal, recognizing that no
17 development is yet proposed. For utilities, no impacts to water supply or drainage are expected.
18 With respect to sewage capacity, there are known capacity issues downstream of the site.
19 Assuming the site is developed at maximum density, the additional peak flow could exacerbate
20 this downstream capacity issue. Further analysis will be required during any future development
21 application to determine if upsizing or mitigation is necessary to allow for adequate capacity.

22 8. Transportation.

23 Future development as a result of the grant of this rezone proposal may result in
24 additional vehicle trips generated but is not expected to result in a significant traffic or
25 transportation impact. The mitigation required for any future development proposal will address
potential rezone impacts as well.

 9. SEPA.

 DSD issued a non-project SEPA Determination of Non-Significance (DNS) on the
Comprehensive Plan Amendment for the properties, File #20-102741-AC on October 8, 2020.
The current rezone proposal is substantively the same proposal reviewed during the

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1 Comprehensive Plan Amendment; DSD determined that no new information, regulatory
2 changes, or changes to the proposal would necessitate additional review of potential
3 environmental impacts. Accordingly, DSD adopted the SEPA determination for the
4 Comprehensive Plan Amendment to address the rezone, as permitted under WAC 197-11-600
5 (4)(a).

6 **10. Public Hearing.**

7 The open record public hearing was convened on this rezone application on August 26,
8 2021 at 6:00 p.m. The hearing was conducted virtually due to the restrictions resulting from
9 the coronavirus pandemic. Represented at the hearing were the Applicant and the Department.
10 No members of the public attended, testified, or submitted comments in writing.

11 **11. Legal Description.**

12 The Applicant requested that the legal description for the parcels be incorporated into
13 this record, and there was no objection to that request by DSD. Accordingly, the following
14 legal description, supplied by the Applicant as Attachment 2 to Exhibit A-1 is adopted in these
15 findings of fact:

16 **LEGAL DESCRIPTION**

17 Parcel 342505-9246: LOT 1, CITY OF BELLEVUE SHORT PLAT NO. CSPSE - 89-6563,
18 RECORDED SEPTEMBER 24, 1991 UNDER RECORDING NO. 9109249008, IN THE OFFICIAL
19 RECORDS OF KING COUNTY, WASHINGTON.

20 Parcel 342505-9103: LOT 2, CITY OF BELLEVUE SHORT PLAT NO. CSPSE - 89-6563,
21 RECORDED SEPTEMBER 24, 1991 UNDER RECORDING NO. 9109249008, IN THE OFFICIAL
22 RECORDS OF KING COUNTY, WASHINGTON.

23 12. Any finding of fact which is a conclusion law herein is hereby adopted as such, and vice
24 versa.

25 **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over this application. Under LUC 20.35.340.A,
the following recommendation criteria apply:

The Examiner shall recommend approval or approval with conditions or
modification if the applicant has demonstrated that the proposal complies with the
applicable decision criteria of the Bellevue City Code. The applicant carries the
burden of proof and must demonstrate that a preponderance of the evidence
supports the conclusion that the application merits approval or approval with

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1 modifications. In all other cases, the Hearing Examiner shall recommend denial of
2 the application.

3 2. Under LUC 20.35.340.C, the Hearing Examiner may include conditions to ensure the
4 proposal conforms to the relevant decision criteria.

5 3. LUC 20.35.340.D provides the relevant requirements for the Hearing Examiner's
6 recommendation to the City Council:

7 **D. Written Recommendation of the Hearing Examiner.** The Hearing Examiner
8 shall within 10 working days following the close of the record distribute a written
9 report including a recommendation on the public hearing. The report shall contain
10 the following:

- 11 1. The recommendation of the Hearing Examiner; and
- 12 2. Any conditions included as part of the recommendation; and
- 13 3. Findings of facts upon which the recommendation, including any
14 conditions, was based and the conclusions derived from those facts; and
- 15 4. A statement explaining the process to appeal the recommendation of the
16 Hearing Examiner; and
- 17 5. The date on which the matter has been scheduled for consideration by the
18 City Council and information on how to find out whether the Examiner's
19 recommendation has been appealed.

20 4. A property may be rezoned if the proposal meets the criteria contained in LUC
21 20.30A.140:

- 22 A. The rezone is consistent with the Comprehensive Plan; and
- 23 B. The rezone bears a substantial relation to the public health, safety, or welfare;
24 and
- 25 C. The rezone is warranted in order to achieve consistency with the
Comprehensive Plan or because of a need for additional property in the proposed
district land use classification or because the proposed zoning classification is
appropriate for reasonable development of the subject property; and
- D. The rezone will not be materially detrimental to uses or property in the
immediate vicinity of the subject property; and
- E. The rezone has merit and value for the community as a whole.

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1 5. The Staff Report has documented how the proposal meets the requirements for rezone
2 approval and the Hearing Examiner incorporates the discussion contained in Exhibit C-2 at 9-
3 10 (Exhibit C-1 at 135-36) by reference in its entirety as a part of this recommendation. In
4 addition, the Hearing Examiner adds the following conclusions, corresponding to the rezone
5 criteria A- E as identified in Conclusion 4:

6 A. The rezone will bring the zoning into consistency with the Comprehensive Plan, as
7 required by the Washington State Growth Management Act. The proposed rezone is consistent
8 with Policy LU-6, LU-15, LU-16, and HO-11, as detailed in the staff report at p. 9 (Exhibit C-
9 1 at 135). These policies encourage the development of additional multi-family housing in
10 areas already developed with the same housing type, and particularly in locations such as this
11 one that provide excellent access to a major transit corridor, NE 8th Street, where rapid transit
12 is readily available. This rezone furthers the Growth Management Act Goal 1: Urban growth.
13 Encourage development in urban areas where adequate public facilities and services exist or
14 can be provided in an efficient manner. RCW 36.70A.020(1).

15 B. The rezone proposal bears a substantial relation to the public, health, safety, and
16 welfare, as it is consistent with the Comprehensive Plan and the Growth Management Act.

17 C. The City Council has already made the determination that this parcel should be
18 designated as Multi-Family High (MF-H). This rezone will simply change the zoning
19 classification so that the zoning is consistent with the Comprehensive Plan designation.

20 D. There is no evidence in the record suggesting the rezone will be materially
21 detrimental to uses or property in the immediate vicinity of the subject property; to the contrary,
22 the evidence in the record indicates that the rezone will foster consistency with other uses and
23 property within the immediate vicinity and allow for the provision of more needed housing along
24 a transit-oriented corridor in an area already developed with multi-family housing; and

25 E. The rezone has merit to the community as a whole, in that it furthers the goals of the
Growth Management Act found at RCW 36.70A.020, including but not limited to: Goal 1, which
encourages urban growth in urban areas where services are available; Goal 2, which encourages
communities to reduce sprawl; and Goal 3, which encourages efficient multi-modal
transportation systems.

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1 6. Based on the evidence in the record, the Applicant has met its burden to show that the
2 rezone application should be approved.

3 7. Any conclusion herein which may be deemed a finding is hereby adopted as such.

4 **RECOMMENDATION**

5 The Hearing Examiner **RECOMMENDS APPROVAL** of the rezone to the Bellevue
6 City Council with the following condition:

7 Approval of this Rezone does not constitute an approval of any Land Use
8 Entitlement review, or any other ancillary permits that may be required for the
9 design and construction of any proposed development or improvements on the
10 rezone site.

11 **DONE**, this 9th day of September, 2021.

12 *Barbara D. Ehrlichman*

13 Barbara Dykes Ehrlichman
14 Hearing Examiner

1 **NOTICE OF RIGHT TO APPEAL**

2 (Pursuant to Resolution No. 9473)

3 **RIGHT TO APPEAL-TIME LIMIT**

4 Persons and entities identified in Land Use Code (LUC) 20.35.350, may appeal the
5 recommendation of the Hearing Examiner to the Bellevue City Council by filing a written
6 statement of the Findings of Fact or Conclusions of Law which are being appealed, and paying a
7 fee, if any, as established by ordinance or resolution, no later than 14 calendar days following the
8 date that the recommendation was mailed. The written statement must be filed together with an
9 appeal notification form, available from the City Clerk. The written statement of appeal, the
10 appeal notification form, and the appeal fee, if any, must be received by the City Clerk no later
11 than **5:00 p.m. on Thursday, September 23, 2021.**

9 **TRANSCRIPT OF HEARING-PAYMENT OF COST**

10 An appeal of the Hearing Examiner’s recommendation requires the preparation of a
11 transcript of the hearing before the Hearing Examiner. Within thirty (30) days of the decision
12 which is appealed from, the appellant shall order from the City Clerk, on a form provided by the
13 Clerk, a full transcript of the hearing before the Hearing Examiner. At the time the order for
14 transcription is placed, the appellant shall post security in the amount of One Hundred Dollars
15 (\$100.00) for each hearing hour to be transcribed. If appellant fails to post security, the appeal
16 shall be considered abandoned.

14 Additional requirements and procedures concerning appeals filed with the Council are
15 found at Resolution 9473 and in the City of Bellevue Land Use Code.

16 **CITY COUNCIL CONSIDERATION**

17 Unless appealed, this matter has tentatively been scheduled to go before the City Council
18 on **Monday, September 27, 2021 at 6:00 pm** for consideration, and **Monday, October 11,**
19 **2021 at 6:00 pm** for final action. After (appeal deadline) **Thursday, September 23, 2021,**
20 interested persons may contact the Hearing Examiner’s Office at (425) 452-6934 to find out
21 whether an appeal has been filed.

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AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

Karen Hohu, being first duly sworn upon oath, deposes and states:

In the Matter of **NE 8th Street Partners Rezone Application**, on the 9th day of September 2021, I served a copy of:

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

BY ELECTRONIC SERVICE – EMAIL by electronically mailing a true and correct copy thereof through the City of Bellevue’s electronic mail system to the email address(es) set forth below:

corr@bellevuewa.gov

hkirkland@collinswoerman.com

jroe@mhseattle.com

mike.swenson@transpogroup.com

imorrison@mhseattle.com

hmoniz@collinswoerman.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Bellevue, Washington on this 9th day of September 2021.



Karen Hohu
Hearing Examiner Program Coordinator

Application, Petition or Case:

NE 8th Street Partners Rezone Application

File No.: 21-104902-LQ